S234269

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

DOE NO. 1,
Defendant and Petitioner,
v.

LATRICE RUBENSTEIN,
Plaintiff and Respondent

MOTION FOR JUDICIAL NOTICE; POINTS AND AUTHORITIES; DECLARATION OF LEE H. ROISTACHER; PROPOSED ORDER

After a Decision From the Court of Appeal of California, Fourth Appellate District, Division One,
Case No. D066722

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MOTION FOR JUDICIAL NOTICE

Petitioner Doe No. 1 moves this Court under Evidence Code section 459 and California Rules of Court, rule 8.252 for judicial notice of the following material:

Exhibit 1: Enrolled Bill Memorandum to Governor on Senate Bill No. 640 (2007-2008 Regular Session), Sept. 10, 2008, attached as Exhibit 1 to the Roistacher declaration;

Exhibit 2: Enrolled Bill Report On Senate Bill No. 640 (2007-2008 Regular Session), Aug. 13, 2008, attached as Exhibit 2 to the Roistacher declaration;

Exhibit 3: Governor's Office of Planning & Research, Enrolled Bill Report on Senate Bill No. 640 (2007-2008 Regular Session) Aug. 14, 2008, attached as Exhibit 3 to the Roistacher declaration;

Exhibit 4: Senate Committee on Judiciary, Background Information Request, Senate Bill No. 1339 (2007-2008 Regular Session), attached as Exhibit 4 to the Roistacher declaration.

Exhibits 1-4, attached to the Roistacher declaration, are authenticated by the Lillge declaration. Exhibits 1-4 are relevant to the issues under review by this Court, which involve determining whether the legislature intended for Code of Civil Procedure section 340.1's extended limitation periods to override the requirement and deadlines for presenting a pre-lawsuit claim to a government entity under the Government Claims Act. None of the material was presented to the lower courts and none relates to post-judgment proceedings.

DATED: August 9, 2016 Daley & Heft, LLP

By: _____
Lee H. Roistacher
Richard J. Schneider
Attorneys for
Defendant and Petitioner
Doe No. 1

POINTS AND AUTHORITIES

Enrolled bill reports (Exhibits 1-3) are subject to judicial notice. (See *People v. Jones* (1995) 11 Cal.4th 118, 122 n.1 (granting request for judicial notice of enrolled bill report); *Watkins v. County of Alameda* (2009) 177 Cal.App.4th 320, 347 n.25 (same).) Enrolled bill reports are relevant to determining legislative intent. (*Conservatorship of Whitley* (2010) 50 Cal.4th 1206, 1218 n.3; *Elsner v. Uveges* (2004) 34 Cal.4th 915, 934 n. 19.) A background information request (Exhibit 4) is also subject to judicial notice and is relevant to determining legislative intent. (*Kachlon v.* Markowitz (2008) 168 Cal.App.4th 316, 338 n. 12.)

At issue in this case is whether the legislature intended for Code of Civil Procedure section 340.1's extended limitation periods to govern when a cause of action for childhood sexual abuse accrues for purposes of timely presentation of a claim to a government entity as required by the Government Claims Act. Also at issue in this case is what the legislature intended through the enactment of Government Code section 905, subdivision (m), which exempted from the Act's claim filing requirement only those childhood sexual abuse causes of action based on post-

January 1, 2009 conduct. Exhibits 1-4 are relevant to these issues. Judicial notice of exhibits 1-4 is thus appropriate.

DATED: August 9, 2016

Daley & Heft, LLP

By: _____

Lee H. Roistacher
Richard J. Schneider
Attorneys for Defendant and
Petitioner Doe No. 1

DECLARATION OF LEE H. ROISTACHER

I, Lee H. Roistacher, declare as follows.

1. I am a partner in the law firm of Daley & Heft, LLP, attorneys for Defendant and Petitioner Doe No. 1.

2. I have read the foregoing and know its contents. The facts alleged are true to my own knowledge.

3. At my request, Legislative Intent Services (LIS) compiled legislative history on Senate Bill 640 (2007-2008 Reg. Sess.), and Senate Bill 1339 (2007-2008 Reg. Sess.). LIS also compiled legislative history on Senate Bill 131 (2013-2014 Reg. Sess.) and Senate Bill 924 (2013-2014 Reg. Sess.)

4. Attached to my declaration as Exhibits 1-4 are true and correct copies of selected portions of the material provided to me by LIS. Attached as Exhibit "6" to my declaration is a CD containing all of the material provided to me by LIS.

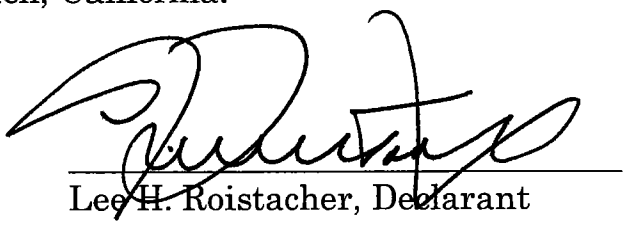
5. Exhibits 1-3 are excerpts from section 13 of exhibit "A" to the Lillge declaration, which are post-enrollment documents regarding Senate Bill 640. Exhibit 4 is an excerpt from section 6 of Exhibit "B" to the Lillge declaration, which are documents from the legislative bill file of the Senate Republican Office of Policy on Senate Bill 1339. The Lillge declaration with

all post-enrollment documents and all documents from the Republican Office of Policy on Senate Bill 1339 complied by LIS is attached to my declaration as Exhibit "5". Within Exhibit "5," Exhibit "1" is found at PE-3. Exhibit "2" is found at PE-11. Exhibit 3 is found at PE 7-10. And Exhibit "4" is found at SROP 27-29.

6. At issue in this case is whether the legislature intended for Code of Civil Procedure section 340.1's extended limitation periods to govern when a cause of action for childhood sexual abuse accrues for purposes of presenting a claim to a government entity as required by the Government Claims Act. Also at issue in this case is what the legislature intended through the enactment of Government Code section 905, subdivision (m), which exempted from the Act's claim filing requirement only those childhood sexual abuse causes of action based on post-January 1, 2009 conduct. Exhibits 1-4 are relevant to these issues.

7. No request for judicial notice of this material was made to the lower courts and the material does not relate to post-judgment proceeding.

I declare under penalty of perjury that the foregoing is true and correct and that this verification was executed on August 9, 2016, at Solana Beach, California.



Lee H. Roistacher, Declarant

CERTIFICATE OF WORD COUNT

The text of this brief consists of 834 words as counted by the Microsoft Office 2010 word-processing program used to generate this document.

DATED: August 9, 2016

Daley & Heft, LLP

By: _____

Lee H. Roistacher
Richard J. Schneider
Attorneys for
Defendant and Petitioner
Doe No. 1

PROPOSED ORDER

Defendant and Petitioner Doe No. 1's Motion for Judicial Notice is granted.

IT IS SO ORDERED.

Dated: _____

_____
JUDGE OF THE
SUPREME COURT

EXHIBIT 1

ENROLLED BILL MEMORANDUM TO GOVERNOR

BILL: SB 640 **AUTHOR:** Simitian **DATE:** **DUE:**

SENATE: 38-0 **ASSEMBLY:** 75-0 **CONCURRENCE:** 37-0

PRESENTED BY: Chris Ryan **RECOMMEND:** Sign ☑ Veto ☐

SUMMARY

This bill eliminates the requirement for a plaintiff to file his/her claim within six months of the injury in order to be allowed to pursue the claim against a local public entity for the recovery of damages suffered as a result of childhood sexual abuse, rsor any claim arising from conduct that occurred after January 1, 2009.

SPONSOR: Author

SUPPORT: Governor's Office of Planning and Research
Crime Victims United

OPPOSITION: None Received

FISCAL IMPACT

This bill will have no fiscal impact on the State.

PREVIOUS ACTION/SIMILAR LEGISLATION

No relevant history provided.

NOTES

EXHIBIT 2

AMENDMENT DATE: July 14, 2008
RECOMMENDATION: Non-Fiscal

BILL NUMBER: SB 640
AUTHOR: J. Simitian
RELATED BILLS: SB 1339

ASSEMBLY: 75/0
SENATE: 37/0

BILL SUMMARY: Government Tort Claims: Childhood Sexual Abuse

Existing law requires that tort claims against a public entity be submitted to the public entity pursuant to a specified process before filing suit against the public entity for money or damages and specifies certain exemptions to this requirement. Furthermore, existing law requires a claim for personal injury against a public entity, or against an employee of a public entity, to be submitted no later than 6 months after the date of the incident resulting in the alleged injury. Existing law also establishes specified time limits and guidelines for seeking recovery of damages suffered as a result of childhood sexual abuse, as defined.

This bill will exempt claims made against a public entity as a result of childhood sexual abuse from government tort claims requirements, including the 6 month time limit for presenting personal injury claims. This bill limits this exemption to claims arising out of conduct occurring on or after January 1, 2009.

FISCAL SUMMARY

This bill will have no fiscal impact on the state.

Code/Department Agency or Revenue Type	SO LA CO RV	PROP 98	FC	(Fiscal Impact by Fiscal Year) (Dollars in Thousands) 2008-2009	FC	2009-2010	FC	2010-2011	Fund Code
9990/Var Depts	SO	No		---------- No/Minor Fiscal Impact ----------					0001
8700/VicCompGovCl	SO	No		---------- No/Minor Fiscal Impact ----------					0001

Analyst/Principal (0651) C. Lief — Date 8-13-08
Program Budget Manager Karen Finn — Date 8/13/08
Department Director — Date 8/13/08

EXHIBIT 3

GOVERNOR'S OFFICE OF PLANNING AND RESEARCH

CONFIDENTIAL-GOVERNMENT CODE §6254(L)		
OFFICE: OFFICE OF PLANNING AND RESEARCH - LEGISLATIVE UNIT	**AUTHOR:** SIMITIAN	**BILL NUMBER/VERSION DATE:** SB 640 JULY 14, 2008
SPONSOR: AUTHOR ☐ ADMIN SPONSORED PROPOSAL NO.	**RELATED BILL(S)** SB 1339	**CHAPTERING ORDER (IF KNOWN)** N/A ☐ ATTACHMENT
SUBJECT: GOVERNMENT TORT CLAIMS: CHILDHOOD SEXUAL ABUSE		

SUMMARY

For any claim arising from conduct that occurred after January 1, 2009, this bill would eliminate the requirement for a plaintiff to file his/her claim within six months of the injury in order to be allowed to pursue the claim against a local public entity for the recovery of damages suffered as a result of childhood sexual abuse.

PURPOSE OF THE BILL

The author is the sponsor of this bill.

According to the author, existing law requires most claims against a public entity to be filed not later than six months after the accrual of the cause of action. The author contends that this six month limitation prevents many victims from being able to file a claim against a public entity for the recovery of damages suffered as a result of childhood sexual abuse. Therefore, the author has introduced SB 640, which would exempt from that six month limitation, any cause of action against a public entity for childhood sexual abuse. In doing so, the author hopes to allow such victims to seek compensation for their injuries.

RECOMMENDATION AND SUPPORTING ARGUMENTS

The Office of Planning and Research recommends that the Governor **SIGN** SB 640.

DEPARTMENTS THAT MAY BE AFFECTED

N/A

☐ NEW / INCREASED FEE ☐ GOVERNOR'S APPOINTMENT ☐ LEGISLATIVE APPOINTMENT ☐ STATE MANDATE ☐ URGENCY CLAUSE

POSITION

☒ SIGN
☐ VETO
☐ DEFER TO:

DEPUTY DIRECTOR	DATE	DIRECTOR	DATE
David J. Simian	8-13-8	Cynthia Bryant	8-14-08

This bill would make it easier for victims of childhood sexual abuse to sue an accused local government entity in cases where a public employee is accused of abuse. In doing so, this bill would help to appropriately compensate victims and better enable them to seek the counseling and other services that will help them cope with the abuse that they have endured. Furthermore, by increasing a local government entity's exposure to lawsuits for childhood sexual abuse, this bill would encourage local governments to implement stronger policies that would better protect children from abuse.

ANALYSIS

The Government Tort Claims Act bars a plaintiff from seeking money or damages from a public entity, with specified exceptions, unless the plaintiff has presented a written claim to the public entity and the Victim Compensation and Government Claims Board have acted upon that written claim. The plaintiff must present a claim for personal injury against a public entity, or against an employee of a public entity, no later than six months after accrual of the cause of action.

Senate Bill 1779 (Burton, Chapter 149, Statutes 2002) provided that the time for commencing an action for recovery of damages suffered as a result of childhood sexual abuse against the direct perpetrator of the abuse is eight years after the plaintiff reaches majority (i.e., 26 years of age) 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 the abuse, whichever occurs later.

The California Supreme Court held that, notwithstanding SB 1779's statute of limitations timeframes, a timely six-month claim is a prerequisite to maintaining a claim for childhood sexual abuse against a public entity school district. *Shirk v. Vista Unified School District* 42, Cal. 4th 301 (2007). The Court concluded that nothing in the express language of SB 1779 (or the bill's legislative history) indicated the intent of the Legislature to exempt childhood sexual abuse claims from the Government Tort Claims Act.

This bill would expressly exempt claims against local public entities for childhood sexual abuse from the Government Tort Claims Act's six-month written claim requirement for any claim arising out of conduct that occurs on or after January 1, 2009.

LEGISLATIVE HISTORY

Previous Legislation

Senate Bill 1779 (Burton, Chapter 149, Statutes 2002) provided specific timeframes for when an action for recovery of damages suffered as a result of childhood sexual abuse may be commenced.

Pending Legislation

Senate Bill 1339 (Simitian) is substantively identical to SB 640, with the exception that SB 640 would only apply prospectively. Senate Bill 1339 was held on suspense in the Senate Appropriations Committee.

DISCUSSION

Shirking Expectations

Part of the intent behind SB 1779 was to provide victims of childhood sexual abuse with more time to file their claims to recover damages. Specifically, SB 1779 was intended to allow plaintiffs to file a claim up until the age of 26 (which is 8 years after becoming an adult). However, the California Supreme Court ruled in the *Shirk* case that SB 1779 failed to exempt childhood sexual abuse

claims from the generally applicable Government Tort Claims Act. As a result, the Supreme Court held that plaintiffs seeking to file claims against public entity school districts must still present a written claim within six moths of the injury (accrual of the cause of action).

Six Months is Impractical

The six month reporting requirement imposed by the Government Tort Claims Act is an impractical requirement for childhood sexual abuse cases. For a variety of reasons, childhood sexual abuse can go undiscovered for decades. Yet current law requires a victim of such abuse to submit a written claim to a government entity within six months of the abuse, if that victim ever hopes to file a claim against the entity for damages. This essentially penalizes child victims for not having the courage to disclose the abuse within six months because, if they do not submit a report, then the victim cannot pursue a claim against a local government entity for the abuse.

By exempting childhood sexual abuse claims from the Government Tort Claims Act, this bill would exempt victims from having to submit a report within six months of their abuse. As a result, they would be able to pursue their claims according to the provisions of SB 1776. Thus, a victim of childhood sexual abuse would have until the age of 26 to pursue a claim against a local government entity for his/her abuse by a public employee.

Importance of Compensation

By making it easier for victims of childhood sexual abuse to seek damages from local government entities, this bill would help ensure that more victims are compensated for the abuse that they have endured. Victims often need such compensation in order to obtain the counseling, and other available service, that may help them to cope with abuse. Without compensation from the abuser, or other potentially liable party, victims of childhood sexual abuse often lack the necessary resources to cope with abuse and otherwise rely upon state services, if they seek services at all.

Incentive For Local Government Entities

While this bill would benefit victims by making it easier to seek compensation for abuse, it would do so at the expense of local government entities. However, that added exposure to liability would help local government entities to prevent future incidents of abuse because it would provide a greater incentive to adopt new policies to better protect children from abuse. These policies may well include more stringent hiring processes and background checks. As a result, this bill would provide safer environments for children.

OTHER STATES' INFORMATION

No information has been obtained.

FISCAL IMPACT

No appropriation is provided. This bill would not create a state-mandated local program.

This bill could expose local government entities to additional litigation costs and damages for claims of child sex abuse by providing victims more time to file claims against local government entities. Presently, the extent of the financial exposure to local governments is unclear. However, these costs may range in the millions of dollars.

ECONOMIC IMPACT

This bill would not appear to have an adverse impact on the state's economic or business climate.

LEGAL IMPACT
This bill would not appear to result in any increased liability for the state or conflict with any state or federal laws.

SUPPORT/OPPOSITION
Support: California Coalition Against Sexual Assault; Commission on the Status of Women; Consumer Attorneys of California; Crime Victims United of California; and, Survivors Network of those Abused by Priests

Opposition: None.

ARGUMENTS
Pro: This bill would provide victims with more time to file their claims to recover damages for childhood sexual abuse.

Con: This bill could result in more exposure to litigation for local governmental entities.

VOTES:

Senate – May 17, 2007*	Assembly – August 7, 2008
Ayes – 38	Ayes – 75
Noes – 0	Noes – 0

Concurrence – August 11, 2008
Ayes – 37
Noes – 0

* This vote is irrelevant because this bill was gutted and amended on June 9, 2008.

LEGISLATIVE STAFF CONTACT

	Office
Cynthia Bryant, Director	(916) 445-3637
Brent J. Jamison, Deputy Director	(916) 445-4831
Peter Ackeret, Legislative Analyst	(916) 324-1398

EXHIBIT 4

SENATE COMMITTEE ON JUDICIARY
Ellen M. Corbett, Chair

BACKGROUND INFORMATION REQUEST

This bill has been referred to the Senate Judiciary Committee. Please forward the following information to the Committee, Room 2187 in the Capitol, **AS SOON AS POSSIBLE** (by e-mail, fax, or hand delivery). Your bill will not be set for hearing until the Committee has received the background information. Use additional pages as necessary. Please call the Committee Assistant at 651-4113 if you have any questions about this request.

Measure: SB 1339

Author : Senator Simitian ANNETTE PORTER

Staff person to contact (phone number, cell number, after hours contact number and email address):

1. Origin of the bill:

   a. Who is the source of the bill? What person, organization, or governmental entity requested introduction? Please provide contact information.
   Senator Simitian

   b. Has a similar bill been introduced this legislative session? If so, please identify the author, bill number and disposition of the bill.
   No

   c. Has a similar bill been introduced in a previous legislative session? If so, please identify the session, author, bill number and disposition of the bill.
   No

   d. Has there been an interim committee report or informational hearing on the bill? If so, please identify the report or informational hearing and attach any information related to the report or informational hearing.
   No

2. Describe in detail existing law on this issue.
The Tort Claims Act requires that a claim against a public entity be filed not later than 6 months after the accrual of the cause of action. This 6 month limit has barred claims that would have been filed by a minor who did not report the abuse until years later.

10. Please identify parties that may have concerns in opposition to the bill, describe those concerns, and state your response to those concerns.
CA School Boards Assoc. - This will allow claims to be filed against districts and potentially result in monetary large dollar losses to districts.

11. Please attach copies of letters of support or opposition from any group, organization, or governmental agency who has contacted you either in support or opposition to the bill as soon as possible, but no later than 5 p.m. of the Thursday before the hearing.

12. If you plan substantive amendments to this bill prior to the hearing, please explain briefly the substance of the amendments to be prepared.

PLEASE NOTE COMMITTEE POLICY ON AUTHOR'S AMENDMENTS.

13. List the witnesses you plan to have testify.
Unknown at this time.

COMMITTEE POLICY ON AUTHOR'S AMENDMENTS

UTHOR'S AMENDMENTS MUST BE SUBMITTED IN LEGISLATIVE COUNSEL FORM TO THE OMMITTEE ASSISTANT NO LATER THAN **TWO WEEKS** (BY 1 P.M.) BEFORE THE SCHEDULED OMMITTEE HEARING.

F THIS DEADLINE IS NOT MET BY THE AUTHOR, YOUR BILL WILL BE PUT OVER TO ALLOW HE COMMITTEE MEMBERS AND THE PUBLIC SUFFICIENT TIME TO REVIEW AN ANALYSIS HAT REFLECTS THE AMENDED VERSION OF THE BILL. THE AUTHOR WILL BE RESPONSIBLE OR OBTAINING ANY NECESSARY RULE WAIVERS TO HEAR THE BILL AT A SUBSEQUENT EARING.

ETURN THIS FORM TO: SENATE COMMITTEE ON JUDICIARY
Phone (916) 651-4113
Fax (916) 445-8390
e-mail to: Roseanne.Moreno@sen.ca.gov

3. What does your bill do? Describe in detail.

4. What is the problem or deficiency in the present law which this bill seeks to remedy? Describe in detail.
The two-year restriction in the current tort Claims Act bars the filing of a claim by a victim who does not file charges for several yrs. In the recent Palo Alto case, the victim was 13yrs old when the abuse occurred

5. Please summarize any studies, reports, statistics or other evidence showing that the problem exists and that the bill will address the problem.
I have provided the attached articles and recent decision to Alex

6. As to Questions 2, 4 and 5, please attach copies of any relevant supplemental or additional background materials.

7. Please identify and summarize all similar or related pending federal legislation (see http://thomas.loc.gov/home/thomas2.html) and any bills or existing laws you are aware of in other states.
(-)

8. Please summarize and show the results (by citation) of a computer search regarding all existing California statutes (http://www.leginfo.ca.gov/calaw.html) and all existing federal statutes (http://www4.law.cornell.edu/uscode/) relevant to this bill.
Attached

9. Please identify and describe any relevant state and/or federal court decisions.
Linda Shirk v Vista Unified School Dist Cal Supreme Crt (attached)

EXHIBIT 5

LEGISLATIVE
INTENT SERVICE, INC.

712 Main Street, Suite 200, Woodland, CA 95695
(800) 666-1917 • Fax (530) 668-5866 • www.legintent.com

DECLARATION OF JENNY S. LILLGE

I, Jenny S. Lillge, declare:

I am an attorney licensed to practice in California, State Bar No. 265046, and am employed by Legislative Intent Service, Inc., a company specializing in researching the history and intent of legislation.

Under my direction and the direction of other attorneys on staff, the research staff of Legislative Intent Service, Inc. undertook to locate and obtain all documents relevant to the enactment of Senate Bill 640 of 2008. Senate Bill 640 was approved by the Legislature and was enacted as Chapter 383 of the Statutes of 2008.

The following list identifies all documents obtained by the staff of Legislative Intent Service, Inc. on Senate Bill 640 of 2008. All listed documents have been forwarded with this Declaration except as otherwise noted in this Declaration. All documents gathered by Legislative Intent Service, Inc. and all copies forwarded with this Declaration are true and correct copies of the originals located by Legislative Intent Service, Inc. In compiling this collection, the staff of Legislative Intent Service, Inc. operated under directions to locate and obtain all available material on the bill.

