

SB 131 (Beall) – Damages: Childhood Sexual Abuse: Statute of Limitations

Introduced January 24, 2013, Enrolled and Presented to the Governor September 11, 2013

This bill provides that the time limits for commencement of an action for recovery of damages suffered as a result of childhood sexual abuse be applied retroactively to any claim that has not been adjudicated to finality on the merits as of January 1, 2014. This bill revives, for a period of one year, a cause of action, as specified, that would otherwise be barred by the statute of limitations as of January 1, 2014, provided that the plaintiff's 26th birthday was before January 1, 2003, and the plaintiff discovered the cause of his/her injury on or after January 1, 2004.

This bill provides that a plaintiff is entitled to conduct discovery before the court may rule on a motion challenging the sufficiency of the plaintiff's showing that a person or entity knew or had reason to know, or was otherwise on notice, of any unlawful sexual conduct and failed to take reasonable steps, and to implement reasonable safeguards, to avoid those acts in the future. This bill specifies that this entitlement does not apply to a cause of action revived pursuant to these provisions.

Existing law:

1. Generally provides that the time for commencing a civil action for damages shall be within two years of the injury or death caused by the wrongful act or neglect of another. (Code of Civil Procedure (CCP) Section 340)
2. Provides that the time for commencing an action based on injuries resulting from childhood sexual abuse, as defined, shall be eight years after the plaintiff reaches majority (i.e., 26 years of age) or within three years of the date the plaintiff discovers or reasonably should have discovered that the psychological injury or illness occurring after the age of majority was caused by the abuse, whichever occurs later. (CCP Section 340.1)
3. Provides that in civil actions, as described above, against persons or entities other than the perpetrator, whose intentional, negligent, or wrongful act was the legal cause of the sex abuse, the plaintiff must show that the person or entity knew or had reason to know, or was otherwise on notice, of unlawful sexual conduct of an employee or agent, and failed to take reasonable steps, as specified, to avoid acts of unlawful sexual conduct in the future. (CCP Section 340.1)
4. For a period of one year commencing January 1, 2003, existing law revived certain actions that would otherwise be barred solely because the applicable statute of limitations had expired.

This bill:

1. Provides that the time limits for commencement of an action for recovery of damages suffered as a result of childhood sexual abuse be applied retroactively to any claim that has not been adjudicated to finality on the merits as of January 1, 2014.
2. Revives, for a period of one year, a cause of action, as specified, that would otherwise be barred by the statute of limitations as of January 1, 2014, provided that the plaintiff's 26th birthday was before January 1, 2003, and the plaintiff discovered the cause of his/her injury on or after January 1, 2004.
3. Provides that a plaintiff is entitled to conduct discovery before the court may rule on a motion challenging the sufficiency of the plaintiff's showing that a person or entity knew or had reason to know, or was otherwise on notice, of any unlawful sexual conduct and failed to take reasonable steps, and to implement reasonable safeguards, to avoid those act in the future.
4. Specifies that this entitlement does not apply to a cause of action revived pursuant to these provisions.

This bill would extend the statute of limitations on actions against a person for committing an act of childhood sexual abuse to 43 years (from the current 26 years) for actions against a perpetrator, and would extend the statute of limitations to 30 years of age (from the current 26 years) for actions against third parties.

In addition, under current law, a claim may be made against a perpetrator or third party within three years of the date the plaintiff discovers or reasonably should have discovered that the injury occurring after the age of majority was caused by the abuse.

This bill would extend and revise this provision of law and allow claims against perpetrators and third parties within five years of the date a mental health practitioner first communicates the causal connection to the plaintiff.

This bill would apply the time limits retroactively to any claim not adjudicated to finality on the merits as of January 1, 2014.

In addition, this bill creates a one-year window for actions against third parties (excluding public entities) that would otherwise be barred by the statute of limitations as of January 1, 2014, provided the plaintiff made the causal connection by being informed by a licensed mental health practitioner after January 1, 2004.

Background

Before 1990, claims of childhood sexual abuse were governed by a one year statute of limitations. (CCP Section 340(3).) However, if the cause of action accrued while the plaintiff was a minor, the statute was tolled until he/she became an adult. (CCP Section 352(a).) Thus, any complaint had to be filed within one year of the plaintiff's 18th birthday.

