

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

AB 452 (Addis)  
Version: March 22, 2023  
Hearing Date: June 27, 2023  
Fiscal: Yes  
Urgency: No  
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**SUBJECT**

Childhood sexual assault: statute of limitations

**DIGEST**

This bill eliminates the statute of limitations for civil actions for damages as a result of childhood sexual assault.

**EXECUTIVE SUMMARY**

The past decades have brought waves of revelations of long covered up sexual abuse by major institutions in this country, from the Catholic Church to United States Gymnastics to the Boy Scouts. California has repeatedly bolstered its law providing a cause of action for damages suffered as a result of childhood sexual assault. This has involved expanding the conduct that is included, extended the relevant statute of limitations, and provided revival periods for expired claims.

Many of these changes reveal an appreciation for the especially acute trauma child survivors of this sexual assault experience. Scientific research and studies make clear that many victims of these crimes repress memories of their assault or are incredibly fearful of reporting it. It is therefore not surprising that childhood sexual assault is grossly underreported. Making matters worse, many of the institutions where the crimes have occurred have played a role in covering up the sexual assaults and failing to prevent further damage.

This author-sponsored bill finally puts an end to the piecemeal legislative efforts of expanding the applicable statute of limitations and creating temporary periods of revival by completely eliminating the limitations period for childhood sexual assault claims that arise after January 1, 2024. It is supported by various organizations and individuals, including the National Association of Social Workers – California Chapter. It is opposed by various organizations, many representing educational institutions, including the California Association of School Business Officials.

**PROPOSED CHANGES TO THE LAW**

Existing law:

- 1) Provides that in an action for recovery of damages suffered as a result of childhood sexual assault, the time for commencement of the action shall be 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, for any of the following actions:
  - 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; or
  - 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. (Code Civ. Proc. § 340.1(a).)
- 2) Authorizes a person who is sexually assaulted and proves it was the result of a cover up to recover up to treble damages against a defendant who is found to have covered up the sexual assault of a minor, unless prohibited by another law. (Code Civ. Proc. § 340.1(b).)
- 3) Provides that the actions above, not including those against the actual perpetrator of the assault, shall not be commenced on or after the plaintiff's 40th birthday unless the person or entity knew or had reason to know, or was otherwise on notice, of any misconduct that creates a risk of childhood sexual assault by an employee, volunteer, representative, or agent, or the person or entity failed to take reasonable steps or to implement reasonable safeguards to avoid acts of childhood sexual assault. (Code Civ. Proc. § 340.1(c).)
- 4) Provides that, notwithstanding any other provision of law, any such claim for damages 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. (Code Civ. Proc. § 340.1(q).)
- 5) Provides that claims pursuant to Section 340.1 are not required to be presented to any government entity prior to the commencement of an action. (Code Civ. Proc. § 340.1(s).)

- 6) Defines “sexual conduct” to mean any of the following, whether actual or simulated: sexual intercourse, oral copulation, anal intercourse, anal oral copulation, masturbation, bestiality, sexual sadism, sexual masochism, penetration of the vagina or rectum by any object in a lewd or lascivious manner, exhibition of the genitals or pubic or rectal area for the purpose of sexual stimulation of the viewer, any lewd or lascivious sexual act as defined in Section 288, or excretory functions performed in a lewd or lascivious manner, whether or not any of the above conduct is performed alone or between members of the same or opposite sex or between humans and animals. An act is simulated when it gives the appearance of being sexual conduct. (Pen. Code § 311.4(d).)

This bill eliminates the statute of limitations applicable to civil actions for damages as a result of childhood sexual assault that arise on or after January 1, 2024.

### COMMENTS

#### 1. Background on laws governing childhood sexual assault

In 2002, the Legislature enacted SB 1779 (Burton, Ch. 149, Stats. 2002), to provide that an action for recovery of damages suffered as a result of childhood sexual abuse may be commenced on or after the plaintiff’s 26th birthday if the third party defendant person or entity knew, had reason to know, or was otherwise on notice, of any unlawful sexual conduct by an employee, volunteer, representative, or agent, and failed to take reasonable steps and implement reasonable safeguards to avoid future acts of unlawful sexual conduct. (Code Civ. Proc. § 340.1(b)(2).) SB 1779 also enacted Section 340.1(c) to allow a claim under Section 340.1(b)(2) to be brought within a one-year window, January 1, 2003, to December 31, 2003, even if that claim would otherwise be time barred as of January 1, 2003, because of an applicable statute of limitations.

The Government Tort Claims Act (the Act) generally governs damage claims brought against public entities. (Gov. Code § 815 et seq.) In addition to any time limitations placed by other statutes on such claims, the Act requires that a claim that is brought against a public entity relating to a cause of action for death or for injury to a person be presented in writing to the public entity not later than six months after accrual of the cause or causes of action. (Gov. Code § 911.2.)

