

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2023-2024 Regular Session

AB 2587 (Aguiar-Curry)
Version: May 2, 2024
Hearing Date: June 18, 2024
Fiscal: No
Urgency: No
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SUBJECT

Sexual assault: statute of limitations

DIGEST

This bill revives otherwise time-barred claims for damages arising from sexual assault and related claims arising out of the sexual assault against the perpetrator and any entities responsible, as specified.

EXECUTIVE SUMMARY

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 seeking to recover damages suffered as a result of a sexual assault of an adult plaintiff 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. However, the bill also revives any related claims arising out of the sexual assault, including wrongful termination and sexual harassment.

This bill is sponsored by the Victim Policy Institute. It is supported by a variety of organizations, including the Zero Abuse Project. It is opposed by a coalition of industry groups, including the Civil Justice Association of California.

PROPOSED CHANGES TO THE LAW

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.)
- 3) Defines "sexual assault," for the purposes of the above provision, to mean any of the crimes described in Section 243.4, 261, former 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 various claims arising from sexual assault or other sexual misconduct, including where entities engaged in a "cover up," and where the assaults were perpetrated by physicians in two unique circumstances. (§ 340.16(c)-(e).)
- 6) 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.)

- 7) 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) Provides that any claim seeking to recover damages suffered as a result of a sexual assault, and any related claims arising out of the sexual assault, that would otherwise be barred before January 1, 2025, solely because the applicable statute of limitations has or had expired, is revived for a two-year period if the plaintiff alleges that they were sexually assaulted and either of the following:
 - 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) 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.
- 3) 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.
- 4) 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, 2025.

COMMENTS

1. Statutes of limitations

A statute of limitations is a requirement to commence legal proceedings (either civil or criminal) within a specific period of time. Statutes of limitations are tailored to the cause of action at issue – for example, cases involving injury must be brought within two years from the date of injury, cases relating to written contracts must be brought four years from the date the contract was broken, and, as commonly referenced in the media, there is no statute of limitations for murder. Although it may appear unfair to bar actions after the statute of limitations has elapsed, that limitations period serves important policy goals that help to preserve both the integrity of our legal system and the due process rights of individuals.

For example, one significant reason that a limitations period is necessary in many cases is that evidence may disappear over time – paperwork gets lost, witnesses forget details or pass away, and physical locations that may be critical to a case change over time. Limitations periods also promote finality by encouraging an individual who has been wronged to bring an action sooner rather than later – timely actions arguably ensure that the greatest amount of evidence is available to all parties.

In general, California law requires all civil actions be commenced within applicable statutes of limitations. (Code Civ. Proc. § 312.) Under existing law, the general statute of limitations in California to bring an action for assault, battery, or injury to, or for the death of, an individual caused by the wrongful act or neglect of another is two years. (Code Civ. Proc. § 335.1.)

In 2018, AB 1619 (Berman, Ch. 939, Stats. 2018) added Section 340.16 to the Code of Civil Procedure expanding the statute of limitations for recovery of damages suffered by an *adult* as a result of sexual assault. The default statute of limitations applicable to such claims was two years. Section 340.16 now provides that a case seeking damages suffered as a result of sexual assault, as defined, where the assault occurred when the plaintiff was 18 years of age or older, must be brought by 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.

2. 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.

AB 2777 (Wicks, Ch. 442, Stats. 2022) revived 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.

Relevant here, AB 2777 also revived any claims seeking to recover damages suffered as a result of a sexual assault of an adult victim, regardless of the date the conduct occurred, where the plaintiff alleges the following facts:

- The plaintiff was sexually assaulted.
- One or more entities are legally responsible for damages arising out of the sexual assault.
- 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.

AB 2777 also revived any related claims, including wrongful termination and sexual harassment, arising out of the sexual assault. That one-year revival period lasted until December 31, 2023.

Concerns have arisen that this latter revival only applied to entities and not the actual perpetrators of these covered up sexual assault claims. In response, this bill again revives any claim seeking to recover damages suffered as a result of a sexual assault, and any related claims arising out of that assault, that would otherwise be time barred. However, the plaintiff needs only allege they were sexually assaulted and allege either of the following:

- 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.
- 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.

“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.

Similar to AB 2777, this bill also revives any related claims arising out of the sexual assault, including wrongful termination and sexual harassment, but does not apply to claims litigated to finality or settled before January 1, 2025.

3. Revival of time-barred claims

This bill explicitly revives claims seeking to recover damages arising out of a sexual assault that would otherwise be barred because the applicable statute of limitations has expired.

As can be imagined, there are exceptionally egregious instances of a statute of limitations running out and leaving a victim of such heinous acts without a remedy. In addition to AB 2777, the Legislature has revived time-barred claims for sexual assaults in several contexts.