EXHIBIT A - SENATE BILL 640 OF 2008:

1. All versions of Senate Bill 640 (Simitian-2008);
2. Procedural history of Senate Bill 640 from the 2007-08 *Senate Final History*;
3. Analysis of Senate Bill 640 prepared for the Senate Committee on Local Government;
4. Material from the legislative bill file of the Senate Committee on Local Government on Senate Bill 640;
5. Consent analysis of Senate Bill 640 prepared by the Office of Senate Floor Analyses;
6. Material from the legislative bill file of the Office of Senate Floor Analyses on Senate Bill 640;
7. Material from the legislative bill file of the Senate Republican Fiscal Office on Senate Bill 640;

8. Analysis of Senate Bill 640 prepared for the Assembly Committee on Local Government;
9. Analysis of Senate Bill 640 prepared for the Assembly Committee on Judiciary;
10. Material from the legislative bill file of the Assembly Committee on Judiciary on Senate Bill 640;
11. Material from the legislative bill file of the Assembly Republican Caucus on Senate Bill 640;
12. Unfinished Business analysis of Senate Bill 640 prepared by the Office of Senate Floor Analyses;
13. Post-enrollment documents regarding Senate Bill 640;
14. Press Release issued by the Office of the Governor on September 27, 2008 to announce that Senate Bill 640 had been signed;
15. Excerpt regarding Senate Bill 640 from the *Digest of Legislation*, prepared by the Office of Senate Floor Analyses, 2008.

EXHIBIT B – SENATE BILL 1339 OF 2008:

1. All versions of Senate Bill 1339 (Simitian-2008);
2. Procedural history of Senate Bill 1339 from the 2007-08 *Senate Final History*;
3. Analysis of Senate Bill 1339 prepared for the Senate Committee on Judiciary;
4. Two fiscal summaries of Senate Bill 1339 prepared for the Senate Committee on Appropriations;
5. Material from the legislative bill file of the Office of Senate Floor Analyses on Senate Bill 1339;
6. Material from the legislative bill file of the Senate Republican Office of Policy on Senate Bill 1339;
7. Material from the legislative bill file of the Senate Republican Fiscal Office on Senate Bill 1339;
8. Excerpt regarding Senate Bill 1339 from the *Digest of Legislation*, prepared by the Office of Senate Floor Analyses, 2008.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 22nd day of June, 2016 at Woodland, California.

Jenny S Lillge

JENNY S. LILLGE

W:\Worldox\WDOCS\SNATBILL\sb\640\00219965.DOC

Senate Bill No. 640 Chapter 383

Year 2008 Regular Session

Author Simitian

Date Received Sept 17

Last Day to Act Sept 30

Action of Governor Sept 27

DEBRA BOWEN | SECRETARY OF STATE
STATE OF CALIFORNIA | CALIFORNIA STATE ARCHIVES
1020 O Street | Sacramento, CA 95814 | Tel (916) 653-7715 | Fax (916) 653-7363 | www.sos.ca.gov

May 2011

Under California Government Code section 6254.3, "the home addresses and home telephone numbers of state employees . . . shall not be deemed to be public records and shall not be open to public inspection."

Pursuant to section 6254.3, home and cellular telephone numbers of state employees have been redacted from enrolled bill reports contained in this file.

ENROLLED BILL MEMORANDUM TO GOVERNOR

BILL: SB 640 **AUTHOR:** Simitian **DATE:** **DUE:**

SENATE: 38-0 **ASSEMBLY:** 75-0 **CONCURRENCE:** 37-0

PRESENTED BY: Chris Ryan **RECOMMEND:** Sign ☑ Veto ☐

SUMMARY

This bill eliminates the requirement for a plaintiff to file his/her claim within six months of the injury in order to be allowed to pursue the claim against a local public entity for the recovery of damages suffered as a result of childhood sexual abuse, rsor any claim arising from conduct that occurred after January 1, 2009.

SPONSOR: Author

SUPPORT: Governor's Office of Planning and Research
Crime Victims United

OPPOSITION: None Received

FISCAL IMPACT

This bill will have no fiscal impact on the State.

PREVIOUS ACTION/SIMILAR LEGISLATION

No relevant history provided.

NOTES

UNOFFICIAL BALLOT

2007-2008 Votes - ROLL CALL

MEASURE: SB 640
TOPIC: Government tort claims: childhood sexual abuse.
DATE: 08/11/08
LOCATION: SEN. FLOOR
MOTION: Unfinished Business SB640 Simitian
(AYES 37. NOES 0.) (PASS)

AYES
****

Aanestad	Ackerman	Alquist	Ashburn
Battin	Calderon	Cedillo	Cogdill
Corbett	Correa	Cox	Denham
Ducheny	Dutton	Harman	Hollingsworth
Kehoe	Kuehl	Lowenthal	Machado
Maldonado	Margett	McClintock	Migden
Negrete McLeod	Oropeza	Padilla	Perata
Romero	Runner	Scott	Simitian
Steinberg	Torlakson	Wiggins	Wyland
Yee			

NOES
****

NO VOTE RECORDED
****

Florez Ridley-Thomas Vincent

UNOFFICIAL BALLOT

2007-2008 Votes - ROLL CALL

MEASURE: SB 640
TOPIC: Government tort claims: childhood sexual abuse.
DATE: 08/07/08
LOCATION: ASM. FLOOR
MOTION: SB 640 Simitian Special Consent Calendar 2nd Day Regular Session
(AYES 75. NOES 0.) (PASS)

AYES
****

Adams	Aghazarian	Anderson	Arambula
Beall	Benoit	Berg	Berryhill
Blakeslee	Brownley	Caballero	Charles Calderon
Carter	Cook	Coto	Davis
De La Torre	De Leon	DeSaulnier	DeVore
Duvall	Dymally	Emmerson	Eng
Evans	Feuer	Fuentes	Fuller
Furutani	Gaines	Galgiani	Garcia
Hernandez	Horton	Houston	Huff
Huffman	Jeffries	Jones	Karnette
Keene	Krekorian	La Malfa	Laird
Leno	Levine	Lieber	Lieu
Ma	Maze	Mendoza	Mullin
Nakanishi	Nava	Niello	Nunez
Parra	Plescia	Portantino	Price
Ruskin	Salas	Saldana	Silva
Smyth	Solorio	Spitzer	Strickland
Swanson	Torrico	Tran	Villines
Walters	Wolk	Bass	

NOES
****

ABSENT, ABSTAINING, OR NOT VOTING
****

Garrick	Hancock	Hayashi	Sharon Runner
Soto			

UNOFFICIAL BALLOT

2007-2008 Votes - ROLL CALL

MEASURE: SB 640
TOPIC: Government tort claims: childhood sexual abuse.
DATE: 05/17/07
LOCATION: SEN. FLOOR
MOTION: Consent Calendar 2nd SB640 Simitian
(AYES 38. NOES 0.) (PASS)

AYES
****

Aanestad	Ackerman	Alquist	Ashburn
Battin	Calderon	Cedillo	Cogdill
Corbett	Correa	Cox	Denham
Ducheny	Dutton	Florez	Harman
Kehoe	Kuehl	Lowenthal	Machado
Maldonado	Margett	McClintock	Migden
Negrete McLeod	Padilla	Perata	Ridley-Thomas
Romero	Runner	Scott	Simitian
Steinberg	Torlakson	Vincent	Wiggins
Wyland	Yee		

NOES
****

NO VOTE RECORDED
****

Hollingsworth Oropeza

GOVERNOR'S OFFICE OF PLANNING AND RESEARCH

CONFIDENTIAL-GOVERNMENT CODE §6254(L)		
OFFICE: OFFICE OF PLANNING AND RESEARCH - LEGISLATIVE UNIT	**AUTHOR:** SIMITIAN	**BILL NUMBER/VERSION DATE:** SB 640 JULY 14, 2008
SPONSOR: AUTHOR ☐ ADMIN SPONSORED PROPOSAL NO.	**RELATED BILL(S)** SB 1339	**CHAPTERING ORDER (IF KNOWN)** N/A ☐ ATTACHMENT
SUBJECT: GOVERNMENT TORT CLAIMS: CHILDHOOD SEXUAL ABUSE		

SUMMARY

For any claim arising from conduct that occurred after January 1, 2009, this bill would eliminate the requirement for a plaintiff to file his/her claim within six months of the injury in order to be allowed to pursue the claim against a local public entity for the recovery of damages suffered as a result of childhood sexual abuse.

PURPOSE OF THE BILL

The author is the sponsor of this bill.

According to the author, existing law requires most claims against a public entity to be filed not later than six months after the accrual of the cause of action. The author contends that this six month limitation prevents many victims from being able to file a claim against a public entity for the recovery of damages suffered as a result of childhood sexual abuse. Therefore, the author has introduced SB 640, which would exempt from that six month limitation, any cause of action against a public entity for childhood sexual abuse. In doing so, the author hopes to allow such victims to seek compensation for their injuries.

RECOMMENDATION AND SUPPORTING ARGUMENTS

The Office of Planning and Research recommends that the Governor **SIGN** SB 640.

DEPARTMENTS THAT MAY BE AFFECTED
N/A

☐ NEW / INCREASED FEE ☐ GOVERNOR'S APPOINTMENT ☐ LEGISLATIVE APPOINTMENT ☐ STATE MANDATE ☐ URGENCY CLAUSE

POSITION
☒ SIGN
☐ VETO
☐ DEFER TO:

DEPUTY DIRECTOR	DATE	DIRECTOR	DATE
Dana J. Simian	8-13-8	Cynthia Bryant	8-14-08

LEGISLATIVE INTENT SERVICE (800) 666-1917

This bill would make it easier for victims of childhood sexual abuse to sue an accused local government entity in cases where a public employee is accused of abuse. In doing so, this bill would help to appropriately compensate victims and better enable them to seek the counseling and other services that will help them cope with the abuse that they have endured. Furthermore, by increasing a local government entity's exposure to lawsuits for childhood sexual abuse, this bill would encourage local governments to implement stronger policies that would better protect children from abuse.

ANALYSIS

The Government Tort Claims Act bars a plaintiff from seeking money or damages from a public entity, with specified exceptions, unless the plaintiff has presented a written claim to the public entity and the Victim Compensation and Government Claims Board have acted upon that written claim. The plaintiff must present a claim for personal injury against a public entity, or against an employee of a public entity, no later than six months after accrual of the cause of action.

Senate Bill 1779 (Burton, Chapter 149, Statutes 2002) provided that the time for commencing an action for recovery of damages suffered as a result of childhood sexual abuse against the direct perpetrator of the abuse is eight years after the plaintiff reaches majority (i.e., 26 years of age) 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 the abuse, whichever occurs later.

The California Supreme Court held that, notwithstanding SB 1779's statute of limitations timeframes, a timely six-month claim is a prerequisite to maintaining a claim for childhood sexual abuse against a public entity school district. *Shirk v. Vista Unified School District* 42, Cal. 4th 301 (2007). The Court concluded that nothing in the express language of SB 1779 (or the bill's legislative history) indicated the intent of the Legislature to exempt childhood sexual abuse claims from the Government Tort Claims Act.

This bill would expressly exempt claims against local public entities for childhood sexual abuse from the Government Tort Claims Act's six-month written claim requirement for any claim arising out of conduct that occurs on or after January 1, 2009.

LEGISLATIVE HISTORY

Previous Legislation

Senate Bill 1779 (Burton, Chapter 149, Statutes 2002) provided specific timeframes for when an action for recovery of damages suffered as a result of childhood sexual abuse may be commenced.

Pending Legislation

Senate Bill 1339 (Simitian) is substantively identical to SB 640, with the exception that SB 640 would only apply prospectively. Senate Bill 1339 was held on suspense in the Senate Appropriations Committee.

DISCUSSION

Shirking Expectations

Part of the intent behind SB 1779 was to provide victims of childhood sexual abuse with more time to file their claims to recover damages. Specifically, SB 1779 was intended to allow plaintiffs to file a claim up until the age of 26 (which is 8 years after becoming an adult). However, the California Supreme Court ruled in the *Shirk* case that SB 1779 failed to exempt childhood sexual abuse

claims from the generally applicable Government Tort Claims Act. As a result, the Supreme Court held that plaintiffs seeking to file claims against public entity school districts must still present a written claim within six moths of the injury (accrual of the cause of action).

Six Months is Impractical

The six month reporting requirement imposed by the Government Tort Claims Act is an impractical requirement for childhood sexual abuse cases. For a variety of reasons, childhood sexual abuse can go undiscovered for decades. Yet current law requires a victim of such abuse to submit a written claim to a government entity within six months of the abuse, if that victim ever hopes to file a claim against the entity for damages. This essentially penalizes child victims for not having the courage to disclose the abuse within six months because, if they do not submit a report, then the victim cannot pursue a claim against a local government entity for the abuse.

By exempting childhood sexual abuse claims from the Government Tort Claims Act, this bill would exempt victims from having to submit a report within six months of their abuse. As a result, they would be able to pursue their claims according to the provisions of SB 1776. Thus, a victim of childhood sexual abuse would have until the age of 26 to pursue a claim against a local government entity for his/her abuse by a public employee.

Importance of Compensation

By making it easier for victims of childhood sexual abuse to seek damages from local government entities, this bill would help ensure that more victims are compensated for the abuse that they have endured. Victims often need such compensation in order to obtain the counseling, and other available service, that may help them to cope with abuse. Without compensation from the abuser, or other potentially liable party, victims of childhood sexual abuse often lack the necessary resources to cope with abuse and otherwise rely upon state services, if they seek services at all.

Incentive For Local Government Entities

While this bill would benefit victims by making it easier to seek compensation for abuse, it would do so at the expense of local government entities. However, that added exposure to liability would help local government entities to prevent future incidents of abuse because it would provide a greater incentive to adopt new policies to better protect children from abuse. These policies may well include more stringent hiring processes and background checks. As a result, this bill would provide safer environments for children.

OTHER STATES' INFORMATION

No information has been obtained.

FISCAL IMPACT

No appropriation is provided. This bill would not create a state-mandated local program.

This bill could expose local government entities to additional litigation costs and damages for claims of child sex abuse by providing victims more time to file claims against local government entities. Presently, the extent of the financial exposure to local governments is unclear. However, these costs may range in the millions of dollars.

ECONOMIC IMPACT

This bill would not appear to have an adverse impact on the state's economic or business climate.

LEGAL IMPACT
This bill would not appear to result in any increased liability for the state or conflict with any state or federal laws.

SUPPORT/OPPOSITION
Support: California Coalition Against Sexual Assault; Commission on the Status of Women; Consumer Attorneys of California; Crime Victims United of California; and, Survivors Network of those Abused by Priests

Opposition: None.

ARGUMENTS
Pro: This bill would provide victims with more time to file their claims to recover damages for childhood sexual abuse.

Con: This bill could result in more exposure to litigation for local governmental entities.

VOTES:

Senate – May 17, 2007*
Ayes – 38
Noes – 0

Assembly – August 7, 2008
Ayes – 75
Noes – 0

Concurrence – August 11, 2008
Ayes – 37
Noes – 0

* This vote is irrelevant because this bill was gutted and amended on June 9, 2008.

LEGISLATIVE STAFF CONTACT

	Office
Cynthia Bryant, Director	(916) 445-3637
Brent J. Jamison, Deputy Director	(916) 445-4831
Peter Ackeret, Legislative Analyst	(916) 324-1398

AMENDMENT DATE: July 14, 2008
RECOMMENDATION: Non-Fiscal

BILL NUMBER: SB 640
AUTHOR: J. Simitian
RELATED BILLS: SB 1339

ASSEMBLY: 75/0
SENATE: 37/0

BILL SUMMARY: Government Tort Claims: Childhood Sexual Abuse

Existing law requires that tort claims against a public entity be submitted to the public entity pursuant to a specified process before filing suit against the public entity for money or damages and specifies certain exemptions to this requirement. Furthermore, existing law requires a claim for personal injury against a public entity, or against an employee of a public entity, to be submitted no later than 6 months after the date of the incident resulting in the alleged injury. Existing law also establishes specified time limits and guidelines for seeking recovery of damages suffered as a result of childhood sexual abuse, as defined.

This bill will exempt claims made against a public entity as a result of childhood sexual abuse from government tort claims requirements, including the 6 month time limit for presenting personal injury claims. This bill limits this exemption to claims arising out of conduct occurring on or after January 1, 2009.

FISCAL SUMMARY

This bill will have no fiscal impact on the state.

Code/Department Agency or Revenue Type	SO LA CO RV	PROP 98	FC	(Fiscal Impact by Fiscal Year) (Dollars in Thousands) 2008-2009 FC	2009-2010 FC	2010-2011	Fund Code
9990/Var Depts	SO	No		No/Minor Fiscal Impact			0001
8700/VicCompGovCl	SO	No		No/Minor Fiscal Impact			0001

LEGISLATIVE INTENT SERVICE (800) 666-1917

Analyst/Principal (0861) C. Lief — Date 8-13-08
Program Budget Manager Karen Finn — Date 8/13/08
Department Director — Date 8/13/08

ENROLLED BILL REPORT — Form DF-43 (Rev 03/95 Fully)
CO :SB640-5460.doc 8/13/2008 11:35:00 AM

SENATE RULES COMMITTEE	SB 640
Office of Senate Floor Analyses	
1020 N Street, Suite 524	
(916) 651-1520 Fax: (916) 327-4478	

UNFINISHED BUSINESS

Bill No: SB 640
Author: Simitian (D)
Amended: 7/14/08 in Assembly
Vote: 21

PRIOR SENATE VOTES NOT RELEVANT

ASSEMBLY FLOOR: 75-0, 8/7/08 (Consent) - See last page for vote

SUBJECT: Government tort claims: childhood sexual abuse

SOURCE: Author

DIGEST: This is a new bill. The provisions dealing with circulation and transportation element were deleted in the Assembly. This bill now exempts 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.

NOTE: This bill is identical to SB 1339 (Simitian), except that this bill applies prospectively only, to claims arising out of conduct occurring on or after January 1, 2009. SB 1339 passed the Senate Judiciary Committee on March 26, 2008 with a vote of

5-0, but was held on suspense in the Senate Appropriations Committee. The change from SB 1339 should reduce the bill's financial impact on local public entities.

CONTINUED

ANALYSIS: Existing law bars a suit for money or damages against a public entity on a cause of action for which a claim is required to be presented, until a written claim therefor has been presented to the public entity and acted upon by the Victim Compensation and Government Claims Board or, in the case of a local public entity, the governing body of the local public entity, or has been deemed to have been rejected, except as specified. Existing law requires a claim for personal injury against a public entity, or against an employee of a public entity, to be presented not later than six months after accrual of the cause of action.

Existing law requires 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 the sexual abuse, whichever occurs later, and provides that certain of those actions may not be commenced on or after the plaintiff's 26th birthday.

This bill exempts claims made against a local public entity pursuant to the above provision for the recovery of damages suffered as a result of childhood sexual abuse from the requirement to file a claim against a public entity within six months after accrual as a prerequisite to filing a cause of action for money damages. This bill limits this exemption to claims arising out of conduct occurring on or after January 1, 2009.

Background

In 2002, the Legislature enacted SB 1779 (Burton), Chapter 149, Statutes of 2002, to provide that an action for recovery of damages suffered as a result of childhood sexual abuse may be commenced on or after the plaintiff's 26th birthday against someone other than the direct perpetrator, if that person or entity knew, had reason to know, or was otherwise on notice, of any unlawful sexual conduct by an employee, volunteer, representative, or agent, and failed to take reasonable steps, and implement

CONTINUED

reasonable safeguards, to avoid future acts of unlawful sexual conduct.

The Government Tort Claims Act generally governs damage 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, which is defined as the date upon which the cause of action would be deemed to have accrued 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 of the Code of Civil Procedure (CCP) 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.

This bill is intended to address the Shirk decision by expressly providing that childhood sexual abuse actions against public entities are exempted from government tort

claims requirements and the six-month notice requirement.

FISCAL EFFECT: Appropriation: No Fiscal Com.: No Local: No

SUPPORT: (Unable to reverify at time of writing)

Support (to SB 1339, when very similar provisions were contained in that bill when it was heard in Senate Judiciary Committee):

California Coalition Against Sexual Assault
Commission on the Status of Women
Consumer Attorneys of California
Crime Victims United of California

CONTINUED

Survivors Network of those Abused by Priests

ARGUMENTS IN SUPPORT: The author writes:

"This bill is essential to ensure that victims severely damaged by childhood sexual abuse are able to seek compensation from those responsible, whether those responsible are private or public entities. For many victims, the emotional and psychological trauma from childhood sexual abuse does not manifest itself until well into adulthood, when some event in their current life triggers remembrance of the past abuse and brings on the trauma (CCP Section 340.1's delayed discovery provisions recognize this). Such an event occurred for Linda Shirk, the plaintiff in Shirk v. Vista Unified School District. Linda Shirk had been sexually abused by a public school teacher when she was 15 years old in the late 1970's. In 2001, her 15-year-old daughter attended the same school, the teacher who had abused her was still there, and admitted to the past acts of abuse. ? [The] California Supreme Court held, in determining the interaction between Section 340.1 and the requirement for

government tort claims that a claim be presented to the public entity within six months of when the injury occurred, that the six-month claim requirement superseded the delayed discovery provisions of Section 340.1. ?

"SB 1339 would respond to the Shirk decision by specifically exempting Section 340.1 civil actions for childhood sexual abuse from government tort claim requirements, thereby treating Section 340.1 actions against public entities the same as those against private entities."

ASSEMBLY FLOOR:

AYES: Adams, Aghazarian, Anderson, Arambula, Beall, Benoit, Berg, Berryhill, Blakeslee, Brownley, Caballero, Charles Calderon, Carter, Cook, Coto, Davis, De La Torre, De Leon, DeSaulnier, DeVore, Duvall, Dymally, Emmerson, Eng, Evans, Feuer, Fuentes, Fuller, Furutani, Gaines, Galgiani, Garcia, Hernandez, Horton, Houston, Huff, Huffman, Jeffries, Jones, Karnette, Keene, Krekorian, La

CONTINUED

Malfa, Laird, Leno, Levine, Lieber, Lieu, Ma, Maze, Mendoza, Mullin, Nakanishi, Nava, Niello, Nunez, Parra, Plescia, Portantino, Price, Ruskin, Salas, Saldana, Silva, Smyth, Solorio, Spitzer, Strickland, Swanson, Torrico, Tran, Villines, Walters, Wolk, Bass

NO VOTE RECORDED: Garrick, Hancock, Hayashi, Sharon Runner, Soto

RJG:mw 8/8/08 Senate Floor Analyses

SUPPORT/OPPOSITION: SEE ABOVE

**** END ****

CONTINUED

File Item # 63
SB 640 (Simitian)
Support

Senate Floor: Vote not relevant (5/17/07)
Assembly Floor: 75-0 (8/7/08)
(AYE: All Republicans, except; ABS: Garrick, Sharon Runner)
Vote requirement: 21
Version Date: 7/14/08

Quick Summary
Assembly amendments: gutted and completely rewrote this bill a new analysis follows.

The Senate Judiciary Committee heard the substance of this bill as SB 1339 (Simitian), which passed it 5-0.

