

CONCURRENCE IN SENATE AMENDMENTS

AB 1455 (Wicks)

As Amended July 1, 2021

Majority vote

SUMMARY

Revives otherwise time-barred claims arising out of an alleged sexual assault by a law enforcement officer, as specified; modifies the statute of limitations claims arising out of an alleged sexual assault by law enforcement officer; and exempts such claims from all state and local government claim presentation requirements.

Major Provisions

- 1) Exempts from all state and local government claim presentation requirements any claim arising out of an alleged sexual assault by a law enforcement officer if the alleged assault occurred on or after the plaintiff's 18th birthday and while the officer was employed by a law enforcement agency.
- 2) Provides, notwithstanding any other law, that the time for commencement of a claim seeking to recover damages arising out of an alleged sexual assault by a law enforcement officer, if the alleged assault occurred on or after the plaintiff's 18th birthday and while the officer was employed by a law enforcement agency, shall be the later of either of the following dates:
 - a) Within 10 years after the date of judgment against a law enforcement officer for a crime of sexual assault or a judgement against a law enforcement officer if a crime of sexual assault was alleged and the crime for which there was a judgment against a law enforcement officer arose out of the same operative facts as the allegation of sexual assault in the present claim.
 - b) Within 10 years after the law enforcement officer is no longer employed by the law enforcement agency that employed the officer when the alleged assault occurred.
- 3) Notwithstanding 2), above, revives a claim seeking to recover damages arising out of an alleged sexual assault by a law enforcement officer if all of the following are true:
 - a) The alleged sexual assault occurred on or after the plaintiff's 18th birthday while the officer was employed by a law enforcement agency.
 - b) The claim has not been litigated to finality or compromised by an executed written settlement agreement.
 - c) The claim would otherwise be barred because the applicable statute of limitations, any state or local government claim presentation deadline, or any other applicable time limit has expired.
- 4) Provides that claims revived pursuant to 3), above, may be commenced if filed within either of the following periods of time:
 - a) Ten years from the date of the last act, attempted act, or assault with the intent to commit an act, of sexual assault against the plaintiff.

- b) Three years from the date the plaintiff discovers or reasonably should have discovered that an injury or illness resulted from an act, attempted act, or assault with the intent to commit an act, of sexual assault against the plaintiff.
- 5) Defines "sexual assault" to mean a crime defined in specified Penal Code Sections.

Senate Amendments

- 1) Specify that assaults covered by this bill apply only to assaults that occur on or after the plaintiff's 18th birthday.
- 2) Clarify the time frame for commencing an action.
- 3) Add a definition of "sexual assault" by reference to specified Penal Code Sections.

COMMENTS

This bill seeks to address the problems that occur when a sexual assault survivor has been sexually assaulted by an on-duty police officer who has the power and authority to threaten the survivor of the assault with arrest, retaliation, or violence if the survivor files a complaint against the law enforcement officer or agency.

The bill modifies existing law in three ways: first, it eliminates the usual "presentation" requirement that is a prerequisite for bringing a cause of action against a public entity or public employee; second, it modifies and extends the statute of limitations for sexual assault committed by a law enforcement officer, *as specified*; and third, it revives otherwise time-barred claims for sexual assault by a law enforcement officer. According to the author, these changes address a survivor's quite reasonable fear that law enforcement officers could use their power to threaten, intimidate, or even falsely arrest the survivor who brings an action.

