Legislative History of Code of Civil Procedure Section 340.1

By

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In reviewing the legislative history of Section 340.1, one is reminded of the writing of Henry David Thoreau in his 1849 work *Resistance to Civil Government*, "that government governs best that governs least." Society, acting through our legislature over a span of almost four decades was troubled by a wrong. Attorneys raised the public awareness of the issue and in rides the legislature. As legislatures often do, they decided to legislate.

Since the advent of Code of Civil Procedure Section 340.1, the statutes of limitations for alleged childhood sexual abuse and molestation claims have been modified and extended several times since the mid-80's, culminating in the elimination of the statute of limitations altogether for claims arising from alleged abuse occurring on or after January 1, 2024.

The following is an overview of the legislative history behind Section 340.1 from whence it came into law some 38 years ago until present day.

Early Attempt to Extend Statute of Limitations

Prior to the enactment of Code of Civil Procedure § 340.1, suits for damages based on childhood sexual abuse were governed by the one-year statute of limitations for personal injuries, CCP § 340(3). In the early 1980's, a number of suits were filed for adults in their twenties and thirties, alleging that they had been justifiably delayed in discovering the long-term psychological injuries caused by the abuse, due to psychological mechanisms of denial, repression, dissociation, and self-blame, which had either prevented them from remembering the abuse, or prevented them from understanding its causal connection to their psychological injuries, until later in life.

In January 1984 Assemblyman Johan Klehs introduced AB 2323, which was based on a proposal recommended to the California State Bar by the Women Lawyers Association of Los Angeles, which sought to make the statute of limitations for commencement of suit based on intrafamilial child abuse three years from the date of discovery that injury or illness was caused by the abuse. That bill died in the Assembly Judiciary Committee, without ever coming to a vote.

SB 1445 - Enacted 1986

In 1985, Assemblymen Klehs introduced AB 1445, which provided a three-year limitations period for such actions, but did not mandate application of delayed discovery to them. In 1986, AB 1445 was amended to provide that it was not intended to preclude

the courts from applying delayed discovery exceptions to the accrual of a cause of action for sexual molestation of a minor.

By its terms AB 1445 was expressly made applicable to all cases filed on or after its effective date, including any actions which had been barred under the previously applicable statute of limitations, and to all cases filed prior to its effective date and still pending thereon.

AB 1445 passed through the legislature and was approved by Governor Deukmejian in September 1986. Thereafter, Section 340.1 was added to the Code of Civil Procedure with an effective date of January 1, 1987, and provided as follows:

340.1 (a) In any civil action for injury or illness based upon lewd or lascivious acts with a child under the age of 14 years, fornication, sodomy, oral copulation, or penetration of genital or anal openings of another with a foreign object, in which this conduct is alleged to have occurred between a household or family member and a child where the act upon which the action is based occurred before the plaintiff attained the age of 18 years, the time for commencement of the action shall be three years.

(b) "Injury or illness" as used in this section includes psychological injury or illness, whether or not accompanied by physical injury or illness.

(c) "Household or family member" as used in this section includes a parent, stepparent, former stepparent, sibling, stepsibling, any other person related by consanguinity or affinity within the second degree, or any other person who regularly resided in the household at the time of the act, or who six months prior to the act regularly resided in the household.

(d) Nothing in this bill is intended to preclude the courts from applying delayed discovery exceptions to the accrual of a cause of action for sexual molestation of a minor.

(e) This section shall apply to both of the following:

(1) Any action commenced on or after January 1, 1987, including any action which would be barred by the application of the period of limitation applicable prior to January 1, 1987.

(2) Any action commenced prior to January 1, 1987, and pending on January 1, 1987.

This newly enacted statute remained in effect without amendment until 1991. In the interim, the provision relating to the application of delayed discovery exceptions was subject to challenges in the courts.

Sample of Court Decisions Following Enactment of Section 340.1

Courts in California at both the trial and appellate levels have struggled mightily grappling with the harsh impact these dated claims have had on school districts.

