

**SENATE JUDICIARY COMMITTEE**  
**Senator Thomas Umberg, Chair**  
**2021-2022 Regular Session**

AB 2959 (Committee on Judiciary)

Version: March 8, 2022

Hearing Date: June 8, 2022

Fiscal: Yes

Urgency: No

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**SUBJECT**

Childhood sexual assault: claims

**DIGEST**

This bill provides that claims for childhood sexual assault are not required to be presented to any governmental entity prior to the commencement of an action.

**EXECUTIVE SUMMARY**

The Government Claims Act (the Act), or Government Tort Claims Act, generally governs damage claims brought against public entities. (Gov. Code § 810 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.)

Recent legislation has made clear that such claims presentation requirements do not apply with respect to childhood sexual assault claims. Therefore, a plaintiff is not required to present the claim to the relevant governmental defendant, prior to commencement of an action. However, that waiver of these requirements only pertained to local public entities.

This bill expands this exception and removes any claims presentation requirements for childhood sexual assault against any public entities in California, including state governmental entities.

This bill is author sponsored. It is supported by the Consumer Attorneys of California. There is no known opposition.

**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) Establishes the Act and provides procedures and timelines for presenting claims against governmental entities in California. (Gov. Code § 810 et seq.)
- 6) Requires a claim against a public entity relating to a cause of action for death or for injury to person or to personal property or growing crops to be presented not later than six months after the accrual of the cause of action. (Gov. Code § 911.2.)
- 7) Exempts 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 from the claims presentation requirements of the Act as against local public entities. (Gov. Code § 905.)

This bill provides that claims for childhood sexual assault described above are not required to be presented to any government entity prior to the commencement of an action.

### 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 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 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. 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.

## 2. Expanding the exemption to all governmental entities

The bills discussed above exempted claims for childhood sexual assault from claims presentation requirements pursuant to the Act, but only as against local public entities. This bill takes the next step and provides that claims for childhood sexual assault under Section 340.1 are not required to be presented to any government entity prior to the commencement of an action. This evens the playing field among various public entities for the same conduct.

According to the author:

Current law provides an exception to the presentation requirement for cases of childhood sexual abuse perpetrated by public employees, but only for actions brought against a local public entity. (*See* Government Code Section 905 (m).) Therefore, a victim of childhood sexual abuse by a state entity is still required to fulfill the claim presentation requirement. There is no logical reason to limit the exemption to the claims presentation requirement for a person victimized by a local public entity, but not

extend the exemption to person victimized by a state public entity. This bill would remove this inconsistency from existing law.

Survivors of childhood sexual abuse (and their families) should not have to endure the costly and [time-consuming] process of presenting their claims to the government and exhausting administrative remedies before bringing claims against the government based on such abuse. These cases are relatively rare, yet traumatic. AB 2959 merely updates California law to exempt survivors of childhood sexual abuse perpetrated by public employees - whether local or state - from the requirement to formally present their claims to the government prior to filing a civil lawsuit against the government and recovering damages for their injuries.

Writing in support, the Consumer Attorneys of California assert:

AB 2959 will allow child victims of sexual assault to bring a claim within the new extended statute without being barred by failure to present a claim to the state pursuant to the government tort claim act. Essentially, this change will put the state in the same position as all other government entities and hold state entities accountable for child sexual assault the same way local entities are held accountable.

### SUPPORT

Consumer Attorneys of California

### OPPOSITION

None known

### RELATED LEGISLATION

Pending Legislation: None known.

Prior Legislation:

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) 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.

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 65, Noes 0)

Assembly Appropriations Committee (Ayes 14, Noes 0)

Assembly Judiciary Committee (Ayes 9, Noes 0)

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