Existing Statutes of Limitation for Sexual Assault. Statutes of limitation serve an important purpose in our legal system, whether they limit the time limit for the state to file criminal charges or limit the time for a plaintiff to bring a civil action. Statutes of limitation give the potential defendant some degree of repose by requiring the potential plaintiff to exercise due diligence in bringing a timely cause of action. These statutes also reflect practical concerns that evidence and memories fade over time, such that delaying the action runs contrary to the interests of both plaintiffs and defendants. In recent years, however, the Legislature has attempted to take account of the fact that typical statutes of limitation – which require a plaintiff to bring an action within a reasonable period of time – fail to accommodate certain victims' complex and delayed process of dealing with, or even remembering, sexual abuse and assault. For example, SB 1779 (Burton) Chapter 149, Statutes of 2002 extended the statute of limitations for victims of childhood sexual abuse and assault cases. More recently, AB 1619 (Berman) Chapter 939, Statutes of 2018 extended the statute of limitations for adult victims of sexual assault from two years to 10 years after the assault or three years after discovery, whichever comes later. (Code of Civil Procedure 340.16 (a).)

Claim Presentation Requirement – Government Claims Act. Under the Government Claims Act, if a survivor of sexual assault intends to sue a public entity or public employee, the right to bring that action is currently subject to the "claims presentation" requirement. In other words, before bringing an action in court for damages against a public entity or public employee, the person suffering the damage must first "present" a claim to the public entity. The apparent rationale for

this requirement is to give the public entity the opportunity to remedy the situation and, presumably, save all parties the time and expense of a lawsuit.

As a general rule, a claim for money damages must be presented to public entity no later than six months after the cause of action. As to sexual assault claims, however, the short time frame for bringing the claim presentation, prior to initiating a lawsuit, clearly frustrates the purpose of statute of limitations for sexual assault of an adult. Not only does the claim presentation requirement fail to recognize the rationale for extended statutes of limitations in sexual assault cases, it also requires the survivor of a sexual assault by a law enforcement officer to publicly present a claim while the officer most likely is still employed by the law enforcement agency and still in a potentially threatening position of authority. Moreover, the rationale for the longer statute of limitations for claims of sexual assault was based upon a legislative determination that, for a variety of complex social and psychological reasons, it often takes time for a survivor of sexual assault to come forward. The claim presentation requirement undermines the Legislature's rationale for the extending the statute of limitations for sexual assault claims.

This bill provides that claims for sexual assault by a law enforcement officer are exempt from the Government Claims Act provisions and instead subject to the extended statutes of limitations for sexual assault claims described above. Given that the bill specifically exempts such claims from the claim presentation requirement on a going forward basis and revives claims that are time-barred for a number of reasons, including their failure to satisfy the claim presentation requirement, this provision applies to both past and future claims.

According to the Author

The author states that this bill is necessary because of the particularly difficult challenges that survivors of sexual assault face when trying to hold accountable their assailants who are law enforcement officers and still in positions of authority. The author believes that these uniquely challenging problems deter most survivors from every filing claims. The author writes: "We should not require impossible-to-imagine bravery of women who have been sexually assaulted by law enforcement as a pre-condition to them seeking compensation for their life-altering trauma. Yet, that is the state of current law which can require already vulnerable and traumatized victims to sue based on the conduct of law enforcement while those officers are still on-duty; while they are still carrying and empowered to discharge their weapons, still empowered to arrest them or their loved one; still able to bring the bear the intimidating power that facilitated the assault in the first place."

Arguments in Support

The California Women's Law supports this bill, writing that "California law gives victims of rape or sexual assault by on-duty police officers the right to sue their attacker but does not ensure safety measures for these victims. Without protection, law enforcement officers have been able to use their power and authority to stalk, arrest, threaten, or retaliate against their victims. . . AB 1455 would exempt a claim rising out of an alleged sexual assault by a law enforcement officer if the alleged assault occurred while the officer was employed. The bill would give victims of sexual assault by a law enforcement officer ten years after the date of judgment in a criminal case or ten years after the law enforcement officer is no longer employed by the agency, whichever is later, to file a civil claim."

Arguments in Opposition

No opposition on file.

