
THIRD READING

Bill No: AB 2777
Author: Wicks (D)
Amended: 8/11/22 in Senate
Vote: 21

SENATE JUDICIARY COMMITTEE: 9-2, 6/14/22
AYES: Umberg, Caballero, Durazo, Gonzalez, Hertzberg, Laird, Stern,
Wieckowski, Wiener
NOES: Borgeas, Jones

SENATE APPROPRIATIONS COMMITTEE: 5-1, 8/11/22
AYES: Portantino, Bradford, Laird, McGuire, Wieckowski
NOES: Jones
NO VOTE RECORDED: Bates

ASSEMBLY FLOOR: 57-0, 5/25/22 - See last page for vote

SUBJECT: Sexual assault: statute of limitations

SOURCE: Victim Policy Institute

DIGEST: This bill revives otherwise time-barred claims for damages arising from sexual assault, as specified.

ANALYSIS:

Existing law:

- 1) Requires all civil actions be commenced within applicable statutes of limitations. (Code Civ. Proc. § 312.)
- 2) Provides that in any civil action commenced on or after January 1, 2019, for recovery of damages suffered as a result of sexual assault, as defined, where the assault occurred on or after the plaintiff's 18th birthday, the time for commencement of the action shall be the later of the following:

- a) Within 10 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; or
 - b) Within 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. (Code Civ. Proc. § 340.16(a), (c) (“Section 340.16.”))
- 3) Defines “sexual assault,” for the purposes of the above provision, to mean any of the crimes described in Section 243.4, 261, 262, 264.1, 286, 287, former 288a, or 289 of the Penal Code, assault with the intent to commit any of those crimes, or an attempt to commit any of those crimes. (§ 340.16(b)(1).)
 - 4) Clarifies that it is not necessary that a criminal prosecution or other proceeding have been brought as a result of the sexual assault or, if a criminal prosecution or other proceeding was brought, that the prosecution or proceeding resulted in a conviction or adjudication. It further makes clear that Section 340.16(b) does not limit the availability of causes of action permitted under Section 340.16(a), including causes of action against persons or entities other than the alleged person who committed the crime. (§ 340.16(b)(2).)
 - 5) Provides revival periods for claims arising from sexual assault or other sexual misconduct perpetrated by physicians in two unique circumstances. (§ 340.16(c), (d).)
 - 6) Provides that an action for recovery of damages suffered as a result of childhood sexual assault must be commenced within 22 years of the date the plaintiff attains the age of majority or within five years of the date the plaintiff discovers or reasonably should have discovered that psychological injury or illness occurring after the age of majority was caused by the sexual assault, whichever period expires later. (Civ. Proc. Code § 340.1(a).)
 - 7) Applies the above statute of limitations to the following actions, as specified:
 - a) An action against any person for committing an act of childhood sexual assault;
 - b) An action for liability against any person or entity who owed a duty of care to the plaintiff if a wrongful or negligent act by that person or entity was a legal cause of the childhood sexual assault that resulted in the injury to the plaintiff; and

- c) An action for liability against any person or entity if an intentional act by that person or entity was a legal cause of the childhood sexual assault that resulted in the injury to the plaintiff. (Civ. Proc. Code § 340.1(a).)
- 8) Revives any claim for damages for childhood sexual assault, as described above, that has not been litigated to finality and that would otherwise be barred as of January 1, 2020, because the applicable statute of limitations, claim presentation deadline, or any other time limit had expired, is revived, and these claims may be commenced within three years of January 1, 2020. A plaintiff shall have the later of this three-year time period or the time period described in 6) above. (Civ. Proc. Code § 340.1(q).)
- 9) Provides that claims for money or damages against local public entities must be presented in accordance with specified procedures, unless specifically exempted. (Gov. Code § 905.) A written claim relating to a cause of action for death or for injury to person or to personal property shall be presented not later than six months after the accrual of the cause of action with the ability to file an application to present an untimely claim up to one year after the accrual of the cause of action. (Gov. Code §§ 911.2, 911.4.) A claim relating to any other cause of action shall be presented not later than one year after the accrual of the cause of action. (Gov. Code § 911.2.) “Local public entity” includes a county, city, district, public authority, public agency, and any other political subdivision or public corporation in the State, but does not include the State. (Gov. Code § 900.4.)
- 10) Establishes numerous exceptions to the claims presentation requirements including claims made pursuant to Section 340.1 of the Code of Civil Procedure for the recovery of damages suffered as a result of childhood sexual abuse. (Gov. Code § 905.)