In *Shirk v. Vista Unified School District* (2007) 42 Cal.4th 201, the California Supreme Court held that, notwithstanding Section 340.1, a timely claim to a public entity pursuant to the Act is a prerequisite to maintaining an action for childhood sexual abuse against a public entity school district. The Court based its holding primarily on its finding that nothing in the express language of SB 1779 or the bill’s legislative history indicated an intent by the Legislature to exempt Section 340.1 claims from the Act and its six-month claim presentation requirement. Essentially, many claims for childhood sexual abuse against a public entity could not benefit from the change to Section 340.1

because the six-month presentation requirement for such claims was not addressed by SB 1779.

To address this loophole for childhood sexual abuse claims against public entities, SB 640 (Simitian, Ch. 383, Stats. of 2008) was enacted into law. It added an explicit exception to the claims presentation requirements to Section 905 of the Act for “[c]laims 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(m).) Section 905(m) applied to claims arising out of conduct occurring on or after January 1, 2009.

Despite this additional legislation making it clear the Legislature intended Section 340.1 to apply to claims against local public entities, numerous public entities, including school districts, were using another statute, Section 935 of the Government Code, to circumvent and undermine SB 640 and Section 905(m) of the Government Code. These public entities were attempting to defeat lawsuits alleging claims of childhood sexual abuse based on claims-presentations requirements the local public entities have set in their own charter, ordinance, or regulation.

To address this issue, SB 1053 (Beall, Ch. 153, Stats. 2018) provided that the procedures authorized to be prescribed by Section 935 relating to claims for money or damages against local public entities do not apply to claims of childhood sexual abuse made as described in Section 905(m). SB 1053 thereafter effectuated the intent of the Legislature in enacting SB 640, thereby ensuring the delayed discovery provisions in Section 340.1 apply to all childhood sexual abuse claims against local public entities.

These bills exempted claims for childhood sexual assault from claims presentation requirements pursuant to the Act, but only as against local public entities. AB 2959 (Committee on Judiciary, Ch. 444, Stats. 2022) took the next step and provided that claims for childhood sexual assault are not required to be presented to any governmental entity prior to the commencement of an action.

## 2. Childhood sexual assault: statute of limitations and scope

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)

Previously, certain actions for childhood sexual abuse were required to be commenced within eight years of the date the plaintiff attains the age of majority or within three 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 abuse, whichever period expires later.

AB 218 (Gonzalez, Ch. 861, Stats. 2019) extended the time for commencement of actions for childhood sexual assault to 40 years of age or five years from discovery of the injury; provided enhanced damages for a cover up, as defined, of the assault; and provided a three-year window in which expired claims are revived. There is a wide range of approaches among the states.

This lengthy limitations period in California applies to actions against:

- the person alleged to have committed the childhood sexual assault;
- any person or entity who owed a duty of care to the plaintiff, where a wrongful or negligent act by that person or entity was a legal cause of the childhood sexual assault which resulted in the injury to the plaintiff; and
- any person or entity where an intentional act by that person or entity was a legal cause of the childhood sexual assault which resulted in the injury to the plaintiff.

(Code Civ. Proc. § 340.1.)

AB 218 also replaced “childhood sexual abuse” throughout the statute with “childhood sexual assault.” The main difference in the relevant definition was the addition of “any sexual conduct” as defined in Penal Code Section 311.4(d)(1). That definition includes certain sexual acts or displays whether actual or simulated. (Pen. Code § 311.4.) This change increased the conduct to which the extended limitations period and the enhanced damages apply.

3. Elimination of the statute of limitations

This bill amends Section 340.1 to completely eliminate the statute of limitations that applies to childhood sexual assault claims. This change applies prospectively to actions arising on and after January 1, 2024.

A number of states have no specific limitations period applying to child sexual abuse, including Colorado and Delaware. Maine does not even apply limits to when actions based upon sexual acts toward minors may be brought. Just last year, President Biden signed the “Eliminating Limits to Justice for Child Sex Abuse Victims Act of 2022,” which eliminated the statute of limitations for childhood sexual assault cases brought in federal court. Previously such federal actions were subject to a 10-year limitations period, as specified. (18 U.S.C. § 2255.)

According to the author:

For many survivors, disclosing their abuse is a long and painful process. Numerous factors prevent survivors, especially those abused as children, from reporting their abuse including: feelings of shame; lacking trusted adults and opportunities to disclose; fear of additional victimization and or not being believed. Even once survivors become adults, various societal, institutional, and psychological barriers impede their ability to report their abuser. This unfortunately results in the vast majority of survivors never disclosing their abuse. Most survivors therefore miss the deadline to obtain justice because trauma affects them in a way that causes them to delay disclosure of their abuse until they are older. It is an unacceptable tragedy that victims of abuse are unable to hold their abuser accountable simply because the law arbitrarily says their time to report has run out.

AB 452 ends California’s cruel and arbitrary civil statute of limitations for minors who have experienced sexual abuse and removes barriers that prevent survivors from seeking justice against their abusers and the institutions that concealed or ignored their claims. With AB 452, California will join the federal government and the growing list [of] states in taking action for survivors. This will codify a survivor’s right to justice, regardless of their age or how long it took them to come forward. In doing so, California will stand with all survivors, at all ages.

