

ASSEMBLY THIRD READING
AB 2959 (Committee on Judiciary)
As Introduced March 8, 2022
Majority vote

SUMMARY

Creates uniformity for childhood sexual abuse claims against public institutions.

Major Provisions

Exempts claims of childhood sex abuse against public state employees from the presentation requirement under the Government Claims Act (Act).

COMMENTS

California's Government Claims Act (Act) starts with the broad claim that "a public entity is not liable for an injury" caused by the entity, *except as otherwise provided by another statute*. Government Code Section 815.2(a) provides that a public entity may be liable for injuries caused by an act or omission of its employees acting within the scope of employment, if the employee's act would subject the employee to liability. However, even where existing law permits an action against a public entity, the Act still includes a "presentation" requirement for most causes of action. Although there are important exceptions, as a general rule, a person wishing to sue a government entity or government employee must first "present" a claim to the entity and, in many cases, exhaust all administrative remedies before bringing a civil action in court. (Government Code Section 910 *et seq.*) The presentation requirement found in the Act is distinct from the statute of limitations for claims of sexual abuse and harassment. Specifically, the statute of limitations for a claim of childhood sexual abuse or assault is 22 years from the date the claimant turns 18, or five years after discovering the behavior resulted in harm, whichever ends later. (Code of Civil Procedure Section 340.1(a).) This statute of limitations applies regardless of whether the claim is against a public entity or not. The presentation requirement, however, requires a claim to be presented to the government agency *within six months to one year* of the qualifying event. (Government Code Section 911.2.) Therefore, a child who is the victim of sexual abuse, subject to the exemption identified below, would need to identify the behavior and present the claim to the appropriate agency within a truncated time frame. As explained further in this analysis, this risks eliminating the ability of these minors to hold their abusers accountable.

Acknowledging the added barriers childhood sexual abuse survivors face in effectively holding their abusers accountable, the Legislature passed a series of bills intended to facilitate these claims. SB 640 (Simitian), Chapter 383, Statutes of 2008, waived the local government six-month notice of claim limitation requirement that applies to all other tort claims for victims of sexual abuse. Unfortunately in the wake of SB 640, several local public agencies continued to enforce the 6-month presentation requirement, and these decisions were upheld in court. (*See generally Big Oak Flat-Groveland Unified School Dist. v. Superior Court* (2018) (2018 Cal. App. Unpub. LEXIS 1145).) In response, SB 1053 (Beall), Chapter 153, Statutes of 2018, explicitly exempted claims of childhood sexual abuse perpetrated by public employees, but only for actions brought against *local* public entities. SB 1053 was intended to facilitate the process for survivors of childhood sexual abuse to hold their abusers accountable, and avoid effecting additional harmful psychological impacts by requiring the survivor to relive the abuse. However,

current law leaves survivors of childhood sexual abuse by state actors bound by the presentation requirement under the Act.

Requiring additional testimony risks re-traumatizing survivors of childhood sexual abuse. All too often, victims of childhood sexual abuse fail to report their abuse timely or fail to report it at all. While the victims almost always know their abusers, they often fail to come forward due to threats of harm in doing so, feelings of shame, blaming themselves, fearing their claims will not be considered credible, failing to fully appreciate the wrongfulness of the conduct, or suppressing very painful memories. The Act's presentation requirement exacerbates several of these factors, as it requires claimants to share details and relive the abuse, potentially triggering additional trauma. Leaving the presentation requirement in place also could prevent victims of childhood sexual abuse from being compensated for their injuries when state attorneys object that administrative remedies were not properly pursued and exhausted.

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 a person victimized by a state public entity.

This bill would expand the exemption to the Act's presentation requirement to all public entities, regardless of whether the claim is against a local or state entity. By doing so, this bill would create uniformity for childhood sexual abuse claims against public institutions, and avoid the potentially traumatizing process of detailing the alleged abuse. Moreover, conforming presentation requirements for all childhood sexual abuse survivors, regardless of the perpetrator, will help avoid any potential confusion in the law's application.

According to the Author

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.

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.

Arguments in Support

The Consumer Attorneys of California writes in support of the bill:

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.

Arguments in Opposition

No opposition on file.

FISCAL COMMENTS

According to the Assembly Appropriations Committee, likely no cost to state agencies or the trial courts given this bill does not affect the likelihood a person will file suit for childhood sexual abuse. Existing law already allows a person to bring action against a state or local agency for alleged child sex abuse.

VOTES**ASM JUDICIARY: 9-0-2**

YES: Stone, Cunningham, Kalra, Kiley, Maienschein, Reyes, Robert Rivas, Wicks, Lee

ABS, ABST OR NV: Patterson, Holden

ASM APPROPRIATIONS: 14-0-2

YES: Holden, Bigelow, Bryan, Calderon, Carrillo, Megan Dahle, Davies, Mike Fong, Seyarto, Levine, Quirk, Robert Rivas, Akilah Weber, Wilson

ABS, ABST OR NV: Gabriel, Eduardo Garcia

UPDATED

VERSION: March 8, 2022

CONSULTANT: Manuela Boucher / JUD. / (916) 319-2334

FN: 0002333