Creates an exception to the Tort Claims Act for claims for the recovery of damages suffered as a result of childhood sexual abuse as specified.

Fiscal Effect

NO STATE COSTS

Local. Potential significant litigation costs and damages in the range of millions of dollars for claims of child sexual abuse that could be brought against local agencies related to activities in which their employees have interactions with minors in a professional capacity. For example, local school districts could face exposure to these types of claims. To the extent that such claims drive new local costs, resources would have to be directed away from direct services to citizens and students.

Fiscal Consultant: Matt Osterli

Analysis
Arguments in Support:
According to the author's office, "[t]he Tort Claims Act requires that a claim against a public entity be filed not later than 6 months after the accrual of the cause of action. This 6-month limit has barred claims that would have been filed by a minor who did not report the abuse until years later."

Arguments in Opposition:

No one has argued in opposition to this bill.

Other Issues:
In Shirk v. Vista Unified School District, 42 Cal. 4th 201 (2007), Plaintiff sued a school district, alleging that the district knew or should have known that a teacher employed by the district was a sexual predator who engaged in inappropriate sexual misconduct with plaintiff from 1978 to 1979. Plaintiff argued that she had timely presented her government tort claim to the district on September 12, 2003, when her statutory cause of action under Code Civ. Proc., § 340.1. subd. (c), accrued because it was only then that she discovered the cause of her adult psychological injuries. The trial court sustained the district's demurrer to plaintiff's complaint without leave to amend on the ground that plaintiff's negligence causes of action were barred by her belated claim presentation. (Superior Court of San Diego County, No. GIC818294, S. Charles Wickersham, Judge.) The Court of Appeal, Fourth Dist., Div. One, No. D043697, reversed the trial court's judgment of dismissal, concluding that plaintiff had timely presented her government tort claim to the district on September 12, 2003, when her statutory cause of action under § 340.1 accrued.

The Supreme Court reversed the judgment of the Court of Appeal. The court concluded that as of January 1, 2003, plaintiff's causes of action against the district were barred by expiration of the time for presenting a claim to the district. Although Code Civ. Proc., § 340.1, subd. (c), revived for the calendar year 2003 those causes of action for childhood sexual abuse that would otherwise have been barred solely by expiration of the applicable statute of limitations, that provision did not apply because plaintiff failed to first present a timely claim to the district, as required by the government claims statute (Gov. Code, former § 911.2). The court rejected plaintiff's contention that her duty to present a claim did not arise until September 12, 2003, when at the age of 41 she first learned that her adult-onset emotional problems resulted from the teacher's molestation of her as a teenager, some 25 years earlier.

Digest
Creates an exception to the Government Claims Act (which requires the victim to notify the government entity within six months of the accrual of the action) to claims for the recovery of damages suffered as a result of childhood sexual abuse made pursuant to Section 340.1 of the Code of Civil Procedure arising after January 1, 2009.

Background
Under current law, the following types of claims are excepted from handling as "government claims:"
a) Claims under the Revenue and Taxation Code or other statute prescribing procedures for the refund, rebate, exemption, cancellation, amendment, modification, or adjustment of any tax,

assessment, fee, or charge or any portion thereof, or of any penalties, costs, or charges related thereto.

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

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

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

(e) Applications or claims for any form of public assistance under the Welfare and Institutions Code or other provisions of law relating to public assistance programs, and claims for goods, services, provisions, or other assistance rendered for or on behalf of any recipient of any form of public assistance.

(f) Applications or claims for money or benefits under any public retirement or pension system.

(g) Claims for principal or interest upon any bonds, notes, warrants, or other evidences of indebtedness.

(h) Claims that relate to a special assessment constituting a specific lien against the property assessed and that are payable from the proceeds of the assessment, by offset of a claim for damages against it or by delivery of any warrant or bonds representing it.

(i) Claims by the state or by a state department or agency or by another local public entity or by a judicial branch entity.

(j) Claims arising under any provision of the Unemployment Insurance Code, including, but not limited to, claims for money or benefits, or for refunds or credits of employer or worker contributions, penalties, or interest, or for refunds to workers of deductions from wages in excess of the amount prescribed.

(k) Claims for the recovery of penalties or forfeitures made pursuant to Article 1 (commencing with Section 1720) of Chapter 1 of Part 7 of Division 2 of the Labor Code.

(l) Claims governed by the Pedestrian Mall Law of 1960 (Part 1 (commencing with Section 11000) of Division 13 of the Streets and Highways Code). Gov't § 905.

Claims against the state or local governments must be filed within six months of the accrual of the cause of action. Gov't § 911.2.

In 2002, SB 1779 (Burton) 2002 Cal. Stat. 149, permitted actions for childhood sexual abuse to be commenced on or after the plaintiff's 26th birthday if the person or entity against whom the action is commenced knew, had reason to know, or was otherwise on notice, of any 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. It revived a cause of action solely for those claims for a period of one year. The Senate passed SB 1779 34-0 (AYE: Ackerman, Battin, Margett) and the Assembly passed it 75-0 (AYE: Aanestad, Ashburn, Cogdill, Cox, Harman, Maldonado, Runner, Wyland; ABS: Hollingsworth).

There are specific rules regarding the statute of limitation for filing childhood sexual abuse actions against non-governmental defendants. 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. Civ. Proc. § 340.1 [a].

Support & Opposition Received
Support: Consumer Attorneys of California, AFSCME.

Opposition: None.

Senate Republican Office of Policy/*Mike Petersen*

Senate Bill No. 640 Chapter 383

Year 2008 Regular Session

Author Simitian

Date Received Sept 11

Last Day to Act Sept 30

Action of Governor Sept 27

VOTES - ROLL CALL
MEASURE: SB 1779
AUTHOR: Burton
TOPIC: Damages: childhood sexual abuse: statute of
DATE: 06/24/2002
LOCATION: ASM. FLOOR
MOTION: SB 1779 Burton Senate Third Reading By Firebaugh
(AYES 75. NOES 0.) (PASS)

AYES
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Aanestad Alquist Aroner Ashburn
Bates Bogh Briggs Calderon
Bill Campbell John Campbell Canciamilla Cardenas
Cardoza Chan Chavez Chu
Cogdill Cohn Corbett Correa
Cox Daucher Diaz Dickerson
Dutra Firebaugh Florez Frommer
Goldberg Harman Havice Hertzberg
Horton Jackson Keeley Kehoe
Kelley Koretz La Suer Leach
Liu Longville Lowenthal Maddox
Maldonado Matthews Migden Nakano
Nation Negrete McLeod Oropeza Robert Pacheco
Rod Pacheco Papan Pavley Pescetti
Reyes Richman Runner Salinas
Shelley Simitian Steinberg Strickland
Strom-Martin Thomson Vargas Washington
Wayne Wiggins Wright Wyland
Wyman Zettel Wesson

NOES
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ABSENT, ABSTAINING, OR NOT VOTING
****

Cedillo Hollingsworth Leonard Leslie
Mountjoy

VOTES - ROLL CALL
MEASURE: SB 1779
AUTHOR: Burton
TOPIC: Damages: childhood sexual abuse: statute of
DATE: 06/27/2002
LOCATION: SEN. FLOOR
MOTION: Unfinished Business SB1779 Burton
(AYES 34. NOES 0.) (PASS)

AYES
****

Ackerman		Alarcon	Alpert	Battin
Bowen	Brulte	Burton	Chesbro	
Costa	Dunn	Escutia	Figueroa	
Johannessen		Karnette	Knight	Kuehl
Machado	Margett	McPherson	Monteith	
Morrow	Murray	O'Connell	Ortiz	
Peace	Perata	Polanco	Poochigian	
Romero	Scott	Sher	Speier	
Torlakson		Vasconcellos		

NOES
****

ABSENT, ABSTAINING, OR NOT VOTING
****

Service: Get by LEXSEE®
Citation: 42 Cal. 4th 201

*42 Cal. 4th 201, *; 164 P.3d 630, **;*
*64 Cal. Rptr. 3d 210, ***; 2007 Cal. LEXIS 8906*

View Available Briefs and Other Documents Related to this Case

LINDA SHIRK, Plaintiff and Appellant, v. VISTA UNIFIED SCHOOL DISTRICT, Defendant and Respondent.

S133687

SUPREME COURT OF CALIFORNIA

42 Cal. 4th 201; 164 P.3d 630; 64 Cal. Rptr. 3d 210; 2007 Cal. LEXIS 8906

August 20, 2007, Filed

SUBSEQUENT HISTORY: Time for Granting or Denying Rehearing Extended Shirk (Linda) v. Vista Unified School District, 2007 Cal. LEXIS 9485 (Cal., Aug. 30, 2007)
Rehearing denied by Shirk v. Vista Unified School District, 2007 Cal. LEXIS 13190 (Cal., Oct. 10, 2007)
Modified by Shirk v. Vista Unified School Dist., 2007 Cal. LEXIS 10875 (Cal., Oct. 10, 2007)
Modified by Shirk v. Vista Unified School District, 2007 Cal. LEXIS 13191 (Cal., Oct. 10, 2007)

PRIOR HISTORY:
Court of Appeal of California, Fourth Appellate District, Division One, No. D043697.
Superior Court of San Diego County, No. GIC818294, S. Charles Wickersham.
Shirk v. Vista Unified School Dist., 128 Cal. App. 4th 156, 26 Cal. Rptr. 3d 771, 2005 Cal. App. LEXIS 533 (Cal. App. 4th Dist., 2005)

CASE SUMMARY

PROCEDURAL POSTURE: Plaintiff accuser sued defendant school district, alleging that the district knew or should have known that a teacher employed by the district was a sexual predator who engaged in inappropriate sexual misconduct with the accuser. The trial court sustained the district's demurrer to the accuser's complaint without leave to amend. The California Court of Appeal, Fourth Appellate District, Division One, reversed. The district petitioned for review.

OVERVIEW: The teacher and the accuser had engaged in sexual conduct from 1978 to 1979. The accuser argued that she had timely presented her government tort claim to the district on September 12, 2003, when her statutory cause of action under Code Civ. Proc., § 340.1, subd. (c), accrued because it was only then that she discovered the cause of her adult psychological injuries. The court concluded that as of January 1, 2003, the accuser's causes of action against the district were barred by expiration of the time for presenting a claim to the district. Although § 340.1, subd. (c), revived for the calendar year 2003 those causes of action for childhood sexual abuse that would otherwise have been barred "solely" by expiration of the applicable statute of limitations, that provision did not apply because the accuser failed to first present a timely claim to the district, as required by Gov. Code, § 911.2. The court rejected the accuser's contention that her duty to present a claim did not arise until September 12, 2003, when at the age of 41 she first learned that her adult-onset emotional problems resulted from the teacher's molestation of her as a teenager, some 25 years earlier.

OUTCOME: The judgment of the intermediate appellate court was reversed.

CORE TERMS: school district, cause of action, public entity, sexual abuse, causes of action, ants</, statute of limitations, presentation, revival, claims statute, childhood, accrual, deadline, teacher, accrue, molestation, accrued, timely claim, psychological injury, discovery, lawsuit, revived, demurrer, delayed, sexual conduct, sexual molestation, statutory language, reviving, expired", com

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HN1

Code Civ. Proc., § 340.1, subd. (c), which revives

limitations.
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SUMMARY:

CALIFORNIA OFFICIAL REPORTS SUMMARY

Plaintiff sued a school district, alleging that the district knew or should have known that a teacher employed by the district was a sexual predator who engaged in inappropriate sexual misconduct with plaintiff from 1978 to 1979. Plaintiff argued that she had timely presented her government tort claim to the district on September 12, 2003, when her statutory cause of action under Code Civ. Proc., § 340.1, subd. (c), accrued because it was only then that she discovered the cause of her adult psychological injuries. The trial court sustained the district's demurrer to plaintiff's complaint without leave to amend on the ground that plaintiff's negligence causes of action were barred by her belated claim presentation. (Superior Court of San Diego County, No. GIC818294, S. Charles Wickersham, Judge.) The Court of Appeal, Fourth Dist., Div. One, No. D043697, reversed the trial court's judgment of dismissal, concluding that plaintiff had timely presented her government tort claim to the district on September 12, 2003, when her statutory cause of action under § 340.1 accrued.

The Supreme Court reversed the judgment of the Court of Appeal. The court concluded that as of January 1, 2003, plaintiff's causes of action against the district were barred by expiration of the time for presenting a claim to the district. Although Code Civ. Proc., § 340.1, subd. (c), revived for the calendar year 2003 those causes of action for childhood sexual abuse that would otherwise have been barred solely by expiration of the applicable statute of limitations, that provision did not apply because plaintiff failed to first present a timely claim to the district, as required by the government claims statute (Gov. Code, former § 911.2). The court rejected plaintiff's contention that her duty to present a claim did not arise until September 12, 2003, when at the age of 41 she first learned that her adult-onset emotional problems resulted from the teacher's molestation of her as a teenager, some 25 years earlier. (Opinion by Kennard, J., with George, C. J., Baxter, Chin, Moreno, and Corrigan, JJ., concurring. Dissenting opinion by Werdegar, J. (see p. 214).) **[*202]**

HEADNOTES

CALIFORNIA OFFICIAL REPORTS HEADNOTES

CA(1) **(1) Limitation of Actions § 26—Torts—Childhood Sexual Abuse—Revival—Vicarious Liability.**—In 2002, the Legislature amended Code Civ. Proc., § 340.1, by reviving for the calendar year 2003 those causes of action based on

childhood sexual abuse brought against a person or an entity that had reason to know or was on notice, of any unlawful sexual conduct by an employee, volunteer, representative, or agent, and failed to take reasonable steps, and to implement reasonable safeguards, to avoid acts of unlawful sexual conduct (§ 340.1, subd. (b)(2)). This change revives for the year 2003 those causes of action brought by plaintiffs over the age of 26 years against nonabuser persons or entities that would otherwise have been time-barred as of January 1, 2003, solely because the applicable statute of limitations has or had expired as of that date (§ 340.1, subd. (c)).

CA(2)± **(2) Government Tort Liability § 25—Actions—Limitations—Accrual.**—Before suing a public entity, a plaintiff must present a timely written claim for damages to the entity (Gov. Code, former § 911.2). Such claims must be presented to the government entity no later than six months after the cause of action accrues (Gov. Code, former § 911.2). Accrual of the cause of action for purposes of the government claims statute is the date of accrual that would pertain under the statute of limitations applicable to a dispute between private litigants (Gov. Code, § 901).

CA(3)± **(3) Government Tort Liability § 25—Actions—Limitations—Timely Claim Presentation—Demurrer.**—Timely claim presentation is not merely a procedural requirement, but is a condition precedent to the plaintiff's maintaining an action against the defendant, and thus an element of the plaintiff's cause of action. Complaints that do not allege facts demonstrating either that a claim was timely presented or that compliance with the claims statute is excused are subject to a general demurrer for not stating facts sufficient to constitute a cause of action.

CA(4)± **(4) Government Tort Liability § 25—Actions—Limitations—Rejection of Claim.**—Only after a public entity's board has acted upon or is deemed to have rejected the claim may the injured person bring a lawsuit alleging a cause of action in tort against the public entity (Gov. Code, §§ 912.4, 945.4). The deadline for filing a lawsuit against a public entity, as set out in the government claims statute, is a true statute of limitations defining the time in which, after a claim presented to the **[*203]** government has been rejected or deemed rejected, the plaintiff must file a complaint alleging a cause of action based on the facts set out in the denied claim (Code Civ. Proc., § 342; Gov. Code, § 945.6).

CA(5)± **(5) Limitation of Actions § 26—Torts—Childhood Sexual Abuse—Accrual.**—Generally, a cause of action for childhood sexual molestation accrues at the time of molestation.

CA(6)± **(6) Statutes § 21—Construction—Legislative Intent—Ambiguity.**—A court applies well-established principles of statutory construction in seeking to determine the Legislature's intent in enacting a statute so that the court may adopt the construction that best effectuates the purpose of the law. The court begins with the statutory language because it is generally the most reliable indication of legislative intent. If the statutory language is unambiguous, the court presumes the Legislature meant what it said, and the plain meaning of the statute controls. But if the statutory language may reasonably be given more than one interpretation, courts may consider various extrinsic aids, including the purpose of the statute, the evils to be remedied, the legislative history, public policy, and the statutory scheme encompassing the statute.

CA(7)± **(7) Limitation of Actions § 26—Torts—Childhood Sexual Abuse—**

Revival.—Code Civ. Proc., § 340.1, subd. (c), expressly limits revival of childhood sexual abuse causes of action to those barred solely by expiration of the applicable statute of limitations.

CA(8)± **(8) Limitation of Actions § 1—Statute of Limitations—Accrual.**—The term "statute of limitations" is the collective term applied to acts or parts of acts that prescribe the periods beyond which a plaintiff may not bring a cause of action. Civil actions, without exception, can only be commenced within the periods prescribed after the cause of action shall have accrued (Code Civ. Proc., § 312).

CA(9)± **(9) Statutes § 13—Amendment—Preexisting Laws—Legislative Awareness.**—The Legislature is deemed to be aware of existing statutes, and a court assumes that the Legislature amends a statute in light of those preexisting statutes.

CA(10)± **(10) Government Tort Liability § 25—Actions—Limitations—Timely Claim Presentation—Childhood Sexual Abuse—Teacher—School District.**—Before a plaintiff may bring a cause of action against a public entity, a timely claim must be presented to the entity; when no claim is **[*204]** timely presented, however, such a cause of action is not barred solely by lapse of the applicable statute of limitations. Thus, in a case in which plaintiff sued a school district because a teacher employed by the district had sexually molested plaintiff as a teenager, some 25 years earlier, plaintiff's causes of action against the district were barred because plaintiff failed to first present a timely claim to the district, as required by Gov. Code, § 911.2.

[Cal. Forms of Pleading and Practice (2007) ch. 1, New Developments, § 1.87; 1 Kiesel et al., Matthew Bender Practice Guide: Cal. Pretrial Civil Procedure (2007) § 4.09; 3 Witkin, Cal. Procedure (4th ed. 1996) Actions, § 434.]

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JUDGES: Kennard, J., with George, C. J., Baxter, Chin, Moreno, and Corrigan, JJ., concurring. Dissenting opinion by Werdegar, J.

OPINION BY: Kennard

OPINION

[*213]** **[**632]** **KENNARD**, J.—In 2002, the Legislature added a statutory provision that "revived" for the calendar year 2003 those causes of action for childhood sexual molestation that would otherwise have been barred "solely" by expiration of the applicable statute of limitations. (Code Civ. Proc., § 340.1, **[*205]** subd. (c).) [1] HN1 Does that provision also apply when a plaintiff suing a public entity has failed to first present a timely claim to the entity, as required by the government claims statute (Gov. Code, § 911.2)? Our answer is "no."

FOOTNOTES

1 Undesignated statutory references are to the Code of Civil Procedure.

I

HN2 Because this appeal arises from a ruling on a demurrer, we treat the demurrer as admitting all properly pleaded material facts. (*Fox v. Ethicon Endo-Surgery, Inc.* (2005) 35 Cal.4th 797, 810 [27 Cal. Rptr. 3d 661, 110 P.3d 914]; *Blank v. Kirwan* (1985) 39 Cal.3d 311, 318 [216 Cal. Rptr. 718, 703 P.2d 58].) The facts set out here are those alleged in plaintiff's complaint.

Plaintiff Linda Shirk was born in June 1962. In September 1977, when she was 15 years old, the Vista Unified School District (School District) assigned her to an English class taught by Jeffrey Paul Jones. Jones began flirting with her on the first day of school; in May 1978, Jones initiated their first sexual encounter. In the ensuing months, Jones and plaintiff engaged in sexual conduct both on and off school premises. Their last sexual contact occurred in November 1979. In the following months plaintiff neither notified the School District of her abuse nor presented a claim to it.

In June 2001, when plaintiff's 15-year-old daughter was attending Vista High School, plaintiff began to encounter teacher Jones at high school band tournaments. That same month, having become "very upset" by her long-ago molestation by Jones, she filed a report with the local sheriff's office. In February 2002, she met with Jones and surreptitiously recorded a conversation in which he admitted to sexual conduct with her and with another student.

On September 12, 2003, a licensed mental health practitioner interviewed plaintiff and concluded that she was still suffering psychological injury from her sexual abuse by Jones. That same day, plaintiff presented a claim to the School District for personal injury stemming from her sexual abuse by its employee Jones. When, as here, the defendant is a public entity, such claim presentation is required under the government claims statute (Gov. Code, § 900 et seq.), sometimes referred to as the Tort Claims Act. Government Code section 911.2 requires timely notice to a public entity before commencing legal action against it. **[*206]**

On September 23, 2003, plaintiff, then 41 years old, sued teacher Jones and the School District. Pertinent here are two causes of action for negligent tortious conduct against the School District, alleging that it "knew or should have known" that Jones

was "a sexual predator" who "was engaging in inappropriate sexual misconduct" with his students, including plaintiff. **[***214]** On a form complaint, plaintiff entered the date of the act complained of as "Sept. 12, 2003 (per CCP 340.1(c))" and she checked two boxes indicating compliance with the government claims statute.

The School District demurred to plaintiff's complaint, asserting that the negligence causes of action were barred by her belated claim presentation. The trial court agreed; it concluded that plaintiff's causes of action accrued as of the last act of sexual molestation, which was in November 1979, but that they were barred because of plaintiff's failure to first present a claim to the School District "at some point in 1980," as statutorily required. Accordingly, the trial court sustained the demurrer without leave to amend, and it entered a judgment of dismissal as to the School District.

Plaintiff appealed, arguing that she had "timely presented her government tort claim" to the School District on September 12, 2003, when her statutory cause of action under subdivision (c) of section 340.1 accrued, because it was only then that "she discovered the cause of her adult psychological injuries." The Court of Appeal agreed. It reasoned **[**633]** that the Legislature's addition in 1998 of provisions making entities liable for sexual abuse committed by their employees (§ 340.1, subd. (a)(2) & (3)) coupled with its failure "to make special rules regarding the application of [government] claims requirements," indicated legislative intent not to differentiate between public entity defendants and private entity defendants. Accordingly, the Court of Appeal held that in 2002, when the Legislature enacted the revival provision to open a one-year window for childhood sexual abuse plaintiffs to bring statutorily lapsed causes of action, it also extended the government claims statute's deadline for presenting a claim to a public entity defendant. The Court of Appeal reasoned that, because plaintiff only discovered on September 12, 2003, that the cause of her psychological injury was the teacher's sexual abuse of her more than two decades earlier, the claim she presented to the School District on that same day was timely.

We granted the School District's petition for review to resolve a conflict between the decision of the Court of Appeal in this case and a nearly contemporaneous decision of a different Court of Appeal in *County of Los Angeles v. Superior Court* (2005) 127 Cal.App.4th 1263, 1269 [26 Cal. Rptr. 3d **[*207]** 445] (*County of Los Angeles*). That case held that the Legislature's 2002 amendment of section 340.1 did not reflect the Legislature's intent "to excuse victims of childhood sexual abuse" from complying with the government claims statute when suing a public entity defendant. We reach the same conclusion here, thus reversing the Court of Appeal in this case.