Writing in support, John Burton Advocates for Youth explains the need for the bill:

Statutes of limitations exist for both civil and criminal causes of action, and begin to run from the date of the injury, or the date it was discovered, or the date on which it would have been discovered with reasonable

efforts. Historically, statutes of limitation (SOLs), the arbitrary deadlines for prosecuting crimes and filing civil claims, have been unfairly short. . . .

According to Child USA, over half of Child Sex Abuse (CSA) survivors first disclose they were abused at age 50 or older. Another study suggests that 44.8% of adult survivors of CSA never disclose abuse.

A large coalition of organizations representing insurance funds, school officials, governmental representatives, including the California Association of Joint Powers Authorities write in opposition:

Since AB 218 (Gonzalez) was signed into law in 2019 the current statute of limitations allows claims to be made either 22 years after the age of majority (i.e., 40 years old) or anytime thereafter within five years of discovering a related psychological injury for a plaintiff to bring a civil suit against the employer of an accused perpetrator. That bill also retroactively revived all claims, for three years, that were otherwise barred because of the previously applicable statute of limitations. No monetary reserves were ever set aside by school agencies for these historic claims. As a result, today's schools have been required to pay hundreds of millions of dollars to resolve claims for which they had no part.

Following the passage of AB 218, there was an immediate fiscal impact on our organizations due to the need to assess and fund costly older exposures. Public entities are finding that liability coverage is drastically more expensive and difficult to obtain as a result of, among other things, the revival of these previously barred claims. Whether or not they have any claims, our members are facing significantly increased rates, hard caps, exclusions, settlement inflation, lower limits of coverage, and stricter underwriting processes. The liability and related cost pressures are leaving our public-school students, education partners, local governments, and the risk pools they are members of, without coverage and exposed to the direct cost of these claims.

The current fiscal reality makes the timing of AB 452 challenging. Even with the clarification that the bill is intended to be applied prospectively, significant financial reserves funded with Prop 98 dollars will need to be collected and retained for the possibility of decades of liability exposure that may be realized in the future. Assessments to fund the associated risk addressed by AB 452 will be levied on today's schools. These assessments will be happening concurrently with assessments on all schools to continue funding historic claims being brought forward under the current five-year psychiatric injury window that is available to all victims-regardless of age.

### **SUPPORT**

Advocates for Child Empowerment and Safety  
California Association of Marriage and Family Therapists (CAMFT)  
Child Abuse Prevention Center  
Consumer Attorneys of California  
John Burton Advocates for Youth  
National Association of Social Workers, California Chapter  
Peace Officers Research Association of California (PORAC)  
Survivors Network of those Abused by Priests  
ValorUS  
9 individuals

### **OPPOSITION**

Association of California School Administrators  
California Association of Joint Powers Authorities  
California Association of Recreation & Park Districts  
California Association of School Business Officials (CASBO)  
California State Association of Counties  
Kern County Superintendent of Schools  
Northern California Regional Liability Excess Fund  
Public Risk Innovation, Solutions, and Management (PRISM)  
Schools Association for Excess Risk (SAFER)  
Schools Excess Liability Fund (SELF)  
Schools Insurance Authority  
Southern California Regional Liability Excess Fund  
Statewide Association of Community Colleges

### **RELATED LEGISLATION**

#### **Pending Legislation:**

SB 558 (Rubio, 2023) expands the definition of childhood sexual assault to include specified violations of Penal Code Sections 311.1 and 311.2, which provide criminal penalties for, among other things, the sale, production, distribution, or exhibition of obscene matter depicting children engaging in or simulating sexual conduct. SB 558 slightly extends the statute of limitations where the underlying sexual assault relates to violations of those Penal Code provisions. Such actions must be brought within 22 years of the date the plaintiff attains the age of majority or within 10 years (five years longer than other forms of childhood sexual assault) 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. SB 558 is currently in the Assembly Public Safety Committee.



AB 1547 (McKinnor, 2023) revives, for one year, claims seeking to recover damages arising out of a sexual assault by an employee of a juvenile probation camp or detention facility owned and operated by a county or of a youth facility owned and operated by the Division of Juvenile Justice, that would otherwise be barred because the statute of limitations has expired. AB 1547 is currently in the Assembly Judiciary Committee.

Prior Legislation:

AB 2959 (Committee on Judiciary, Ch. 444, Stats. 2022) *See* Comment 1.

AB 1455 (Wicks, Ch. 595, Stats. 2021) amended the statute of limitations for seeking damages arising out of a sexual assault committed by a law enforcement officer, eliminated the claim presentation requirements for such claims, and revived such claims that would otherwise be barred by the existing statute of limitations.

AB 218 (Gonzalez, Ch. 861, Stats. 2019) *See* Comment 2.

SB 1053 (Beall, Ch. 153, Stats. 2018) *See* Comment 1.

SB 640 (Simitian, Ch. 383, Stats. 2008) *See* Comment 1.

SB 1779 (Burton, Ch. 149, Stats. 2002) *See* Comment 1.

**PRIOR VOTES:**

Assembly Floor (Ayes 75, Noes 0)

Assembly Appropriations Committee (Ayes 15, Noes 0)

Assembly Judiciary Committee (Ayes 11, Noes 0)

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