FISCAL COMMENTS

According to the Senate Appropriations Committee:

- 1) *State judgements & settlements*: Unknown, potentially-major costs in the millions of dollars in the aggregate to the extent there are verdict or judgement awards against, or settlements made by, the state for claims filed outside of existing deadlines related to alleged conduct by a state law enforcement officer, such as a California Highway Patrol officer. (General Fund)
- 2) *Courts*: Unknown, potentially-significant workload cost pressures to the courts to adjudicate claims that would be revived or otherwise permitted by measure that fall outside of the existing filing or claim presentation deadline. While the superior courts are not funded on a workload basis, an increase in workload could result in delayed court services and would put pressure on the General Fund to increase the amount appropriated to backfill for trial court operations. For illustrative purposes, the Budget Act of 2021 allocates \$118.3 million from the General Fund for insufficient revenue for trial court operations. (General Fund*)
- 3) *Department of Corrections and Rehabilitation (CDCR)*: The department reports that AB 1455 may result in unknown but potentially-significant cost pressures related primarily to increased attorney expenses and longer records retention periods. It also may incur increased costs associated with the payment of settlements, additional costs related to witnesses, and potentially increased legal exposure given that this bill would revive lapsed claims and CDCR uses existing statutes of limitations to determine records retention schedules. (General Fund)
- 4) *Department of Justice*: Unknown, potentially-significant workload cost pressures for Deputy Attorneys General (DAGs) to litigate an increase in civil suits alleging sexual assault committed by law enforcement officers. The department estimates the need for 2.0 DAGs and 1.0 Legal Secretary to handle increased workload associated with this bill. (Special fund**)

*Trial Court Trust Fund

**Legal Services Revolving Fund

VOTES:

ASM JUDICIARY: 10-0-1

YES: Stone, Gallagher, Chau, Chiu, Davies, Lorena Gonzalez, Holden, Kalra, Maienschein, Reyes

ABS, ABST OR NV: Kiley

ASM APPROPRIATIONS: 16-0-0

YES: Lorena Gonzalez, Bigelow, Calderon, Carrillo, Chau, Megan Dahle, Davies, Fong, Gabriel, Eduardo Garcia, Levine, Quirk, Robert Rivas, Akilah Weber, Holden, Luz Rivas

ASSEMBLY FLOOR: 71-0-8

YES: Aguiar-Curry, Arambula, Bauer-Kahan, Bennett, Berman, Bigelow, Bloom, Boerner Horvath, Bryan, Burke, Calderon, Carrillo, Cervantes, Chau, Chen, Chiu, Cooley, Cooper, Cunningham, Megan Dahle, Daly, Davies, Flora, Fong, Frazier, Friedman, Gabriel,

Gallagher, Eduardo Garcia, Gipson, Lorena Gonzalez, Gray, Grayson, Holden, Irwin, Jones-Sawyer, Kalra, Lackey, Lee, Levine, Mayes, McCarty, Medina, Mullin, Muratsuchi, Nazarian, Nguyen, O'Donnell, Petrie-Norris, Quirk, Quirk-Silva, Ramos, Reyes, Luz Rivas, Robert Rivas, Rodriguez, Blanca Rubio, Salas, Santiago, Seyarto, Stone, Ting, Valladares, Villapudua, Voepel, Waldron, Ward, Akilah Weber, Wicks, Wood, Rendon

ABS, ABST OR NV: Choi, Cristina Garcia, Kiley, Low, Maienschein, Mathis, Patterson, Smith

SENATE FLOOR: 32-1-7

YES: Allen, Archuleta, Atkins, Becker, Borgeas, Bradford, Caballero, Cortese, Dodd, Durazo, Eggman, Glazer, Gonzalez, Hertzberg, Hueso, Hurtado, Kamlager, Laird, Leyva, Limón, McGuire, Min, Newman, Ochoa Bogh, Pan, Portantino, Roth, Rubio, Skinner, Umberg, Wieckowski, Wiener

NO: Nielsen

ABS, ABST OR NV: Bates, Dahle, Grove, Jones, Melendez, Stern, Wilk

UPDATED

VERSION: July 1, 2021

CONSULTANT: Thomas Clark / JUD. / (916) 319-2334

FN: 0001444