

Date of Hearing: March 29, 2022

Chief Counsel: Sandy Uribe

ASSEMBLY COMMITTEE ON PUBLIC SAFETY

Reginald Byron Jones-Sawyer, Sr., Chair

AB 2274 (Blanca Rubio) – As Amended March 24, 2022

SUMMARY: Extends the statute of limitations for the failure of a mandated reporter to report suspected child abuse or neglect not involving sexual abuse to within one year of the discovery of the offense, but in no case later than four years after the commission of the offense.

EXISTING LAW:

- 1) Establishes the Child Abuse and Neglect Reporting Act (CANRA) and states that the intent and purpose of the Act is to protect children from abuse and neglect. (Pen. Code, § 11164.)
- 2) Defines "child" under CANRA to mean person under the age of 18 years. (Pen. Code, § 11165.)
- 3) Defines "child abuse or neglect" under CANRA to include physical injury or death inflicted by other than accidental means upon a child by another person, sexual abuse as defined, neglect as defined, the willful harming or injuring of a child or the endangering of the person or health of a child as defined, and unlawful corporal punishment or injury, as defined. (Pen. Code, § 11165.6.)
- 4) Enumerates close to 50 categories of mandatory child abuse reporters. Specific occupations that are mandated reporters include, but are not limited to, teachers, athletic coaches, social workers, peace officers, firefighters, physicians, psychologists, psychiatrists, emergency medical technicians, licensed family therapists, child visitation monitors, and clergy
- 5) Requires a mandated reporter to make a report to a specified agency whenever the mandated reporter, in his or her professional capacity or within the scope of his or her employment, has knowledge of or observes a child whom the mandated reporter knows or reasonably suspects has been the victim of child abuse or neglect to report that incident immediately to a specified child protection agency by telephone, and further requires a written report be sent within 36 hours. (Pen. Code, § 11166, subd. (a).)
- 6) Makes it a misdemeanor for a mandated reporter to fail to report an incident of known or reasonably suspected child abuse or neglect as required by the CANRA. The offense is punishable by up to six months confinement in a county jail, or by a fine of \$1,000, or by both. (Pen. Code, § 11166, subd. (c).)
- 7) States that if a mandated reporter intentionally conceals his or her failure to report an incident known by the mandated reporter to be abuse or severe neglect, the failure to report is a continuing offense until a specified agency discovers the offense. (Pen. Code, § 11166, subd.

(c.)

- 8) Provides that the prosecution of a misdemeanor must commence within one year of the commission of the offense, unless otherwise provided by law. (Pen. Code, § 802 subd. (a).)
- 9) Provides exceptions for the one-year statute of limitations for specified misdemeanors. (Pen. Code, § 802.)
- 10) States that the prosecution for a mandated reporter's failure to report known or reasonably suspected sexual assault may be filed at any time within five years from the date of the occurrence of such offense. (Pen. Code, § 801.6.)
- 11) States that, unless otherwise provided by law, a statute of limitations is not tolled or extended for any reason. (Pen. Code, § 803, subd. (a).)
- 12) States that, for specified crimes, the statute of limitations does not begin to run until the offense has been discovered, or could have reasonably been discovered. (Pen. Code, § 803, subd. (e).)
- 13) Provides that if more than one statute of limitations period applies to a crime, the time for commencing an action shall be governed by the period that expires later in time. (Pen. Code § 803.6, subd. (a).)
- 14) States that a prosecution is commenced when one of the following occurs:
 - a) An indictment or information is filed;
 - b) A complaint charging a misdemeanor or infraction is filed;
 - c) The defendant is arraigned on a complaint that charges him or her with a felony; or,
 - d) An arrest warrant or bench warrant is issued. (Pen. Code, § 804.)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** According to the author, "Assembly Bill 2274 will amend PC 11166 (c) to make the failure by a mandated reporter to report an incident of known or reasonably suspected child abuse or neglect a continuing offense until discovered by the appropriate law enforcement agency. The bill helps ensure that mandated reporters take their roles seriously and can be held accountable for failing to protect the children they are trusted to supervise."
- 2) **Mandated Reporters:** California's mandated reporter statutes require that certain individuals who, in a professional capacity or within the scope of employment, have knowledge of or observe a child whom the mandated reporter knows or reasonably suspects has been the victim of child abuse or neglect to make an immediate report to a law enforcement agency, as specified. The statute defines what constitutes reasonable suspicion and lists 49 specific categories of employees that are defined as mandated reporters, including teachers, coaches, child care workers, social workers and probation officers,

