

AB 2777 Signed: Revival of sexual assault claims previously barred by the statute of limitations

By Christa L. Riggins

Approximately 1 in 5 women in the United States have experienced completed or attempted rape, and nearly 44% of women and 25% of men have experienced sexual violence other than rape. (*The National Intimate Partner and Sexual Violence Survey (NISVS): 2015 Data Brief*, National Sexual Violence Resource Center (Nov. 2018), www.nsvrc.org/sites/default/files/2021-04/2015data-brief508.pdf [as of Feb. 2023].)

Sexual violence leads to significant emotional trauma, which contributes to the delayed and under-reporting of sexual crimes. In fact, a recent survey estimated that less than 25% of all incidents of rape and sexual assault were reported to law enforcement in 2018. (*Criminal Victimization, 2018* (2019) Bureau of Justice Statistics of the United States Department of Justice, www.nsvrc.org/sites/default/files/2021-04/cv18.pdf [as of Feb. 2023].)

Notwithstanding the realities of sexual violence and delayed reporting, prior to 2019, the statute of limitations for adult sexual assault claims was two years from the date of injury. (Code Civ. Proc., § 335.1.) The two-year statute of limitations was simply not enough time to allow sexual assault survivors to begin to heal and engage the legal system.

In 2018, the California Legislature set out to provide survivors of sexual assault with an expanded statute of limitations that acknowledged the trauma associated with the violence they had endured. The result was California Code of Civil Procedure section 340.16, and recent amendments to this statute have expressly revived claims that had lapsed under the previous two-year statute of limitations.

This article discusses the expansion of the statute of limitations for adult sexual assault claims. We begin with the enactment of new legislation and end with the recent amendments to that statute, which revive certain lapsed claims.

section specified that the extended statute of limitations period applied to any action “commenced on or after January 1, 2019.” (Former Code Civ. Proc., § 340.16, subd. (3), amended by Stat. 2022, c. 442, § 3, eff. Jan. 1, 2023, italics added.)

Thus, the plain language of the statute appeared to extend the statute of limitations for any action “commenced on or after January 1, 2019” even to those claims that had lapsed under the previous two-year limitations period. This interpretation was supported by legislative records, which stated that the changes to the statute of limitations would apply to any cause of action that would have been barred by a limitations period, “thereby reviving those causes of action which had lapsed or technically expired under the law existing prior to January 1, 2019.” (Sen. Com. on Judiciary, analysis of Assem. Bill No. 1619 (2017 – 2018 Reg. Sess.) June 26, 2018, p. 2.)

That said, in 2018, the Senate considered but did not adopt a version of the bill with express language regarding revival. (Sen. Com. On Judiciary, Assem. Bill No. 1619, as amended on June 11, 2018.)

Extending The Statute of Limitations for Adult Sexual Assault Claims (AB 1619)

In 2018, the California Legislature passed Assembly Bill 1619, which added Section 340.16 to the California Code of Civil Procedure. This new section extended the amount of time for an adult who had suffered damages from sexual assault to file a lawsuit to 10 years from the last act or 3 years from discovery. (Code Civ. Proc., § 340.16, subd. (a) – (b).) The

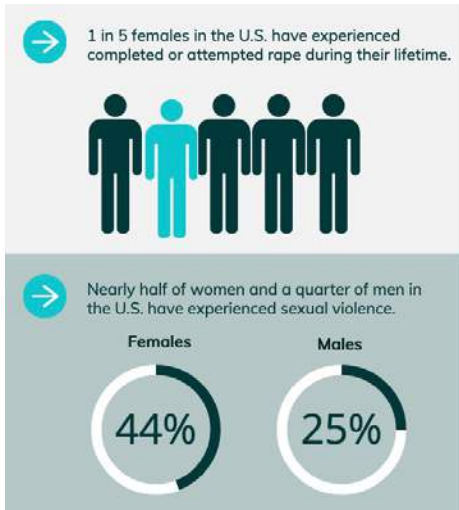
Claims that lapsed under the two-year statute of limitations period but were filed “on or after January 1, 2019”

Following the enactment of section 340.16, a number of sexual assault survivors filed lawsuits against their perpetrators. Many of these cases sought redress for conduct that occurred many years prior and pled sexual assault claims that had lapsed under

