

Assembly Bill No. 218

CHAPTER 861

An act to amend Sections 340.1 and 1002 of the Code of Civil Procedure, and to amend Section 905 of the Government Code, relating to childhood sexual assault.

[Approved by Governor October 13, 2019. Filed with Secretary of State October 13, 2019.]

LEGISLATIVE COUNSEL'S DIGEST

AB 218, Gonzalez. Damages: childhood sexual assault: 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 the psychological injury or illness occurring after the age of majority was caused by sexual abuse, whichever occurs later, and provides that certain of those actions may not be commenced on or after the plaintiff's 26th birthday. Existing law also prohibits confidentiality provisions within a settlement agreement arising from a claim of childhood sexual abuse.

This bill would expand the definition of childhood sexual abuse, which would instead be referred to as childhood sexual assault. This bill would increase the time limit for commencing an action for recovery of damages suffered as a result of childhood sexual assault to 22 years from the date the plaintiff attains the age of majority or within 5 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 sexual assault, whichever is later. This bill would also provide for the recovery of up to treble damages against certain defendants in these actions, and would revive time-lapsed claims in certain circumstances.

Existing law, the Government Claims Act, generally requires the presentation of all claims for money or damages against local public entities. The Government Claims Act excludes from this requirement claims made for the recovery of damages suffered as a result of childhood sexual abuse, as defined, arising from conduct that occurred on or after January 1, 2009.

This bill would change that reference from childhood sexual abuse to childhood sexual assault, as defined, and it would remove the requirement that the conduct occurred on or after that specified date. The bill would also make a conforming change to the provision governing confidentiality provisions in childhood sexual abuse claims.

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

SECTION 1. Section 340.1 of the Code of Civil Procedure, as amended by Chapter 423 of the Statutes of 2018, is amended to read:

340.1. (a) 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:

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

(2) 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.

(3) 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.

(b) (1) In an action described in subdivision (a), a person who is sexually assaulted and proves it was as the result of a cover up may 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.

(2) For purposes of this subdivision, a “cover up” is a concerted effort to hide evidence relating to childhood sexual assault.

(c) An action described in paragraph (2) or (3) of subdivision (a) 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. For purposes of this subdivision, providing or requiring counseling is not sufficient, in and of itself, to constitute a reasonable step or reasonable safeguard. Nothing in this subdivision shall be construed to constitute a substantive change in negligence law.

(d) “Childhood sexual assault” as used in this section includes any act committed against the plaintiff that occurred when the plaintiff was under the age of 18 years 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 287 or of former Section 288a of the Penal Code; subdivision (h), (i), or (j) of Section 289 of the Penal Code; any sexual conduct as defined in paragraph (1) of subdivision (d) of Section 311.4 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. This subdivision does not limit 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.

(e) This section shall not 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.

(f) Every plaintiff 40 years of age or older at the time the action is filed shall file certificates of merit as specified in subdivision (g).

(g) 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 which support the declaration:

(1) That the attorney has reviewed the facts of the case, consulted with at least one mental health practitioner who the attorney reasonably believes is knowledgeable of the relevant facts and issues involved in the particular action, and concluded on the basis of that review and consultation that there is reasonable and meritorious cause for the filing of the action.

(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 the practitioner's knowledge of the facts and issues, that in the practitioner's 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.

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

(i) In any action subject to subdivision (f), a defendant shall not 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 (g) 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.

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

(k) 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.

(l) In any action subject to subdivision (f), a defendant shall be named 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.

(m) 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) If the application to name a defendant is made before 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) If 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.

(n) 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.

(o) 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 (m).

(p) 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 (g) to execute the certificate to reveal the name, address, and telephone number of the person or persons consulted with pursuant to subdivision (g) 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.

(q) Notwithstanding any other provision of law, any claim for damages described in paragraphs (1) through (3), inclusive, of subdivision (a) 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. A plaintiff shall have the later of the three-year time period under this subdivision or the time period under subdivision (a) as amended by the act that added this subdivision.

(r) The changes made to the time period under subdivision (a) as amended by the act that amended this subdivision in 2019 apply to and revive any action commenced on or after the date of enactment of that act, and to any action filed before the date of enactment, and still pending on that date, including any action or causes of action that would have been barred by the laws in effect before the date of enactment.