In December 1987, the Sixth District Court of Appeal issued a decision in *DeRose v. Carswell,* 196 Cal.App.3d 1011, which held that the delayed discovery injury doctrine was not applicable to an action brought by a 24-year old woman for alleged sexual abuse by her step-grandfather when she always knew that the abuse had happened but was claiming to have been delayed in understanding that the abuse had caused her long-term psychological injuries until after the expiration of the three years provided by Section 340.1. *DeRose* left open the question of whether the doctrine could apply to a situation in which the victim claimed to have repressed all memory of the incidents of abuse until within the limitations period.

Subsequent to the *DeRose* decision, trial courts began granting demurrers and motions for summary judgment in cases wherein the plaintiff could not claim to have totally repressed all memory of the abuse.

In November 1988, the Third District Court of Appeal ruled that a nineteen-year old boy whose action was filed more than one-year after he reached the age of majority was barred by the one-year statute of limitations for personal injury actions [CCP Section 340(3)] from bringing an action for damages against a Boy Scout troop leader who had allegedly sexually assaulted him for many years because the three-years provided by Section 340.1 applied specifically only to actions against a family or household member. *Synder v. Boy Scouts of America* (1988) 205 Cal.App.3d 1318.

In November 1989, the Sixth District Court of Appeal issued a decision in *Mary D. v. John D.*, 216 Cal.App.3d 285. Although the court was critical the appellant had failed to provide any medical or psychological evidence as to repressed memory, it held that the doctrine of delayed discovery may be applied in a case where plaintiff can establish lack of memory of tortious acts due to psychological repression which took place before plaintiff obtained the age of majority, and which caused plaintiff to forget the facts of the acts of abuse until a date subsequent to which the complaint is timely filed, and that allegations in complaint, that daughter repressed memories of the alleged abuse, were sufficient to resist summary judgment based upon the statute of limitations.

The court was asked to reconsider its *DeRose* holding and use the *Mary D.* case to extend the delayed discovery doctrine to cases in which the plaintiff had not totally repressed the abuse but had been prevented from understanding its long-term effects. The court declined to do so, stating that such changes in the law, if appropriate, should come from the legislature and not the courts.

SB-108 – Enacted 1991

In December 1988, Senator Lockyer introduced SB 108. This bill provided for the extension of the statute of limitations provided in Section 340.1 to eight years from the

plaintiff's majority or within three years of the date the plaintiff discovers that the injury was caused by sexual abuse, whichever occurs later; expressly provided for delayed discovery accrual; and dropped the existing restriction to actions against a family member.

The bill was also applicable to any action commenced on or after January 1, 1990, including any action barred by application of the period of limitation that was applicable prior to January 1, 1990, and any action commenced prior to and pending as of January 1, 1990.

The purpose of the bill was to recognize the need for all victims of childhood sexual abuse to be allowed a longer time period in which to become aware of their psychological injuries and remain eligible to bring suit. It also served to remove the restriction in existing law to actions based on abuse by a family or household member, since child sexual abuse often occurs at the hands of persons outside of the child's family, such as teachers, day-care providers, or neighbors. The proponents of the bill believed that there was no justification for treating victims of such abuse differently from victims of abuse by a family or household member, as the same psychological injuries and dynamics of repression and dissociation occur.

The bill also recognized how other states were addressing the delayed discovery doctrine. In June 1988, the Legislature of the State of Washington, in direct response to a decision by that State's Supreme Court holding delayed discovery inapplicable to actions based on childhood sexual abuse (*Tyson v. Tyson* (1986) 727 P.2d 226), passed unanimously a new statute of limitations for such actions, providing specifically for the application of delayed discovery accrual.

Following several amendments to AB 108, childhood sexual abuse was defined to include any act committed by the defendant against the plaintiff which act occurred when the plaintiff was under the age of 18 years, and which act would have been proscribed by specific Penal Code sections dealing with sexual abuse and molestation of a minor.

This bill also set forth the framework and the parameters under which certificates of merit are required to filed with the court by certain-aged plaintiffs which remains a mandated requirement to the present day, along with repercussions for plaintiff's counsel if these requirements were not met.

