

AMENDED IN ASSEMBLY JUNE 11, 2014

AMENDED IN SENATE MAY 27, 2014

AMENDED IN SENATE MAY 13, 2014

SENATE BILL

No. 924

Introduced by Senators Beall and Lara
(Coauthor: Assembly Member Skinner)

January 29, 2014

An act to amend Section 340.1 of, and to add Section 340.105 to, the Code of Civil Procedure, *and to amend Section 905 of the Government Code*, relating to damages.

LEGISLATIVE COUNSEL'S DIGEST

SB 924, as amended, Beall. Damages: childhood sexual abuse: 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 psychological injury or illness occurring after the age of majority was caused by sexual abuse, whichever occurs later. Existing law provides that certain actions may be commenced on and after the plaintiff's 26th birthday if specified conditions are met.

This bill would establish 2 separate statute of limitations for an action for recovery of damages suffered as a result of childhood sexual abuse. An action for recovery of damages suffered as a result of childhood sexual abuse occurring prior to January 1, 2015, would be subject to the above provisions of existing law. An action involving childhood sexual abuse occurring on or after January 1, 2015, would be required

to be commenced within 22 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 psychological injury or illness occurring after the age of majority was caused by the sexual abuse, whichever period expires later.

The Government Claims Act sets forth the general procedure for presentation of a claim for money or damages against local public entities. This act also enumerates excepted categories of claims, including certain claims for the recovery of damages suffered as a result of childhood sexual abuse arising out of conduct occurring on or after January 1, 2009.

This bill would clarify that the same exception applies regardless of which statute of limitation is controlling.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

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

1 SECTION 1. Section 340.1 of the Code of Civil Procedure is
2 amended to read:

3 340.1. (a) In an action for recovery of damages suffered as a
4 result of childhood sexual abuse that occurred prior to January 1,
5 2015, the time for commencement of the action shall be within
6 eight years of the date the plaintiff attains the age of majority or
7 within three years of the date the plaintiff discovers or reasonably
8 should have discovered that psychological injury or illness
9 occurring after the age of majority was caused by the sexual abuse,
10 whichever period expires later, for any of the following actions:

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

13 (2) An action for liability against any person or entity who owed
14 a duty of care to the plaintiff, where a wrongful or negligent act
15 by that person or entity was a legal cause of the childhood sexual
16 abuse that resulted in the injury to the plaintiff.

17 (3) An action for liability against any person or entity where an
18 intentional act by that person or entity was a legal cause of the
19 childhood sexual abuse that resulted in the injury to the plaintiff.

20 (b) (1) No action described in paragraph (2) or (3) of
21 subdivision (a) may be commenced on or after the plaintiff's 26th
22 birthday.

1 (2) This subdivision does not apply if the person or entity knew
2 or had reason to know, or was otherwise on notice, of any unlawful
3 sexual conduct by an employee, volunteer, representative, or agent,
4 and failed to take reasonable steps, and to implement reasonable
5 safeguards, to avoid acts of unlawful sexual conduct in the future
6 by that person, including, but not limited to, preventing or avoiding
7 placement of that person in a function or environment in which
8 contact with children is an inherent part of that function or
9 environment. For purposes of this subdivision, providing or
10 requiring counseling is not sufficient, in and of itself, to constitute
11 a reasonable step or reasonable safeguard.

12 (c) Notwithstanding any other provision of law, any claim for
13 damages described in paragraph (2) or (3) of subdivision (a) that
14 is permitted to be filed pursuant to paragraph (2) of subdivision
15 (b) that would otherwise be barred as of January 1, 2003, solely
16 because the applicable statute of limitations has or had expired, is
17 revived, and, in that case, a cause of action may be commenced
18 within one year of January 1, 2003. Nothing in this subdivision
19 shall be construed to alter the applicable statute of limitations
20 period of an action that is not time barred as of January 1, 2003.

21 (d) Subdivision (c) does not apply to either of the following:

22 (1) Any claim that has been litigated to finality on the merits in
23 any court of competent jurisdiction prior to January 1, 2003.
24 Termination of a prior action on the basis of the statute of
25 limitations does not constitute a claim that has been litigated to
26 finality on the merits.

27 (2) Any written, compromised settlement agreement that has
28 been entered into between a plaintiff and a defendant where the
29 plaintiff was represented by an attorney who was admitted to
30 practice law in this state at the time of the settlement, and the
31 plaintiff signed the agreement.