SEC. 2. Section 1002 of the Code of Civil Procedure is amended to read:

1002. (a) Notwithstanding any other law, a provision within a settlement agreement that prevents the disclosure of factual information related to the action is prohibited in any civil action the factual foundation for which establishes a cause of action for civil damages for any of the following:

- (1) An act that may be prosecuted as a felony sex offense.
- (2) An act of childhood sexual assault, as defined in Section 340.1.
- (3) An act of sexual exploitation of a minor, as defined in Section 11165.1 of the Penal Code, or conduct prohibited with respect to a minor pursuant to Section 311.1, 311.5, or 311.6 of the Penal Code.
- (4) An act of sexual assault, as defined in paragraphs (1) to (9), inclusive, of subdivision (e) of Section 15610.63 of the Welfare and Institutions Code, against an elder or dependent adult, as defined in Sections 15610.23 and 15610.27 of the Welfare and Institutions Code.

(b) Notwithstanding any other law, in a civil action described in paragraphs (1) to (4), inclusive, of subdivision (a), a court shall not enter, by stipulation or otherwise, an order that restricts the disclosure of information in a manner that conflicts with subdivision (a).

(c) Subdivisions (a) and (b) do not preclude an agreement preventing the disclosure of any medical information or personal identifying information, as defined in subdivision (b) of Section 530.55 of the Penal Code, regarding the victim of the offense listed in subdivision (a) or of any information revealing the nature of the relationship between the victim and the defendant. This subdivision shall not be construed to limit the right of a crime victim to disclose this information.

(d) Except as authorized by subdivision (c), a provision within a settlement agreement that prevents the disclosure of factual information

related to the action described in subdivision (a) that is entered into on or after January 1, 2017, is void as a matter of law and against public policy.

(e) An attorney's failure to comply with the requirements of this section by demanding that a provision be included in a settlement agreement that prevents the disclosure of factual information related to the action described in subdivision (a) that is not otherwise authorized by subdivision (c) as a condition of settlement, or advising a client to sign an agreement that includes such a provision, may be grounds for professional discipline and the State Bar of California shall investigate and take appropriate action in any such case brought to its attention.

SEC. 3. Section 905 of the Government Code is amended to read:

905. There shall be presented in accordance with Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) all claims for money or damages against local public entities except any of the following:

(a) Claims under the Revenue and Taxation Code or other statute prescribing procedures for the refund, rebate, exemption, cancellation, amendment, modification, or adjustment of any tax, assessment, fee, or charge or any portion of the charge, or of any penalties, costs, or related charges.

(b) Claims in connection with which the filing of a notice of lien, statement of claim, or stop notice is required under any law relating to liens of mechanics, laborers, or materialmen.

(c) Claims by public employees for fees, salaries, wages, mileage, or other expenses and allowances.

(d) Claims for which the workers' compensation authorized by Division 4 (commencing with Section 3200) of the Labor Code is the exclusive remedy.

(e) Applications or claims for any form of public assistance under the Welfare and Institutions Code or other provisions of law relating to public assistance programs, and claims for goods, services, provisions, or other assistance rendered for or on behalf of any recipient of any form of public assistance.

(f) Applications or claims for money or benefits under any public retirement or pension system.

(g) Claims for principal or interest upon any bonds, notes, warrants, or other evidences of indebtedness.

(h) Claims that relate to a special assessment constituting a specific lien against the property assessed and that are payable from the proceeds of the assessment, by offset of a claim for damages against it or by delivery of any warrant or bonds representing it.

(i) Claims by the state or by a state department or agency or by another local public entity or by a judicial branch entity.

(j) Claims arising under any provision of the Unemployment Insurance Code, including, but not limited to, claims for money or benefits, or for refunds or credits of employer or worker contributions, penalties, or interest,

or for refunds to workers of deductions from wages in excess of the amount prescribed.

(k) Claims for the recovery of penalties or forfeitures made pursuant to Article 1 (commencing with Section 1720) of Chapter 1 of Part 7 of Division 2 of the Labor Code.

(l) Claims governed by the Pedestrian Mall Law of 1960 (Part 1 (commencing with Section 11000) of Division 13 of the Streets and Highways Code).

(m) 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 assault.

(n) Claims made pursuant to Section 701.820 of the Code of Civil Procedure for the recovery of money pursuant to Section 26680.

(o) Claims made pursuant to Section 49013 of the Education Code for reimbursement of pupil fees for participation in educational activities.

(p) The changes made to this section by the act that added this subdivision are retroactive and apply to any action commenced on or after the date of enactment of that act, and to any action filed before the date of enactment and still pending on that date, including any action or causes of action that would have been barred by the laws in effect before the date of enactment.