The California Defense Counsel (CDC) opposed the bill with respect to the certificates of merit arguing there was little use in the certificate of merit procedures required by the bill. Alternatively, CDC suggested that the bill should require a court determination that the plaintiff seeking to file an action under the bill's provisions has established that there is a reasonable probability that he or she will prevail in the action. It was proposed that this procedure would be initiated by the filing of a verified petition and supporting affidavits stating facts upon which the plaintiff's claims are based. The defendant would then be allowed to submit responding affidavits. If the court's ruling on the petition was favorable to the petitioning party, then a complaint may be filed.

CDC's proposal was rejected and instead the certificate of merit procedure that was adopted was modeled after the certificate procedure required in filing malpractice actions against certain design professionals.

After this legislation was signed by Governor Deukmejian, SB 108 went into effect on January 1, 1991. The amended statute read as follows:

340.1 (a) In any civil 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 occurs later.

(b) "Childhood sexual abuse" as used in this section includes any act committed by the defendant against the plaintiff which act occurred when the plaintiff was under the age of 18 years and which act 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.

(c) Nothing in this section shall be construed to alter the otherwise applicable burden of proof, as defined in Section 115 of the Evidence Code, which a plaintiff has in a civil action subject to this section.

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

(e) 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, that the attorney has consulted with at least one licensed 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, 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.

(f) Where certificates are required pursuant to subdivision (d), separate certificates shall be filed for each defendant named in the complaint.

(g) A complaint filed pursuant to subdivision (d) may not name the defendant or defendants until the court has reviewed the certificates of merit filed pursuant to subdivision (e) 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. At that time, the complaint may be amended to name the defendant or defendants. The duty to give notice to the defendant or defendants shall not attach until that time.

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

(i) 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.

(j) 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 (e) to execute the certificate to reveal the name, address, and telephone number of the person or persons consulted with pursuant to subdivision (e) 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 an *in camera* proceeding at which the moving party shall not be present. 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.

(k) 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.

(l) Nothing in the amendments specified in subdivision (k) shall be construed to preclude the courts from applying equitable exceptions to the running of the applicable statute of limitations, including exceptions relating to delayed discovery of injuries, with respect to actions commenced prior to January 1, 1991.

AB 2846 – Enacted 1994

The legislature continues to tweak the law. Three years later in 1994, Section 340.1 was amended by AB 2846 with relatively few changes.

Under this bill the right to bring a cause of action remained to 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.

However, a new requirement was added with respect to the certificate of merit required to be filed by a mental health practitioner. In that regard, the mental health practitioner who executes a certificate of merit now had the additional obligation to also affirm that he/she was not treating and had not treated the plaintiff.

The other notable change dealt with how the defendant was to be named in the original complaint. This bill provided that when certificates of merit are required to be filed, 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.

In order to substitute the true name of the defendant for the Doe designation, the plaintiff's counsel must make application to the court which is to 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 witness's statement 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.

The court is required to review the application and the certificate of corroborative fact in camera and, based solely on the certificate and any reasonable inferences to be drawn therefrom, 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.

The court is also required to 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.

After this legislation was signed by Governor Wilson, SB 2846 went into effect and expressly provided that the changes it made would apply to any action commenced on or after January 1, 1991.

AB 1651 – Enacted 1998

In January 1998, AB 1651 (Ortiz) was introduced to again amend Section 340.1 relating to the commencement of actions against certain defendants.

Existing law at this time required that an action for recovery of damages suffered as a result of childhood sexual abuse, as defined, be commenced 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 the psychological injury or illness occurring after the age of majority was caused by sexual abuse, whichever occurs later, and that it applies to any action filed on or after January 1, 1991, and revives causes of action which had otherwise lapsed.

Under AB 1651, the bill specified that these requirements would apply to any such civil action brought against any person or entity under any theory of liability, and that the bill would apply to actions commenced on or after January 1, 1991, and those still pending on the effective date of the bill, as well as any cause of action commenced on or after the effective date of the bill. A specific age limit was also placed on a plaintiff as to his/her right to bring suit against an [public] entity.

