

SENATE JUDICIARY COMMITTEE
Senator Hannah-Beth Jackson, Chair
2019-2020 Regular Session

AB 3092 (Wicks)
Version: May 4, 2020
Hearing Date: August 13, 2020
Fiscal: Yes
Urgency: No
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SUBJECT

Sexual assault and other sexual misconduct: statutes of limitations on civil actions

DIGEST

This bill revives otherwise time-barred claims for damages arising from sexual assault and other inappropriate conduct of a sexual nature, as specified.

EXECUTIVE SUMMARY

The statute of limitations for damages arising from a sexual assault that occurred when the victim was an adult is 10 years from the date of the last actionable conduct or three years from the discovery of the injury resulting, as specified.

In response to numerous sexual misconduct allegations against Dr. James Heaps and the response from the University of California, Los Angeles (UCLA), where he worked, this bill revives certain claims arising out of sexual assault or other inappropriate sexual conduct that would otherwise be time-barred because of the applicable statute of limitations for one year starting January 1, 2021. This revival does not apply to claims litigated to finality or compromised by written settlement.

This bill is sponsored by the author. It is supported by the California Women's Law Center and a number of labor and consumer groups. There is no known opposition.

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(a), (c) ("Section 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, 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 a revival period for claims arising from sexual assault or other sexual misconduct by a physician occurring at a student health center between January 1, 1988, and January 1, 2017, that would otherwise be barred prior to January 1, 2020, solely because the applicable statute of limitations had expired. It further authorizes a cause of action to proceed if already pending in court on the effective date of this provision or, if not filed by that date, may be commenced between January 1, 2020, and December 31, 2020. However, the revival does not affect a claim that has been litigated to finality in a court of competent jurisdiction before January 1, 2020; a claim that has been compromised by a written settlement agreement between the parties entered into before January 1, 2020; or a claim brought against a public entity. (§ 340.16(c)(2).)

This bill:

- 1) Revives any claim 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 the University of California at Los Angeles, or a physician who held active privileges at a hospital owned and operated by the University of California at Los Angeles, 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, that would otherwise be barred before January 1, 2021, solely because the applicable statute of limitations has or had expired.
- 2) Provides that a cause of action may proceed if already pending in court on January 1, 2021, or, if not filed by that date, may be commenced between January 1, 2021, and December 31, 2021.
- 3) Provides that it does not revive the following claims:
 - a) a claim that has been litigated to finality in a court of competent jurisdiction before January 1, 2021; or
 - b) a claim that has been compromised by a written settlement agreement between the parties entered into before January 1, 2021.
- 4) Makes clarifying changes to Section 340.16.

COMMENTS

1. Statutes of limitation

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)

Currently, certain actions for childhood sexual abuse must be commenced 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.

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. Section 340.16 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.

This statute thus starts the clock for adult victims of sexual assault to assert their civil claims against those responsible. As can be imagined, there are exceptionally egregious instances of the statute of limitations running out and leaving a victim of such heinous acts without a remedy. One such instance was the impetus behind a recent bill, AB 1510 (Reyes, Ch. 462, Stats. 2019).

2. Revival of Section 340.16 claims

AB 1510 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 (USC). For nearly 30 years, USC's student health clinic had one full-time gynecologist, Dr. George Tyndall, who was repeatedly accused of sexually assaulting, and engaging in other sexual misconduct with, numerous patients. It was reported that USC knew of allegations but did not promptly respond and eventually made attempts to quietly deal with the problem. The revival comprises the time period within which Dr. Tyndall was treating patients at USC and is limited to damages arising from inappropriate sexual conduct by a physician at a student health center.

During the discussion over AB 1510, one criticism of the bill was that it did not apply to public entities. One group in opposition specifically called attention to allegations that doctors at UCLA had engaged in similar sexual misconduct and argued for their inclusion in the scope of the bill.