This bill:

- 1) Revives any action or causes of action for sexual assault that is commenced on or after January 1, 2019, where the assault occurred on or after January 1, 2009 when the plaintiff was an adult that would have been barred solely because the applicable statute of limitations has expired. The revival period extends until December 31, 2026.
- 2) Provides that any claim seeking to recover damages suffered as a result of a sexual assault that occurred while the plaintiff was an adult that would

otherwise be barred before January 1, 2023, solely because the applicable statute of limitations has or had expired, is hereby revived for a one-year period if the plaintiff alleges the following:

- a) The plaintiff was sexually assaulted;
 - b) One or more entities are legally responsible for damages arising out of the sexual assault; and
 - c) The entity or entities, including, but not limited to, their officers, directors, representatives, employees, or agents, engaged in a cover up or attempted a cover up of a previous instance or allegations of sexual assault by an alleged perpetrator of such abuse.
- 3) Defines “cover up” as a concerted effort to hide evidence relating to a sexual assault that incentivizes individuals to remain silent or prevents information relating to a sexual assault from becoming public or being disclosed to the plaintiff, including, but not limited to, the use of nondisclosure agreements or confidentiality agreements.
 - 4) Clarifies that it does not alter the otherwise applicable burden of proof, as defined in Section 115 of the Evidence Code, that a plaintiff has in a civil action subject to this statute. It further clarifies that the above revival does not preclude a plaintiff from bringing an action for sexual assault pursuant to the statute.
 - 5) Provides that these revival provisions do not apply to claims that have been litigated to finality in a court of competent jurisdiction or compromised by a written settlement agreement between the parties entered into before January 1, 2023.

Background

The statute of limitations for damages arising from a sexual assault that occurred when the victim was an adult is the later of either 10 years from the date of the last actionable conduct or three years from the discovery of the injury resulting, as specified. When that limitations timeline was extended in 2009 from two years to 10 years it only provided that benefit to victims whose claims had not yet expired when the bill was signed.

This bill revives claims that could have been brought if that limitations period was afforded to claims dating back ten years from when the bill went into effect. This bill also revives claims seeking to recover damages suffered as a result of a sexual assault that would otherwise be time-barred if the plaintiff alleges certain facts.

These revivals do not apply to claims litigated to finality or compromised by a written settlement.

This bill is sponsored by the Victim Policy Institute. It is supported by a variety of groups, including the California Partnership to End Domestic Violence. It is opposed by a coalition of groups, including the California Retailers Association.

Comments

According to the author, “At a moment of reckoning in the United States about sexual harassment, abuse and sexual assault, California has made landmark decisions that recognize for many survivors it takes years before being able to come forward. With this bill, California takes another step to protect survivors of sexual abuse when there is evidence of cover up by a defendant entity.”

Revival of claims. When AB 1619 went into effect on January 1, 2019, it extended the clock for all relevant claims that had not already expired, those dating back less than two years from that date. Therefore, even though the new limitations period was ten years, those claims that accrued more than two years before the effective date of the new law did not reap the benefit of the extension. This bill revives claims based upon conduct that occurred on or after January 1, 2009, and that are commenced on or after January 1, 2019, that would have been barred solely because the applicable statute of limitations has or had expired. This functions to revive actions that could have been brought if AB 1619 had applied its 10-year statute of limitations retroactively. The revival period lasts until December 31, 2026.

The bill also revives any claims, regardless of the date the conduct occurred, based on sexual assault where the plaintiff alleges certain facts. The first is that the plaintiff was sexually assaulted. Second, it must be alleged that one or more entities are responsible for relevant damages and that the entity or entities engaged in a cover up or attempted a cover up of a previous instance or allegations of sexual assault by an alleged perpetrator of such abuse. The bill defines “cover up” as a concerted effort to hide evidence relating to a sexual assault that incentivizes individuals to remain silent or prevents information relating to a sexual assault from becoming public or being disclosed to the plaintiff, including, but not limited to, the use of nondisclosure agreements or confidentiality agreements. The one-year revival period lasts until December 31, 2023.

It should be noted that just last month New York State signed a similar bill into law. New York Senate Bill S66A revived otherwise time-barred sexual offense

claims where the plaintiff was over 18 years of age at the time of the offense regardless of how long ago the offense took place. The law also provides for expedited judicial proceedings to adjudicate such claims. For a more thorough discussion of the bill, please see the relevant Senate Judiciary Committee analysis.

FISCAL EFFECT: Appropriation: No Fiscal Com.: No Local: No

According to the Senate Appropriations Committee: “Unknown, potentially-significant workload cost pressures to the courts to the extent that lawsuits are filed under the provisions of AB 2777 that otherwise would have been barred by the statute of limitations (Special Fund - Trial Court Trust Fund, General Fund).”