32 (e) “Childhood sexual abuse” as used in this section includes
33 any act committed against the plaintiff that occurred when the
34 plaintiff was under 18 years of age and that would have been
35 proscribed by Section 266j of the Penal Code; Section 285 of the
36 Penal Code; paragraph (1) or (2) of subdivision (b), or of
37 subdivision (c), of Section 286 of the Penal Code; subdivision (a)
38 or (b) of Section 288 of the Penal Code; paragraph (1) or (2) of
39 subdivision (b), or of subdivision (c), of Section 288a of the Penal
40 Code; subdivision (h), (i), or (j) of Section 289 of the Penal Code;

1 Section 647.6 of the Penal Code; or any prior laws of this state of
2 similar effect at the time the act was committed. Nothing in this
3 subdivision limits the availability of causes of action permitted
4 under subdivision (a), including causes of action against persons
5 or entities other than the alleged perpetrator of the abuse.

6 (f) Nothing in this section shall be construed to alter the
7 otherwise applicable burden of proof, as defined in Section 115
8 of the Evidence Code, that a plaintiff has in a civil action subject
9 to this section.

10 (g) Every plaintiff 26 years of age or older at the time the action
11 is filed shall file certificates of merit as specified in subdivision
12 (h).

13 (h) Certificates of merit shall be executed by the attorney for
14 the plaintiff and by a licensed mental health practitioner selected
15 by the plaintiff declaring, respectively, as follows, setting forth
16 the facts that support the declaration:

17 (1) That the attorney has reviewed the facts of the case, that the
18 attorney has consulted with at least one mental health practitioner
19 who is licensed to practice and practices in this state and who the
20 attorney reasonably believes is knowledgeable of the relevant facts
21 and issues involved in the particular action, and that the attorney
22 has concluded on the basis of that review and consultation that
23 there is reasonable and meritorious cause for the filing of the action.
24 The person consulted may not be a party to the litigation.

25 (2) That the mental health practitioner consulted is licensed to
26 practice and practices in this state and is not a party to the action,
27 that the practitioner is not treating and has not treated the plaintiff,
28 and that the practitioner has interviewed the plaintiff and is
29 knowledgeable of the relevant facts and issues involved in the
30 particular action, and has concluded, on the basis of his or her
31 knowledge of the facts and issues, that in his or her professional
32 opinion there is a reasonable basis to believe that the plaintiff had
33 been subject to childhood sexual abuse.

34 (3) That the attorney was unable to obtain the consultation
35 required by paragraph (1) because a statute of limitations would
36 impair the action and that the certificates required by paragraphs
37 (1) and (2) could not be obtained before the impairment of the
38 action. If a certificate is executed pursuant to this paragraph, the
39 certificates required by paragraphs (1) and (2) shall be filed within
40 60 days after filing the complaint.

1 (i) Where certificates are required pursuant to subdivision (g),
2 the attorney for the plaintiff shall execute a separate certificate of
3 merit for each defendant named in the complaint.

4 (j) In any action subject to subdivision (g), no defendant may
5 be served, and the duty to serve a defendant with process does not
6 attach, until the court has reviewed the certificates of merit filed
7 pursuant to subdivision (h) with respect to that defendant, and has
8 found, in camera, based solely on those certificates of merit, that
9 there is reasonable and meritorious cause for the filing of the action
10 against that defendant. At that time, the duty to serve that defendant
11 with process shall attach.

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

14 (l) The failure to file certificates in accordance with this section
15 shall be grounds for a demurrer pursuant to Section 430.10 or a
16 motion to strike pursuant to Section 435.

17 (m) In any action subject to subdivision (g), no defendant may
18 be named except by “Doe” designation in any pleadings or papers
19 filed in the action until there has been a showing of corroborative
20 fact as to the charging allegations against that defendant.

21 (n) At any time after the action is filed, the plaintiff may apply
22 to the court for permission to amend the complaint to substitute
23 the name of the defendant or defendants for the fictitious
24 designation, as follows:

25 (1) The application shall be accompanied by a certificate of
26 corroborative fact executed by the attorney for the plaintiff. The
27 certificate shall declare that the attorney has discovered one or
28 more facts corroborative of one or more of the charging allegations
29 against a defendant or defendants, and shall set forth in clear and
30 concise terms the nature and substance of the corroborative fact.
31 If the corroborative fact is evidenced by the statement of a witness
32 or the contents of a document, the certificate shall declare that the
33 attorney has personal knowledge of the statement of the witness
34 or of the contents of the document, and the identity and location
35 of the witness or document shall be included in the certificate. For
36 purposes of this section, a fact is corroborative of an allegation if
37 it confirms or supports the allegation. The opinion of any mental
38 health practitioner concerning the plaintiff shall not constitute a
39 corroborative fact for purposes of this section.