Subdivision (a) of Section 340.1 was thereafter amended to provide as follows:

(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 which 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 which resulted in the injury to the plaintiff.

Subdivision (b) was added which provided no action described in paragraph (2) or (3) of subdivision (a) may be commenced on or after the plaintiff's 26th birthday.

All other provisions relating to the filing of certificates of merit and of naming a defendant only by a Doe designation until there has been a showing of corroborative fact as to the charging allegations against any defendant alleged to have committed childhood sexual abuse against the plaintiff remained unchanged.

After this legislation was signed by Governor Wilson in September 1998, AB 1651 went into effect and expressly provided that the changes it made would 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.

SB 674 – Enacted 1999

In 1999 SB 674 (Ortiz) was introduced which provided that the previous amendments to subdivision (a) which specifies the time in which an action for recovery of damages suffered as a result of childhood sexual abuse, as defined, must be commenced 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.

However, this bill also declared that it was not intended to revive actions or causes of actions as to which there has been a final adjudication prior to January 1, 1999.

This bill was approved by Governor Davis on July 14, 1999.

SB 1779 – Enacted 2002

In 2002, the Legislature enacted SB 1779 (Burton) extending the statute of limitations as against third parties, which was signed by Governor Davis on July 10, 2002.

This bill provided that an action for recovery of damages suffered as a result of childhood sexual abuse may be commenced after the plaintiff's 26th birthday against someone other than the direct perpetrator, if that person or entity knew, or had reason to known, or was otherwise on notice, of any unlawful sexual contact by an employee, volunteer, representative or agent for unlawful sexual conduct by an employee, volunteer, representative or agent, and failed to take reasonable steps, and implement reasonable safeguards, to avoid future acts of unlawful sexual conduct 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. Providing or requiring counseling was deemed to be insufficient, in and of itself, to constitute a reasonable step or reasonable safeguard.

This bill was applied retroactively and provided victims of childhood sexual abuse a one-year window to bring an action against a third party, when that claim would otherwise be barred solely because the statute of limitations has or had expired, and a cause of action could be commenced within one year of January 1, 2003.

The revival of claims under this amendment did not apply to any claim that had been litigated to finality on the merits or when a written, compromised settlement agreement had been entered into between a plaintiff and a defendant where the plaintiff was represented by an attorney admitted to practice in California at the time of the settlement, and the plaintiff had signed the settlement agreement.

SB 640 – Enacted 2008

In 2007 SB 640 (Simitian) was introduced which was an act to amend Government Code Section 905 to make exempt claims made pursuant to Section 340.1 for the recovery of damages suffered as a result of childhood sexual abuse.

The Government Tort Claims Act generally governs claims brought against public entities. The Act requires that a claim relating to a cause of action for death or for injury to a person be presented in writing to the public entity not later than six months after accrual of the cause of action, which is defined as the date upon which the cause of action would be deemed to have occurred within the meaning of the applicable statute of limitations.

In *Shirk v. Vista Unified School District* (2007) 42 Cal.4th 201, the California Supreme Court held that, notwithstanding the childhood sexual abuse statute of limitations timeframes in Section 340.1 and its delayed discovery provisions, 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 of SB 1779 or the bill's legislative history indicated an intent by the Legislature to exempt Section 340.1 claims from the Act and its six-month claim presentation requirement.

SB 640 was intended to address the *Shirk* decision by expressly providing that childhood sexual abuse actions against public entities are exempted from the Government Tort Claims Act requirements and the six-month notice requirement.

This bill was approved by Governor Schwarzenegger on September 27, 2008 which made exempt claims for childhood sexual abuse against a local public entity, arising out of conduct occurring on or after January 1, 2009, from the Government Tort Claims Act.

AB 218 – Enacted 2019

A sea change came in 2019. AB 218 (Gonzales) was introduced in 2019 and became a game changer through its enactment effective 2020 after signed into law by Governor Newsom.