II

Below we summarize the pertinent provisions of section 340.1, which sets forth deadlines for bringing a lawsuit for childhood sexual abuse, and Government Code section 911.2, which sets forth a deadline for presenting a claim to a public entity and is a prerequisite to the filing of a lawsuit against the entity.

A. Section 340.1

At the time of plaintiff's sexual molestation in 1978 to 1979, the applicable statute of limitations for sexual molestation was one year. (Former § 340, subd. (3).) In 1986, the Legislature enacted section 340.1, which expanded to three years the statute of

limitations for sexual abuse by a relative or household member of a child under 14 years of age. (Former § 340.1, added by Stats. 1986, ch. 914, § 1, pp. 3165–3166.) **[***215]**

In 1990, the Legislature amended section 340.1 to make it applicable to anyone who sexually abused a child, regardless of that person's relationship to, or residence with, the victim. It also extended the statute of limitations to eight years from the date the victim "attains the age of majority," or three years from the date the victim "discovers or reasonably should have discovered that psychological injury or illness occurring after the age of majority was caused by the sexual abuse." (§ 340.1, subd. (a).) A plaintiff over the age of 26 years had to provide a certificate of merit from a mental health practitioner. (Former § 340.1, subds. (a), (b), & (d), as amended by Stats. 1990, ch. 1578, § 1, pp. 7550–7552.)

In 1994, the Legislature again amended section 340.1 by expressly providing that the 1990 amendments "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." (Former § 340.1, subd. (*o*), added by Stats. 1994, ch. 288, § 1, p. 1930.) **[*208]**

In 1998, there was another amendment to section 340.1, acknowledging the liability of a "person or entity" whose negligent or intentional acts were a "legal cause" of a child's sexual abuse. (§ 340.1, subd. (a)(2) & (3), added by Stats. 1998, ch. 1032, § 1.) Causes of action against such persons or entities had to be brought before the victim's 26th birthday. (§ 340.1, subd. (b)(1), amended by Stats. 1998, ch. 1032, § 1.)

In 1999, the Legislature again amended section 340.1, clarifying that its 1998 changes **[**634]** relating to the liability of nonabuser persons or entities were prospective—that is, its provisions applied only to actions begun on or after January 1, 1999, or if filed before that time, actions still pending as of that date, "including any action or causes of action which would have been barred by the laws in effect prior to January 1, 1999." (§ 340.1, subd. (u), added by Stats. 1999, ch. 120, § 1.)

HN3 CA(1) **(1)** In 2002, the Legislature yet again amended section 340.1, this time reviving for the calendar year 2003 those causes of action based on childhood sexual abuse brought against a person or an entity that had "reason to know" or was "on notice, of any unlawful sexual conduct by an employee, volunteer, representative, or agent, and failed to take reasonable steps, and to implement reasonable safeguards, to avoid acts of unlawful sexual conduct." (§ 340.1, subd. (b)(2), added by Stats. 2002, ch. 149, § 1.) Thus, this change revived for the year 2003 those causes of action brought by plaintiffs over the age of 26 years against *nonabuser* persons or entities that would otherwise have been time-barred as of January 1, 2003, "*solely because the applicable statute of limitations has or had expired*" as of that date. (§ 340.1, subd. (c), italics added.)

B. *Government Claims Statute*

HN4 CA(2) **(2)** Before suing a public entity, the plaintiff must present a timely written claim for damages to the entity. (Gov. Code, § 911.2; *State of California v. Superior Court (Bodde)* (2004) 32 Cal.4th 1234, 1239 [13 Cal. Rptr. 3d 534, 90 P.3d 116] (*Bodde*); but see Gov. Code, § 905 [itemized exceptions not relevant here].) In 1979

and 1980, a claim relating to a cause of action for "injury to person" had to be presented to a government entity "not later than the 100th day after the accrual of the cause of action." (Gov. Code, § 911.2, added by Stats. 1963, ch. 1715, § 1, p. 3376.) Since 1988, such claims must be presented to the government entity no later than six **[***216]** months after the cause of action accrues. (Gov. Code, former § 911.2, as amended by Stats. 1987, ch. 1208, § 3, p. 4306.) Accrual of the cause of **[*209]** action for purposes of the government claims statute is the date of accrual that would pertain under the statute of limitations applicable to a dispute between private litigants. (Gov. Code, § 901; *Whitfield v. Roth* (1974) 10 Cal.3d 874, 884-885 [112 Cal. Rptr. 540, 519 P.2d 588]; *Jefferson v. County of Kern* (2002) 98 Cal.App.4th 606, 615 [120 Cal. Rptr. 2d 1]; *Dujardin v. Ventura County Gen. Hosp.* (1977) 69 Cal. App. 3d 350, 355 [138 Cal. Rptr. 20].)

HN5↑CA(3)↑**(3)** Timely claim presentation is not merely a procedural requirement, but is, as this court long ago concluded, " ' "a condition precedent to plaintiff's maintaining an action against defendant" ' " (*Bodde, supra*, 32 Cal.4th at p. 1240, quoting *Williams v. Horvath* (1976) 16 Cal.3d 834, 842 [129 Cal. Rptr. 453, 548 P.2d 1125]), and thus an element of the plaintiff's cause of action. (*Bodde, supra*, at p. 1240.) Complaints that do not allege facts demonstrating either that a claim was timely presented or that compliance with the claims statute is excused are subject to a general demurrer for not stating facts sufficient to constitute a cause of action. (*Bodde, supra*, at p. 1245.)

HN6↑CA(4)↑**(4)** Only after the public entity's board has acted upon or is deemed to have rejected the claim may the injured person bring a lawsuit alleging a cause of action in tort against the public entity. (Gov. Code, §§ 912.4, 945.4; *Williams v. Horvath, supra*, 16 Cal.3d at p. 838.) The deadline for filing a lawsuit against a public entity, as set out in the government claims statute, is a true statute of limitations defining the time in which, after a claim presented to the government has been rejected or deemed rejected, the plaintiff must file a complaint alleging a cause of action based on the facts set out in the denied claim. (Code Civ. Proc., § 342; Gov. Code, § 945.6; *Addison v. State of California* (1978) 21 Cal.3d 313, 316 [146 Cal. Rptr. 224, 578 P.2d 941]; *Tubbs v. Southern Cal. Rapid Transit Dist.* (1967) 67 Cal.2d 671, 675 [63 Cal. Rptr. 377, 433 P.2d 169]; *County of Los Angeles, supra*, 127 Cal.App.4th 1263, 1271; *Martell v. Antelope Valley Hospital Medical Center* (1998) 67 Cal.App.4th 978, 981-982 [79 Cal. Rptr. 2d 329]; see Cal. Law Revision Com. **[**635]** com., reprinted at 32A pt. 1 West's Ann. Gov. Code (1995 ed.) foll. § 945.6, p. 33.)

The six-month statute of limitations for *filing a lawsuit* that is generally applicable to actions against public defendants (Code Civ. Proc., § 342; Gov. Code, § 945.6, subd. (a)(1)) is not implicated by the facts here. Rather, *it is the claim presentation deadline* (Code Civ. Proc., § 313; Gov. Code, § 911.2) that is at issue, as we explain below. **[*210]**

C. *School District's Demurrer to Plaintiff's Complaint*

As discussed earlier, on September 23, 2003, 41-year-old plaintiff sued the School District under subdivision (c) of section 340.1, alleging, as relevant here, two causes of action for negligence based on the district's employment of teacher Jones. Plaintiff alleged that on September 12, 2003, when she consulted a licensed mental health professional, she learned she was "suffering from psychological injuries" caused by teacher Jones's sexual abuse of her in 1978 and 1979, when she was a teenager.

The School District successfully demurred to both causes of action, arguing that not only were "the 25 year old negligence claims" time-barred, but also that **[***217]** they were not subject to the revival provision in subdivision (c) of section 340.1, because of plaintiff's failure to present a claim to the School District at the time of her molestation by Jones.

HN7[↑]CA(5)[↑] **(5)** Generally, a cause of action for childhood sexual molestation accrues at the time of molestation. (*John R. v. Oakland Unified School Dist.* (1989) 48 Cal.3d 438, 443 [256 Cal. Rptr. 766, 769 P.2d 948]; *Doe v. Bakersfield City School Dist.* (2006) 136 Cal.App.4th 556, 567, fn. 2 [39 Cal. Rptr. 3d 79]; *Ortega v. Pajaro Valley Unified School Dist.* (1998) 64 Cal.App.4th 1023, 1053 [75 Cal. Rptr. 2d 777].) Here, plaintiff's complaint alleged that her molestation by teacher Jones began in May 1978 and ended in November 1979. The trial court found that plaintiff's cause of action accrued on November 30, 1979 (the last possible act of molestation), and that under the then applicable 100-day deadline for presenting a claim to a public entity (Gov. Code, former § 911.2, added by Stats. 1963, ch. 1715, § 1, p. 3372) she "was required to submit a claim" to the School District "at some point in 1980." Plaintiff, however, did not submit a claim to the School District until September 12, 2003, nearly 25 years after the last act of molestation.

III

Plaintiff acknowledges that because of her failure to present a claim to the School District in 1980, her cause of action against the School District was extinguished in 1980. But she argues that under section 340.1, subdivision (c), which revived for the year 2003 those childhood sexual abuse causes of action on which the statute of limitations had already lapsed as of January 1, 2003, her cause of action against the School District reaccrued on September 12, 2003, when she discovered that her present psychological injury was caused by teacher Jones's sexual abuse of her some 25 years earlier. Alternatively, she argues that her duty to present her claim to the **[*211]** School District, as required under the government claims statute, first arose on September 12, 2003, when she discovered that her psychological injury was caused by the teacher's sexual abuse and presented her claim to the School District. We conclude that neither of her contentions is supported by the language and history of the legislative scheme, as we explain below.

HN8[↑]CA(6)[↑] **(6)** We apply well-established principles of statutory construction in seeking "to determine the Legislature's intent in enacting the statute ' "so that we may adopt the construction that best effectuates the purpose of the law." ' " (*Kibler v. Northern Inyo County Local Hospital Dist.* (2006) 39 Cal.4th 192, 199 [46 Cal. Rptr. 3d 41, 138 P.3d 193]; see *People v. King* (2006) 38 Cal.4th 617, 622 [42 Cal. Rptr. 3d 743, 133 P.3d 636]; *Fitch v. Select Products Co.* (2005) 36 Cal.4th 812, 818 [31 Cal. Rptr. 3d 591, 115 P.3d 1233].) We begin with the statutory language because it is generally the most reliable indication of legislative intent. (*City of Burbank v. State Water Resources Control Bd.* (2005) 35 Cal.4th 613, 625 [26 Cal. Rptr. 3d 304, 108 P.3d 862].) If the statutory language is unambiguous, we presume the Legislature meant what **[**636]** it said, and the plain meaning of the statute controls. (*People v. Hudson* (2006) 38 Cal.4th 1002, 1009 [44 Cal. Rptr. 3d 632, 136 P.3d 168].) But if the statutory language may reasonably be given more than one interpretation, " ' " 'courts may consider various extrinsic aids, including the purpose of the statute, the evils to be remedied, the legislative history, public policy, and the statutory scheme encompassing the statute.' " ' " (*People v. King, supra*, 38 Cal.4th 617, 622; see *People* **[***218]** *v. Yartz* (2005) 37 Cal.4th 529, 538 [36 Cal. Rptr.

3d 328, 123 P.3d 604]; *People v. Garcia* (2002) 28 Cal.4th 1166, 1172 [124 Cal. Rptr. 2d 464, 52 P.3d 648].)

As amended in 2003, the pertinent language of subdivision (c) of section 340.1 reads: HN9 "[A] claim for damages" brought against an entity that owed plaintiff a duty of care and whose wrongful or negligent act was a legal cause of injury to plaintiff resulting from childhood sexual abuse, if the cause of action "would otherwise be barred as of January 1, 2003, *solely* because the applicable statute of limitations has or had expired, is revived" (italics added), and the revived "cause of action may be commenced within one year of January 1, 2003."

CA(7) **(7)** In plain language, HN10 that provision expressly limited revival of childhood sexual abuse causes of action to those barred "solely" by expiration of the applicable statute of limitations. (§ 340.1, subd. (c).) HN11 CA(8) **(8)** The term " '[s]tatute of limitations' is the collective term applied to acts or parts of acts that prescribe the periods beyond which a plaintiff may not bring a cause of **[*212]** action." (*Fox v. Ethicon Endo-Surgery Inc., supra*, 35 Cal.4th at p. 806; see *Norgart v. Upjohn Co.* (1999) 21 Cal.4th 383, 395 [87 Cal. Rptr. 2d 453, 981 P.2d 79].) As the Code of Civil Procedure explains, "[c]ivil actions, without exception, can only be commenced within the periods prescribed ... , after the cause of action shall have accrued ... ." (§ 312.)

Section 340.1, subdivision (c), makes no reference whatsoever to any revival of the period in which to present a claim under the government claims statute. That lack of reference led the Court of Appeal here to infer that because the Legislature must have been aware that by expressly reviving causes of action against entity defendants in general under subdivision (c), it implicitly revived the deadline for presenting a claim to public entity defendants. We are not persuaded.

CA(9) **(9)** The legislative history of the 2002 amendment at issue here is virtually silent as to its impact on a public entity defendant; it mentions only the general principle that "a school district, church, or other organization engaging in the care and custody of a child owes a duty of care to that child to reasonably ensure its safety." (Assem. Com. on Judiciary, Rep. on Sen. Bill No. 1779 (2001–2002 Reg. Sess.) as amended June 6, 2002, p. 6.) No opposition at all to the bill was noted in the committee report. (Sen. Rules Com., Off. of Sen. Floor Analyses, Analysis of Sen. Bill No. 1779 (2001–2002 Reg. Sess.) as amended June 17, 2002, pp. 4–5; Sen. Com. on Judiciary, Analysis of Sen. Bill No. 1779 (2001–2002 Reg. Sess.) as amended May 2, 2002, p. 10.) And the bill's legislative history makes no mention of an intent to revive the deadline by which to present a claim to a public entity, nor have we found any mention of the potential fiscal impact of reviving public liability for incidents that occurred, as here, decades ago. Thus, the legislative history does not support the view of the Court of Appeal in this case that the Legislature's revival of childhood sexual abuse causes of action otherwise barred solely by the lapse of the applicable statute of limitations also was intended to apply to the then-already-codified government claim presentation deadline. HN12 The Legislature is deemed to be aware of existing statutes, and we assume that it amends a statute in light of those preexisting statutes. (*People v. Yartz, supra*, 37 Cal.4th at p. 538; *People v. Overstreet* (1986) 42 Cal.3d 891, 897 [231 Cal. Rptr. 213, 726 P.2d 1288].)

CA(10) **(10)** Plaintiff argues that the Legislature was well aware of the claim presentation deadline under the government claims statute, **[***219]** as indicated by section 340.1, subdivision (c)'s opening phrase, "Notwithstanding any other

provision of law ... ." But that interpretation is inconsistent with the more specific language later in that same sentence expressly reviving **[**637]** only those causes of action "barred ... *solely* because the applicable statute of limitations has or had expired" as of January 1, 2003. (*Ibid.*, italics added.) **[*213]** As discussed earlier, HN13 *before* a plaintiff can bring a cause of action against a *public entity*, a timely claim must be presented to the entity; when no claim is timely presented, however, such a cause of action is not barred "solely" by lapse of the applicable statute of limitations, the phrasing that the Legislature used in the revival provision of subdivision (c). As explained earlier, *ante*, at page 209, the government claim presentation deadline is not a statute of limitations. Had the Legislature intended to also revive in subdivision (c) the claim presentation deadline under the government claims statute, it could have easily said so. It did not. We thus conclude that as of January 1, 2003, plaintiff's causes of action against the School District were barred by expiration of the time for presenting a claim to the School District.

This conclusion also finds support in the public policies underlying the claim presentation requirement of the government claims statute. Requiring a person allegedly harmed by a public entity to first present a claim to the entity, before seeking redress in court, affords the entity an opportunity to promptly remedy the condition giving rise to the injury, thus minimizing the risk of similar harm to others. (*Johnson v. San Diego Unified School Dist.* (1990) 217 Cal. App. 3d 692, 696-697 [266 Cal. Rptr. 187]; *Roberts v. State of California* (1974) 39 Cal. App. 3d 844, 848 [114 Cal. Rptr. 518]; see also Recommendation; Claims, Actions and Judgments Against Public Entities and Public Employees (Dec. 1963) 4 Cal. Law Revision Com. Rep. (1963) pp. 1008–1009.) The requisite timely claim presentation before commencing a lawsuit also permits the public entity to investigate while tangible evidence is still available, memories are fresh, and witnesses can be located. (*Wells v. One2One Learning Foundation* (2006) 39 Cal.4th 1164, 1214 [48 Cal. Rptr. 3d 108, 141 P.3d 225]; *City of San Jose v. Superior Court* (1974) 12 Cal.3d 447, 455 [115 Cal. Rptr. 797, 525 P.2d 701]; *Barkley v. City of Blue Lake* (1996) 47 Cal.App.4th 309, 316 [54 Cal. Rptr. 2d 679].) Fresh notice of a claim permits early assessment by the public entity, allows its governing board to settle meritorious disputes without incurring the added cost of litigation, and gives it time to engage in appropriate budgetary planning. (*Phillips v. Desert Hospital Dist.* (1989) 49 Cal.3d 699, 705 [263 Cal. Rptr. 119, 780 P.2d 349]; *City of San Jose, supra*, 12 Cal.3d at p. 455; *Baines Pickwick Ltd. v. City of Los Angeles* (1999) 72 Cal.App.4th 298, 303 [85 Cal. Rptr. 2d 74]; see *Crescent Wharf etc. Co. v. Los Angeles* (1929) 207 Cal. 430, 437 [278 P. 1028].) The notice requirement under the government claims statute thus is based on a recognition of the special status of public entities, according them greater protections than nonpublic entity defendants, because unlike nonpublic defendants, public entities whose acts or omissions are alleged to have caused harm will incur costs that must ultimately be borne by the taxpayers. For the reasons discussed above, we conclude that plaintiff's causes of action against the School District for injury resulting from her childhood sexual abuse by teacher Jones were not revived in 2003 by section 340.1, subdivision (c). **[*214]**

Plaintiff's second contention is that her duty to present a claim to the School District did not arise until September **[***220]** 12, 2003, when at the age of 41 she first learned from a mental health practitioner that her adult-onset emotional problems resulted from teacher Jones's molestation of her as a teenager, some 25 years earlier. That very same day, she presented her claim to the School District, which denied it as untimely. Thus, plaintiff argues, she has timely filed against the School District her complaint alleging her injury was caused by the School District's breach

of its duty of care to protect her from sexual abuse by teacher Jones.

We disagree. We concluded earlier that the Legislature's amendment of section 340.1, subdivision (c), revived for the year 2003 certain lapsed causes of action against *nonpublic entities*, but that nothing in the express language of those amendments or in the history of their adoption indicates an intent by the Legislature to apply against *public entity defendants* the one-year revival provision for certain causes of action. (§ 340.1, subd. (c).) In light of that conclusion, **[**638]** it seems most unlikely that the Legislature also intended revival applicable to persons who discovered only in 2003 a new injury attributable to the same predicate facts underlying a cause of action previously barred by failure to comply with the government claims statute.

Disposition

The judgment of the Court of Appeal is reversed.

George, C. J., Baxter, J., Chin, J., Moreno, J., and Corrigan, J., concurred.

DISSENT BY: Werdegar

DISSENT

WERDEGAR, J., Dissenting—The majority concludes plaintiff failed to present a timely claim to defendant school district and that her suit is accordingly barred, notwithstanding the 2003 revival statute (Code Civ. Proc., § 340.1, subd. (c)). I disagree and would affirm the Court of Appeal's unanimous decision to the contrary.

Plaintiff's obligation under the claim presentation statute (Gov. Code, § 911.2, subd. (a)) was to present her claim "not later than six months after the accrual of the cause of action" (*ibid.*). Her claim first accrued sometime in 1979, when defendant's employee last molested her. She did not present a claim then. But her claim accrued again in 2003 under the newly enacted revival statute (Code Civ. Proc., § 340.1, subd. (c)), read together with the earlier-enacted delayed discovery statute (*id.*, subd. (a)), when she "discover[ed] or reasonably should have discovered that psychological injury or illness occurring after the age of majority was caused by the sexual abuse" (*ibid.*). The applicable statute of limitations, which in this case is the delayed discovery statute, defines accrual for purposes of the claim presentation **[*215]** statute. (See Gov. Code, § 901.) Having redefined accrual in the applicable statute of limitations, the Legislature necessarily redefined accrual, and plaintiff's obligations, under the claim presentation statute. This conclusion merely respects the plain language of all the relevant statutes.

The majority does not argue a claim cannot accrue twice. Indeed, the revival statute (Code Civ. Proc., § 340.1, subd. (c)), read together with the delayed discovery statute (*id.*, subd. (a)), necessarily causes previously accrued claims for sexual molestation to accrue a second time by prescribing the time for commencing an action in terms of delayed discovery. Although, " '[g]enerally speaking, a cause of action accrues at "the time when the cause of action is complete with all of its elements[,]" [a]n important exception to the general rule of accrual is the "discovery **[***221]** rule," which postpones accrual of a cause of action until the plaintiff discovers, or has reason to discover, the cause of action.' " (*Grisham v. Philip Morris*

U.S.A., Inc. (2007) 40 Cal.4th 623, 634 [54 Cal. Rptr. 3d 735, 151 P.3d 1151], quoting Fox v. Ethicon Endo-Surgery, Inc. (2005) 35 Cal.4th 797, 806–807 [27 Cal. Rptr. 3d 661, 110 P.3d 914].) Thus, plaintiff's claim accrued once in 1979, when all the elements of her cause of action first existed, and once again in 2003, when her delayed discovery of psychological injury as an adult brought her claim within the revival statute.

