
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Steven Bradford, Chair

2021 - 2022 Regular

Bill No: AB 2274 **Hearing Date:** June 14, 2022
Author: Blanca Rubio
Version: March 31, 2022
Urgency: No **Fiscal:** No
Consultant: MK

Subject: *Mandated reporters: statute of limitations*

HISTORY

Source: San Diego County District Attorney

Prior Legislation: AB 2302 (Baker) Chapter 943, Stats. 2018

Support: Arcadia Police Officers Association; Burbank Police Officers' Association; California Coalition of School Safety Professionals; California District Attorneys Association; Child USA; Children's Legal Services of San Diego; Claremont Police Officers Association; Consumer Attorneys of California; Corona Police Officers Association; Culver City Police Officers' Association; Fullerton Police Officers' Association; Inglewood Police Officers Association; Los Angeles School Police Officers Association; Newport Beach Police Association; Palos Verdes Police Officers Association; Placer County Deputy Sheriffs' Association; Pomona Police Officer Association; Riverside Police Officers Association; Riverside Sheriffs' Association; San Diego County District Attorney's Office; Santa Ana Police Officers Association; Upland Police Officers Association

Opposition: None known

Assembly Floor Vote: 66 - 0

PURPOSE

The purpose of this bill is to extend the statute of limitations for the failure of a mandated reporter to report reasonably suspected child abuse or severe neglect not involving sexual abuse to within one year of the discovery of the offense, but in no case later than four years after the commission of the offense.

Existing law establishes the Child Abuse and Neglect Reporting Act (CANRA) and states that the intent and purpose of the Act is to protect children from abuse and neglect. (Penal Code § 11164.)

Existing law defines "child" under CANRA to mean person under the age of 18 years. (Penal Code § 11165.)

Existing law defines severe neglect as the negligent failure of a person having the care or custody of a child to protect the child from severe malnutrition or medically diagnosed nonorganic failure to thrive. “Severe neglect” also means those situations of neglect where any person having the care or custody of a child willfully causes or permits the person or health of the child to be placed in a situation such that his or her person or health is endangered, including the intentional failure to provide adequate food, clothing, shelter, or medical care. (Penal Code Section 11165.2(a))

Existing law defines "child abuse or neglect" under CANRA to include physical injury or death inflicted by other than accidental means upon a child by another person, sexual abuse as defined, neglect as defined, the willful harming or injuring of a child or the endangering of the person or health of a child as defined, and unlawful corporal punishment or injury, as defined. (Penal Code § 11165.6.)

Existing law enumerates close to 50 categories of mandatory child abuse reporters. Specific occupations that are mandated reporters include, but are not limited to, teachers, athletic coaches, social workers, peace officers, firefighters, physicians, psychologists, psychiatrists, emergency medical technicians, licensed family therapists, child visitation monitors, and clergy (Penal Code § 11165.7)

Existing law requires a mandated reporter to make a report to a specified agency whenever the mandated reporter, in his or her professional capacity or within the scope of his or her employment, has knowledge of or observes a child whom the mandated reporter knows or reasonably suspects has been the victim of child abuse or neglect to report that incident immediately to a specified child protection agency by telephone, and further requires a written report be sent within 36 hours. (Penal Code §11166 (a).)

Existing law makes it a misdemeanor for a mandated reporter to fail to report an incident of known or reasonably suspected child abuse or neglect as required by the CANRA. The offense is punishable by up to six months confinement in a county jail, or by a fine of \$1,000, or by both. (Penal Code § 11166 (c).)

Existing law states that if a mandated reporter intentionally conceals his or her failure to report an incident known by the mandated reporter to be abuse or severe neglect, the failure to report is a continuing offense until a specified agency discovers the offense. (Penal Code § 11166 (c).)

Existing law provides that the prosecution of a misdemeanor must commence within one year of the commission of the offense, unless otherwise provided by law. (Penal Code § 802 (a).)

Existing law provides exceptions for the one-year statute of limitations for specified misdemeanors. (Penal Code § 802.)

Existing law states that the prosecution for a mandated reporter’s failure to report known or reasonably suspected sexual assault may be filed at any time within five years from the date of the occurrence of such offense. (Pen. Code, § 801.6.)