In 1990, the Legislature rewrote the statute of limitations for cases involving adult trauma caused by childhood sexual abuse. (SB 108 (Lockyer), Chapter 1578, Statutes of 1990) That law provides that the time for commencing an action based on injuries resulting from "childhood sexual abuse" shall be eight years after the plaintiff reaches majority (i.e., age 26) or within three years of the date of the plaintiff discovers or reasonably should have discovered that the psychological injury or illness occurring after the age of majority was caused by the abuse, whichever occurs later. As subsequently interpreted by the courts, SB 108 changed the statute of limitations for actions against the perpetrators, but did not change it for actions against other responsible third parties.

In 1998, the Legislature responded to this interpretation and enacted AB 1651 (Ortiz, Chapter 1021, Statutes 1998) to apply the extended statute of limitations in actions against third parties. However, any action against any person or entity other than the sexual abuser would have to be commenced before the plaintiff's 26th birthday. (CCP Section 340.1(b).)

In 2002, SB 1779 (Burton and Escutia, Chapter 149, Statutes of 2002) was enacted to extend the statute of limitations in cases against a third party who was not the perpetrator of the sexual abuse beyond age 26, when the third party knew or had reason to know of complaints against an employee or agent for unlawful sexual conduct and failed to take reasonable steps to avoid similar unlawful conduct by that employee or agent in the future. SB 1779 also created a one year window in which victims could bring a claim against a third party, when that claim would have otherwise been barred solely because the statute of limitations had expired.

Almost 1,000 cases were filed in California during the one year window in 2003. However, between 2005 and 2012, about 50 cases were filed by victims who were over the age of 26 in 2003, but did not make a causal connection between childhood abuse and problems as an adult until after 2003. The Quarry brothers, who filed suit in 2007, were among those who filed one of these cases. The trial court dismissed the case based on their age in 2003 (over 26 years of age), stating that the brothers should have brought their case within the one year window under SB 1779. The First District Court of Appeal reversed the trial court's decision, and held that the one year window only applied to victims who were both over the age of 26 and had made the required causal connection more than three years prior to January 1, 2003. It held that victims like the Quarry brothers were not barred as of January 1, 2003, and could avail themselves of the option of filing a claim within three years from discovery.

Ultimately the Quarry case and about 20 others were taken up by the California Supreme Court. (Quarry v. Doe (2009) 53 Cal.4th 945.) The Court held that the Legislature failed to make its retroactive intent in SB 1779 clear, and the rules of statutory construction required that when the Legislature amends a statute of limitations, that amendment is presumed to be prospective, and is retroactive only if the Legislature expressly provides that it is intended to be retroactive and revive previously time-barred

claims. The majority found the language of SB 1779 did not satisfy that rule of construction, and must be interpreted prospectively, or limited to the one year window. The dissent disagreed, and invited the Legislature to fix the problem.

Related Legislation:

AB 1628 (Beall) 2012 would have extended the statute of limitations in civil cases involving child sexual abuse to 35 years of age, prohibited confidential settlements, and imposed new duties on private entities. This bill was held in the Assembly Committee on Appropriations.

SB 640 (Simitian) Chapter 383/2008 provided that child sex abuse claims are not subject to the Government Torts Claim Act, which provides that no lawsuit for money damages may be brought against a governmental entity unless a written claim has been properly filed within a six-month time limit. The bill's provisions have been applied prospectively, thereby allowing child sex abuse claims against public entities arising out of conduct occurring on or after January 1, 2009, to not be limited by the six-month time period.

Comments:

By extending the statute of limitations for bringing an action against an alleged perpetrator or third party, as well as reviving for one year a cause of action against a third party that would otherwise be barred by the statute of limitations as of January 1, 2014, as specified, this bill would result in increased causes of action filed with the courts. In addition, the change from the objective and subjective component under the existing standard of "within three years of the date the plaintiff discovers or reasonably should have discovered," to "within five years of the date the sexual abuse is first communicated to the plaintiff by a licensed mental health practitioner practicing within the state," could significantly extend the period of time in which a plaintiff has to file a claim.

This bill would apply the extended time limits retroactively, and create a one-year period in which victims who would otherwise have been time barred to submit a claim provided he/she made the required causal connection, as redefined, after 2004. This one year window would allow individuals who are over the maximum age allowed by the statute of limitations, but who made the causal connection after the one year window created by SB 1779 (2002), to bring a case against a third party. The following individuals could potentially be eligible to file a claim:

- Persons older than 26 years as of December 31, 2013, and who discovered the connection under the existing standards more than three years prior to that date.
- Persons who were older than 26 years prior to 2003 and who discovered the connection before 2003 (claimants who failed to file during the one-year revival period in 2003).