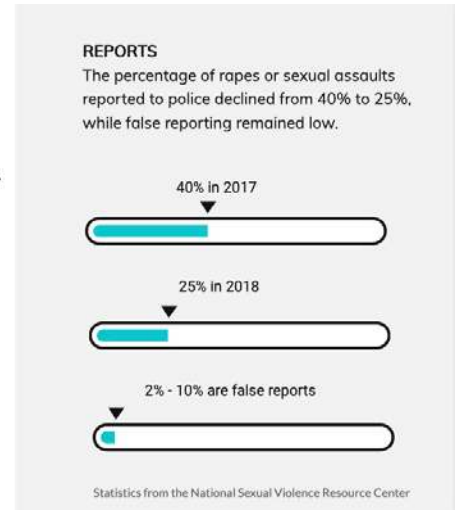


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734,630
 Is the estimated number of people raped (including threatened, attempted, or completed rape) in the U.S. in 2018.



the two-year statute of limitations. These cases faced legal challenges, and the issue became whether the two-year or ten-year statute of limitations applied. In evaluating this issue, the courts held that section 340.16 *did not* revive lapsed claims.

For instance, in *Bianco v. Warner* (C.D. Cal. 2021) 562 F.Supp.3d 526, an actress brought a lawsuit against a recording artist for sexual assault, sexual battery, and violation of the Trafficking Victims Protection and Reauthorization Act. (*Id.* at 528.) The lawsuit alleged that from 2009 through

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2013, the defendant had forced the plaintiff to perform sexual acts on camera, had bit, cut, and beat her breasts and genitals without consent, and had performed sexual acts on her while she was unconscious. (*Id.* at 529.) The defendant filed a motion to dismiss the sexual assault and battery claims on the ground that they were time-barred under the two-year statute of limitations. (*Id.* at 531.) The actress argued that under the plain meaning of section 340.16, the ten-year statute of limitations applied because her lawsuit was filed “on or after January 1, 2019.” (*Ibid.*)

In deciding whether the extended limitations period applied, the court in *Bianco* noted that there is a presumption against

retroactivity and that statutes generally operate prospectively only. (*Bianco, supra*, 562 F.Supp.3d at p. 532.) As the California Supreme Court has explained, a statute may be applied retroactively “only if it contains express language of retroactivity or if other sources provide a clear and unavoidable implication that the Legislature intended retroactive application.” (*Myers v. Philip Morris Cos.* (2002) 28 Cal.4th 828, 844; see also Cal. Code Civ. Proc., § 3 [“No part of [the California Code of Civil Procedure] is retroactive, unless expressly so declared.”].) In addition to this presumption, the principles of statutory interpretation require that courts first look to the language of the statute to ascertain legislative intent and consider extrinsic evidence when the wording of a statute is ambiguous (e.g., legislative history records). (*Hughes v. Bd. of Architectural Exam’rs* (1998) 17 Cal.4th 763, 776.)

The court in *Bianco* noted that these principles were applied in *David A. v. Superior Court* (1993) 20 Cal.App.4th 281, in which the court considered whether a childhood sexual assault claim was revived pursuant to an amended version of Code of Civil Procedure section 340.1. (*Id.* at 286.) In that case, the amended statute provided a longer limitations period for “any action commenced on or after January 1, 1991.” (*Ibid.*) The court in *David* found that this language was “insufficiently explicit” to revive lapsed claims. (*Id.* at 287 – 288.)

The California Supreme Court has cited *David* with approval noting “any action commenced on or after January 1, 1991 ... did not constitute express language of

revival” and was “insufficient to revive lapsed claims.” (*Quarry v. Doe I* (2012) 53 Cal.4th 945, 964.) The court also reiterated the presumption against retroactivity, stating that “legislative enlargement of a limitations period does not revive lapsed claims in the absence of express language of revival.” (*Id.* at 955.)

The court in *Bianco* held that the same rationale applied to section 340.16, holding that the language any action “commenced on or after January 1, 2019” was not sufficiently explicit enough to overcome the presumption against retroactivity. In other words, the ten-year statute of limitations period did not apply to claims that lapsed under the previous two-year limitations period, even if filed on or after January 1, 2019.

Expressly Reviving Claims Against Physicians (AB 1510 and AB 3092)

Section 340.16 was amended in 2019 (AB 1510) and 2021 (AB 3092) in response to numerous allegations of sexual misconduct by physicians at the University of Southern California (USC) and the University of California, Los Angeles (UCLA).

These amendments specifically revived certain claims against physicians at student health centers or employed by a medical clinic owned and operated by UCLA. (Code Civ. Proc., § 340.16, subd. (c) – (d).) Both amendments gave sexual assault survivors a one-year window from the effective date of the amendment to file their claims in court. The one-year window

closed on December 31, 2020 (AB 1510) and December 31, 2021 (AB 3092).