Existing law states that, unless otherwise provided by law, a statute of limitations is not tolled or extended for any reason. (Penal Code § 803(a).)

Existing law states that, for specified crimes, the statute of limitations does not begin to run until the offense has been discovered, or could have reasonably been discovered. (Penal Code § 803 (e).)

Existing law provides that if more than one statute of limitations period applies to a crime, the time for commencing an action shall be governed by the period that expires later in time. (Penal Code § 803.6 (a).)

Existing law states that a prosecution is commenced when one of the following occurs:

- a) An indictment or information is filed;
- b) A complaint charging a misdemeanor or infraction is filed;
- c) The defendant is arraigned on a complaint that charges him or her with a felony; or,
- d) An arrest warrant or bench warrant is issued. (Penal Code, § 804.)

This bill provides that notwithstanding any other statute of limitations, prosecution for the failure of a mandated reporter to report an incident under Section 11166 known or reasonably suspected by the mandated reporter to be child abuse or severe neglect that is not a sexual assault may be filed within one year of the discovery of the offense, but in no case later than four years after the commission of the offense.

COMMENTS

1. Need for This Bill

According to the author:

Current law requires mandated reporters report known or suspected child abuse and neglect so that an investigation can take place. However, if a mandated reporter fails to protect a child by failing to report, and one-year passes, the law is no longer enforceable. The problem with this is approach is that several cases have occurred where a child has been the victim of physical abuse or neglect and a mandated reporter was made aware of this, but for a variety of reasons, did not report this abuse to authorities. This lapse in time, sometimes months or years, creates a very difficult prosecution of the perpetrator due to lost evidence, and exposes the vulnerable child to an egregious situation of becoming an ongoing victim of preventable physical abuse or neglect.

AB 2274 does not increase the penalty of the “failure to report” crime; the bill merely extends the statute of limitations to ensure mandated reporters take this legal responsibility seriously, specifically in cases of severe neglect. Mandated reporters are aware of their obligations, but because there is little to no enforcement many organizations develop a sense that there are no consequences or there exists a culture wherein the mandated reporting rules can be bent and altered by the specific organization

2. Mandated reporters

Existing law requires a mandated reporter to report whenever in their professional capacity they have knowledge of or observe a child whom they reasonably suspect to be a victim of child abuse or neglect. Failure to report is a 6 month misdemeanor.

Teachers, teacher's aids, other school employees, medical professionals, social workers and many others are among those that are mandated reporters. Administrators and employees of a public or private youth center, youth recreation program, or youth organization and as of this year so are volunteers of such organizations are also currently considered mandated reporters.

The law specifies that the reporting duties are individual and states that no supervisor or administrator may impede or inhibit the reporting duties, and no person making a report shall be subject to any sanction for making the report.

The penalty for a mandated reporter who fails to report an incident in a timely manner is up to six months in jail and a fine of up to \$1,000, or both. The punishment for a mandated reporter who either willfully fails to report or who impedes or inhibits a report of abuse or neglect – where the abuse or neglect results in the death or great bodily injury of a child – is up to one year in a county jail, or a fine of not more than \$5,000, or both.

3. Statute of Limitations

The statute of limitations requires commencement of a prosecution within a certain period of time after the commission of a crime. A prosecution is initiated by filing an indictment or information, filing a complaint, certifying a case to superior court, or issuing an arrest or bench warrant.

The statute of limitations serves several important purposes in a criminal prosecution, including staleness, prompt investigation, and finality. The statute of limitations protects persons accused of crime from having to face charges based on evidence that may be unreliable, and from losing access to the evidentiary means to defend against the accusation. With the passage of time, memory fades, witnesses die or otherwise become unavailable, and physical evidence becomes unobtainable or contaminated.

The statute of limitations also imposes a priority among crimes for investigation and prosecution. The deadline serves to motivate the police and to ensure against bureaucratic delays in investigating crimes. Additionally, the statute of limitations reflects society's lack of desire to prosecute for crimes committed in the distant past. The interest in finality represents a societal evaluation of the time after which it is neither profitable nor desirable to commence a prosecution.

These principals are reflected in court decisions. The United States Supreme Court has stated that statutes of limitations are the primary guarantee against bringing overly stale criminal charges. (*United States v. Ewell* (1966) 383 U.S. 116, 122.) There is a measure of predictability provided by specifying a limit beyond which there is an irrebuttable presumption that a defendant's right to a fair trial would be prejudiced. Such laws reflect legislative assessments of the relative interests of the state and the defendant in administering and receiving justice.