- Persons who were older than 26 prior to 2003 but who didn't discover the connection until after 2003 (those barred by the Quarry case).

In order to be eligible, the plaintiffs in the categories above would have to "discover the cause of his or her injuries," by being informed by a mental health practitioner on or after January 1, 2004. In practical terms, even plaintiffs who would have been barred under the existing standard of "knew or should have known," could potentially file a claim due to the delayed discovery standard requiring communication with a mental health practitioner of the injury.

The provisions of this measure are not anticipated to have an impact on the decision in *Shirk v. Vista Unified School District* (2007) 42 Cal.4th 201, in which the California Supreme Court held that a timely public entity six-month claim 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 or legislative history indicated intent by the Legislature to exempt Section 340.1 claims from the Act and its six-month claim presentation requirement. Therefore, no claims arising out of injuries suffered by victims of abuse by employees of public entities where the conduct occurred prior to January 1, 2009, would be eligible under this bill's revival period. The extended and revised statute of limitations would apply prospectively, however, for claims based on allegations of abuse after January 1, 2009 (pursuant to provisions enacted under SB 640 (Simitian) 2008, noted above).

Fiscal Impact:

As approved on May 23, 2013: Unknown, potentially significant state court costs (General Fund) to the extent providing for the one-year retroactive window results in additional civil cases. For every 25 additional claims filed, assuming one week of court time, annual costs potentially in excess of \$500,000 (General Fund).

It is unknown how many additional claims will be brought under the retroactive and prospective provisions of this bill, but for every 25 to 50 additional claims, assuming one week of court time, costs would be in the range of \$500,000 to \$1 million (General Fund), utilizing an estimated daily court cost of \$4,000. To the extent this bill results in extended litigation due to the provision entitling plaintiffs to conduct discovery before the court may rule on a motion challenging the sufficiency of the plaintiff's showing in cases that otherwise would have been dismissed, could also lead to increased litigation costs.

To the extent the provisions of this measure impact the operation and enrollment levels of private schools statewide to a level that causes some degree of displacement from private to public school enrollment could result in future General Fund cost pressure of an unknown, but potentially significant amount.

Senate Bill No. 131

Passed the Senate September 6, 2013

Secretary of the Senate

Passed the Assembly September 4, 2013

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day
of _____, 2013, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Section 340.1 of the Code of Civil Procedure, relating to damages.

LEGISLATIVE COUNSEL'S DIGEST

SB 131, Beall. Damages: childhood sexual abuse: statute of limitations.

Existing law requires that an action for recovery of damages suffered as a result of childhood sexual abuse, as defined, be commenced within 8 years of the date the plaintiff attains the age of majority or within 3 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 sexual abuse, whichever occurs later. Existing law provides that certain actions may be commenced on and after the plaintiff's 26th birthday if the person or entity against whom the action is commenced knew or 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 to implement reasonable safeguards, to avoid acts of unlawful sexual conduct in the future by that person. For a period of one year commencing January 1, 2003, existing law revived certain actions that would otherwise be barred solely because the applicable statute of limitations had expired.

This bill would provide that the time limits for commencement of an action for recovery of damages suffered as a result of childhood sexual abuse shall be applied retroactively to any claim that has not been adjudicated to finality on the merits as of January 1, 2014. This bill would revive, for a period of one year, a cause of action, as specified, that would otherwise be barred by the statute of limitations as of January 1, 2014, provided that the plaintiff's 26th birthday was before January 1, 2003, and the plaintiff discovered the cause of his or her injury on or after January 1, 2004.

This bill would provide that a party shall be entitled to conduct discovery before the court may rule on a motion challenging the sufficiency of the plaintiff's showing that a person or entity knew

or had reason to know, or was otherwise on notice, of any unlawful sexual conduct and failed to take reasonable steps, and to implement reasonable safeguards, to avoid those acts in the future. This bill would specify that this entitlement shall not apply to a cause of action revived pursuant to these provisions.

The people of the State of California do enact as follows:

SECTION 1. Section 340.1 of the Code of Civil Procedure is amended to read:

340.1. (a) In an action for recovery of damages suffered as a result of childhood sexual abuse, the time for commencement of the action shall be 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, for any of the following actions:

(1) An action against any person for committing an act of childhood sexual abuse.

(2) An action for liability against 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 abuse that resulted in the injury to the plaintiff.

