

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

SB 558 (Rubio)
Version: April 12, 2023
Hearing Date: April 18, 2023
Fiscal: Yes
Urgency: No
CK

SUBJECT

Crimes: childhood sexual abuse

DIGEST

This bill adds distribution of child sexual abuse material as a predicate offense for the statute providing causes of action for childhood sexual assault and extends the attendant statute of limitations.

EXECUTIVE SUMMARY

The Penal Code provides for criminal penalties for, among other things, the sale, production, distribution, or exhibition of obscene matter depicting children engaging in or simulating sexual conduct. The Code of Civil Procedure provides causes of action for recovery of damages suffered as a result of "childhood sexual assault," as defined, and applies an extended statute of limitations for bringing such actions.

To further bolster the remedies available to victimized children, this bill refines the definition of "distribution" for purposes of the above referenced Penal Code provisions. It adds violations of those provisions to the definition of "childhood sexual assault" for purposes of the civil causes of action provided to victims. The bill extends the statute of limitations for instances of childhood sexual assault related to such violations.

The bill is sponsored by the Youth Power Project. It is supported by a number of groups, including the Child Abuse Prevention Center and CHILD USAAdvocacy. There is no known opposition.

This bill passed out of the Senate Public Safety Committee on a vote of 5 to 0.

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) Provides that every person who knowingly sends or causes to be sent, or brings or causes to be brought, into this state for sale or distribution, or in this state possesses, prepares, publishes, produces, develops, duplicates, or prints any representation of information, data, or image, including specified media, with intent to distribute or to exhibit to, or to exchange with, others, or who offers to distribute, distributes, or exhibits to, or exchanges with, others, any obscene matter, knowing that the matter depicts a person under the age of 18 years personally engaging in or personally simulating sexual conduct, as defined in Section 311.4, shall be punished as provided. (Pen. Code § 311.1(a).)
- 7) Provides that every person who knowingly sends or causes to be sent, or brings or causes to be brought, into this state for sale or distribution, or in this state possesses, prepares, publishes, produces, develops, duplicates, or prints any representation of information, data, or image, including specified media, with intent to distribute or exhibit to, or to exchange with, a person 18 years of age or older, or who offers to distribute, distributes, or exhibits to, or exchanges with, a person any matter, knowing that the matter depicts a person under the age of 18 years personally engaging in or personally simulating sexual conduct, as defined in Section 311.4, shall be punished as provided. (Pen. Code § 311.2(b)-(d).)
- 8) 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:

- 1) Includes within Section 340.1’s definition of “childhood sexual assault” any act committed against the plaintiff that occurred when the plaintiff was a child and that would have been proscribed by Section 311.1(a) or Section 311.2(b), (c), or (d) of the Penal Code.
- 2) Provides that notwithstanding the statute of limitations otherwise applied, in an action for recovery of damages suffered as a result of childhood sexual assault related to Sections 311.1 and 311.2 of the Penal Code, the time for commencement

of the action shall be within 22 years of the date the plaintiff attains the age of majority or within 10 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 is later, for any of the actions provided for in Section 340.1.

- 3) Includes within the definition of “distribution” in Sections 311.1 and 311.2 giving possession or exhibiting in public, including, but not limited to, a billboard, marquee, newsstand, display rack, window, showcase, display case, or similar place so that it is easily visible from a public road, sidewalk or thoroughfare, or the property of others.
- 4) Redefines the definition of “distribution” in Section 311 of the Penal Code to include exhibiting in public or giving possession, except if the following apply:
 - a) the distribution is made in the course of reporting an unlawful activity;
 - b) the distribution is made in compliance with a subpoena or other court order for use in a legal proceeding;
 - c) the distribution is made in the course of a lawful public proceeding; or
 - d) the distribution is related to a matter of public concern or public interest. Distribution is not a matter of public concern or public interest solely because the depicted individual is a public figure.

COMMENTS

1. Background on laws governing childhood sexual assault

In 2002, the Legislature enacted SB 1779 (Burton, Chapter 149, Statutes of 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 must 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. A number of states have no specific limitations period applying to child sexual abuse. Maine does not even apply limits to when actions based upon sexual acts toward minors may be brought.

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.

This bill again 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. “Sexual conduct” again being defined as provided in Section 311.4(d)(1). The bill 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.

This bill also redefines the definition of “distribution” for purposes of Section 311 to include giving possession or exhibiting in public, with specified exceptions.

According to the author:

Online child sexual abuse material and grooming tripled after the pandemic as children were forced inside and began socializing on online platforms, leaving tens of thousands of hours of exploitative material and hundreds of millions of files documenting CSA on the Internet. The current statute of limitations for cases of child pornography under the CA Penal Code exists at ten years since the “date of production of the pornographic material.” Most victims remain unaware of the distribution of said material until years later, by which [time] this statute has already expired. For example, if a child’s material was produced when they were five years old, their ability to file a suit against their abuser would expire before they even reach the legal age to hire an attorney (18 years old). Additionally, the definition of “distribution” as it pertains to child sexual abuse material currently does not apply to material put on public display (i.e. distributed via billboards, trucks, etc.). The second provision of this bill amends the definition of “distribution” of child sexual abuse material in the California Penal Code to include “public display,” so perpetrators cannot find loopholes to distribute CSAM. Predators will continue to adapt and capitalize off survivors’ current inability to access justice, while our policy will continue to remain lackluster and outdated. Every explicit

photo of a child is a photo of a tortured child. Protecting victims is a top priority for me, and this bill is a step in the right direction.

The Youth Power Project, the sponsor of this bill, write in support:

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. It is similarly unacceptable that perpetrators currently have a loophole to publicly display CSAM and still receive lesser sentences, due to the currently limiting definition of “distribution” in the California Penal Code.

SB 558 will end California’s arbitrary civil statute of limitations for minors who experience sexual abuse and removes barriers that prevent survivors from seeking justice against their abusers and the institutions that concealed or ignored their claims. With SB 558, California will prevent future instances of perpetrators being able to continue their abuse to countless victims. We must help the victims of today garner justice when they come to realize material of theirs has been distributed to others by systematically removing barriers that thousands of young survivors face every year when attempting to come forward and receive the redress they rightfully deserve.

SUPPORT

Youth Power Project (sponsor)
Child Abuse Prevention Center
CHILD USA
CHILD USA Advocacy
Consumer Attorneys of California
GENup
Peace Officers Research Association of California

OPPOSITION

None known

RELATED LEGISLATION

Pending Legislation:

AB 452 (Addis, 2023) eliminates the statute of limitations for claims under Section 340.1 for childhood sexual assault. The bill is in the Assembly Appropriations 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. The bill is 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:

Senate Public Safety Committee (5 Ayes, 0 Noes)