AB 218 (Gonzalez, Ch. 861, Stats. 2019) provided that the claims provided for in Section 340.1 involving childhood sexual assault that would otherwise be barred as of January 1, 2020, because an applicable statute of limitations, claim presentation deadline, or any other time limit had expired, are explicitly revived by the bill. AB 218 created a three-year window in which such claims can be brought, or, if later, within the statute of limitations period newly established by the bill.

AB 1510 (Reyes, Ch. 462, Stats. 2019) amended Section 340.16 by reviving claims that arose out of either sexual assault, or other inappropriate contact, communication, or activity of a sexual nature by a physician where the conduct occurs at a student health center between January 1, 1988 and January 1, 2017. The revival applied to claims that would have otherwise been time-barred prior to January 1, 2020, solely because the applicable statute of limitations had expired. AB 1510 provided that a cause of action could proceed if already pending in court or, if not filed, could be commenced within a one-year revival period starting January 1, 2020.

The revival period created by AB 1510 was tailored to a now infamous scandal at the University of Southern California student health clinic, where one full-time gynecologist, Dr. George Tyndall, was repeatedly accused of sexually assaulting, and engaging in other sexual misconduct with, numerous patients, and the school was accused of failing to act to stop his crimes and protect students.

AB 3092 (Wicks, Ch. 246, Stats. 2020) dealt with a similar situation with similar legislative action. It closely tracked the provisions included by AB 1510, but revived claims seeking to recover damages arising out of a sexual assault or other inappropriate

contact, communication, or activity of a sexual nature by a physician while employed by a medical clinic owned and operated by UCLA, or a physician who held active privileges at a hospital owned and operated by UCLA, at the time that the sexual assault or other inappropriate contact, communication, or activity of a sexual nature occurred, between January 1, 1983, and January 1, 2019.

The perpetrator at the center of this scandal was Dr. James Heaps. UCLA was found to have failed to adequately respond to allegations, potentially allowing preventable tragedies, namely the sexual assault of additional students.

More recently, AB 1455 (Wicks, Ch. 595, Stats. 2021) amended the statute of limitations for seeking damages arising out of a sexual assault that occurred while a plaintiff was an adult and that was committed by a law enforcement officer. It also eliminated the claim presentation requirements for such claims. AB 1455 also revived such claims that would otherwise be barred by the existing statute of limitations, any government claim presentation deadline, or any other applicable time limit, and applied an extended statute of limitations as to those revived claims.

As stated, several of these revival bills also exempted the claims from the claims presentation requirements that apply to actions against public entities. This bill does not, and therefore does not apply to all claims against public entities.

4. Policy implications of revival

The California Supreme Court has squarely addressed the modification of statutes of limitations and the revival of stale claims:

The Legislature has authority to establish—and to enlarge—limitations periods. . . . [H]owever, legislative enlargement of a limitations period does not revive lapsed claims in the absence of express language of revival. This rule of construction grows out of an understanding of the difference between prospective and retroactive application of statutes. . . . As long as the former limitations period has not expired, an enlarged limitations period ordinarily applies and is said to apply prospectively to govern cases that are pending when, or instituted after, the enactment took effect. This is true even though the underlying conduct that is the subject of the litigation occurred prior to the new enactment. . . . However, when it comes to applying amendments that enlarge the limitations period to claims as to which the limitations period has expired before the amendment became law—that is, claims that have lapsed—the analysis is different. Once a claim has lapsed (under the formerly applicable statute of limitations), revival of the claim is seen as a retroactive application of the law under an enlarged statute of limitations.

Lapsed claims will not be considered revived without express language of revival.

(*Quarry v. Doe I (Quarry)* (2012) 53 Cal.4th 945, 955-957, internal citations omitted.) The court continues, specifically addressing the policy reasons against revival:

“The reason for this rule is a judicial perception of unfairness in reviving a cause after the prospective defendant has assumed its expiration and has conducted his affairs accordingly.” As one court commented, “a statute of limitations grants prospective defendants relief from the burdens of indefinite exposure to stale claims. By reviving lapsed claims, the Legislature may appear to renege on this promise. As Judge [Learned] Hand wrote, there may be something ‘unfair and dishonest’ in after-the-fact withdrawal of this legislative assurance of safety.” Individuals, as well as businesses and other enterprises ordinarily rely upon the running of the limitations period: “The keeping of records, the maintenance of reserves, and the commitment of funds may all be affected by such reliance To defeat such reliance . . . deprives [enterprises] of the ability to plan intelligently with respect to stale and apparently abandoned claims.”