(3) An action for liability against any person or entity where an intentional act by that person or entity was a legal cause of the childhood sexual abuse that resulted in the injury to the plaintiff.

(b) (1) No action described in paragraph (2) or (3) of subdivision (a) may be commenced on or after the plaintiff's 26th birthday.

(2) This subdivision does not apply if the person or entity knew or 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 to implement reasonable safeguards, to avoid acts of unlawful sexual conduct in the future by that person, including, but not limited to, preventing or avoiding placement of that person in a function or environment in which contact with children is an inherent part of that function or environment. For purposes of this subdivision, providing or

requiring counseling is not sufficient, in and of itself, to constitute a reasonable step or reasonable safeguard.

(3) Notwithstanding any other provision of law, a party shall be entitled to conduct discovery before the court may rule on a motion challenging the sufficiency of the plaintiff's showing under paragraph (2).

(c) The time limits for commencement of actions described in subdivisions (a) and (b) shall be applied retroactively to any claim that has not been adjudicated to finality on the merits as of January 1, 2014. Notwithstanding any other provision of law, any cause of action for damages described in paragraph (2) or (3) of subdivision (a) that would otherwise be barred solely by the statute of limitations as of January 1, 2014, is revived, and, in that case, a cause of action may be commenced within one year of January 1, 2014, provided that the plaintiff's 26th birthday was before January 1, 2003, and the plaintiff discovered the cause of his or her injuries on or after January 1, 2004. Paragraph (3) of subdivision (b) shall not apply to a cause of action revived pursuant to this subdivision.

(d) Subdivision (c) does not apply to either of the following:

(1) Any claim that has been litigated to finality on the merits in any court of competent jurisdiction prior to January 1, 2014. Termination of a prior action on the basis of the statute of limitations does not constitute a claim that has been litigated to finality on the merits.

(2) Any written, compromised settlement agreement that has been entered into between a plaintiff and a defendant where the plaintiff was represented by an attorney who was admitted to practice law in this state at the time of the settlement, and the plaintiff signed the agreement.

(e) "Childhood sexual abuse" as used in this section includes any act committed against the plaintiff that occurred when the plaintiff was under 18 years of age and that would have been proscribed by Section 266j of the Penal Code; Section 285 of the Penal Code; paragraph (1) or (2) of subdivision (b), or of subdivision (c), of Section 286 of the Penal Code; subdivision (a) or (b) of Section 288 of the Penal Code; paragraph (1) or (2) of subdivision (b), or of subdivision (c), of Section 288a of the Penal Code; subdivision (h), (i), or (j) of Section 289 of the Penal Code; Section 647.6 of the Penal Code; or any prior laws of this state of

similar effect at the time the act was committed. Nothing in this subdivision limits the availability of causes of action permitted under subdivision (a), including causes of action against persons or entities other than the alleged perpetrator of the abuse.

(f) Nothing in this section shall be construed to 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 section.

(g) Every plaintiff 26 years of age or older at the time the action is filed shall file certificates of merit as specified in subdivision (h).

(h) Certificates of merit shall be executed by the attorney for the plaintiff and by a licensed mental health practitioner selected by the plaintiff declaring, respectively, as follows, setting forth the facts that support the declaration:

(1) That the attorney has reviewed the facts of the case, that the attorney has consulted with at least one mental health practitioner who is licensed to practice and practices in this state and who the attorney reasonably believes is knowledgeable of the relevant facts and issues involved in the particular action, and that the attorney has concluded on the basis of that review and consultation that there is reasonable and meritorious cause for the filing of the action. The person consulted may not be a party to the litigation.

(2) That the mental health practitioner consulted is licensed to practice and practices in this state and is not a party to the action, that the practitioner is not treating and has not treated the plaintiff, and that the practitioner has interviewed the plaintiff and is knowledgeable of the relevant facts and issues involved in the particular action, and has concluded, on the basis of his or her knowledge of the facts and issues, that in his or her professional opinion there is a reasonable basis to believe that the plaintiff had been subject to childhood sexual abuse.

(3) That the attorney was unable to obtain the consultation required by paragraph (1) because a statute of limitations would impair the action and that the certificates required by paragraphs (1) and (2) could not be obtained before the impairment of the action. If a certificate is executed pursuant to this paragraph, the certificates required by paragraphs (1) and (2) shall be filed within 60 days after filing the complaint.

(i) Where certificates are required pursuant to subdivision (g), the attorney for the plaintiff shall execute a separate certificate of merit for each defendant named in the complaint.