SUPPORT: (Verified 8/12/22)

Victim Policy Institute (source)
California Partnership to End Domestic Violence
California Sexual Assault Forensic Examiners Association
Family Violence Appellate Project
Rape Trauma Services: A Center for Healing and Violence Prevention
Thompson Law Offices
Valor California

OPPOSITION: (Verified 8/12/22)

American Property Casualty Insurance Association
American Tort Reform Association
California Business Properties Association
California Business Roundtable
California Chamber of Commerce
California Retailers Association
Civil Justice Association of California
National Association of Mutual Insurance Companies
National Federation of Independent Business
Torrance Area Chamber of Commerce
Tulare Chamber of Commerce
Western Electrical Contractors Association

ARGUMENTS IN SUPPORT: The California Partnership to End Domestic Violence writes in support:

“The emotional trauma following sexual assault does not present the same in all survivors and may lead to a delay in seeking medical or legal assistance. Women

may not define a victimization as a rape or sexual assault for many reasons such as self-blame, embarrassment, not clearly understanding the legal definition of the terms, or not wanting to define someone they know who victimized them as a rapist or because others blame them for their sexual assault. When the perpetrator is someone they trusted, it can take years for victims even to identify what happened to them as a violation. The time a survivor needs to process and recover from their assault, enough to engage with the legal system, can take months and even years, certainly longer than currently allowable for many survivors to seek civil restitution.

“Whether a criminal case is filed or not, survivors of sexual assault may also turn to the civil court for recovery of costs related to medical and non-medical needs, which are required for healing. If a survivor awaits the outcome of a criminal case to initiate civil proceedings, they may find their search for justice blocked, if the statute of limitations has expired. Given the potential lifetime costs a survivor may face, both immediate and long-term, the option to recover damages through the civil court is critical. The loss of this option is punitive and possibly injurious to the survivor. . . . AB 2777 is a commonsense bill, which would build upon the precedent established by bills passed in recent years to give survivors their day in court.”

ARGUMENTS IN OPPOSITION: A coalition of industry groups writes:

AB 2777 provides a one-year “reviver” window in 2023 to sue for alleged sexual assault or other inappropriate conduct of a sexual nature that can go back in time for half a century or more. As a result, this bill could result in an onslaught of ancient claims against which businesses of all types and sizes across every industry will have no ability to defend themselves due to records and witnesses that are no longer accessible.

As Governor Brown explained when he vetoed comparable reviver provisions in bills before him:

The reason for [the] universal practice [of barring actions after a lapse of years] is one of fairness. [¶] There comes a time when an individual or organization should be secure in the reasonable expectation that past acts are indeed in the past and not subject to further lawsuits. With the passage of time evidence may be lost or disposed of, memories fade and witnesses move away or die. (Veto Messages re: AB 3120, Sept. 30, 2018, and SB 131, Oct. 12, 2013.)

AB 2777 flies in the face of these long-established principles underlying statutes of limitation. As a matter of policy, statutes of limitations recognize that when claims reach too far back in time, the legal system is no longer able to find employees, other witnesses, or records from the time period of the claim to evaluate what did or did not occur. This leaves juries with comparatively little evidence, and leaves defendants with no basis for an appropriate response or ability to defend themselves in court. Those evidentiary problems are magnified because AB 2777 encompasses many types of potential plaintiffs – such as customers, visitors, and vendors – for which records may be minimal or nonexistent in the regular course of business.

ASSEMBLY FLOOR: 57-0, 5/25/22

AYES: Aguiar-Curry, Arambula, Bauer-Kahan, Bennett, Bloom, Boerner Horvath, Mia Bonta, Bryan, Calderon, Carrillo, Cervantes, Cooley, Cunningham, Megan Dahle, Mike Fong, Friedman, Gabriel, Gallagher, Cristina Garcia, Eduardo Garcia, Gipson, Gray, Haney, Holden, Irwin, Jones-Sawyer, Kalra, Lee, Levine, Low, Maienschein, Mayes, McCarty, Medina, Mullin, Muratsuchi, Nazarian, Petrie-Norris, Quirk, Quirk-Silva, Ramos, Reyes, Luz Rivas, Robert Rivas, Rodriguez, Salas, Santiago, Stone, Ting, Valladares, Villapudua, Ward, Akilah Weber, Wicks, Wilson, Wood, Rendon

NO VOTE RECORDED: Berman, Bigelow, Chen, Choi, Cooper, Daly, Davies, Flora, Fong, Grayson, Kiley, Lackey, Mathis, Nguyen, O'Donnell, Patterson, Blanca Rubio, Seyarto, Smith, Voepel, Waldron

Prepared by: Christian Kurpiewski / JUD. / (916) 651-4113
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