To argue a claim cannot accrue twice would, in effect, nullify the revival statute. Eschewing this absurdity, the majority instead reasons the Legislature's silence, when it drafted the revival statute, on the subject of claim presentation must mean the Legislature did not intend the revival statute (Code Civ. Proc., § 340.1, subd. (c)) to affect "the accrual of the cause of action" (Gov. Code, § 911.2, subd. (a)) for purposes of the claim presentation statute (*ibid.*). (See maj. opn., *ante*, at pp. 211–212.) But the argument fails because, as already noted, the Legislature had already expressly provided that a claim accrues for purposes of claim presentation at the same time it accrues under the applicable statute of limitations (Gov. Code, § 901), which in this case is the delayed discovery statute (Code Civ. Proc., § 340.1, subd. (a)). Because the Legislature had already redefined accrual in terms of delayed discovery, the Legislature's later silence on the point proves nothing. In any event, we ordinarily will not invoke legislative history to justify interpreting a statute contrary to its plain **[**639]** language. (E.g., City & County of San Francisco v. County of San Mateo (1995) 10 Cal.4th 554, 572, fn. 10 [41 Cal. Rptr. 2d 888, 896 P.2d 181].) Although exceptions to that rule are occasionally admitted in extreme cases, to argue that legislative *silence* can justify ignoring a statute's plain meaning stands the ordinary rule on its head. At the very least, the burden of proving the Legislature did not mean what it said would seem to be on the one making the argument. The Legislature's silence does not help the majority carry that burden. **[*216]**

The majority also argues, apparently in the alternative, that the revival statute does not apply to this case. The majority reasons that plaintiff's claim was barred not "*solely* because the applicable statute of limitations has or had expired" (Code Civ. Proc., § 340.1, subd. (c), italics added), but also because she has not complied with the claim presentation statute. (Maj. opn., *ante*, at p. 211.) But this additional argument obviously begs the question whether plaintiff *has* complied with the claim presentation statute. For the reasons given above, I conclude she has.

SB 1339 codes

Govt **GOVERNMENT CODE**
SECTION 910-913.2

GOVERNMENT CODE
SECTION 905-907

905. There shall be presented in accordance with Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) all claims for money or damages against local public entities except:

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

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

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

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

(e) Applications or claims for any form of public assistance under the Welfare and Institutions Code or other provisions of law relating to public assistance programs, and claims for goods, services, provisions, or other assistance rendered for or on behalf of any recipient of any form of public assistance.

(f) Applications or claims for money or benefits under any public retirement or pension system.

(g) Claims for principal or interest upon any bonds, notes, warrants, or other evidences of indebtedness.

(h) Claims that relate to a special assessment constituting a specific lien against the property assessed and that are payable from the proceeds of the assessment, by offset of a claim for damages against it or by delivery of any warrant or bonds representing it.

(i) Claims by the state or by a state department or agency or by another local public entity or by a judicial branch entity.

(j) Claims arising under any provision of the Unemployment Insurance Code, including, but not limited to, claims for money or benefits, or for refunds or credits of employer or worker

contributions, penalties, or interest, or for refunds to workers of deductions from wages in excess of the amount prescribed.

(k) Claims for the recovery of penalties or forfeitures made pursuant to Article 1 (commencing with Section 1720) of Chapter 1 of Part 7 of Division 2 of the Labor Code.

(l) Claims governed by the Pedestrian Mall Law of 1960 (Part 1 (commencing with Section 11000) of Division 13 of the Streets and Highways Code).

905.1. No claim is required to be filed to maintain an action against a public entity for taking of, or damage to, private property pursuant to Section 19 of Article I of the California Constitution.

910. A claim shall be presented by the claimant or by a person acting on his or her behalf and shall show all of the following:

(a) The name and post office address of the claimant.

(b) The post office address to which the person presenting the claim desires notices to be sent.

(c) The date, place and other circumstances of the occurrence or transaction which gave rise to the claim asserted.

(d) A general description of the indebtedness, obligation, injury, damage or loss incurred so far as it may be known at the time of presentation of the claim.

(e) The name or names of the public employee or employees causing the injury, damage, or loss, if known.

(f) The amount claimed if it totals less than ten thousand dollars ($10,000) as of the date of presentation of the claim, including the estimated amount of any prospective injury, damage, or loss, insofar as it may be known at the time of the presentation of the claim, together with the basis of computation of the amount claimed. If the amount claimed exceeds ten thousand dollars ($10,000), no dollar amount shall be included in the claim. However, it shall indicate whether the claim would be a limited civil case.

910.2. The claim shall be signed by the claimant or by some person on his behalf. Claims against local public entities for supplies, materials, equipment or services need not be signed by the claimant or on his behalf if presented on a billhead or invoice regularly used in the conduct of the business of the claimant.

910.4. The board shall provide forms specifying the information to be contained in claims against the state or a judicial branch entity. The person presenting a claim shall use the form in order that his or her claim is deemed in conformity with Sections 910 and 910.2. A claim may be returned to the person if it was not presented using the form. Any claim returned to a person may be resubmitted using the appropriate form.

910.6. (a) A claim may be amended at any time before the expiration of the period designated in Section 911.2 or before final action thereon is taken by the board, whichever is later, if the claim as amended relates to the same transaction or occurrence which gave rise to the original claim. The amendment shall be considered a part of the original claim for all purposes.

(b) A failure or refusal to amend a claim, whether or not notice of insufficiency is given under Section 910.8, shall not constitute a defense to any action brought upon the cause of action for which the claim was presented if the court finds that the claim as presented complied substantially with Sections 910 and 910.2 or a form provided under Section 910.4.

910.8. If, in the opinion of the board or the person designated by it, a claim as presented fails to comply substantially with the requirements of Sections 910 and 910.2, or with the requirements of a form provided under Section 910.4 if a claim is presented pursuant thereto, the board or the person may, at any time within 20 days after the claim is presented, give written notice of its insufficiency, stating with particularity the defects or omissions therein. The notice shall be given in the manner prescribed by Section 915.4. The board may not take action on the claim for a period of 15 days after the notice is given.

911. Any defense as to the sufficiency of the claim based upon a defect or omission in the claim as presented is waived by failure to give notice of insufficiency with respect to the defect or omission as provided in Section 910.8, except that no notice need be given and no waiver shall result when the claim as presented fails to state either an address to which the person presenting the claim desires notices to be sent or an address of the claimant.

911.2. (a) A claim relating to a cause of action for death or for injury to person or to personal property or growing crops shall be presented as provided in Article 2 (commencing with Section 915) not later than six months after the accrual of the cause of action. A claim relating to any other cause of action shall be presented as provided in Article 2 (commencing with Section 915) not later than one year after the accrual of the cause of action.

(b) For purposes of determining whether a claim was commenced within the period provided by law, the date the claim was presented to the California Victim Compensation and Government Claims Board is one of the following:

(1) The date the claim is submitted with a twenty-five dollar ($25) filing fee.

(2) If a fee waiver is granted, the date the claim was submitted with the affidavit requesting the fee waiver.

(3) If a fee waiver is denied, the date the claim was submitted with the affidavit requesting the fee waiver, provided the filing fee is paid to the board within 10 calendar days of the mailing of the notice of the denial of the fee waiver.

toga Nat. Bank v. Calistoga Vineyard Co. (App. 1935) 7 Cal.App.2d 65, 46 P.2d 246. Banks And Banking ⇐ 154(2)

180. Measure of damages, procedure

Adult tenants suing landlord and manufacturer of gas furnace for injuries sustained from escaping gas as result of alleged negligence and breach of warranty by defendants could not recover for injuries suffered more than one year prior to filing of complaint even though they were ignorant of source of such injuries. Howe v. Pioneer Mfg. Co. (App. 1 Dist. 1968) 68 Cal.Rptr. 617, 262 Cal.App.2d 330. Limitation Of Actions ⇐ 95(4.1)

181. Review, procedure

Although notice of appeal recited that plaintiff appealed from order sustaining defendant's demurrer, where notice was filed within 60 days after judgment of dismissal and defendant suffered no prejudice, whether or not error in referring to order sustaining demurrer was merely one in describing order or judgment, notice could be reasonably interpreted to apply to appealable judgment and appeal must be heard on merits. Vibert v. Berger (1966) 48 Cal.Rptr. 886, 64 Cal.2d 65, 410 P.2d 390. Appeal And Error ⇐ 419(1)

Where, in malpractice case against physician, plaintiff alleges that action was brought within year of discovery of alleged malpractice, although plaintiff must narrate circumstances concerning his delayed discovery in such detail that court may determine whether discovery was within time alleged but if allegations might be more explicit as to reason for not discovering cause sooner and it does not appear that complaint could not be amended to cure such objections, sustaining of demurrer without leave to amend would be reversible error. Hurlimann v. Bank of America Nat. Trust & Sav. Ass'n (App. 1956) 141 Cal.App.2d 801, 297 P.2d 682. Appeal And Error ⇐ 1040(3); Limitation Of Actions ⇐ 179(2); Pleading ⇐ 225(1)

Where defendant in alienation of affections action pleaded § 339 which was not applicable, objection to manner of pleading limitation was waived by failure of plaintiff to object to pleading at trial. Tofte v. Tofte (App. 2 Dist. 1936) 12 Cal.App.2d 111, 54 P.2d 1137. Appeal And Error ⇐ 193(4)

Appellate court could not conclude that libel of March 12, 1928 alleged in amended complaint filed September 29, 1930, was not barred by this section because original complaint, filed February 26, 1929, counted upon same libel, where record did not disclose contents of original complaint. Moore v. U.S. Fidelity & Guaranty Co. (App. 1932) 122 Cal.App. 205, 9 P.2d 562. Limitation Of Actions ⇐ 202(2)

182. Remand, procedure

Where issue of statute of limitation was not and could not have been considered by the appellate department of the superior court because defendants did not raise issue until their pleading of it as a defense in their answers to amended complaint following remand of action for further proceedings by appellate department of the superior court, defendants were not precluded in proceedings upon remand from asserting that Penal Code section involved imposed a penalty of forfeiture and that consequently one year statute of limitations was applicable to the action. San Diego County v. Milotz (1956) 46 Cal.2d 761, 300 P.2d 1. Appeal And Error ⇐ 1195(1)

§ 340.1. Childhood sexual abuse; certificates of merit executed by attorney; violations; failure to file; name designation of defendant; periods of limitation; legislative intent

(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.

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

(2) This subdivision does not apply if the person or entity knew or had reason to know, or was otherwise on notice, of any unlawful sexual conduct by an employee, volunteer, representative, or agent, and failed to take reasonable steps, and to implement reasonable safeguards, to avoid acts of unlawful sexual conduct in the future 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. For purposes of this subdivision, providing or requiring counseling is not sufficient, in and of itself, to constitute a reasonable step or reasonable safeguard.

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

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

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

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

(e) "Childhood sexual abuse" as used in this section includes any act committed against the plaintiff that occurred when the plaintiff was under the age of 18 years and that 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. Nothing in this subdivision limits the availability of causes of action permitted under subdivision (a), including causes of action against persons or entities other than the alleged perpetrator of the abuse.

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

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

(h) 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 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, that the practitioner is not treating and has not treated the plaintiff, and that the practitioner 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.

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

(j) In any action subject to subdivision (g), no defendant may be served, and the duty to serve a defendant with process does not attach, until the court has reviewed the certificates of merit filed pursuant to subdivision (h) with respect to that defendant, 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 against that defendant. At that time, the duty to serve that defendant with process shall attach.

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

(*l*) 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.

(m) In any action subject to subdivision (g), 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.

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

(1) The application shall 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 statement of the witness 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.

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

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

(o) The court shall review the application and the certificate of corroborative fact in camera and, based solely on the certificate and any reasonable inferences to be drawn from the certificate, 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.

(p) The court shall 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 pursuant to subdivision (n).

(q) 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 (h) to execute the certificate to reveal the name, address, and telephone number of the person or persons consulted with pursuant to subdivision (h) 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 camera and in the absence of the moving party. 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.

(r) 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, 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.

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

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

(u) The amendments to subdivision (a) of this section, enacted at the 1998 portion of the 1997–98 Regular Session, 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. Nothing in this subdivision is intended to revive actions or causes of action as to which there has been a final adjudication prior to January 1, 1999.

(Added by Stats.1986, c. 914, § 1. Amended by Stats.1990, c. 1578 (S.B.108), § 1; Stats.1994, c. 288 (A.B.2846), § 1; Stats.1998, c. 1032 (A.B.1651), § 1; Stats.1999, c. 120 (S.B.674), § 1; Stats.2002, c. 149 (S.B.1779), § 1.)

Historical and Statutory Notes

The 1990 amendment rewrote this section, which had read:

"(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 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."

The 1994 amendment, in subd. (a), substituted "period expires" for "occurs" following "caused by the sexual abuse, whichever"; in the first sentence of subd. (e)(1), deleted "licensed" preceding "mental health practitioner"; in subd. (e)(2), inserted "that the practitioner is not treating and has not treated the plaintiff, and that the practitioner" following "not a party to the action,"; in the first sentence of subd. (g), substituted "A complaint subject to subdivision (d) may not be served upon" for "A complaint filed pursuant to subdivision (d) may not name"; in the second sentence of subd. (g),

substituted "served upon" for "amended to name"; in the third sentence of subd. (g), substituted "serve" for "give notice to", and inserted "with process" following "defendants"; inserted subd. (j), requiring defendants be named as "Doe" until collaborative facts have been shown; inserted subd. (k), regarding application to amend the complaint and substitute defendant's name; inserted subd. (*l*), providing for the court's review of the application to amend the complaint; inserted subd. (m) requiring confidentiality of collaborative facts; redesignated former subd. (j) as subd. (n) and rewrote the second sentence which read: "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"; redesignated former subd. (k) as subd. (o), and inserted ", 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." following "on or after January 1, 1991"; deleted former subd. (*l*); inserted subd. (p) declaring legislative intent; and made nonsubstantive changes throughout. Prior to amendment, subd. (*l*) read:

"(*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.";

Stats.1998, c. 1032, § 1, substituted "an action" for "a civil action", added "for any of the following actions:", and added paragraphs (1) to (3) that follow in subd. (a); added new subds (b) and (r) and redesignated other subdivisions and references thereto accordingly; added the concluding sentence in subd. (c); rewrote subds. (f) to (j); substituted "statement" for "testimony", and inserted "certificate shall declare that the attorney has personal knowledge of the witness's statement or of the contents of the document, and the" in subd. (*l*)(1). Prior to amendment subds. then designated as subds. (f) to (j) provided:

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

"(g) A complaint subject to subdivision (d) may not be served upon 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 served upon the defendant or defendants. The duty to serve the defendant or defendants with process 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) In any action subject to subdivision (d), the defendant or defendants may not 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 any defendant alleged to have committed an act or acts of childhood sexual abuse against the plaintiff."

Stats.1999, c. 120, added subd. (s), relating to the 1998 amendments.

Stats.2002, c. 149 (S.B.1779), in subd. (b), designated the existing paragraph as par. (1) and added a new par. (2); inserted new subds. (c) and (d), redesignated as subds. (e) to (u) former subds. (c) to (s), and modified internal references throughout the section accordingly; in subd. (j), substituted "and the duty to serve a defendant with process does not attach" for "nor shall the duty to serve a defendant with process attach"; in subd. (n), made a nonsubstantive change in the introductory paragraph, in the third sentence of par. (1), substituted "statement of the witness" for "witness's statement", and, in par. (3), deleted "thereof" prior to "provided to the court"; in subd. (o), substituted "from the certificate" for "therefrom" following "reasonable inferences to be drawn"; and, made a nonsubstantive change in subd. (p).

Cross References

"Action", defined, see Code of Civil Procedure § 22.
Attorney's fees and costs, generally, see Code of Civil Procedure § 1021.
Attorneys, rules of professional conduct, see California Rules of Court, Rule 1–100 et seq.
Attorneys, State Bar Act, see Business and Professions Code § 6000.
Burden of proof, generally, see Evidence Code § 500 et seq.
Child abuse prevention coordinating council act, general provisions, see Welfare and Institutions Code § 18980 et seq.
"Civil action", defined, see Code of Civil Procedure § 30.
Civil action, origin, see Code of Civil Procedure § 25.
Classes of judicial remedies, see Code of Civil Procedure § 21.

SENATE COMMITTEE ON JUDICIARY
Ellen M. Corbett, Chair

BACKGROUND INFORMATION REQUEST

his bill has been referred to the Senate Judiciary Committee. Please forward he following information to the Committee, Room 2187 in the Capitol, **AS SOON S POSSIBLE** (by e-mail, fax, or hand delivery). Your bill will not be set for hearing until the Committee has received the background information. Use dditional pages as necessary. Please call the Committee Assistant at 51-4113 if you have any questions about this request.

easure: SB 1339

uthor : Senator Simitian ANNETTE PORINI

taff person to contact (phone number, cell number, after hours contact umber and email address):

1. Origin of the bill:

   a. Who is the source of the bill? What person, organization, or governmental entity requested introduction? Please provide contact information.
   Senator Simitian

   b. Has a similar bill been introduced this legislative session? If so, please identify the author, bill number and disposition of the bill.
   No

   c. Has a similar bill been introduced in a previous legislative session? If so, please identify the session, author, bill number and disposition of the bill.
   No

   d. Has there been an interim committee report or informational hearing on the bill? If so, please identify the report or informational hearing and attach any information related to the report or informational hearing.
   No

2. Describe in detail existing law on this issue.
The Tort Claims Act requires that a claim against a public entity be filed not later than 6 months after the accrual of the cause of action. This 6 month limit has barred claims that would have been filed by a minor who did not report the abuse until years later.

10. Please identify parties that may have concerns in opposition to the bill, describe those concerns, and state your response to those concerns.
CA School Boards Assoc. — This will allow claims to be filed against district and potentially result in ~~monetary~~ large dollar losses to districts.

11. Please attach copies of letters of support or opposition from any group, organization, or governmental agency who has contacted you either in support or opposition to the bill as soon as possible, but no later than 5 p.m. of the Thursday before the hearing.

12. If you plan substantive amendments to this bill prior to the hearing, please explain briefly the substance of the amendments to be prepared.

PLEASE NOTE COMMITTEE POLICY ON AUTHOR'S AMENDMENTS.

13. List the witnesses you plan to have testify.
Unknowns at this time.

COMMITTEE POLICY ON AUTHOR'S AMENDMENTS

UTHOR'S AMENDMENTS MUST BE SUBMITTED IN LEGISLATIVE COUNSEL FORM TO THE OMMITTEE ASSISTANT NO LATER THAN TWO WEEKS (BY 1 P.M.) BEFORE THE SCHEDULED OMMITTEE HEARING.

F THIS DEADLINE IS NOT MET BY THE AUTHOR, YOUR BILL WILL BE PUT OVER TO ALLOW HE COMMITTEE MEMBERS AND THE PUBLIC SUFFICIENT TIME TO REVIEW AN ANALYSIS HAT REFLECTS THE AMENDED VERSION OF THE BILL. THE AUTHOR WILL BE RESPONSIBLE OR OBTAINING ANY NECESSARY RULE WAIVERS TO HEAR THE BILL AT A SUBSEQUENT EARING.

ETURN THIS FORM TO: SENATE COMMITTEE ON JUDICIARY
Phone (916) 651-4113
Fax (916) 445-8390
e-mail to: Roseanne.Moreno@sen.ca.gov

3. What does your bill do? Describe in detail.

4. What is the problem or deficiency in the present law which this bill seeks to remedy? Describe in detail.
The 6 month restriction in the current Tort Claims Act bars the filing of a claim by a victim who does not file charges for several yrs. In the recent Palo Alto case, the victim was 13yrs old when the abuse occurred

5. Please summarize any studies, reports, statistics or other evidence showing that the problem exists and that the bill will address the problem.
I have provided the attached articles and court decision to Alex

6. As to Questions 2, 4 and 5, please attach copies of any relevant supplemental or additional background materials.

7. Please identify and summarize all similar or related pending federal legislation (see http://thomas.loc.gov/home/thomas2.html) and any bills or existing laws you are aware of in other states.
(-)

8. Please summarize and show the results (by citation) of a computer search regarding all existing California statutes (http://www.leginfo.ca.gov/calaw.html) and all existing federal statutes (http://www4.law.cornell.edu/uscode/) relevant to this bill.
Attached

9. Please identify and describe any relevant state and/or federal court decisions.
Linda Swirt v Vista Unified School Dist Cal Supreme Crt (attached)

*42 Cal. 4th 201, *; 164 P.3d 630, **;*
*64 Cal. Rptr. 3d 210, ***; 2007 Cal. LEXIS 8906*

LINDA SHIRK, Plaintiff and Appellant, v. VISTA UNIFIED SCHOOL DISTRICT, Defendant and Respondent.

S133687

SUPREME COURT OF CALIFORNIA

42 Cal. 4th 201; 164 P.3d 630; 64 Cal. Rptr. 3d 210; 2007 Cal. LEXIS 8906

August 20, 2007, Filed

SUBSEQUENT HISTORY: Time for Granting or Denying Rehearing Extended Shirk (Linda) v. Vista Unified School District, 2007 Cal. LEXIS 9485 (Cal., Aug. 30, 2007)
Rehearing denied by Shirk v. Vista Unified School District, 2007 Cal. LEXIS 13190 (Cal., Oct. 10, 2007)
Modified by Shirk v. Vista Unified School Dist., 2007 Cal. LEXIS 10875 (Cal., Oct. 10, 2007)
Modified by Shirk v. Vista Unified School District, 2007 Cal. LEXIS 13191 (Cal., Oct. 10, 2007)

PRIOR HISTORY:
Court of Appeal of California, Fourth Appellate District, Division One, No. D043697. Superior Court of San Diego County, No. GIC818294, S. Charles Wickersham.
Shirk v. Vista Unified School Dist., 128 Cal. App. 4th 156, 26 Cal. Rptr. 3d 771, 2005 Cal. App. LEXIS 533 (Cal. App. 4th Dist., 2005)

CASE SUMMARY:

PROCEDURAL POSTURE: Plaintiff accuser sued defendant school district, alleging that the district knew or should have known that a teacher employed by the district was a sexual predator who engaged in inappropriate sexual misconduct with the accuser. The trial court sustained the district's demurrer to the accuser's complaint without leave to amend. The California Court of Appeal, Fourth Appellate District, Division One, reversed. The district petitioned for review.

OVERVIEW: The teacher and the accuser had engaged in sexual conduct from 1978 to 1979. The accuser argued that she had timely presented her government tort claim to the district on September 12, 2003, when her statutory cause of action under Code Civ. Proc., § 340.1, subd. (c), accrued because it was only then that she discovered the cause of her adult psychological injuries. The court concluded that as of January 1, 2003, the accuser's causes of action against the district were barred by expiration of the time for presenting a claim to the district. Although § 340.1, subd. (c), revived for the calendar year 2003 those causes of action for childhood sexual abuse that would otherwise have been barred "solely" by expiration of the applicable statute of limitations, that provision did not apply because the accuser failed to first present a timely claim to the district, as required by Gov. Code, § 911.2. The court rejected the accuser's contention that her duty to present a claim did not arise until September 12, 2003, when at the age of 41 she first learned that her adult-onset emotional problems resulted from the teacher's molestation of her as a teenager, some 25 years earlier.

OUTCOME: The judgment of the intermediate appellate court was reversed.

CORE TERMS: school district, cause of action, public entity, sexual abuse, causes of action, ants</, statute of limitations, presentation, revival, claims statute, childhood, accrual, deadline, teacher, accrue, molestation, accrued, timely claim, psychological injury, discovery, lawsuit, revived, demurrer, delayed, sexual conduct, sexual molestation, statutory language, reviving, expired", com

LEXISNEXIS(R) HEADNOTES

Governments > Legislation > Statutes of Limitations > Time Limitations
Torts > Procedure > Statutes of Limitations > General Overview
Torts > Public Entity Liability > Liability > Claim Presentation > General Overview

HN1 Code Civ. Proc., § 340.1, subd. (c), which revives for the calendar year 2003 those causes of action for childhood sexual molestation that would otherwise have been barred "solely" by expiration of the applicable statute of limitations, does not apply when a plaintiff suing a public entity has failed to first present a timely claim to the entity, as required by the government claims statute, Gov. Code, § 911.2.