firefighters, specific medical personnel, commercial film and photographic image processors, and others. It requires that mandated reporters be trained about their responsibilities and duties to report, including specifying that the first report must be made by telephone and a subsequent written report must be made within 36 hours of receiving information about the incident. (Pen. Code, §§ 11165.7 & 11166.)

The statute specifies that the reporting duties are individual and states that no supervisor or administrator may impede or inhibit the reporting duties, and no person making a report shall be subject to any sanction for making the report. (Pen. Code, § 11166, subd. (i)(1).)

The penalty for a mandated reporter who fails to report an incident in a timely manner is up to six months in jail and a fine of up to \$1,000, or both. (Pen. Code, § 11166, subd. (c).) The punishment for a mandated reporter who either willfully fails to report or who impedes or inhibits a report of abuse or neglect – where the abuse or neglect results in the death or great bodily injury of a child – is up to one year in a county jail, or a fine of not more than \$5,000, or both. (Pen. Code, § 11166.01, subd. (b).)

- 3) **Statute of Limitations:** The statute of limitations requires commencement of a prosecution within a certain period of time after the commission of a crime. A prosecution is initiated by filing an indictment or information, filing a complaint, certifying a case to superior court, or issuing an arrest or bench warrant. (Pen. Code, § 804.)

The statute of limitations serves several important purposes in a criminal prosecution, including staleness, prompt investigation, and finality. The statute of limitations protects persons accused of crime from having to face charges based on evidence that may be unreliable, and from losing access to the evidentiary means to defend against the accusation. With the passage of time, memory fades, witnesses die or otherwise become unavailable, and physical evidence becomes unobtainable or contaminated.

The statute of limitations also imposes a priority among crimes for investigation and prosecution. The deadline serves to motivate the police and to ensure against bureaucratic delays in investigating crimes. Additionally, the statute of limitations reflects society's lack of desire to prosecute for crimes committed in the distant past. The interest in finality represents a societal evaluation of the time after which it is neither profitable nor desirable to commence a prosecution.

These principals are reflected in court decisions. The United States Supreme Court has stated that statutes of limitations are the primary guarantee against bringing overly stale criminal charges. (*United States v. Ewell* (1966) 383 U.S. 116, 122.) There is a measure of predictability provided by specifying a limit beyond which there is an irrebuttable presumption that a defendant's right to a fair trial would be prejudiced. Such laws reflect legislative assessments of the relative interests of the state and the defendant in administering and receiving justice.

More recently, in *Stogner v. California* (2003) 539 U.S. 607, the Court underscored the basis for statutes of limitations: "Significantly, a statute of limitations reflects a legislative judgment that, after a certain time, no quantum of evidence is sufficient to convict. And that judgment typically rests, in large part, upon evidentiary concerns - for example, concern that the passage of time has eroded memories or made witnesses or other evidence unavailable."

(*Id.* at p. 615.)

The amount of time in which a prosecuting agency may charge an alleged defendant varies based on the crime. In general, the limitations period is related to the seriousness of the offense as reflected in the length of punishment established by the Legislature. (*People v. Turner* (2005) 134 Cal.App.4th 1591, 1594-1595; see, e.g., Pen. Code, §§ 799-805.) After a comprehensive review of criminal statutes of limitation in 1984, the Law Revision Commission recommended that the length of a "limitations statute should generally be based on the seriousness of the crime." (17 Cal. Law Revision Com. Rep. (1984) p. 313.) The Legislature overhauled the entire statutory scheme with this recommendation in mind. In *People v. Turner, supra*, 134 Cal.App.4th 1591, the court summarized the recommendations of the Law Revision Commission:

The use of seriousness of the crime as the primary factor in determining the length of the applicable statute of limitations was designed to strike the right balance between the societal interest in pursuing and punishing those who commit serious crimes, and the importance of barring stale claims. It also served the procedural need to provid[e] predictability and promote uniformity of treatment for perpetrators and victims of all serious crimes. The commission suggested that the seriousness of an offense could easily be determined in the first instance by the classification of the crime as a felony rather than a misdemeanor. Within the class of felonies, a long term of imprisonment is a determination that it is one of the more serious felonies; and imposition of the death penalty or life in prison is a determination that society views the crime as the most serious. (*People v. Turner, supra*, 134 Cal.App.4th at pp. 1594-1595, citations omitted.)

The failure of a prosecution to be commenced within the applicable period of limitation is a complete defense to the charge. The statute of limitations is jurisdictional and may be raised as a defense at any time, before or after judgment. (*People v. Morris* (1988) 46 Cal.3d 1, 13.) The defense may only be waived under limited circumstances. (See *Cowan v. Superior Court* (1996) 14 Cal.4th 367.)

The court is required to construe application of the statute of limitations strictly in favor of the defendants. (*People v. Zamora* (1976) 18 Cal.3d 538, 574; *People v. Lee* (2000) 82 Cal.App.4th 1352, 1357-1358.)

This bill provides that a charge for failure of a mandated reporter to report known or suspected child abuse or neglect may be filed up to one year after the date of discovery, but no more than four years after the commission of the offense.

- 4) **Ex Post Facto:** In *Stogner v. United States, supra*, 539 U.S. 607 the Supreme Court ruled that a law enacted after expiration of a previously applicable limitations period violates the Ex Post Facto Clause when it is applied to revive a previously time-barred prosecution. (*Id.* at pp. 610-611, 616.) However, extension of an existing statute of limitations is not ex post facto as long as the prior limitations period has not expired. (*Id.* at pp. 618-619.)

Under these principles, the extended statute of limitations provided for in this bill cannot be

applied to cases in which the period has expired.

- 5) **Argument in Support:** According to *Crime Victims United*, “The current state of the law imposes a year statute of limitation which can prevent many abusers from being brought to justice and cause more trauma to victims. Oftentimes for a variety of reasons, mandated reporters fail to protect children by filing a report. Then the statute of limitation passes, and the result is that children are exposed to the egregious situation of becoming an ongoing victim of preventable abuse.

“AB 2274 serves as a vehicle to dissolve this gap in the law and protect children. By extending the statute of limitations ... we are affording the victim, the children – the protections they need.”

- 6) **Argument in Opposition:** According to *ACLU California Action*, “we must respectfully oppose AB 2274 in the form in which we understand it will be amended in committee. As amended, this measure would expand the statute of limitations for prosecution of mandated reporters who did not intentionally fail to report. Under current law, if a mandated reporter 1) fails to report abuse or severe neglect, and 2) intentionally conceals their failure, it is considered a continuing violation until it is discovered, whereas failing to report when the reporter does not intentionally conceal their failure to report or when they fail to report general neglect has a statute of limitations of one year after the failure to report. AB 2274 would make any failure to make any report a continuing violation until discovered, with a statute of limitations of four years after the failure to report. By vastly expanding the statute of limitations and expanding the scope to include poverty-based reporting of general neglect, AB 2274 will incentivize increased overreporting in a system that already over-polices communities of color and low-income communities.

“Many mandated reporters err on the side of overreporting out of fear of liability. By quadrupling the statute of limitations for prosecuting a mandated reporter who unintentionally fails to report and does nothing to conceal the lack of reporting, AB 2274 will further encourage overreporting by mandated reporters. By expanding the extension of the statute of limitations to also apply to cases of general neglect – which require families to be reported to child protective services agencies for poverty-related reasons that do not harm the child – AB 2274 would exponentially expand the tendency to overreport and the pipeline of cases into the family regulation system.