More recently, in *Stogner v. California* (2003) 539 U.S. 607, the Court underscored the basis for statutes of limitations: "Significantly, a statute of limitations reflects a legislative judgment that, after a certain time, no quantum of evidence is sufficient to convict. And that judgment typically rests, in large part, upon evidentiary concerns - for example, concern that the passage of time has eroded memories or made witnesses or other evidence unavailable." (*Id.* at p. 615.)

The amount of time in which a prosecuting agency may charge an alleged defendant varies based on the crime. In general, the limitations period is related to the seriousness of the offense as reflected in the length of punishment established by the Legislature. (*People v. Turner* (2005) 134 Cal.App.4th 1591, 1594-1595; see, e.g., Pen. Code, §§ 799-805.) After a comprehensive review of criminal statutes of limitation in 1984, the Law Revision Commission recommended that the length of a "limitations statute should generally be based on the seriousness of the crime." (17 Cal. Law Revision Com. Rep. (1984) p. 313.) The Legislature overhauled the entire statutory scheme with this recommendation in mind

The failure of a prosecution to be commenced within the applicable period of limitation is a complete defense to the charge. The statute of limitations is jurisdictional and may be raised as a defense at any time, before or after judgment. (*People v. Morris* (1988) 46 Cal.3d 1, 13.) The defense may only be waived under limited circumstances. (See *Cowan v. Superior Court* (1996) 14 Cal.4th 367.)

The court is required to construe application of the statute of limitations strictly in favor of the defendants. (*People v. Zamora* (1976) 18 Cal.3d 538, 574; *People v. Lee* (2000) 82 Cal.App.4th 1352, 1357-1358.)

This bill provides that a charge for failure of a mandated reporter to report known or reasonably suspect child abuse or severe neglect may be filed up to one year after the date of discovery, but no more than four years after the commission of the offense. Because of the Ex Post Facto Clause, this new statute of limitations will only apply to offenses that have not been previously time barred (*Stogner v. United States, supra*, 539 U.S. 607)

4. Argument in Support

According to the sponsor, the San Diego District Attorney's Office:

In San Diego, we have several cases where a child has been the victim of physical abuse or neglect and a mandated reporter was made aware of this, but for a variety of reasons, did not report this abuse to authorities. This lapse in time, sometimes months or years, creates a very difficult prosecution of the perpetrator due to lost evidence, and exposes the vulnerable child to an egregious situation of becoming an ongoing victim of preventable physical abuse or neglect.

AB 2274 does not increase the penalty of the "failure to report" crime; we are only extending the SOL to ensure mandated reporters take this legal responsibility seriously. It is our first-hand experience with current cases that training has not been sufficient to encourage people to abide by the law. Mandated reporters are aware of their obligations, but because there is little to no enforcement many organizations develop a sense that there are no consequences or there exists a

culture wherein the mandated reporting rules can be bent and altered by the specific organization.

Many organizations ask their staff and employees to report suspected child abuse “up the chain” as opposed to going to law enforcement and/or CWS. Doing both is absolutely acceptable under the law, but oftentimes, law enforcement and/or CWS are never notified, and the abuse or suspicion of abuse is kept in-house, where no independent investigation takes place, and those who do investigate internally do so using standards that are not consistent with the mandating reporting laws.

Our office has seen on multiple occasions where a school did not notify the authorities of suspected sexual abuse by a staff member on underage girls. The mandated reporter relied upon their superiors who reviewed the allegations internally using a school district sexual harassment policy. Using this standard, which is not consistent with the mandating reporting laws, and with no third-party witness, officials determined the allegations by the girls were unsubstantiated and closed the cases without ever notifying law enforcement or CWS.

Foreseeably, as time went by in those situations, more allegations from additional girls were made. Had the mandated reporting laws been followed initially, later victims could have been spared. Instead, abusers were protected by mandated reporters who failed to report.

In all these cases, *mandated reporters knew they were legally obligated to report suspected abuse because they have been trained regularly on this, and yet they failed the children time and time again.* By simply extending this specific SOL, we can solve this problem.

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