

ASSEMBLY THIRD READING
AB 2587 (Aguiar-Curry)
As Amended May 2, 2024
Majority vote

SUMMARY

Revives a claim for sexual assault against a private entity that is time barred as of January 1, 2025 solely because of the statute of limitations and allows it to be filed for a two-year period if the claim meets specified criteria.

Major Provisions

- 1) Revives for a two year period, beginning on January 1, 2025 and until December 31, 2026, a claim that is time barred as of January 1, 2025 solely because of the statute of limitations and allows it to be filed, or allows it to proceed if already filed as of January 1, 2025; specifies that claims by a plaintiff who alleges that the plaintiff was sexually assaulted and one of the following are revived:
 - a) One or more entities or persons, including the perpetrator of the sexual assault, are legally responsible for damages arising out of sexual assault by an alleged perpetrator against the plaintiff.
 - b) An 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.
- 2) Clarifies that the term "legally responsible" means that the *person*, entity, or entities are liable under any theory of liability established by statute or common law, including, but not limited to, negligence, intentional torts, and vicarious liability.
- 3) Clarifies that the bill does not revive either of the following:
 - a) A claim that has been litigated to finality in a court of competent jurisdiction before January 1, 2025.
 - b) A claim that has been compromised by a written settlement agreement between the parties entered into before January 1, 2025.

COMMENTS

This bill, sponsored by Victim Policy Institute, revives some time-lapsed claims for sexual assault. Specifically, it revives a claim seeking to recover damages suffered as a result of a sexual assault that occurred on or after the plaintiff's 18th birthday that would otherwise be barred before January 1, 2025, solely because the applicable statute of limitations and allows a cause of action to proceed if already pending in court on January 1, 2025, or, if not filed by that date, to be commenced between January 1, 2025, and December 31, 2026. The type of claims that may be revived under the bill are those alleging that the plaintiff was sexually assaulted and one of the following:

- 1) One or more entities or persons, including the perpetrator of the sexual assault, are legally responsible for damages arising out of sexual assault by an alleged perpetrator against the plaintiff.
- 2) An 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.

The bill defines "entity" to mean "a sole proprietorship, partnership, limited liability company, corporation, association, or other legal entity." Therefore the bill does not apply to public entities.

The Legislature has the power to create, extend, and change statutes of limitation, as it deems appropriate. The policy behind statutes of limitations provides that they "are designed to promote justice by preventing surprises through the revival of claims that have been allowed to slumber until evidence has been lost, memories have faded, and witnesses have disappeared. The theory is that even if one has a just claim it is unjust not to put the adversary on notice to defend within the period of limitation and the right to be free of stale claims in time comes to prevail over the right to prosecute them." (3 Witkin, California Procedure Section 433, 4th Ed.) Statutes of limitation reflect the reality that, over time, evidence is lost or destroyed and witnesses' memories fade. However, current laws regarding the statute of limitations for sexual abuse claims reflect another reality, namely that victims often delay coming forward for a variety of reasons, including threats, shame, lack of trust, fear, or some combination thereof.

Nonetheless, courts have acknowledged that, "the need for repose is not so overarching that the Legislature cannot by express legislative provision allow certain actions to be brought at any time, and it has occasionally done so." (*Duty v. Abex Corp* (1989) 214 Cal.App.3rd 742, 749 [citations omitted].)

The most recent revival statute regarding sexual assault of an adult is AB 2777 (Wicks), Chapter 442, Statutes of 2022. AB 2777 allowed some time-barred claims to be revived for a one-year period in 2023 if there were a "cover up" of a sexual assault. AB 2777 revived some lapsed claims for adult sexual assault and others for childhood sexual assault. Relevant to this bill, AB 2777 revived claims alleging that one or more entities or their agents engaged in a "cover up" of a sexual assault, or other inappropriate conduct, communication, or activity of a sexual nature. The bill revived claims that otherwise would be barred before January 1, 2023. Those claims, once revived, were allowed to be filed during a one-year period between January 1, 2023 and December 31, 2023. According to the author of this bill, "Unfortunately, courts have interpreted AB 2777 to only allow sexual assault survivors to recover damages from the *entities* that engaged in the cover up, not the *perpetrators* of sexual assault. This is not consistent with the intent of AB 2777 and this bill seeks to include the perpetrators as a party that can be held responsible for damages."

According to the Author

In 2022, the Legislature passed AB 2777 (Wicks), Chapter 442, Statutes of 2022 to protect survivors of sexual assault by opening a one-year window for survivors to bring claims against the entities who harmed them. However, as survivors have tried to access their overdue recourse, they have encountered problems as courts make determinations about the intent of the Legislature. Notably, courts have prevented survivors from holding the

individual who perpetrated the sexual assault accountable, which is not consistent with the original intent of the bill.

