

Calif. Law Offers New Hope For Child Sexual Abuse Victims

By **Scott Gordon** (October 16, 2019, 4:34 PM EDT)

The issues surrounding the appropriate statute of limitations for civil cases involving child sexual abuse have been discussed for years. On Oct. 13, California took a bold step to change the law in this area with the passage of A.B. 218.

Issues concerning the statute of limitations in civil child sexual abuse cases have forced courts to address the policy concerns regarding the appropriate limitation period for these important cases. Concern has been expressed that a filing window that is too long will result in important evidence becoming destroyed, stale or unavailable.



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It has been argued that an extended statute of limitations would result in unfairness to potential defendants, who would have to defend themselves long after the alleged acts. It has also been suggested that an extended statute of limitations does not acknowledge the “need for self-reformation by potential defendants.”[1]

However, none of these policy arguments are victim-centered, and they don’t acknowledge the real impacts and dynamics of child sexual abuse. A child who has experienced trauma will experience it again and again as they mature and perceive the victimization through different eyes. At some point the victim who revisits the trauma of child sexual abuse may finally truly realize how they have been victimized, and may come forward and disclose their victimization.

This can occur at any time in their lives. Researchers have opined that the disclosure of sexual abuse is a lifelong process. Disclosure is not a single event, but rather a measured and dynamic process.[2] It is well-documented that nondisclosure and delayed disclosure of child sexual abuse are widespread among child survivors of sexual abuse.[3]

In recent years, child sexual abuse cases involving perpetrators who gained access to victims through organizations designed to assist children — including USA Gymnastics, the Roman Catholic Church, the Boy Scouts of America and the Los Angeles Unified School District — have exploded in the media, and have brought the topic of how the justice system should respond to these cases to the forefront.

Litigating cases involving child sexual abuse incidents that involve a perpetrator using a position of trust to prey on children pose unique challenges. The trauma inflicted on the victims, dealing with cases involving multiple victims, issues involving delayed disclosure and progressive disclosure and discovery,

and litigation involving an organizational defendant can all make these cases more complex and challenging to resolve.

These multiple victim child sexual abuse cases coming to light, coupled with the challenges inherent in litigating these cases, has sounded a call to legislatures across the country to respond. In February 2019, the Child Victims Act (S.B. S 4440) became law in New York state. This statute provided a “look-back window” for one year. This window allows victims of any age of child sexual assault to file civil actions regardless of when the abuse occurred. After the “window” closes in a year, victims will have up until the age of 55 to file civil lawsuits regarding their abuse.[1]

In the past, similar legislative efforts have been attempted in California, with limited success. In 2013, Gov. Jerry Brown vetoed S.B. 131, which would have expanded the statute of limitations for child sexual abuse cases for victims 48 years old and older, and provided a one-year look-back window to file claims.

In 2014, S.B. 924 was vetoed. This legislation would have allowed civil actions regarding child sexual abuse that occurred on or after Jan. 1, 2015, to be filed within 22 years after the victim turned 18, or within three years of discovery of the abuse (or of when it should have reasonably been discovered) after the victim reached the age of majority.

A.B. 3120 was vetoed in 2018. This legislation would have allowed victims to file suits until age 40, or within five years of discovery of the abuse. This legislation also provided for the recovery of treble damages if it could be shown that an involved organization tried to cover up the child abuse.

The current legislative session has produced several new laws in this area. A.B. 1510 creates a one-year window to revive time-barred civil actions for claims arising out of sexual assault or misconduct by a physician occurring at a student health center where there are more than \$250,000 in damages.

The most significant change in the law was accomplished through the passage of A.B. 218. Under previous law, sexual abuse survivors could file civil lawsuits based on child sexual abuse until they were 26 years old, or any time after the age of majority within three years of their discovery that their injury or illness was caused by the abuse. The new law modified Code of Civil Procedure Section 340.1 to extend the statute of limitations from age 26 to 40, and extend the period for filing after discovery of the abuse from three to five years.

A.B. 218 provides for a “look-back window” of three years. This means that any civil actions for child sexual assault that were barred by the previous law within the past three years can be revived and filed. The new legislation also provides that when a child is further victimized by an effort to cover up sexual assault, the victim can recover treble damages. The legislation defines “cover-up” as a concerted effort to hide evidence relating to child sexual abuse.

The new legislation also modifies CCP 340.1 to state that child sexual abuse actions against nonperpetrator defendants 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 child sexual abuse 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 child sexual abuse.

This legislation was introduced to address the dramatic changes in the social view of child sexual abuse, especially those cases that arise out of a position of trust between the perpetrator and the victim. A

great deal of light has been directed at these cases on a national level and this legislation is an effort to combat the stigma and legal obstacles encountered by victims of child sexual abuse.

This new law will pose challenges. The justice system will have to deal with an influx of new cases, and parties will have to litigate acts that occurred years before the filing of cases. However, the burden posed by those challenges will be shifted from child sexual abuse survivors to the accused, involved organizations and the court system.

This legislation marks a major change in the perception and understanding of child sexual abuse and will allow — if not force — society to come to terms with the way child sexual abuse is viewed, treated and prevented. The changes made by A.B. 218 have been a long time in coming. Some express relief that the new law will allow healing and accountability; others fear for the impact on the courts, and on organizations that work with children. As with all change, time will tell.

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[1] Rodgers, K., Childhood Sexual Abuse: Perceptions on Tolling the Statute of Limitations, *Journal of Contemporary Health Law and Policy*, Vol. 8 Issue 1 (1992).

[2] Alaggia, R., Collin-Vézina, D., and Lateef, R., Facilitators and Barriers to Child Sexual Abuse (CSA) Disclosure Research Update (2000-2016), *Trauma, Violence & Abuse* (2017).

[3] “[T]here is compelling evidence to suggest that nondisclosure and delayed disclosure of sexual abuse are indeed widespread in childhood. One Canadian study found that more than three-quarters of a representative sample of adults reported either never disclosing or delaying their disclosure of CSA by more than five years from the first incident (citation omitted). In their review of retrospective research data, London et al. (2005) concluded that only one-third of adults who experienced CSA disclosed during childhood, and less than one-fifth of cases came to the attention of authorities.” Azzopardi, C., Eirich, R., Rash, C., MacDonald, S., and Madigan, S., “A meta-analysis of the prevalence of child sexual abuse disclosure in forensic settings”, *Child Abuse & Neglect*, 93, 291-304 (2019).

[4] New York Senate Bill S 4440 also provides that the statute of limitations for criminal prosecution of a sexual offense committed against a child shall not begin to run until the child turns 23 years of age; provides that a civil action for conduct constituting a sexual offense against a child shall be brought before the child turns 55 years of age; revives previously barred actions related to sexual abuse of children; and grants civil trial preference to such actions.