(*Quarry*, at 958, internal citations omitted.)

The California Supreme Court thus makes the case against reviving claims that have expired, highlighting the principle that such revival, while within the Legislature’s power, should not be provided lightly. (See also *Chase Sec. Corp. v. Donaldson* (1945) 325 U.S. 304, 314 [finding statutes of limitations are “good only by legislative grace and to be subject to a relatively large degree of legislative control”]; *Liebig v. Superior Court* (1989) 209 Cal. App. 3d 828, 831-834; *Lent v. Doe* (1995) 40 Cal.App.4th 1177, 1181 [finding the Legislature has the power to revive causes of action].) The courts have made clear that important state interests must be at stake to justify such a disruption of the law.

In analyzing the expansion of the limitations period in AB 1619, this Committee stated:

The nature of sexual assault arguably supports the need for a longer statute of limitations for survivors to be able to raise their claims. While recovering from sexual assault, many survivors do not have the capacity to also pursue civil remedies. As stated by the author [of AB 1619], the “current two-year statute of limitations simply does not provide sexual assault survivors adequate time to heal from the physical and emotional trauma of a sexual assault and prepare for a civil case.” Researchers are learning more about the aftermath of sexual assault. As more information about the potential for post-traumatic stress syndrome (PTSD), depression, and other mental health complications in sexual assault survivors is unveiled, it is clear that two years does not provide victims with the time needed to

heal from the trauma of sexual assault.¹ By providing victims the later of 10 years or within 3 years from when the plaintiff discovers or reasonably should have discovered an injury or illness that resulted from the sexual assault, this bill would provide victims with a timeframe that is more respectful of the violence they have endured and the trauma that has resulted.

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 perpetrate 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.

5. Stakeholder positions

Writing in support, the Junior Leagues of California State Public Affairs Committee (CalSPAC) states:

¹ *Statistics about Sexual Violence* (2015) National Sexual Violence Resource Center, http://www.nsvrc.org/sites/default/files/publications_nsvrc_factsheet_media-packet_statistics-about-sexual-violence_0.pdf. Internet citations are current as of June 8, 2022.

CalSPAC seeks to increase awareness of the impact of violence in California communities and champions policies that strive to decrease violence through prevention, intervention, and education. AB 2587 plays a vital role in guaranteeing access to justice for survivors of sexual assault, empowering them to hold accountable not only the perpetrators of the assault but also any entities whose negligence or misconduct demonstrably contributed to the assault.

The Victim Policy Institute, the sponsor of the bill, discusses its scope:

AB 2587 does not interfere with any pending claims or litigation. AB 2587 does not change any legal standard or burden of proof with regard to any claim brought before a judge or court. Survivors must still prove all the elements of their claims regardless of when the sexual assault occurred.

A coalition of industry associations, including the American Property Casualty Insurance Association, write in opposition:

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.

In response to requests from opposition, the author has agreed to amend the bill to require a plaintiff to allege both of the following rather than one or the other:

- 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.
- 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.

However, to ensure that perpetrators can still be held liable under the revival, the amendments will also provide: “Failure to allege a cover up as required by subparagraph (B) of paragraph (2) as to one entity does not affect revival of the plaintiff’s claim or claims against any other entity or person, including the perpetrator.”

SUPPORT

Victim Policy Institute (sponsor)
American Association of University Women California
Consumer Attorneys of California
Female Composer Safety League
Junior Leagues of California State Public Affairs Committee
Promoting Awareness, Victim Empowerment
Punk Rock Therapist
Stand With Survivors
Zero Abuse Project
One individual

OPPOSITION

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 Federation of Independent Business

RELATED LEGISLATION

Pending Legislation: AB 2693 (Wicks, 2024) revives otherwise expired claims for damages suffered as a result of childhood sexual assault by an employee of a juvenile probation camp or detention facility owned and operated by a county. AB 2693 is currently in this Committee.

Prior Legislation:

AB 2777 (Wicks, Ch. 442, Stats. 2022) *See* Comment 2.

AB 1455 (Wicks, Ch. 595, Stats. 2021) *See* Comment 3.

AB 3092 (Wicks, Ch. 246, Stats. 2020) *See* Comment 3.

AB 218 (Gonzalez, Ch. 861, Stats. 2019) *See* Comment 3.

AB 1510 (Reyes, Ch. 462, Stats. 2019) *See* Comment 3.

AB 1619 (Berman, Ch. 939, Stats. 2018) *See* Comment 1.

PRIOR VOTES:

Assembly Floor (Ayes 60, Noes 0)

Assembly Appropriations Committee (Ayes 11, Noes 2)

Assembly Judiciary Committee (Ayes 9, Noes 1)