Notably, the legislative material for AB 1510 stated that AB 1619 did not apply retroactively: “[w]hile AB 1619 extended the limitations period, it did not apply retroactively to claims that had already expired.” (Sen. Com. on Judiciary, Assem. Bill No. 1510 (2019 – 2020 Reg. Sess.) June 18, 2019, p. 6.)

Reviving Lapsed Claims (AB 2777)

In September 2022, the California Legislature passed AB 2777, known as the Sexual Assault and Abuse Cover Up Accountability Act. The bill amends section 340.16 by reviving two categories of claims.

Three-Year Window to File Adult Sexual Assault Claims Based on Conduct that Occurred on or after January 1, 2009

First, the amendment revives sexual assault claims for survivors who were adults at the time of the abuse, where the conduct occurred on or after January 1, 2009.

(Code Civ. Proc., § 340.16, subd. (b)(3).) This means claims that were previously barred by the statute of limitations can now proceed in court. (*Ibid.*) The amended statute provides that these revived claims may be commenced until December 31, 2026. (*Ibid.*)

As the legislative text explains, this amendment functions to revive claims (such as those in *Bianco*) that could have been brought had AB 1619 applied retroactively:

This bill revives claims based upon conduct that occurred on or after January 1, 2009, and that are commenced on or after January 1, 2019, that would have been barred solely because the applicable statute of limitations would have expired. This functions to revive actions that would have been brought if AB 1619 had applied its 10-year statute of limitations retroactively.

(Sen. Com. on Judiciary, analysis of Assem. Bill No. 2777 (2021 – 2022 Reg. Sess.) June 14, 2022, p. 6.)

One-Year Window to File Adult Sexual Assault Claims Where There Was a Cover-Up

Second, the bill revives claims for sexual assault or other inappropriate conduct of a sexual nature – regardless of the date the conduct occurred – for a one-year period if certain criteria are met, including the involvement of responsible entities in a cover-up of abuse. (Code Civ. Proc., 340.16, subd. (e).)

Specifically, the plaintiff must allege the following: (A) the plaintiff was sexually assaulted, (B) one or more entities are legally responsible for damages arising out of the sexual assault, and (C) the entity or entities, including, but not limited to, their officers, directors, representatives, employees, or agents, engaged in a cover up or attempted a cover up of a previous instance or allegations of sexual assault by an alleged perpetrator of such abuse. (Code Civ. Proc., §340.16, subd. (e)(2).)

The statute defines cover-up as “a concerted effort to hide evidence relating to a sexual assault that incentivizes individuals to remain silent or prevents information relating to a sexual assault from becoming public or being disclosed to the plaintiff, including, but not limited to, the use of nondisclosure agreements or

confidentiality agreements.” (Code Civ. Proc., § 340.16, subd. (e)(4)(A).)

It is important to note that with regard to the cover-up allegation, there does not need to be a connection between the cover-up alleged and the conduct underlying the revived claim. (Cal. Code of Civil. Proc., (e)(2)(c) [merely requiring that the involved entities engaged in a cover up of sexual assault]; see also Sen. Com. on Judiciary, Assem. Bill No. 2777 (2021 – 2022 Reg. Sess.) June 14, 2022, p. 7.) Furthermore, while the plaintiff must set forth allegations of a cover-up, there is no requirement that the allegations be established to any legal standard. (*Ibid.*)

A recent survey estimated that less than 25% of all incidents of rape and sexual assault were reported to law enforcement in 2018.

Last, the bill expressly applies to employment cases: “this subdivision revives any related claims, including, but not limited to, wrongful termination and sexual harassment, arising out of the sexual assault that is the basis for a claim pursuant to this subdivision.” (Code. Civ. Proc., § 340.16, subd. (e)(5).)

Not Applicable to Claims Litigated to Finality or Settled

Both types of claims revived by the bill do not apply to actions litigated to finality or compromised by a written settlement. (Code Civ. Proc., § 340.16, subd. (b)(3) and (e)(6).) However, in addition to new actions and pending cases filed on or after January 1, 2019, it would allow plaintiffs to amend pleadings to add claims that were previously considered outside the statute of limitations.

Conclusion

The California Legislature recognized the trauma associated with sexual violence and its impact in our justice system in 2018 when it passed AB 1619. However, initial legislation did not go far enough in the fight against sexual assault. AB 2777 amends section 340.16 to give survivors their day in court. ■