1 (2) Where the application to name a defendant is made prior to
2 that defendant's appearance in the action, neither the application
3 nor the certificate of corroborative fact by the attorney shall be
4 served on the defendant or defendants, nor on any other party or
5 their counsel of record.

6 (3) Where the application to name a defendant is made after
7 that defendant's appearance in the action, the application shall be
8 served on all parties and proof of service provided to the court,
9 but the certificate of corroborative fact by the attorney shall not
10 be served on any party or their counsel of record.

11 (o) The court shall review the application and the certificate of
12 corroborative fact in camera and, based solely on the certificate
13 and any reasonable inferences to be drawn from the certificate,
14 shall, if one or more facts corroborative of one or more of the
15 charging allegations against a defendant has been shown, order
16 that the complaint may be amended to substitute the name of the
17 defendant or defendants.

18 (p) The court shall keep under seal and confidential from the
19 public and all parties to the litigation, other than the plaintiff, any
20 and all certificates of corroborative fact filed pursuant to
21 subdivision (n).

22 (q) Upon the favorable conclusion of the litigation with respect
23 to any defendant for whom a certificate of merit was filed or for
24 whom a certificate of merit should have been filed pursuant to this
25 section, the court may, upon the motion of a party or upon the
26 court's own motion, verify compliance with this section by
27 requiring the attorney for the plaintiff who was required by
28 subdivision (h) to execute the certificate to reveal the name,
29 address, and telephone number of the person or persons consulted
30 with pursuant to subdivision (h) that were relied upon by the
31 attorney in preparation of the certificate of merit. The name,
32 address, and telephone number shall be disclosed to the trial judge
33 in camera and in the absence of the moving party. If the court finds
34 there has been a failure to comply with this section, the court may
35 order a party, a party's attorney, or both, to pay any reasonable
36 expenses, including attorney's fees, incurred by the defendant for
37 whom a certificate of merit should have been filed.

38 (r) The amendments to this section enacted at the 1990 portion
39 of the 1989-90 Regular Session shall apply to any action
40 commenced on or after January 1, 1991, including any action

1 otherwise barred by the period of limitations in effect prior to
2 January 1, 1991, thereby reviving those causes of action which
3 had lapsed or technically expired under the law existing prior to
4 January 1, 1991.

5 (s) The Legislature declares that it is the intent of the Legislature,
6 in enacting the amendments to this section enacted at the 1994
7 portion of the 1993–94 Regular Session, that the express language
8 of revival added to this section by those amendments shall apply
9 to any action commenced on or after January 1, 1991.

10 (t) Nothing in the amendments to this section enacted at the
11 1998 portion of the 1997–98 Regular Session is intended to create
12 a new theory of liability.

13 (u) The amendments to subdivision (a) of this section, enacted
14 at the 1998 portion of the 1997–98 Regular Session, shall apply
15 to any action commenced on or after January 1, 1999, and to any
16 action filed prior to January 1, 1999, and still pending on that date,
17 including any action or causes of action which would have been
18 barred by the laws in effect prior to January 1, 1999. Nothing in
19 this subdivision is intended to revive actions or causes of action
20 as to which there has been a final adjudication prior to January 1,
21 1999.

22 SEC. 2. Section 340.105 is added to the Code of Civil
23 Procedure, immediately following Section 340.1, to read:

24 340.105. (a) In an action for recovery of damages suffered as
25 a result of childhood sexual abuse that occurred on or after January
26 1, 2015, the time for commencement of the action shall be within
27 22 years of the date the plaintiff attains the age of majority or
28 within three years of the date the plaintiff discovers or reasonably
29 should have discovered that psychological injury or illness
30 occurring after the age of majority was caused by the sexual abuse,
31 whichever period expires later, for any of the following actions:

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

34 (2) An action for liability against any person or entity who owed
35 a duty of care to the plaintiff, where a wrongful or negligent act
36 by that person or entity was a legal cause of the childhood sexual
37 abuse that resulted in the injury to the plaintiff.

38 (3) An action for liability against any person or entity where an
39 intentional act by that person or entity was a legal cause of the
40 childhood sexual abuse that resulted in the injury to the plaintiff.

1 (b) (1) No action described in paragraph (2) or (3) of
2 subdivision (a) may be commenced on or after the plaintiff's 40th
3 birthday.