With the enactment of AB 218, the Legislature amended Section 340.1 to significantly lengthen the statute of limitations for child sexual abuse cases, as well as to revive claims that were previously time-barred. These changes had a profound impact on school districts.

The 2020 amendments to Section 340.1 are made up of 21 subparts. Instead of listing each of the subparts, only the most salient are addressed.

Extension of Statute of Limitations

Section 340.1(a) subds. (1), (2) and (3) provide that the time for commencement of an action against any person for committing an act of childhood sexual assault or action for liability against any person or entity who either owed a duty of care to the plaintiff or whose intentional act by that person or entity was the legal cause of the childhood sexual assault, shall be within 22 years of the date the plaintiff attains the age of majority (age 40) or within five years of the date the plaintiff discovers or reasonably should have discovered the injury occurring after the age of majority, whichever period expires later.

The words, "whichever period expires later" are significant in that they tend to leave the proverbial door indefinitely open for an adult of any age to bring an action based on the discovery of a latent injury, so long as the action is brought within five years from the discovery of that injury.

Section 340.1 subd.(c) provides that 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.

Filing Requirements When Plaintiff Is Over 40

Although 340.1 permits childhood sexual abuse victims who are over the age of 40 to file suit within five years of discovering the nexus between the abuse and their psychological injury or illness, the same filing requirements apply to plaintiffs who proceed under this delayed discovery provision. Specifically: (1) certificates of merit executed by plaintiffs' counsel and a licensed mental-health provider must be submitted to the court, (2) the complaint may not be served on the defendants until the court has reviewed those certificates of merit and determined that reasonable and meritorious cause for filing the action exists; and (3) all defendants must be named only by "Doe" designation in all pleadings and papers until an application to amend the complaint to substitute the true names of the defendants has been granted after establishing a corroborative fact as to the charging allegations against that defendant.

Claims Revival Period

As amended Section 340.1 also created a three-year "lookback window," which revived all civil claims arising from childhood sexual assault that were barred as of January 1, 2020, because of the applicable statute of limitations, claim presentation deadline, or any other time limit had expired (Section 340.1, subd. (q).) thereby allowing these claims to be commenced within three years of January 1, 2020.

No Government Tort Claim Requirement

AB 218 also expressly abolished the tort claim-filing requirement for claims made pursuant to Section 340.1 for the recovery of damages suffered as a result of childhood sexual assault. (Gov. Code, § 905 subd. (m).)

Cover Up - Treble Damages

Section 340.1(b)(1) provides that a person who proves his or her sexual assault was a 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. The term "cover up" is defined in Section 340.1(b)(2) as a concerted effort to hide evidence relating to childhood sexual assault.

Public Entities Are Exempt from an Award of Punitive Damages

Government Code Section 818 exempts a public entity from an award of damages imposed primarily for the sake of example and by way of punishing the defendant.

Notwithstanding the prohibition of imposing punitive damages against a public entity, there were several split decisions among the state's appellate courts regarding whether the treble damages component of Section 340.1 should be applied to public entities. The issue was ultimately resolved by the California Supreme Court in 2023.

In *LAUSD v. Superior Court of Los Angeles*, 14 Cal.5th 758, the high court held that the Government Claims Act's prohibition of public entities being held liable in tort for damages imposed primarily for sake of example and by way of punishing a defendant applies not only to damages that are simply and solely punitive but also to damages that would function, in essence, as an award of punitive or exemplary damages.

Challenging the Constitutionality of AB 218

Since the passage of AB 218, hundreds of cases have been filed against public school districts across the State, presenting those districts with multi-million dollar verdicts and the potential for hundreds of millions more dollars in exposure.

In response numerous school districts have challenged the constitutionality of AB 218 through the filing of demurrers to the complaints based on the grounds that the retroactive imposition of liability on public entities for past acts of negligence would violate Article XVI, Section 6 of the California Constitution, which expressly prohibits gifts of public funds where there is no enforceable claim, even if there is a moral or equitable obligation. And on the further grounds the complaints are barred because of a plaintiff's s failure to file a timely Government Tort Claim, as well as being time barred due the passage of the statute of limitations.