This bill now similarly revives the statute of limitations period provided by Section 340.16, this time focused on UCLA. The bill closely tracks the provisions included by AB 1510, but revives 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 is Dr. James Heaps, however several other doctors have been accused of sexual assault. Similar to the allegations against USC's handling of the crisis, UCLA was found to have failed to adequately respond to allegations, potentially allowing preventable misconduct. As the Los Angeles Times reports:

UCLA's handling of allegations of sexual harassment and sexual misconduct against five physicians employed by the university over three decades was "at times either delayed or inadequate or both," an independent committee investigating the allegations said in a report released Friday.

The allegations included conduct ranging from sexually suggestive questions and commentary to inappropriate touching and invasive genital, anal and breast exams. They involved five physicians who worked at UCLA Health and the Arthur Ashe Student Health and Wellness Center.

Among them is James M. Heaps, whose arrest a year ago for sexual battery and exploitation in connection with two patients touched off intense public

scrutiny about how UCLA handled earlier complaints against him. Heaps has strongly denied all allegations of wrongdoing.

The committee found that “a number of organizational, cultural and informational deficiencies played a role” in UCLA’s failure to act adequately at the time of the incidents and complaints. “In short,” the report said, “some of the conduct the committee examined may have been prevented.”¹

3. 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

¹ Nina Agrawal, *UCLA handling of sexual misconduct allegations against physicians ‘inadequate,’ report finds* (June 5, 2020) Los Angeles Times, <https://www.latimes.com/california/story/2020-06-05/ucla-sexual-misconduct-allegations-against-physicians> [as of July 1, 2020].

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.² 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.

These same principles arguably support a revival period for the claims at the center of this bill as they did with AB 1510. While AB 1619 extended the limitations period for these types of claims, it did not apply the longer limitations period retroactively to claims that had already expired, expressly applying to only claims commenced on or

² *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 [as of July 1, 2020].)

after January 1, 2019. This bill allows a very specific group of past victims the ability to bring their claims despite the passage of potentially many years.

4. Support

According to the author:

Modest legislation is urgently needed to ensure that the University of California, at Los Angeles (UCLA) is not permitted to escape accountability for keeping secret what it knew about disgraced gynecologist and oncologist Dr. James Heaps. He abused his position of trust and authority by sexually assaulting his patients, majority being either vulnerable college students or cancer patients, throughout most of his career. UCLA has acknowledged that it received its first complaint against Heaps back in 2014. However, UCLA waited four full years to remove him from practice. The school also waited four years to report him to law enforcement and the state medical board. And, during this time, while the public was not informed of the investigation, the statute of limitations for legal actions to hold Heaps and UCLA accountable was running.

AB 3092 (Wicks) will give sexual assault survivors of the University of California's Dr. Heaps a chance to have their civil claims heard in court by clearly reviving potentially lapsed claims for a short period of one year.

To date over one hundred women have filed individual civil lawsuits against Dr. Heaps and the University of California. Thus, it is vital to give these women an opportunity to have their day in court.

The Consumer Federation of California writes in support: "Last year, the Legislature took near-unanimous action to give survivors of past sexual assaults at private educational institutions access to justice and compensation. Unfortunately, this law excluded public entities. Dr. Heaps' UCLA survivors and any others throughout the UC system merit the same protection."

Writing in support, a coalition of labor groups asserts that the bill "would hold public institutions accountable for the gross misdeeds of physician employees."

SUPPORT

California Conference Board of the Amalgamated Transit Union
California Conference of Machinists
California Teamsters Public Affairs Council
California Women's Law Center
Center for Public Interest Law

Consumer Attorneys of California
Consumer Federation of California
Engineers & Scientists of California, Local 20
Inland Boatmen's Union of the Pacific (IBU)
Professional & Technical Engineers, Local 21
UNITE HERE International Union
Utility Workers Union of America

OPPOSITION

None known

RELATED LEGISLATION

Pending Legislation: None known

Prior Legislation:

AB 1510 (Reyes, Ch. 462, Stats. 2019) *See* Comment 2.

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

PRIOR VOTES:

Assembly Floor (Ayes 70, Noes 1)

Assembly Appropriations Committee (Ayes 15, Noes 0)

Assembly Judiciary Committee (Ayes 10, Noes 0)