Civil Procedure > Pleading & Practice > Defenses, Demurrers, & Objections > Demurrers
Civil Procedure > Appeals > Standards of Review > General Overview

HN2 Where an appeal arises from a ruling on a demurrer, an appellate court treats the demurrer as admitting all properly pleaded material facts.

Governments > Legislation > Statutes of Limitations > Extension & Revival
Torts > Procedure > Statutes of Limitations > General Overview

HN3 In 2002, the legislature amended Code Civ. Proc., § 340.1, by reviving for the calendar year 2003 those causes of action based on childhood sexual abuse brought against a person or an entity that had reason to know or was on notice, of any unlawful sexual conduct by an employee, volunteer, representative, or agent, and failed to take reasonable steps, and to implement reasonable safeguards, to avoid acts of unlawful sexual conduct. § 340.1, subd. (b)(2). This change revives for the year 2003 those causes of action brought by plaintiffs over the age of 26 years against nonabuser persons or entities that would otherwise have been time barred as of January 1, 2003, solely because the applicable statute of limitations has or had expired as of that date. § 340.1, subd. (c).

Governments > Legislation > Statutes of Limitations > Time Limitations
Torts > Procedure > Statutes of Limitations > Accrual of Actions > General Overview
Torts > Public Entity Liability > Liability > Claim Presentation > Time Limitations

HN4 Before suing a public entity, a plaintiff must present a timely written claim for damages to the entity. Gov. Code, § 911.2. In 1979 and 1980, a claim relating to a cause of action for injury to person had to be presented to a government entity not later than the 100th day after the accrual of the cause of action. Since 1988, such claims must be presented to the government entity no later than six months after the cause of action accrues. Gov. Code, § 911.2. Accrual of the cause of action for purposes of the government claims statute is the date of accrual that would pertain under the statute of limitations applicable to a dispute between private litigants. Gov. Code, § 901.

Civil Procedure > Pleading & Practice > Defenses, Demurrers, & Objections > Demurrers
Governments > Legislation > Statutes of Limitations > Time Limitations
Torts > Procedure > Statutes of Limitations > General Overview
Torts > Public Entity Liability > Liability > Claim Presentation > Time Limitations

HN5 Timely claim presentation is not merely a procedural requirement, but is a condition precedent to the plaintiff's maintaining an action against the defendant,

and thus an element of the plaintiff's cause of action. Complaints that do not allege facts demonstrating either that a claim was timely presented or that compliance with the claims statute is excused are subject to a general demurrer for not stating facts sufficient to constitute a cause of action.

Governments > Legislation > Statutes of Limitations > Time Limitations
Torts > Procedure > Statutes of Limitations > General Overview
Torts > Public Entity Liability > Liability > Claim Presentation > Time Limitations
HN6 Only after a public entity's board has acted upon or is deemed to have rejected the claim may the injured person bring a lawsuit alleging a cause of action in tort against the public entity. Gov. Code, §§ 912.4, 945.4. The deadline for filing a lawsuit against a public entity, as set out in the government claims statute, is a true statute of limitations defining the time in which, after a claim presented to the government has been rejected or deemed rejected, the plaintiff must file a complaint alleging a cause of action based on the facts set out in the denied claim. Code Civ. Proc., § 342; Gov. Code, § 945.6.

Governments > Legislation > Statutes of Limitations > Time Limitations
Torts > Procedure > Statutes of Limitations > Accrual of Actions > General Overview
HN7 Generally, a cause of action for childhood sexual molestation accrues at the time of molestation.

Governments > Legislation > Interpretation
HN8 A court applies well-established principles of statutory construction in seeking to determine the legislature's intent in enacting a statute so that the court may adopt the construction that best effectuates the purpose of the law. The court begins with the statutory language because it is generally the most reliable indication of legislative intent. If the statutory language is unambiguous, the court presumes the legislature meant what it said, and the plain meaning of the statute controls. But if the statutory language may reasonably be given more than one interpretation, courts may consider various extrinsic aids, including the purpose of the statute, the evils to be remedied, the legislative history, public policy, and the statutory scheme encompassing the statute.

Governments > Legislation > Statutes of Limitations > Extension & Revival
Torts > Procedure > Statutes of Limitations > General Overview
HN9 See Code Civ. Proc., § 340.1, subd. (c).

Governments > Legislation > Statutes of Limitations > Extension & Revival
Torts > Procedure > Statutes of Limitations > General Overview
HN10 Code Civ. Proc., § 340.1, subd. (c), expressly limits revival of childhood sexual abuse causes of action to those barred solely by expiration of the applicable statute of limitations.

Governments > Legislation > Statutes of Limitations > Time Limitations
HN11 The term "statute of limitations" is the collective term applied to acts or parts of acts that prescribe the periods beyond which a plaintiff may not bring a cause of action. Civil actions, without exception, can only be commenced within the periods prescribed after the cause of action shall have accrued. Code Civ. Proc., § 312.

Governments > Legislation > Effect & Operation > Amendments
HN12 The legislature is deemed to be aware of existing statutes, and a court assumes that the legislature amends a statute in light of those preexisting statutes.

Governments > Legislation > Statutes of Limitations > Time Limitations
Torts > Procedure > Statutes of Limitations > General Overview
Torts > Public Entity Liability > Liability > Claim Presentation > Time Limitations

HN13 ± Before a plaintiff can bring a cause of action against a public entity, a timely claim must be presented to the entity; when no claim is timely presented, however, such a cause of action is not barred "solely" by lapse of the applicable statute of limitations.

SUMMARY:

CALIFORNIA OFFICIAL REPORTS SUMMARY

Plaintiff sued a school district, alleging that the district knew or should have known that a teacher employed by the district was a sexual predator who engaged in inappropriate sexual misconduct with plaintiff from 1978 to 1979. Plaintiff argued that she had timely presented her government tort claim to the district on September 12, 2003, when her statutory cause of action under Code Civ. Proc., § 340.1, subd. (c), accrued because it was only then that she discovered the cause of her adult psychological injuries. The trial court sustained the district's demurrer to plaintiff's complaint without leave to amend on the ground that plaintiff's negligence causes of action were barred by her belated claim presentation. (Superior Court of San Diego County, No. GIC818294, S. Charles Wickersham, Judge.) The Court of Appeal, Fourth Dist., Div. One, No. D043697, reversed the trial court's judgment of dismissal, concluding that plaintiff had timely presented her government tort claim to the district on September 12, 2003, when her statutory cause of action under § 340.1 accrued.

The Supreme Court reversed the judgment of the Court of Appeal. The court concluded that as of January 1, 2003, plaintiff's causes of action against the district were barred by expiration of the time for presenting a claim to the district. Although Code Civ. Proc., § 340.1, subd. (c), revived for the calendar year 2003 those causes of action for childhood sexual abuse that would otherwise have been barred solely by expiration of the applicable statute of limitations, that provision did not apply because plaintiff failed to first present a timely claim to the district, as required by the government claims statute (Gov. Code, former § 911.2). The court rejected plaintiff's contention that her duty to present a claim did not arise until September 12, 2003, when at the age of 41 she first learned that her adult-onset emotional problems resulted from the teacher's molestation of her as a teenager, some 25 years earlier. (Opinion by Kennard, J., with George, C. J., Baxter, Chin, Moreno, and Corrigan, JJ., concurring. Dissenting opinion by Werdegar, J. (see p. 214).) **[*202]**

HEADNOTES

CALIFORNIA OFFICIAL REPORTS HEADNOTES

CA(1) ± **(1) Limitation of Actions § 26—Torts—Childhood Sexual Abuse—Revival—Vicarious Liability.**—In 2002, the Legislature amended Code Civ. Proc., § 340.1, by reviving for the calendar year 2003 those causes of action based on childhood sexual abuse brought against a person or an entity that had reason to know or was on notice, of any

unlawful sexual conduct by an employee, volunteer, representative, or agent, and failed to take reasonable steps, and to implement reasonable safeguards, to avoid acts of unlawful sexual conduct (§ 340.1, subd. (b)(2)). This change revives for the year 2003 those causes of action brought by plaintiffs over the age of 26 years against nonabuser persons or entities that would otherwise have been time-barred as of January 1, 2003, solely because the applicable statute of limitations has or had expired as of that date (§ 340.1, subd. (c)).

CA(2)**(2) Government Tort Liability § 25—Actions—Limitations—Accrual.**—Before suing a public entity, a plaintiff must present a timely written claim for damages to the entity (Gov. Code, former § 911.2). Such claims must be presented to the government entity no later than six months after the cause of action accrues (Gov. Code, former § 911.2). Accrual of the cause of action for purposes of the government claims statute is the date of accrual that would pertain under the statute of limitations applicable to a dispute between private litigants (Gov. Code, § 901).

CA(3)**(3) Government Tort Liability § 25—Actions—Limitations—Timely Claim Presentation—Demurrer.**—Timely claim presentation is not merely a procedural requirement, but is a condition precedent to the plaintiff's maintaining an action against the defendant, and thus an element of the plaintiff's cause of action. Complaints that do not allege facts demonstrating either that a claim was timely presented or that compliance with the claims statute is excused are subject to a general demurrer for not stating facts sufficient to constitute a cause of action.

CA(4)**(4) Government Tort Liability § 25—Actions—Limitations—Rejection of Claim.**—Only after a public entity's board has acted upon or is deemed to have rejected the claim may the injured person bring a lawsuit alleging a cause of action in tort against the public entity (Gov. Code, §§ 912.4, 945.4). The deadline for filing a lawsuit against a public entity, as set out in the government claims statute, is a true statute of limitations defining the time in which, after a claim presented to the **[*203]** government has been rejected or deemed rejected, the plaintiff must file a complaint alleging a cause of action based on the facts set out in the denied claim (Code Civ. Proc., § 342; Gov. Code, § 945.6).

CA(5)**(5) Limitation of Actions § 26—Torts—Childhood Sexual Abuse—Accrual.**—Generally, a cause of action for childhood sexual molestation accrues at the time of molestation.

CA(6)**(6) Statutes § 21—Construction—Legislative Intent—Ambiguity.**—A court applies well-established principles of statutory construction in seeking to determine the Legislature's intent in enacting a statute so that the court may adopt the construction that best effectuates the purpose of the law. The court begins with the statutory language because it is generally the most reliable indication of legislative intent. If the statutory language is unambiguous, the court presumes the Legislature meant what it said, and the plain meaning of the statute controls. But if the statutory language may reasonably be given more than one interpretation, courts may consider various extrinsic aids, including the purpose of the statute, the evils to be remedied, the legislative history, public policy, and the statutory scheme encompassing the statute.

CA(7)**(7) Limitation of Actions § 26—Torts—Childhood Sexual Abuse—Revival.**—Code Civ. Proc., § 340.1, subd. (c), expressly limits revival of childhood sexual abuse causes of action to those barred solely by expiration of the applicable statute of limitations.

CA(8)**(8) Limitation of Actions § 1—Statute of Limitations—Accrual.**—The term "statute of limitations" is the collective term applied to acts or parts of acts that prescribe the periods beyond which a plaintiff may not bring a cause of action. Civil actions, without exception, can only be commenced within the periods prescribed after the cause of action

shall have accrued (Code Civ. Proc., § 312).

CA(9)±**(9) Statutes § 13—Amendment—Preexisting Laws—Legislative Awareness.**—The Legislature is deemed to be aware of existing statutes, and a court assumes that the Legislature amends a statute in light of those preexisting statutes.

CA(10)±**(10) Government Tort Liability § 25—Actions—Limitations—Timely Claim Presentation—Childhood Sexual Abuse—Teacher—School District.**—Before a plaintiff may bring a cause of action against a public entity, a timely claim must be presented to the entity; when no claim is **[*204]** timely presented, however, such a cause of action is not barred solely by lapse of the applicable statute of limitations. Thus, in a case in which plaintiff sued a school district because a teacher employed by the district had sexually molested plaintiff as a teenager, some 25 years earlier, plaintiff's causes of action against the district were barred because plaintiff failed to first present a timely claim to the district, as required by Gov. Code, § 911.2.

[Cal. Forms of Pleading and Practice (2007) ch. 1, New Developments, § 1.87; 1 Kiesel et al., Matthew Bender Practice Guide: Cal. Pretrial Civil Procedure (2007) § 4.09; 3 Witkin, Cal. Procedure (4th ed. 1996) Actions, § 434.]

COUNSEL: Ronquillo & Corrales and Manuel Corrales, Jr., for Plaintiff and Appellant.

Zalkin & Zimmer, Irwin M. Zalkin, Devin M. Storey; Kiesel, Boucher & Larson and Raymond P. Boucher as Amici Curiae on behalf of Plaintiff and Appellant.

Stutz, Artiano, Shinoff & Holtz, Daniel R. Shinoff, Jack M. Sleeth, Jr., William C. Pate, Jeffrey A. Morris and Paul V. Carelli IV for Defendant and Respondent.

Hennigan, Bennett & Dorman, J. Michael Hennigan and Lee W. Potts for Roman Catholic Archbishop of Los Angeles as Amicus Curiae on behalf of Defendant and Respondent.

Jennifer B. Henning for California State Association of Counties and League of California Cities as Amici Curiae on behalf of Defendant and Respondent.

JUDGES: Kennard, J., with George, C. J., Baxter, Chin, Moreno, and Corrigan, JJ., concurring. Dissenting opinion by Werdegar, J.

OPINION BY: Kennard

OPINION

[*213]** **[**632]** **KENNARD, J.**—In 2002, the Legislature added a statutory provision that "revived" for the calendar year 2003 those causes of action for childhood sexual molestation that would otherwise have been barred "solely" by expiration of the applicable statute of limitations. (Code Civ. Proc., § 340.1, **[*205]** subd. (c).) [1] HN1↑Does that provision also apply when a plaintiff suing a public entity has failed to first present a timely claim to the entity, as required by the government claims statute (Gov. Code, § 911.2)? Our answer is "no."

FOOTNOTES

1 Undesignated statutory references are to the Code of Civil Procedure.

I

HN2 Because this appeal arises from a ruling on a demurrer, we treat the demurrer as admitting all properly pleaded material facts. (*Fox v. Ethicon Endo-Surgery, Inc.* (2005) 35 Cal.4th 797, 810 [27 Cal. Rptr. 3d 661, 110 P.3d 914]; *Blank v. Kirwan* (1985) 39 Cal.3d 311, 318 [216 Cal. Rptr. 718, 703 P.2d 58].) The facts set out here are those alleged in plaintiff's complaint.

Plaintiff Linda Shirk was born in June 1962. In September 1977, when she was 15 years old, the Vista Unified School District (School District) assigned her to an English class taught by Jeffrey Paul Jones. Jones began flirting with her on the first day of school; in May 1978, Jones initiated their first sexual encounter. In the ensuing months, Jones and plaintiff engaged in sexual conduct both on and off school premises. Their last sexual contact occurred in November 1979. In the following months plaintiff neither notified the School District of her abuse nor presented a claim to it.

In June 2001, when plaintiff's 15-year-old daughter was attending Vista High School, plaintiff began to encounter teacher Jones at high school band tournaments. That same month, having become "very upset" by her long-ago molestation by Jones, she filed a report with the local sheriff's office. In February 2002, she met with Jones and surreptitiously recorded a conversation in which he admitted to sexual conduct with her and with another student.

On September 12, 2003, a licensed mental health practitioner interviewed plaintiff and concluded that she was still suffering psychological injury from her sexual abuse by Jones. That same day, plaintiff presented a claim to the School District for personal injury stemming from her sexual abuse by its employee Jones. When, as here, the defendant is a public entity, such claim presentation is required under the government claims statute (Gov. Code, § 900 et seq.), sometimes referred to as the Tort Claims Act. Government Code section 911.2 requires timely notice to a public entity before commencing legal action against it. **[*206]**

On September 23, 2003, plaintiff, then 41 years old, sued teacher Jones and the School District. Pertinent here are two causes of action for negligent tortious conduct against the School District, alleging that it "knew or should have known" that Jones was "a sexual predator" who "was engaging in inappropriate sexual misconduct" with his students, including plaintiff. **[***214]** On a form complaint, plaintiff entered the date of the act complained of as "Sept. 12, 2003 (per CCP 340.1(c))" and she checked two boxes indicating compliance with the government claims statute.

The School District demurred to plaintiff's complaint, asserting that the negligence causes of action were barred by her belated claim presentation. The trial court agreed; it concluded that plaintiff's causes of action accrued as of the last act of sexual molestation, which was in November 1979, but that they were barred because of plaintiff's failure to first present a claim to the School District "at some point in 1980," as statutorily required. Accordingly, the trial court sustained the demurrer without leave to amend, and it entered a judgment of dismissal as to the School District.

Plaintiff appealed, arguing that she had "timely presented her government tort claim" to the School District on September 12, 2003, when her statutory cause of action under subdivision (c) of section 340.1 accrued, because it was only then that "she discovered the cause of her adult psychological injuries." The Court of Appeal agreed. It reasoned **[**633]** that the Legislature's addition in 1998 of provisions making entities liable for sexual abuse committed by their employees (§ 340.1, subd. (a)(2) & (3)) coupled with its failure "to make special rules regarding the application of [government] claims requirements," indicated legislative intent not to differentiate between public entity defendants and private entity defendants.

Accordingly, the Court of Appeal held that in 2002, when the Legislature enacted the revival provision to open a one-year window for childhood sexual abuse plaintiffs to bring statutorily lapsed causes of action, it also extended the government claims statute's deadline for presenting a claim to a public entity defendant. The Court of Appeal reasoned that, because plaintiff only discovered on September 12, 2003, that the cause of her psychological injury was the teacher's sexual abuse of her more than two decades earlier, the claim she presented to the School District on that same day was timely.

We granted the School District's petition for review to resolve a conflict between the decision of the Court of Appeal in this case and a nearly contemporaneous decision of a different Court of Appeal in *County of Los Angeles v. Superior Court* (2005) 127 Cal.App.4th 1263, 1269 [26 Cal. Rptr. 3d **[*207]** 445] (*County of Los Angeles*). That case held that the Legislature's 2002 amendment of section 340.1 did not reflect the Legislature's intent "to excuse victims of childhood sexual abuse" from complying with the government claims statute when suing a public entity defendant. We reach the same conclusion here, thus reversing the Court of Appeal in this case.

II

Below we summarize the pertinent provisions of section 340.1, which sets forth deadlines for bringing a lawsuit for childhood sexual abuse, and Government Code section 911.2, which sets forth a deadline for presenting a claim to a public entity and is a prerequisite to the filing of a lawsuit against the entity.

A. Section 340.1

At the time of plaintiff's sexual molestation in 1978 to 1979, the applicable statute of limitations for sexual molestation was one year. (Former § 340, subd. (3).) In 1986, the Legislature enacted section 340.1, which expanded to three years the statute of limitations for sexual abuse by a relative or household member of a child under 14 years of age. (Former § 340.1, added by Stats. 1986, ch. 914, § 1, pp. 3165–3166.) **[***215]**

In 1990, the Legislature amended section 340.1 to make it applicable to anyone who sexually abused a child, regardless of that person's relationship to, or residence with, the victim. It also extended the statute of limitations to eight years from the date the victim "attains the age of majority," or three years from the date the victim "discovers or reasonably should have discovered that psychological injury or illness occurring after the age of majority was caused by the sexual abuse." (§ 340.1, subd. (a).) A plaintiff over the age of 26 years had to provide a certificate of merit from a mental health practitioner. (Former § 340.1, subds. (a), (b), & (d), as amended by Stats. 1990, ch. 1578, § 1, pp. 7550–7552.)

In 1994, the Legislature again amended section 340.1 by expressly providing that the 1990 amendments "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." (Former § 340.1, subd. (*o*), added by Stats. 1994, ch. 288, § 1, p. 1930.) **[*208]**

In 1998, there was another amendment to section 340.1, acknowledging the liability of a "person or entity" whose negligent or intentional acts were a "legal cause" of a child's sexual abuse. (§ 340.1, subd. (a)(2) & (3), added by Stats. 1998, ch. 1032, § 1.) Causes of action against such persons or entities had to be brought before the victim's 26th birthday. (§ 340.1, subd. (b)(1), amended by Stats. 1998, ch. 1032, § 1.)

In 1999, the Legislature again amended section 340.1, clarifying that its 1998 changes **[**634]** relating to the liability of nonabuser persons or entities were prospective—that is,

its provisions applied only to actions begun on or after January 1, 1999, or if filed before that time, actions still pending as of that date, "including any action or causes of action which would have been barred by the laws in effect prior to January 1, 1999." (§ 340.1, subd. (u), added by Stats. 1999, ch. 120, § 1.)

HN3[↑]CA(1)[↑](1) In 2002, the Legislature yet again amended section 340.1, this time reviving for the calendar year 2003 those causes of action based on childhood sexual abuse brought against a person or an entity that had "reason to know" or was "on notice, of any unlawful sexual conduct by an employee, volunteer, representative, or agent, and failed to take reasonable steps, and to implement reasonable safeguards, to avoid acts of unlawful sexual conduct." (§ 340.1, subd. (b)(2), added by Stats. 2002, ch. 149, § 1.) Thus, this change revived for the year 2003 those causes of action brought by plaintiffs over the age of 26 years against *nonabuser* persons or entities that would otherwise have been time-barred as of January 1, 2003, "*solely because the applicable statute of limitations has or had expired*" as of that date. (§ 340.1, subd. (c), italics added.)

B. *Government Claims Statute*

HN4[↑]CA(2)[↑](2) Before suing a public entity, the plaintiff must present a timely written claim for damages to the entity. (Gov. Code, § 911.2; *State of California v. Superior Court* (*Bodde*) (2004) 32 Cal.4th 1234, 1239 [13 Cal. Rptr. 3d 534, 90 P.3d 116] (*Bodde*); but see Gov. Code, § 905 [itemized exceptions not relevant here].) In 1979 and 1980, a claim relating to a cause of action for "injury to person" had to be presented to a government entity "not later than the 100th day after the accrual of the cause of action." (Gov. Code, § 911.2, added by Stats. 1963, ch. 1715, § 1, p. 3376.) Since 1988, such claims must be presented to the government entity no later than six **[***216]** months after the cause of action accrues. (Gov. Code, former § 911.2, as amended by Stats. 1987, ch. 1208, § 3, p. 4306.) Accrual of the cause of **[*209]** action for purposes of the government claims statute is the date of accrual that would pertain under the statute of limitations applicable to a dispute between private litigants. (Gov. Code, § 901; *Whitfield v. Roth* (1974) 10 Cal.3d 874, 884–885 [112 Cal. Rptr. 540, 519 P.2d 588]; *Jefferson v. County of Kern* (2002) 98 Cal.App.4th 606, 615 [120 Cal. Rptr. 2d 1]; *Dujardin v. Ventura County Gen. Hosp.* (1977) 69 Cal. App. 3d 350, 355 [138 Cal. Rptr. 20].)