“California’s system of mandated child abuse reporting as it exists today is a far-reaching system that all too often needlessly subjects families to the trauma of a child welfare investigation that does not find the report to be substantiated. The result is an overbroad reporting scheme that results in increased system-involvement and trauma for predominantly Black, Indigenous, and low-income families. A recent study in the *American Journal of Public Health* looked at longitudinal data regarding all children born in California in 1999, tracking whether they were the subject of reports of maltreatment from birth through the age of 18. The study found that overall, 26.3% of children were investigated for maltreatment. That statistic is alarming in itself, but the numbers for certain subgroups are much worse: 46.8% of Black children, and 50.2% of Native American children were investigated for alleged abuse or neglect. In the vast majority of cases, the allegations are not found to be substantiated. The study also found children on Medi-Cal are more than twice as likely to experience child welfare involvement than children with private health insurance.

“Investigation that results in a finding that a report was unsubstantiated is not harmless: a child welfare investigation is frequently traumatic for the family and child. Many studies show that children do better at home than in foster care and that mandated reporting does not decrease child abuse or harm. Additionally, the inaccuracy of the current mandated reporter system results in irreparable harm to families through consequences such as negative health outcomes – especially for mothers and babies who are separated by the family regulation system for issues largely related to economic insecurity, short-term removals and extended system-involvement. Nationally, in 2017, of all mandated reporter calls (approx. 4.1 million), only 9% ended in substantiated investigations (meaning there was any purported cause for concern to proceed investigating). Of that 9%, three quarters of cases were related to neglect, which is frequently attributed to poverty and the need for resources and support.⁸ Mandated reporting undermines such support services because families are less likely to trust support services forced upon them through this punitive intervention and system surveillance process.⁹ Moreover, due to systemic bias as cases are investigated, Black and Brown families also face a greater likelihood of having a report found to be substantiated, and having their families subjected to interventions, including in some cases removal of the child from the home, where it is neither necessary nor beneficial to the child or the family. This is yet another manifestation of the over-policing of communities of color, which AB 2274 will serve to exacerbate.” (footnotes omitted.)

- 7) **Related Legislation:** AB 1980 (Irwin) would extend the statute of limitations for the crime of “introduction of ransomware” to allow prosecution to commence within three years after a person is initially identified by law enforcement as a suspect in the commission of the offense, for crimes committed after January 1, 2023 or those for which the statute of limitations has not lapsed as of that date. The hearing on AB 1980 in this committee was cancelled at the request of the author.
- 8) **Prior Legislation:**
 - a) SB 23 (Rubio), Chapter, 483, Statutes of 2021, extended the statute of limitations for the misdemeanor crime of revenge porn to allow prosecution to commence within one year of the discovery of the offense, but not more than four years after the image was distributed.
 - b) AB 2032 (Baker), Chapter 943, Statutes of 2018, extended the statute of limitations in cases involving the failure to report an incident known or reasonably suspected by a mandated reporter to be sexual assault to five years, commencing on the date the offense occurred.
 - c) SB 610 (Nguyen), Chapter 74, Statutes of 2017, extended the statute of limitations for the misdemeanor crime of concealing an accidental death to one year after a suspect is identified by law enforcement, but no more than four years after the commission of the offense.

REGISTERED SUPPORT / OPPOSITION:

Support

Arcadia Police Officers Association
Burbank Police Officers' Association
California Coalition of School Safety Professionals
Child USA
Claremont Police Officers Association
Corona Police Officers Association
Crime Victims United of California
Culver City Police Officers' Association
Fullerton Police Officers' Association
Inglewood Police Officers Association
Los Angeles School Police Officers Association
Newport Beach Police Association
Palos Verdes Police Officers Association
Placer County Deputy Sheriffs' Association
Pomona Police Officer Association
Riverside Police Officers Association
Riverside Sheriffs' Association
Santa Ana Police Officers Political Action Committee
Upland Police Officers Association

Opposition

ACLU California Action
California Public Defenders Association

Analysis Prepared by: Sandy Uribe / PUB. S. / (916) 319-3744