Today, AB 2587 will clarify that the legislature intends to hold both the perpetrators of sexual assault and entities who covered up or willfully ignored the assault accountable for the harms inflicted on survivors, regardless of when the assault occurred. This bill allows additional time for survivors to seek restitution and act on the clearer signals sent by this bill. However, nothing in the bill changes any legal standard or burden of proof with regard to any claim brought before a judge or court. Victims must still prove all the elements of their claims regardless of when the sexual assault occurred.

At a moment of reckoning in the United States about sexual assault, California has made landmark policies that recognize it can take years for many survivors to come forward due to trauma, stigma, fears of backlash, or other complex factors. With this bill, California ensures survivors of sexual assault can continue to come forward while maintaining the integrity of the judicial process.

Arguments in Support

Sponsor Victim Policy Institute writes the following in support of the bill:

The person who committed the sexual assault or the entity whose intentional or negligent act caused the sexual assault were not intended to be excluded from AB 2777 (Wicks) as the issue of cover up was being addressed in the state.

Currently, accused perpetrators of sexual assault are interpreting AB 2777 to mean the statute did not intend to allow victims of sexual assault to revive claims against individuals who committed the sexual assault. They are also asserting AB 2777 only applies to workplace assaults at major companies. A recent state Court of Appeal's analysis included that the revival of claims under Code of Civil Procedure 340.16(e) depends upon whether plaintiffs have alleged a cover up.

AB 2587 would clarify any confusion for victims of sexual assault by making clear that cover up is not required in order for them to come forward against their perpetrators or the entities whose intentional or negligent act caused the sexual assault. The bill would also allow more time for victims.

Consumer Attorneys of California write the following:

AB 2587 will clarify that the legislature intends to hold both the perpetrators of sexual assault, and entities who covered up or willfully ignored the assault, accountable for the harm inflicted on survivors. This bill allows a limited time for survivors to seek recourse by clarifying the intent of past legislation.

Arguments in Opposition

The coalition of business groups that are opposed to the bill write the following in their joint letter:

AB 2587 attempts to recast the negotiated provisions in AB 2777 (Wicks) (Chapter 422, 2022) (reviving claims against entities that allegedly "covered up" evidence related to a sexual assault) which at the time was the broadest reviver bill to be presented to a California

governor in the state's history. This bill goes further by reviving any claims alleging injuries not only from sexual assault, but also related employment claims. The justification for AB 2777 was that an entity should not be able to avoid being held accountable for wrongdoing by engaging in a cover up to run out the statutes of limitations clock, but AB 2587 expands the window by two additional years, without a justification for why this policy change is necessary at this time.

Not only does AB 2587 violate fundamental fairness principles in our civil justice system by disregarding the public policy benefits of the statutes of limitations, but it also discriminates against an entire class of sexual assault survivors who were victimized at the hands of public employers since this bill only applies to the private sector.

FISCAL COMMENTS

According to the Assembly Appropriations analysis, cost pressures (Trial Court Trust Fund, General Fund) of an unknown but potentially significant amount to the courts to adjudicate cases that are time-barred by the current statute of limitation, but may be brought during the two-year revival period. Although this bill revives only one type of sexual assault claim, the short duration of the revival period could result in a large number of cases being filed in a short period of time. A significant increase in workload to the courts could result in delays of court services and prioritization of court cases might impact access to justice, and would put pressure on the General Fund to fund additional staff and resources.

The Governor's 2024-25 budget proposes \$83.1 million ongoing from the General Fund to backfill declining revenue to the Trial Court Trust Fund. According to the Legislative Analyst's Office, the General Fund faces a structural deficit in the tens of billions of dollars over the next several fiscal years.

VOTES

ASM JUDICIARY: 9-1-2

YES: Kalra, Bauer-Kahan, Bryan, Connolly, Haney, Maienschein, McKinnor, Pacheco, Reyes

NO: Dixon

ABS, ABST OR NV: Essayli, Sanchez

ASM APPROPRIATIONS: 11-2-2

YES: Wicks, Arambula, Bryan, Calderon, Wendy Carrillo, Mike Fong, Grayson, Haney, Hart, Pellerin, Villapudua

NO: Dixon, Ta

ABS, ABST OR NV: Sanchez, Jim Patterson

UPDATED

VERSION: April 22, 2024

CONSULTANT: Alison Merrilees / JUD. / (916) 319-2334

FN: 0002974