HN5[↑]CA(3)[↑](3) Timely claim presentation is not merely a procedural requirement, but is, as this court long ago concluded, " ' "a condition precedent to plaintiff's maintaining an action against defendant" ' " (*Bodde, supra*, 32 Cal.4th at p. 1240, quoting *Williams v. Horvath* (1976) 16 Cal.3d 834, 842 [129 Cal. Rptr. 453, 548 P.2d 1125]), and thus an element of the plaintiff's cause of action. (*Bodde, supra*, at p. 1240.) Complaints that do not allege facts demonstrating either that a claim was timely presented or that compliance with the claims statute is excused are subject to a general demurrer for not stating facts sufficient to constitute a cause of action. (*Bodde, supra*, at p. 1245.)

HN6[↑]CA(4)[↑](4) Only after the public entity's board has acted upon or is deemed to have rejected the claim may the injured person bring a lawsuit alleging a cause of action in tort against the public entity. (Gov. Code, §§ 912.4, 945.4; *Williams v. Horvath, supra*, 16 Cal.3d at p. 838.) The deadline for filing a lawsuit against a public entity, as set out in the government claims statute, is a true statute of limitations defining the time in which, after a claim presented to the government has been rejected or deemed rejected, the plaintiff must file a complaint alleging a cause of action based on the facts set out in the denied claim. (Code Civ. Proc., § 342; Gov. Code, § 945.6; *Addison v. State of California* (1978) 21 Cal.3d 313, 316 [146 Cal. Rptr. 224, 578 P.2d 941]; *Tubbs v. Southern Cal. Rapid Transit Dist.* (1967) 67 Cal.2d 671, 675 [63 Cal. Rptr. 377, 433 P.2d 169]; *County of Los Angeles, supra*, 127 Cal.App.4th 1263, 1271; *Martell v. Antelope Valley Hospital Medical Center* (1998) 67 Cal.App.4th 978, 981–982 [79 Cal. Rptr. 2d 329]; see Cal. Law Revision Com. **[**635]**

com., reprinted at 32A pt. 1 West's Ann. Gov. Code (1995 ed.) foll. § 945.6, p. 33.)

The six-month statute of limitations for *filing a lawsuit* that is generally applicable to actions against public defendants (Code Civ. Proc., § 342; Gov. Code, § 945.6, subd. (a)(1)) is not implicated by the facts here. Rather, *it is the claim presentation deadline* (Code Civ. Proc., § 313; Gov. Code, § 911.2) that is at issue, as we explain below. **[*210]**

C. *School District's Demurrer to Plaintiff's Complaint*

As discussed earlier, on September 23, 2003, 41-year-old plaintiff sued the School District under subdivision (c) of section 340.1, alleging, as relevant here, two causes of action for negligence based on the district's employment of teacher Jones. Plaintiff alleged that on September 12, 2003, when she consulted a licensed mental health professional, she learned she was "suffering from psychological injuries" caused by teacher Jones's sexual abuse of her in 1978 and 1979, when she was a teenager. The School District successfully demurred to both causes of action, arguing that not only were "the 25 year old negligence claims" time-barred, but also that **[***217]** they were not subject to the revival provision in subdivision (c) of section 340.1, because of plaintiff's failure to present a claim to the School District at the time of her molestation by Jones.

*HN7*CA(5)**(5)** Generally, a cause of action for childhood sexual molestation accrues at the time of molestation. (*John R. v. Oakland Unified School Dist.* (1989) 48 Cal.3d 438, 443 [256 Cal. Rptr. 766, 769 P.2d 948]; *Doe v. Bakersfield City School Dist.* (2006) 136 Cal.App.4th 556, 567, fn. 2 [39 Cal. Rptr. 3d 79]; *Ortega v. Pajaro Valley Unified School Dist.* (1998) 64 Cal.App.4th 1023, 1053 [75 Cal. Rptr. 2d 777].) Here, plaintiff's complaint alleged that her molestation by teacher Jones began in May 1978 and ended in November 1979. The trial court found that plaintiff's cause of action accrued on November 30, 1979 (the last possible act of molestation), and that under the then applicable 100-day deadline for presenting a claim to a public entity (Gov. Code, former § 911.2, added by Stats. 1963, ch. 1715, § 1, p. 3372) she "was required to submit a claim" to the School District "at some point in 1980." Plaintiff, however, did not submit a claim to the School District until September 12, 2003, nearly 25 years after the last act of molestation.

III

Plaintiff acknowledges that because of her failure to present a claim to the School District in 1980, her cause of action against the School District was extinguished in 1980. But she argues that under section 340.1, subdivision (c), which revived for the year 2003 those childhood sexual abuse causes of action on which the statute of limitations had already lapsed as of January 1, 2003, her cause of action against the School District reaccrued on September 12, 2003, when she discovered that her present psychological injury was caused by teacher Jones's sexual abuse of her some 25 years earlier. Alternatively, she argues that her duty to present her claim to the **[*211]** School District, as required under the government claims statute, first arose on September 12, 2003, when she discovered that her psychological injury was caused by the teacher's sexual abuse and presented her claim to the School District. We conclude that neither of her contentions is supported by the language and history of the legislative scheme, as we explain below.

*HN8*CA(6)**(6)** We apply well-established principles of statutory construction in seeking "to determine the Legislature's intent in enacting the statute ' "so that we may adopt the construction that best effectuates the purpose of the law." ' " (*Kibler v. Northern Inyo County Local Hospital Dist.* (2006) 39 Cal.4th 192, 199 [46 Cal. Rptr. 3d 41, 138 P.3d 193]; see *People v. King* (2006) 38 Cal.4th 617, 622 [42 Cal. Rptr. 3d 743, 133 P.3d 636]; *Fitch v. Select Products Co.* (2005) 36 Cal.4th 812, 818 [31 Cal. Rptr. 3d 591, 115 P.3d 1233].) We begin with the statutory language because it is generally the most reliable indication of legislative intent. (*City of Burbank v. State Water Resources Control Bd.* (2005) 35 Cal.4th

613, 625 [26 Cal. Rptr. 3d 304, 108 P.3d 862].) If the statutory language is unambiguous, we presume the Legislature meant what **[**636]** it said, and the plain meaning of the statute controls. (*People v. Hudson* (2006) 38 Cal.4th 1002, 1009 [44 Cal. Rptr. 3d 632, 136 P.3d 168].) But if the statutory language may reasonably be given more than one interpretation, " ' " 'courts may consider various extrinsic aids, including the purpose of the statute, the evils to be remedied, the legislative history, public policy, and the statutory scheme encompassing the statute.' " ' " (*People v. King*, *supra*, 38 Cal.4th 617, 622; see *People* **[***218]** *v. Yartz* (2005) 37 Cal.4th 529, 538 [36 Cal. Rptr. 3d 328, 123 P.3d 604]; *People v. Garcia* (2002) 28 Cal.4th 1166, 1172 [124 Cal. Rptr. 2d 464, 52 P.3d 648].)

As amended in 2003, the pertinent language of subdivision (c) of section 340.1 reads: HN9 "[A] claim for damages" brought against an entity that owed plaintiff a duty of care and whose wrongful or negligent act was a legal cause of injury to plaintiff resulting from childhood sexual abuse, if the cause of action "would otherwise be barred as of January 1, 2003, *solely* because the applicable statute of limitations has or had expired, is revived" (italics added), and the revived "cause of action may be commenced within one year of January 1, 2003."

CA(7) **(7)** In plain language, HN10 that provision expressly limited revival of childhood sexual abuse causes of action to those barred "solely" by expiration of the applicable statute of limitations. (§ 340.1, subd. (c).) HN11 CA(8) **(8)** The term " '[s]tatute of limitations' is the collective term applied to acts or parts of acts that prescribe the periods beyond which a plaintiff may not bring a cause of **[*212]** action." (*Fox v. Ethicon Endo-Surgery Inc.*, *supra*, 35 Cal.4th at p. 806; see *Norgart v. Upjohn Co.* (1999) 21 Cal.4th 383, 395 [87 Cal. Rptr. 2d 453, 981 P.2d 79].) As the Code of Civil Procedure explains, "[c]ivil actions, without exception, can only be commenced within the periods prescribed ... , after the cause of action shall have accrued ... ." (§ 312.)

Section 340.1, subdivision (c), makes no reference whatsoever to any revival of the period in which to present a claim under the government claims statute. That lack of reference led the Court of Appeal here to infer that because the Legislature must have been aware that by expressly reviving causes of action against entity defendants in general under subdivision (c), it implicitly revived the deadline for presenting a claim to public entity defendants. We are not persuaded.

CA(9) **(9)** The legislative history of the 2002 amendment at issue here is virtually silent as to its impact on a public entity defendant; it mentions only the general principle that "a school district, church, or other organization engaging in the care and custody of a child owes a duty of care to that child to reasonably ensure its safety." (Assem. Com. on Judiciary, Rep. on Sen. Bill No. 1779 (2001–2002 Reg. Sess.) as amended June 6, 2002, p. 6.) No opposition at all to the bill was noted in the committee report. (Sen. Rules Com., Off. of Sen. Floor Analyses, Analysis of Sen. Bill No. 1779 (2001–2002 Reg. Sess.) as amended June 17, 2002, pp. 4–5; Sen. Com. on Judiciary, Analysis of Sen. Bill No. 1779 (2001–2002 Reg. Sess.) as amended May 2, 2002, p. 10.) And the bill's legislative history makes no mention of an intent to revive the deadline by which to present a claim to a public entity, nor have we found any mention of the potential fiscal impact of reviving public liability for incidents that occurred, as here, decades ago. Thus, the legislative history does not support the view of the Court of Appeal in this case that the Legislature's revival of childhood sexual abuse causes of action otherwise barred solely by the lapse of the applicable statute of limitations also was intended to apply to the then-already-codified government claim presentation deadline. HN12 The Legislature is deemed to be aware of existing statutes, and we assume that it amends a statute in light of those preexisting statutes. (*People v. Yartz*, *supra*, 37 Cal.4th at p. 538; *People v. Overstreet* (1986) 42 Cal.3d 891, 897 [231 Cal. Rptr. 213, 726 P.2d 1288].)

CA(10) **(10)** Plaintiff argues that the Legislature was well aware of the claim presentation

deadline under the government claims statute, **[***219]** as indicated by section 340.1, subdivision (c)'s opening phrase, "Notwithstanding any other provision of law ... ." But that interpretation is inconsistent with the more specific language later in that same sentence expressly reviving **[**637]** only those causes of action "barred ... *solely* because the applicable statute of limitations has or had expired" as of January 1, 2003. (*Ibid.*, italics added.) **[*213]** As discussed earlier, [HN13] *before* a plaintiff can bring a cause of action against a *public entity*, a timely claim must be presented to the entity; when no claim is timely presented, however, such a cause of action is not barred "solely" by lapse of the applicable statute of limitations, the phrasing that the Legislature used in the revival provision of subdivision (c). As explained earlier, *ante*, at page 209, the government claim presentation deadline is not a statute of limitations. Had the Legislature intended to also revive in subdivision (c) the claim presentation deadline under the government claims statute, it could have easily said so. It did not. We thus conclude that as of January 1, 2003, plaintiff's causes of action against the School District were barred by expiration of the time for presenting a claim to the School District.

This conclusion also finds support in the public policies underlying the claim presentation requirement of the government claims statute. Requiring a person allegedly harmed by a public entity to first present a claim to the entity, before seeking redress in court, affords the entity an opportunity to promptly remedy the condition giving rise to the injury, thus minimizing the risk of similar harm to others. (*Johnson v. San Diego Unified School Dist.* (1990) 217 Cal. App. 3d 692, 696–697 [266 Cal. Rptr. 187]; *Roberts v. State of California* (1974) 39 Cal. App. 3d 844, 848 [114 Cal. Rptr. 518]; see also Recommendation: Claims, Actions and Judgments Against Public Entities and Public Employees (Dec. 1963) 4 Cal. Law Revision Com. Rep. (1963) pp. 1008–1009.) The requisite timely claim presentation before commencing a lawsuit also permits the public entity to investigate while tangible evidence is still available, memories are fresh, and witnesses can be located. (*Wells v. One2One Learning Foundation* (2006) 39 Cal.4th 1164, 1214 [48 Cal. Rptr. 3d 108, 141 P.3d 225]; *City of San Jose v. Superior Court* (1974) 12 Cal.3d 447, 455 [115 Cal. Rptr. 797, 525 P.2d 701]; *Barkley v. City of Blue Lake* (1996) 47 Cal.App.4th 309, 316 [54 Cal. Rptr. 2d 679].) Fresh notice of a claim permits early assessment by the public entity, allows its governing board to settle meritorious disputes without incurring the added cost of litigation, and gives it time to engage in appropriate budgetary planning. (*Phillips v. Desert Hospital Dist.* (1989) 49 Cal.3d 699, 705 [263 Cal. Rptr. 119, 780 P.2d 349]; *City of San Jose, supra*, 12 Cal.3d at p. 455; *Baines Pickwick Ltd. v. City of Los Angeles* (1999) 72 Cal.App.4th 298, 303 [85 Cal. Rptr. 2d 74]; see *Crescent Wharf etc. Co. v. Los Angeles* (1929) 207 Cal. 430, 437 [278 P. 1028].) The notice requirement under the government claims statute thus is based on a recognition of the special status of public entities, according them greater protections than nonpublic entity defendants, because unlike nonpublic defendants, public entities whose acts or omissions are alleged to have caused harm will incur costs that must ultimately be borne by the taxpayers. For the reasons discussed above, we conclude that plaintiff's causes of action against the School District for injury resulting from her childhood sexual abuse by teacher Jones were not revived in 2003 by section 340.1, subdivision (c). **[*214]**

Plaintiff's second contention is that her duty to present a claim to the School District did not arise until September **[***220]** 12, 2003, when at the age of 41 she first learned from a mental health practitioner that her adult-onset emotional problems resulted from teacher Jones's molestation of her as a teenager, some 25 years earlier. That very same day, she presented her claim to the School District, which denied it as untimely. Thus, plaintiff argues, she has timely filed against the School District her complaint alleging her injury was caused by the School District's breach of its duty of care to protect her from sexual abuse by teacher Jones.

We disagree. We concluded earlier that the Legislature's amendment of section 340.1, subdivision (c), revived for the year 2003 certain lapsed causes of action against *nonpublic entities*, but that nothing in the express language of those amendments or in the history of

their adoption indicates an intent by the Legislature to apply against *public entity defendants* the one-year revival provision for certain causes of action. (§ 340.1, subd. (c).) In light of that conclusion, **[**638]** it seems most unlikely that the Legislature also intended revival applicable to persons who discovered only in 2003 a new injury attributable to the same predicate facts underlying a cause of action previously barred by failure to comply with the government claims statute.

Disposition

The judgment of the Court of Appeal is reversed.

George, C. J., Baxter, J., Chin, J., Moreno, J., and Corrigan, J., concurred.

DISSENT BY: Werdegar

DISSENT

WERDEGAR, J., Dissenting—The majority concludes plaintiff failed to present a timely claim to defendant school district and that her suit is accordingly barred, notwithstanding the 2003 revival statute (Code Civ. Proc., § 340.1, subd. (c)). I disagree and would affirm the Court of Appeal's unanimous decision to the contrary.

Plaintiff's obligation under the claim presentation statute (Gov. Code, § 911.2, subd. (a)) was to present her claim "not later than six months after the accrual of the cause of action" (*ibid.*). Her claim first accrued sometime in 1979, when defendant's employee last molested her. She did not present a claim then. But her claim accrued again in 2003 under the newly enacted revival statute (Code Civ. Proc., § 340.1, subd. (c)), read together with the earlier-enacted delayed discovery statute (*id.*, subd. (a)), when she "discover[ed] or reasonably should have discovered that psychological injury or illness occurring after the age of majority was caused by the sexual abuse" (*ibid.*). The applicable statute of limitations, which in this case is the delayed discovery statute, defines accrual for purposes of the claim presentation **[*215]** statute. (See Gov. Code, § 901.) Having redefined accrual in the applicable statute of limitations, the Legislature necessarily redefined accrual, and plaintiff's obligations, under the claim presentation statute. This conclusion merely respects the plain language of all the relevant statutes.

The majority does not argue a claim cannot accrue twice. Indeed, the revival statute (Code Civ. Proc., § 340.1, subd. (c)), read together with the delayed discovery statute (*id.*, subd. (a)), necessarily causes previously accrued claims for sexual molestation to accrue a second time by prescribing the time for commencing an action in terms of delayed discovery. Although, " '[g]enerally speaking, a cause of action accrues at "the time when the cause of action is complete with all of its elements[,]" [a]n important exception to the general rule of accrual is the "discovery **[***221]** rule," which postpones accrual of a cause of action until the plaintiff discovers, or has reason to discover, the cause of action.' " (*Grisham v. Philip Morris U.S.A., Inc.* (2007) 40 Cal.4th 623, 634 [54 Cal. Rptr. 3d 735, 151 P.3d 1151], quoting *Fox v. Ethicon Endo-Surgery, Inc.* (2005) 35 Cal.4th 797, 806–807 [27 Cal. Rptr. 3d 661, 110 P.3d 914].) Thus, plaintiff's claim accrued once in 1979, when all the elements of her cause of action first existed, and once again in 2003, when her delayed discovery of psychological injury as an adult brought her claim within the revival statute.

To argue a claim cannot accrue twice would, in effect, nullify the revival statute. Eschewing this absurdity, the majority instead reasons the Legislature's silence, when it drafted the revival statute, on the subject of claim presentation must mean the Legislature did not intend the revival statute (Code Civ. Proc., § 340.1, subd. (c)) to affect "the accrual of the cause of

action" (Gov. Code, § 911.2, subd. (a)) for purposes of the claim presentation statute (*ibid.*). (See maj. opn., *ante*, at pp. 211-212.) But the argument fails because, as already noted, the Legislature had already expressly provided that a claim accrues for purposes of claim presentation at the same time it accrues under the applicable statute of limitations (Gov. Code, § 901), which in this case is the delayed discovery statute (Code Civ. Proc., § 340.1, subd. (a)). Because the Legislature had already redefined accrual in terms of delayed discovery, the Legislature's later silence on the point proves nothing. In any event, we ordinarily will not invoke legislative history to justify interpreting a statute contrary to its plain **[**639]** language. (E.g., *City & County of San Francisco v. County of San Mateo* (1995) 10 Cal.4th 554, 572, fn. 10 [41 Cal. Rptr. 2d 888, 896 P.2d 181].) Although exceptions to that rule are occasionally admitted in extreme cases, to argue that legislative *silence* can justify ignoring a statute's plain meaning stands the ordinary rule on its head. At the very least, the burden of proving the Legislature did not mean what it said would seem to be on the one making the argument. The Legislature's silence does not help the majority carry that burden. **[*216]**

The majority also argues, apparently in the alternative, that the revival statute does not apply to this case. The majority reasons that plaintiff's claim was barred not "*solely* because the applicable statute of limitations has or had expired" (Code Civ. Proc., § 340.1, subd. (c), italics added), but also because she has not complied with the claim presentation statute. (Maj. opn., *ante*, at p. 211.) But this additional argument obviously begs the question whether plaintiff *has* complied with the claim presentation statute. For the reasons given above, I conclude she has.

CALIFORNIA CODES
GOVERNMENT CODE
SECTION 815-818.9

815. Except as otherwise provided by statute:
(a) A public entity is not liable for an injury, whether such injury arises out of an act or omission of the public entity or a public employee or any other person.
(b) The liability of a public entity established by this part (commencing with Section 814) is subject to any immunity of the public entity provided by statute, including this part, and is subject to any defenses that would be available to the public entity if it were a private person.

815.2. (a) A public entity is liable for injury proximately caused by an act or omission of an employee of the public entity within the scope of his employment if the act or omission would, apart from this section, have given rise to a cause of action against that employee or his personal representative.
(b) Except as otherwise provided by statute, a public entity is not liable for an injury resulting from an act or omission of an employee of the public entity where the employee is immune from liability.

815.3. (a) Notwithstanding any other provision of this part, unless the elected official and the public entity are named as codefendants in the same action, a public entity is not liable to a plaintiff under this part for any act or omission of an elected official employed by or otherwise representing that public entity, which act or omission constitutes an intentional tort, including, but not limited to, harassment, sexual battery, and intentional infliction of emotional distress. For purposes of this section, harassment in violation of state or federal law constitutes an intentional tort, to the extent permitted by federal law. This section shall not apply to defamation.
(b) If the elected official is held liable for an intentional tort other than defamation in such an action, the trier of fact in reaching the verdict shall determine if the act or omission constituting the intentional tort arose from and was directly related to the elected official's performance of his or her official duties.
If the trier of fact determines that the act or omission arose from and was directly related to the elected official's performance of his or her official duties, the public entity shall be liable for the judgment as provided by law. For the purpose of this subdivision, employee managerial functions shall be deemed to arise from, and to directly relate to, the elected official's official duties. However, acts or omissions constituting sexual harassment shall not be deemed to arise from, and to directly relate to, the elected official's official duties.
(c) If the trier of fact determines that the elected official's act or omission did not arise from and was not directly related to the elected official's performance of his or her official duties, upon a final judgment, including any appeal, the plaintiff shall

first seek recovery of the judgment against the assets of the elected official. If the court determines that the elected official's assets are insufficient to satisfy the total judgment, including plaintiff's costs as provided by law, the court shall determine the amount of the deficiency and the plaintiff may seek to collect that remainder of the judgment from the public entity. The public entity may pay that deficiency if the public entity is otherwise authorized by law to pay that judgment.

(d) To the extent the public entity pays any portion of the judgment against the elected official pursuant to subdivision (c) or has expended defense costs in an action in which the trier of fact determines the elected official's action did not arise from and did not directly relate to his or her performance of official duties, the public entity shall pursue all available creditor's remedies against the elected official in indemnification, including garnishment, until the elected official has fully reimbursed the public entity.

(e) If the public entity elects to appeal the judgment in an action brought pursuant to this section, the entity shall continue to provide a defense for the official until the case is finally adjudicated, as provided by law.

(f) It is the intent of the Legislature that elected officials assume full fiscal responsibility for their conduct which constitutes an intentional tort not directly related to their official duties committed for which the public entity they represent may also be liable, while maintaining fair compensation for those persons injured by such conduct.

(g) This section shall not apply to a criminal or civil enforcement action brought on behalf of the state by an elected district attorney, city attorney, or Attorney General.

(h) If any provision of this section or the application thereof to any person or circumstances is held invalid, that invalidity shall not affect other provisions or applications of the section which can be given effect without the invalid provision or application, and to this end the provisions of this section are severable.