In cases in which demurrers have either been sustained without leave to amend or overruled parties in at least four of these cases have filed petitions for writs of mandate in the State's appellate courts without achieving success to date.

In the matter of *Sierra Sands Unified School District v. Superior Court of Kern County (*M.M. real party in interest) Fifth District Court of Appeal case number F087401, the District's petition for writ of mandate was summarily denied on March 6, 2024.

In the matter of *Doe v. Acalanes Union High School District*, First District Court of Appeal case number A169013, this case was just fully brief as of September 19, 2024. Oral argument is anticipated to be scheduled within the next three months following which a ruling will be issued by the Court.

In the matter of *Roe #2, a Public Elementary School District, v. Superior Court of San Barbara County* (John Does 1, 2 & 3 real parties in interest), Second District Court of Appeal case number B334707, this case remains in the briefing stage.

In the matter of *West Contra Costa Unified School District v. Superior Court of Contra Costa County* (A.M.M. real party in interest) First District Court of Appeal case number A169314, following briefing and oral argument, a published opinion was filed on July 31, 2024, rejecting the school district's arguments that AB 218 violated California's Constitution's prohibition on gifts of public funds and the due process clauses of both the California and U.S. Constitutions, thereby denying the District's petition.

Supreme Court Review

Will our Supreme Court help? On September 9, 2024, a petition for review was filed in the *West Contra Costa Unified School District v. Superior Court of Contra Costa County* case with the California Supreme Court. It has been assigned case number S286798. It is anticipated that it will be months before a ruling is issued by the Court.

The Current Status of Section 340.1

AB 452 – Enacted 2023

In February 2023, AB 452 (Addis) was introduced. This bill proposed to eliminate entirely any time limit for the commencement of actions for the recovery of damages suffered as a result of childhood sexual assault. The bill also specified that its provisions apply to any action arising on and after January 1, 2024. Lastly, the bill expressly provided that a claim for damages is not required to be presented to any government entity prior to the commencement of an action.

This bill as drafted was signed into law by Governor Newsom in October 2023. Effective January 1, 2024, there is no statute of limitations for the commencement of actions for the recovery of damages suffered as a result of childhood sexual assault that occurred after January 1, 2024.

Even though the statute of limitations has been removed, the requirement to file a certificate of merit, stating facts supporting the claim, executed by the plaintiff's attorney and a licensed mental health practitioner (who is not and has not treated the plaintiff), remains in effect for a plaintiff who is 40 years of age or older at the time of filing. The plaintiff is also still required to file the certificate of merit against each named defendant. Failure to do so brings about the same repercussions to plaintiffs' counsel as addressed above.

Other States with Similar Statutes Relating to Childhood Sexual Abuse

Washington – RCW § 4.16.340 – For conduct that occurred before June 6, 2024, an action must be commenced (after reaching the age of majority) within three years of the act alleged to have caused the injury or condition; within three years of the time the victim discovered or reasonably should have discovered that the injury or condition was caused by said act; or within three years of the time the victim discovered that the act caused the injury for which the claim is brought.

For childhood sexual abuse that occurs on or after June 6, 2024, there is no statute of limitations.

Oregon – ORS § 12.117 - An action must be commenced before the person attains 40 years of age, or not more than five years from the date the person discovers or in the exercise of reasonable care should have discovered the causal connection between the child abuse and the injury, whichever period is longer.

Nevada – NRS § 11.215 – an action must be commended within 20 years after a plaintiff reaches the age of majority. Nevada doesn't recognize the delayed discovery doctrine.

Conclusion

The presentation was intended to provide an overview of the legislative history of Section 340.1. It was not intended to provide legal advice. Beyond that it is clear that the efforts of the legislature to deal with a societal ill has in many ways created more problems than it solved. Perhaps the teachings of Henry David Thoreau were prophetic.