4 (2) This subdivision does not apply if the person or entity knew
5 or had reason to know, or was otherwise on notice, of any unlawful
6 sexual conduct by an employee, volunteer, representative, or agent,
7 and failed to take reasonable steps, and to implement reasonable
8 safeguards, to avoid acts of unlawful sexual conduct in the future
9 by that person, including, but not limited to, preventing or avoiding
10 placement of that person in a function or environment in which
11 contact with children is an inherent part of that function or
12 environment. For purposes of this subdivision, providing or
13 requiring counseling is not sufficient, in and of itself, to constitute
14 a reasonable step or reasonable safeguard.

15 (c) "Childhood sexual abuse" as used in this section includes
16 any act committed against the plaintiff that occurred when the
17 plaintiff was under 18 years of age and that would have been
18 proscribed by Section 266j of the Penal Code; Section 285 of the
19 Penal Code; paragraph (1) or (2) of subdivision (b), or of
20 subdivision (c), of Section 286 of the Penal Code; subdivision (a)
21 or (b) of Section 288 of the Penal Code; paragraph (1) or (2) of
22 subdivision (b), or of subdivision (c), of Section 288a of the Penal
23 Code; subdivision (h), (i), or (j) of Section 289 of the Penal Code;
24 Section 647.6 of the Penal Code; or any prior laws of this state of
25 similar effect at the time the act was committed. Nothing in this
26 subdivision limits the availability of causes of action permitted
27 under subdivision (a), including causes of action against persons
28 or entities other than the alleged perpetrator of the abuse.

29 (d) Nothing in this section shall be construed to alter the
30 otherwise applicable burden of proof, as defined in Section 115
31 of the Evidence Code, that a plaintiff has in a civil action subject
32 to this section.

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

36 (f) Certificates of merit shall be executed by the attorney for
37 the plaintiff and by a licensed mental health practitioner selected
38 by the plaintiff declaring, respectively, as follows, setting forth
39 the facts that support the declaration:

1 (1) That the attorney has reviewed the facts of the case, that the
2 attorney has consulted with at least one mental health practitioner
3 who is licensed to practice and practices in this state and who the
4 attorney reasonably believes is knowledgeable of the relevant facts
5 and issues involved in the particular action, and that the attorney
6 has concluded on the basis of that review and consultation that
7 there is reasonable and meritorious cause for the filing of the action.
8 The person consulted may not be a party to the litigation.

9 (2) That the mental health practitioner consulted is licensed to
10 practice and practices in this state and is not a party to the action,
11 that the practitioner is not treating and has not treated the plaintiff,
12 and that the practitioner has interviewed the plaintiff and is
13 knowledgeable of the relevant facts and issues involved in the
14 particular action, and has concluded, on the basis of his or her
15 knowledge of the facts and issues, that in his or her professional
16 opinion there is a reasonable basis to believe that the plaintiff had
17 been subject to childhood sexual abuse.

18 (3) That the attorney was unable to obtain the consultation
19 required by paragraph (1) because a statute of limitations would
20 impair the action and that the certificates required by paragraphs
21 (1) and (2) could not be obtained before the impairment of the
22 action. If a certificate is executed pursuant to this paragraph, the
23 certificates required by paragraphs (1) and (2) shall be filed within
24 60 days after filing the complaint.

25 (g) Where certificates are required pursuant to subdivision (e),
26 the attorney for the plaintiff shall execute a separate certificate of
27 merit for each defendant named in the complaint.

28 (h) In any action subject to subdivision (e), no defendant may
29 be served, and the duty to serve a defendant with process does not
30 attach, until the court has reviewed the certificates of merit filed
31 pursuant to subdivision (f) with respect to that defendant, and has
32 found, in camera, based solely on those certificates of merit, that
33 there is reasonable and meritorious cause for the filing of the action
34 against that defendant. At that time, the duty to serve that defendant
35 with process shall attach.

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

38 (j) The failure to file certificates in accordance with this section
39 shall be grounds for a demurrer pursuant to Section 430.10 or a
40 motion to strike pursuant to Section 435.

1 (k) In any action subject to subdivision (e), no defendant may
2 be named except by “Doe” designation in any pleadings or papers
3 filed in the action until there has been a showing of corroborative
4 fact as to the charging allegations against that defendant.

5 (l) At any time after the action is filed, the plaintiff may apply
6 to the court for permission to amend the complaint to substitute
7 the name of the defendant or defendants for the fictitious
8 designation, as follows:

9 (1) The application shall be accompanied by a certificate of
10 corroborative fact executed by the attorney for the plaintiff. The
11 certificate shall declare that the attorney has discovered one or
12 more facts corroborative of one or more of the charging allegations
13 against a defendant or defendants, and shall set forth in clear and
14 concise terms the nature and substance of the corroborative fact.
15 If the corroborative fact is evidenced by the statement of a witness
16 or the contents of a document, the certificate shall declare that the
17 attorney has personal knowledge of the statement of the witness
18 or of the contents of the document, and the identity and location
19 of the witness or document shall be included in the certificate. For
20 purposes of this section, a fact is corroborative of an allegation if
21 it confirms or supports the allegation. The opinion of any mental
22 health practitioner concerning the plaintiff shall not constitute a
23 corroborative fact for purposes of this section.