815.4. A public entity is liable for injury proximately caused by a tortious act or omission of an independent contractor of the public entity to the same extent that the public entity would be subject to such liability if it were a private person. Nothing in this section subjects a public entity to liability for the act or omission of an independent contractor if the public entity would not have been liable for the injury had the act or omission been that of an employee of the public entity.

815.6. Where a public entity is under a mandatory duty imposed by an enactment that is designed to protect against the risk of a particular kind of injury, the public entity is liable for an injury of that kind proximately caused by its failure to discharge the duty unless the public entity establishes that it exercised reasonable diligence to discharge the duty.

816. A public entity is not liable for injury arising out of any activity conducted by a member of the California National Guard pursuant to Section 316, 502, 503, 504, or 505 of Title 32 of the

United States Code and compensated pursuant to the Federal Tort Claims Act.

It is the intent of the Legislature, in enacting this section, to conform state law regarding liability for activities of the National Guard to federal law as expressed in Public Law 97-124.

818. Notwithstanding any other provision of law, a public entity is not liable for damages awarded under Section 3294 of the Civil Code or other damages imposed primarily for the sake of example and by way of punishing the defendant.

818.2. A public entity is not liable for an injury caused by adopting or failing to adopt an enactment or by failing to enforce any law.

818.4. A public entity is not liable for an injury caused by the issuance, denial, suspension or revocation of, or by the failure or refusal to issue, deny, suspend or revoke, any permit, license, certificate, approval, order, or similar authorization where the public entity or an employee of the public entity is authorized by enactment to determine whether or not such authorization should be issued, denied, suspended or revoked.

818.5. The Department of Motor Vehicles is liable for any injury to a lienholder or good faith purchaser of a vehicle proximately caused by the department's negligent omission of the lienholder's name from an ownership certificate issued by the department. The liability of the department under this section shall not exceed the actual cash value of the vehicle.

818.6. A public entity is not liable for injury caused by its failure to make an inspection, or by reason of making an inadequate or negligent inspection, of any property, other than its property (as defined in subdivision (c) of Section 830), for the purpose of determining whether the property complies with or violates any enactment or contains or constitutes a hazard to health or safety.

818.7. No board, commission, or any public officer or employee of the state or of any district, county, city and county, or city is liable for any damage or injury to any person resulting from the publication of any reports, records, prints, or photographs of or concerning any person convicted of violation of any law relating to the use, sale, or possession of controlled substances, when such publication is to school authorities for use in instruction on the subject of controlled substances or to any person when used for the purpose of general education. However, the name of any person concerning whom any such reports, records, prints, or photographs are used shall be kept confidential and every reasonable effort shall be made to maintain as confidential any information which may tend to identify such person.

818.8. A public entity is not liable for an injury caused by misrepresentation by an employee of the public entity, whether or not such misrepresentation be negligent or intentional.

818.9. A court or county, its employees, independent contractors, and volunteers shall not be liable because of any advice provided to small claims court litigants or potential litigants as a public service on behalf of the court or county pursuant to the Small Claims Act (Chapter 5.5 (commencing with Section 116.110) of Title 1 of Part 1 of the Code of Civil Procedure).

TIME-BARRED

By Paul V. Carelli IV

In 2002 the California Legislature opened a one-year window permitting plaintiffs who had suffered childhood sexual abuse to file negligence suits against entity defendants, even if the statute of limitations had long since passed. Code of Civil Procedure Section 340.1, subdivision (c). This legislation arose from the aftermath of the problems involving the Roman Catholic Church after allegations had come to light that the church may have protected priests who abused children. What was unclear, however, was whether this "revival" legislation applied to public, rather than private, entities.

The decision means that, if the Legislature wants to permit the revival of old claims for childhood sexual abuse against negligent public entities, it must say so expressly.

Based on this new legislation, in 2003, Linda Shirk sued the Vista Unified School District for events that she said occurred when she was a high-school student in the late 1970s. In her complaint Shirk said that, when she was between 15 and 17, she had sex 200 times with her high-school English teacher over an 18-month period.

Vista Unified demurred to the complaint on the grounds that the newly created one-year window did not apply to public entities, because the Tort Claims Act requires that a tort claim be submitted to the public entity within one year of the accrual of the claim involving a minor. The district argued that, because the last act allegedly occurred in 1979, Shirk had until 1980 to submit a claim and she failed to do so. San Diego County Superior Court agreed and dismissed the case. The 4th District Court of Appeal reversed. *Shirk v. Vista Unified School District*, 2006 DJDAR 9036 (Cal. App. 4th Dist. April 5, 2006).

The case went to the California Supreme Court. In a 6-1 decision, the court ruled in the district's favor, holding that Shirk's claim accrued 25 years ago and that the new legislation did not revive the claim. Accordingly, because Shirk did not submit a claim by 1980, the Supreme Court reversed the judgment of the Court of Appeal. *Shirk v. Vista Unified School District*, 42 Cal.4th 201 (Cal. Aug. 20, 2007).

The Complaint

Shirk was born on June 22, 1962. In September 1977, when she was 15, her English teacher began flirting with her on the first day of school; in May 1978, the teacher initiated their first sexual encounter. In the ensuing months, the teacher and Shirk engaged in sexual conduct both on and off school premises. Their last sexual contact occurred in November 1979. In the following months, Shirk neither notified the School District of her abuse nor presented a claim to it.

In June 2001, when Shirk's 15-year-old daughter was attending Vista High School, she saw the teacher at high school band tournaments. That same month, having become "very upset" by her long-ago molestation, she filed a report with the local sheriff's office. She met with the teacher and surreptitiously recorded a conversation in which the teacher admitted to sexual conduct with her and with another student. On Sept. 12, 2003, a licensed mental health practitioner interviewed Shirk and concluded that she was still suffering psychological injury from the abuse. That same day, Shirk presented a claim to the school district for personal injury stemming from her sexual abuse by its employee.

Based on the incidents, Shirk sued both the teacher and the district on Sept. 23, 2003. The suit was for general negligence, based on an allegations that the school district knew or should have known that the teacher was unfit and a danger to his students and that the district knew or should have known that the teacher was engaging in inappropriate sexual misconduct with the plaintiff but failed to do anything to protect her.

Demurrer Sustained

The district demurred to the complaint on the basis that Shirk's claims were time-barred by the Tort Claims Act, which mandates that plaintiffs present a claim, at the latest, within one year of the accrual of the claim against the public entity. The trial court ruled that Shirk's claims accrued on the date of the alleged molestations, no later than Nov. 30, 1979, and that Shirk was required to submit a tort claim in 1980. The trial court further found that Section 340.1 did not trump the timing provisions of the Tort Claims Act.

The 4th District Court of Appeal reversed in a unanimous opinion. The Court of Appeal ruled that [illegible] the [illegible]

[illegible] curred in the late 1970s, the 2002 amendments to Section 340.1 newly permitted Shirk to sue the school district because Section 340.1 revived her 1979 state claim for the purposes of suing a public entity like the district.

The Supreme Court granted the school district's petition for review on the basis that the appellate court's decision conflicted with a nearly contemporaneous decision by the 2nd District Court of Appeal in the case of *County of Los Angeles v. Superior Court*, 127 Cal.App.4th 1263 (2005). That case held that the timing provisions of Tort Claims Act must be followed by plaintiffs, and these provisions were not mooted by the statutes of limitations in the Code of Civil Procedure.

After briefing and oral argument by the district's counsel, the Supreme Court decided the *Shirk* case on Aug. 20, 2007. The decision addresses and resolves the apparent conflict between two separate statutory schemes, the statute of limitations under the Code of Civil Procedure and the California Tort Claims Act, and holds that the statute of limitations does not trump the Tort Claims Act.

Tort Claims Act Requirements

When a public entity is a defendant in a personal-injury case, the plaintiff is required to comply with the mandates of the California Tort Claims Act. Claimants who are minors are not excused from the act's requirements, including statutory time limits. *Whitfield v. Roth*, 10 Cal.3d 874 (1974).

The act requires that a plaintiff suing a public entity for personal injury must first submit a written claim to the entity within six months of the accrual of the claim. If the unwitting plaintiff fails to do so, he or she may apply to the entity to present a late claim within one year of the accrual of the claim. Government Code Section 911.4. If the application is rejected and the claimant is a minor, the court must grant relief if the application for late claim was made within one year of the accrual of the claim. Government Code Section 946.6, subdivision C.

Although Shirk acknowledged that her claim went stale in 1980, one year after the date of the last molestation, she asserted that the 2002 amendments to Code of Civil Procedure Section 340.1 revived her claim.

Shirk specifically pointed to language in subdivision (c) of Section 340.1, which provides, "[A] claim for dar[illegible] brought against an entity that owed a [illegible]laintiff a duty of care and whose wrongful or negligent act was a [illegible]ded." It seems most unlikely that sexual abuse, if the cause of action "would otherwise be barred as of Jan. 1, 2003, solely because the applicable statute of limitations has or had expired is revived," and the revived "cause of action may be commenced within one year of Jan. 1, 2003."

The Supreme Court rejected Shirk's assertion. First, it concluded that, by its plain language, subdivision (c) expressly limited revival of childhood sexual-abuse causes of action to those barred "solely" by expiration of the applicable statute of limitations and "makes no reference whatsoever to any revival of the period in which to present a claim under the government claims statute." The court added that the "legislative history makes no mention of an intent to revive the deadline by which to present a claim to a public entity, nor have we found any mention of the potential fiscal impact of reviving public liability for incidents that occurred, as here, decades ago." The court emphasized that, "[h]ad the Legislature intended to also revive in subdivision (c) the claim presentation deadline under the government claims statute, it could have easily said so. It did not."

The court also rejected Shirk's argument that her claim accrued in 2003, when she went to the mental health practitioner. The court explained that Section 340.1 did not appear to apply to public-entity defendants. Therefore, the Legislature also intended revival applicable to persons who discovered only in 2003 a new injury attributable to the same predicate facts underlying a cause of action previously barred by failure to comply with the government claims statute."

Finally, the court emphasized that its holding was consistent with the public policies underlying the Tort Claims Act, including that the act permits the public entity "to investigate while tangible evidence is still available, memories are fresh, and witnesses can be located".

Implications

The decision means that, if the Legislature wants to permit the revival of old claims for childhood sexual abuse against negligent public entities, it must say so expressly. Otherwise, plaintiffs must continue to comply with the mandates of the Tort Claims Act, meaning that, absent any equitable considerations, minors have one year from the last act of molestation to submit an application for a late claim when alleging that a public entity negligently permitted abuse.

Paul V. Carelli IV practices [illegible]tate law and civil litigation in San D[illegible] and Temecula for the law firm Stutz Artiano Shinoff & Holtz.

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Oct 6, 2007

Ex-pupil drops abuse lawsuit

Woman won $260,000 settlement, but further action nixed on technicality

By Sharon Noguchi / MediaNews

A former Palo Alto student has won a $260,000 settlement in her lawsuit against the middle school teacher who molested her more than a decade ago, but she was forced to drop her claim that school officials did nothing to stop the abuse.

The Palo Alto Unified School District successfully fought its way out of the lawsuit by taking advantage of a legal technicality: The student failed to file a claim - the precursor to a lawsuit - against the district within six months of being molested by former Jordan Middle School teacher William Giordano. The problem: Like many young abuse victims, she didn't come forward until many years later.

Recent changes in California law allow child victims of molestation to sue for damages years after the abuse. But a recent California Supreme Court decision in a similar school abuse case said that didn't relax the standard that victims must file claims within six months of the abuse against governmental agencies, including school districts.

If she had been a private school student, the limitation wouldn't have applied.

"This just killed us," said attorney Chuck Smith, who is representing the woman, who is now 30 and living in Pennsylvania with her husband and two young children. "If you applied that decision to a 6-year-old who was molested by a teacher, she'd have to tell someone when she was 6 1/2."

MediaNews is not identifying the woman because she was the victim of a sex crime. She filed her claim against Palo Alto Unified in February 2006 - 12 years after the abuse ended. She then filed her civil lawsuit against Giordano and the district in July 2006.

Months later, in a criminal case, Giordano pleaded no contest to molestation charges and was sentenced to four years in prison.

The attorney who represented Giordano in the civil case, Charles Bronitsky, expressed satisfaction with the settlement, reached late last week. "It made people whole," he said. However, he said, negotiations were complicated because it was not easy communicating with his client, who is in Avenal State Prison.

The molestation began when the student was in eighth grade at Jordan, and Giordano was a physical education teacher, volleyball coach and student activities director. She cut off the relationship 2 1/2 years later after, she told police, she realized that it was wrong for Giordano, then 48, to be having sex with a girl her age.

The lawsuit claimed the abuse "was so open and pervasive that a substantial amount of the student body knew of the sexual abuse and also some fellow teachers at Jordan were aware of the sexual abuse."

Co-principal Robert Alvares told the San Jose Mercury News last year that he warned Giordano to be very careful after a student told a school secretary that she suspected something was going on between the coach and the victim.

Attorney Mark Davis, who represented the school district, emphatically denied

negligence by the school district. Alvares, he said, responded properly by speaking with the girl who had confided in the secretary, then to Giordano and to the victim. All three denied it was true, Davis said.

The district still didn't do enough, said the woman's attorney.

"At a minimum, Alvares should have picked up a phone and called (the victim's parents)," Smith said. "If he had they would have looked into it, they would have realized that Giordano was taking (her) off campus and this could have been stopped."

The lawsuit alleged that Giordano and the girl would leave campus during school hours to go to his Menlo Park home, where the abuse took place, and would return "observed by other administrators, faculty, staff and students of Jordan Middle School."

Years later, after the victim finally came forward, Giordano told police he had informed two district employees about his affair. California law requires that teachers and others to immediately report evidence or suspicions of child abuse to law enforcement.

But Davis said those two employees - a teacher and an administrator still with the district - heard only that Giordano was attracted to a student. "But he never mentioned anything about sexual activity," he said.

In recent years, California lawmakers have extended the legal deadline, or statute of limitations, for victims of childhood sexual abuse to file claims for damages. Advocates say that many victims don't come forward immediately to report their abuse because they are ashamed, or in some cases they don't even realize until they are older that what happened to them was wrong.

The same argument led legislators to grant a special one-time exemption in 2003 that was intended to help hundreds of people bring claims against the Catholic church for abuse by individual priests. And under current law, victims of childhood abuse can bring a lawsuit up to the time they are 26, or within three years from the time they realize they were abused.

But that doesn't override the state law that requires victims to file an administrative claim first - within six months of the alleged abuse - when a government agency is sued. Although it is possible in some cases to seek a one-year extension, victims' advocates say that is a big hurdle for someone abused by an employee of a school district.

"It's one of those shields that government has put up, to make it more difficult to bring a claim," said Rob Mezzetti II, a San Jose attorney who has represented numerous victims of childhood sexual abuse.

"The whole reason behind the extension for clergy is that people were not coming to the realization, until years later, that their emotional problems had to do with the fact that they were molested," he said. "They were also embarrassed to come forward, or sometimes afraid to come forward."

Smith, the woman's attorney, said she is glad that she did.

"She is happy and satisfied that she did the right thing and stood up for herself, and received just damages against her molester," Smith said. "Hopefully this will have a chilling effect on teachers who want" to abuse their students.

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EXHIBIT 6

DVD CONTAINING
LEGISLATIVE HISTORY

ATTORNEY or party without attorney (Name, state bar number, and address): Daley & Heft, LLP, Attorneys at Law Lee H. Roistacher, Esq. (SBN 179619) Richard J. Schneider, Esq. (SBN 118580) 462 Stevens Avenue #201, Solana Beach, CA 92075 Telephone No. (858) 755-5666 Facsimile No. (858) 755-7870 ATTORNEY FOR (Name): Doe No. 1	*FOR COURT USE ONLY*
IN THE SUPREME COURT OF THE STATE OF CALIFORNIA Street Address: 350 McAllister Street City and Zip Code: San Francisco, CA 94102	
PLAINTIFF(S)/PETITIONER(S) Doe No. 1	Case Number: S234269
Defendant(S)/RESPONDENT(S) Latrice Rubenstein	Court of Appeal Case No. D066722 Superior Court Case No.: ECU08107
PROOF OF SERVICE—CIVIL Check method of service: ☐ By Personal Service ☐ By Mail ☐ By Messenger Service ☐ By Facsimile ☒ By Overnight Delivery ☐ By E-Mail/Electronic Transmission	JUDGE: Hon. Juan Ulloa DEPT: 9

(Do not use this Proof of Service to show service of a Summons and Complaint)

1. At the time of service I was over 18 years of age and **not a party to this action.**

2. My address is (specify one):
   a. ☒ Business: b. ☐ Residence:

   462 Stevens Avenue, Suite 201, Solana Beach, CA 92075

3. The fax number or electronic address from which I served the documents is (*complete if service was by fax or electronic service*):

4. On (date): August 15, 2016, I served the following **documents** (specify):

   ☒ The documents are listed in the Attachment to Proof of Service–Civil (Documents Served).

5. I served the documents on the **person or persons** below, as follows:

   a. Name of person served:

   b. ☒ (*Complete if service was by personal service, mail, overnight, or messenger service.*)
   Business or residential address where person was served:

   c. ☐ (*Complete if service was by fax or electronic service.*)
   (1) Fax number or electronic notification address where person was served:

   (2) Time of Service:

   ☒ The names, addresses, and other applicable information about the persons served is on the Attachment to Proof of Service—Civil (Persons Served).

6. The documents were served by the following means (specify):

a. ☐ **By personal service.** I personally delivered the documents to the persons at the addresses listed in item 5. (1) For a party represented by an attorney, delivery was made to the attorney or at the attorney's office by leaving the documents in an envelope or package clearly labeled to identify the attorney being served with a receptionist or an individual in charge of the office, between the hours of nine in the morning and five in the evening. (2) For a party, delivery was made to the party or by leaving the documents at the party's residence with some person not less than 18 years of age between the hours of eight in the morning and six in the evening.

CASE NAME: *Doe No. 1 v. Latrice Rubenstein*	CASE NUMBER: S234269 Court of Appeal Case No. D066722 Superior Court Case No.: ECU08107

6.b. ☐ **By United States mail.** I enclosed the documents in a sealed envelope or package addressed to the persons at the addresses in item 5 and (specify one):

(1) ☐ deposited the sealed envelope with the United States Postal Service, with the postage fully prepaid.

(2) ☐ placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

I am a resident or employed in the county where the mailing occurred. The envelope or package was placed in the mail at (city and state): Solana Beach, California

c. ☒ **By overnight delivery**. I enclosed the documents in an envelope or package provided by an overnight delivery carrier and addressed to the persons at the addresses in item5. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.

d. ☐ **By messenger service**. I served the documents by placing them in an envelope or package addressed to the persons at the addresses listed in item 5 and providing them to a professional messenger service for service. *(A declaration by the messenger must accompany this Proof of Service or be contained in the Declaration of Messenger below.)*

e. ☐ **By fax transmission.** Based on an agreement of the parties to accept service by fax transmission, I faxed the documents to the persons at the fax numbers listed in item 5. No error was reported by the fax machine that I used. A copy of the record of the fax transmission, which I printed out, is attached.

f. ☐ **By electronic service.** Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission, I caused the documents to be sent to the persons at the e-mail addresses listed in item 5.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: August 15, 2016

Maria E. Kilcrease
(TYPE OR PRINT NAME OF DECLARANT)

Maria E. Kilcrease
(SIGNATURE OF DECLARANT)

(If item 5d above is checked, the declaration below must be completed or a separate declaration from a messenger must be attached.)

DECLARATION OF MESSENGER

☐ **By personal service.** I personally delivered the envelope or package received from the declarant above to the persons at the addresses listed in item 4. (1) For a party represented by an attorney, delivery was made to the attorney or at the attorney's office by leaving the documents in an envelope or package, which was clearly labeled to identify the attorney being served, with a receptionist or an individual in charge of the office. (2) For a party, delivery was made to the party or by leaving the documents at the party's residence with some person not less than 18 years of age between the hours of eight in the morning and six in the evening.

At the time of service, I was over 18 years of age. I am not a party to the above-referenced legal proceeding.

served the envelope or package, as stated above, on (date):

declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

(TYPE OR PRINT NAME OF DECLARANT)

(SIGNATURE OF DECLARANT)

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ATTACHMENT TO PROOF OF SERVICE - CIVIL (DOCUMENTS SERVED)

The documents that were served are as follows (describe each document specifically):

MOTION FOR JUDICIAL NOTICE; POINTS AND AUTHORITIES; DECLARATION OF LEE H. ROISTACHER; PROPOSED ORDER

CASE NAME: *Doe No. 1 v. Latrice Rubenstein*	CASE NUMBER: S234269 Court of Appeal Case No. D066722 Superior Court Case No.: ECU08107

ATTACHMENT TO PROOF OF SERVICE - CIVIL (PERSONS SERVED)

Name, Address, and Other Applicable Information About Persons Served:

Name of Person Served:	***Where Served***: *(Provide business or residential address where service was made by personal service, mail, overnight delivery, or messenger service. For other means of service, provide fax number or electronic notification address, as applicable.)*	***Time of Service***: *(Complete for service by fax transmission or electronic service.)*
Elliott N. Kanter, Esq. Justin O. Walker, Esq.	Elliott N. Kanter, Esq. Justin O. Walker, Esq. Law Offices of Elliott N. Kanter 2445 Fifth Avenue, Suite 350 San Diego, CA 92101 Tel: (619) 231-1883 Fax: (619) 234-4553 Email: ekanter@enkanter.com jwalker@enkanter.com Attorney for Plaintiff and Respondent Latrice Rubenstein	Time:
Holly Noelle Boyer, Esq.	Holly Noelle Boyer, Esq. Esner Chang & Boyer 234 East Colorado Boulevard Suite 975 Pasadena, CA 91101-2262 Tel: (626) 535-9860 Fax: (626) 535-9859 Email: hboyer@ecbappeal.com Attorneys for Plaintiff and Respondent Latrice Rubenstein	
Leila Nourani, Esq. Sherry L. Swieca, Esq. Douglas M. Egbert, Esq.	Leila Nourani, Esq. Sherry L. Swieca, Esq. Douglas M. Egbert, Esq. Jackson Lewis P.C. 725 S. Figueroa Street, Suite 2500 Los Angeles, CA 90017 Tel: (213) 689-0404 Fax (213) 689-0430 Attorneys for Defendant and Petitioner Doe No.1	Time:

CASE NAME: *Doe No. 1 v. Latrice Rubenstein*	CASE NUMBER: S234269 Court of Appeal Case No. D066722 Superior Court Case No.: ECU08107

Name of Person Served:	***Where Served***: *(Provide business or residential address where service was made by personal service, mail, overnight delivery, or messenger service. For other means of service, provide fax number or electronic notification address, as applicable.)*	***Time of Service***: *(Complete for service by fax transmission or electronic service.)*
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Court of Appeal Division One 750 B Street San Diego, CA 92101	Court of Appeal Fourth District Division One 750 B Street San Diego, CA 92101 (619) 744-0760	