(j) In any action subject to subdivision (g), no defendant may be served, and the duty to serve a defendant with process does not attach, until the court has reviewed the certificates of merit filed pursuant to subdivision (h) with respect to that defendant, and has found, in camera, based solely on those certificates of merit, that there is reasonable and meritorious cause for the filing of the action against that defendant. At that time, the duty to serve that defendant with process shall attach.

(k) A violation of this section may constitute unprofessional conduct and may be the grounds for discipline against the attorney.

(l) The failure to file certificates in accordance with this section shall be grounds for a demurrer pursuant to Section 430.10 or a motion to strike pursuant to Section 435.

(m) In any action subject to subdivision (g), no defendant may be named except by “Doe” designation in any pleadings or papers filed in the action until there has been a showing of corroborative fact as to the charging allegations against that defendant.

(n) At any time after the action is filed, the plaintiff may apply to the court for permission to amend the complaint to substitute the name of the defendant or defendants for the fictitious designation, as follows:

(1) The application shall be accompanied by a certificate of corroborative fact executed by the attorney for the plaintiff. The certificate shall declare that the attorney has discovered one or more facts corroborative of one or more of the charging allegations against a defendant or defendants, and shall set forth in clear and concise terms the nature and substance of the corroborative fact. If the corroborative fact is evidenced by the statement of a witness or the contents of a document, the certificate shall declare that the attorney has personal knowledge of the statement of the witness or of the contents of the document, and the identity and location of the witness or document shall be included in the certificate. For purposes of this section, a fact is corroborative of an allegation if it confirms or supports the allegation. The opinion of any mental health practitioner concerning the plaintiff shall not constitute a corroborative fact for purposes of this section.

(2) Where the application to name a defendant is made prior to that defendant's appearance in the action, neither the application nor the certificate of corroborative fact by the attorney shall be served on the defendant or defendants, nor on any other party or their counsel of record.

(3) Where the application to name a defendant is made after that defendant's appearance in the action, the application shall be served on all parties and proof of service provided to the court, but the certificate of corroborative fact by the attorney shall not be served on any party or their counsel of record.

(o) The court shall review the application and the certificate of corroborative fact in camera and, based solely on the certificate and any reasonable inferences to be drawn from the certificate, shall, if one or more facts corroborative of one or more of the charging allegations against a defendant has been shown, order that the complaint may be amended to substitute the name of the defendant or defendants.

(p) The court shall keep under seal and confidential from the public and all parties to the litigation, other than the plaintiff, any and all certificates of corroborative fact filed pursuant to subdivision (n).

(q) Upon the favorable conclusion of the litigation with respect to any defendant for whom a certificate of merit was filed or for whom a certificate of merit should have been filed pursuant to this section, the court may, upon the motion of a party or upon the court's own motion, verify compliance with this section by requiring the attorney for the plaintiff who was required by subdivision (h) to execute the certificate to reveal the name, address, and telephone number of the person or persons consulted with pursuant to subdivision (h) that were relied upon by the attorney in preparation of the certificate of merit. The name, address, and telephone number shall be disclosed to the trial judge in camera and in the absence of the moving party. If the court finds there has been a failure to comply with this section, the court may order a party, a party's attorney, or both, to pay any reasonable expenses, including attorney's fees, incurred by the defendant for whom a certificate of merit should have been filed.

(r) The amendments to this section enacted at the 1990 portion of the 1989-90 Regular Session shall apply to any action commenced on or after January 1, 1991, including any action

otherwise barred by the period of limitations in effect prior to January 1, 1991, thereby reviving those causes of action which had lapsed or technically expired under the law existing prior to January 1, 1991.

(s) The Legislature declares that it is the intent of the Legislature, in enacting the amendments to this section enacted at the 1994 portion of the 1993–94 Regular Session, that the express language of revival added to this section by those amendments shall apply to any action commenced on or after January 1, 1991.

(t) Nothing in the amendments to this section enacted at the 1998 portion of the 1997–98 Regular Session is intended to create a new theory of liability.

(u) The amendments to subdivision (a) of this section, enacted at the 1998 portion of the 1997–98 Regular Session, shall apply to any action commenced on or after January 1, 1999, and to any action filed prior to January 1, 1999, and still pending on that date, including any action or causes of action which would have been barred by the laws in effect prior to January 1, 1999. Nothing in this subdivision is intended to revive actions or causes of action as to which there has been a final adjudication prior to January 1, 1999.

Approved _____, 2013

Governor