24 (2) Where the application to name a defendant is made prior to
25 that defendant’s appearance in the action, neither the application
26 nor the certificate of corroborative fact by the attorney shall be
27 served on the defendant or defendants, nor on any other party or
28 their counsel of record.

29 (3) Where the application to name a defendant is made after
30 that defendant’s appearance in the action, the application shall be
31 served on all parties and proof of service provided to the court,
32 but the certificate of corroborative fact by the attorney shall not
33 be served on any party or their counsel of record.

34 (m) The court shall review the application and the certificate of
35 corroborative fact in camera and, based solely on the certificate
36 and any reasonable inferences to be drawn from the certificate,
37 shall, if one or more facts corroborative of one or more of the
38 charging allegations against a defendant has been shown, order
39 that the complaint may be amended to substitute the name of the
40 defendant or defendants.

1 (n) The court shall keep under seal and confidential from the
2 public and all parties to the litigation, other than the plaintiff, any
3 and all certificates of corroborative fact filed pursuant to
4 subdivision (l).

5 (o) Upon the favorable conclusion of the litigation with respect
6 to any defendant for whom a certificate of merit was filed or for
7 whom a certificate of merit should have been filed pursuant to this
8 section, the court may, upon the motion of a party or upon the
9 court's own motion, verify compliance with this section by
10 requiring the attorney for the plaintiff who was required by
11 subdivision (f) to execute the certificate to reveal the name, address,
12 and telephone number of the person or persons consulted with
13 pursuant to subdivision (f) that were relied upon by the attorney
14 in preparation of the certificate of merit. The name, address, and
15 telephone number shall be disclosed to the trial judge in camera
16 and in the absence of the moving party. If the court finds there has
17 been a failure to comply with this section, the court may order a
18 party, a party's attorney, or both, to pay any reasonable expenses,
19 including attorney's fees, incurred by the defendant for whom a
20 certificate of merit should have been filed.

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

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

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

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

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

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

- 1 (e) Applications or claims for any form of public assistance
- 2 under the Welfare and Institutions Code or other provisions of law
- 3 relating to public assistance programs, and claims for goods,
- 4 services, provisions, or other assistance rendered for or on behalf
- 5 of any recipient of any form of public assistance.
- 6 (f) Applications or claims for money or benefits under any public
- 7 retirement or pension system.
- 8 (g) Claims for principal or interest upon any bonds, notes,
- 9 warrants, or other evidences of indebtedness.
- 10 (h) Claims that relate to a special assessment constituting a
- 11 specific lien against the property assessed and that are payable
- 12 from the proceeds of the assessment, by offset of a claim for
- 13 damages against it or by delivery of any warrant or bonds
- 14 representing it.
- 15 (i) Claims by the state or by a state department or agency or by
- 16 another local public entity or by a judicial branch entity.
- 17 (j) Claims arising under any provision of the Unemployment
- 18 Insurance Code, including, but not limited to, claims for money
- 19 or benefits, or for refunds or credits of employer or worker
- 20 contributions, penalties, or interest, or for refunds to workers of
- 21 deductions from wages in excess of the amount prescribed.
- 22 (k) Claims for the recovery of penalties or forfeitures made
- 23 pursuant to Article 1 (commencing with Section 1720) of Chapter
- 24 1 of Part 7 of Division 2 of the Labor Code.
- 25 (l) Claims governed by the Pedestrian Mall Law of 1960 (Part
- 26 1 (commencing with Section 11000) of Division 13 of the Streets
- 27 and Highways Code).
- 28 (m) Claims made pursuant to Section 340.1 and 340.105 of the
- 29 Code of Civil Procedure for the recovery of damages suffered as
- 30 a result of childhood sexual abuse. This subdivision shall apply
- 31 only to claims arising out of conduct occurring on or after January
- 32 1, 2009.
- 33 (n) Claims made pursuant to Section 701.820 of the Code of
- 34 Civil Procedure for the recovery of money pursuant to Section
- 35 26680.
- 36 (o) Claims made pursuant to Section 49013 of the Education
- 37 Code for reimbursement of pupil fees for participation in
- 38 educational activities.

O