

How New Federal Child Sex Abuse Victims Act Impacts Clergy Abuse Claims

This new federal framework may inspire states to create a safer legal landscape for child abuse survivors by either extending or abolishing their own statutes of limitation, personal injury attorney Mary Alexander.

By Mary Alexander

When President Joe Biden signed the Eliminating Limits to Justice for Child Sex Abuse Victims Act into law in September, it put a deserved focus back on the epidemic in the U.S. that is child abuse and, in some ways, strengthened the rights of plaintiffs.

Under the new law, survivors will not have to consider time limits when filing a civil claim in federal court. The new law applies when hearing civil claims related to sex abuse crimes against minors, including forced labor, sex trafficking, sexual abuse and sexual exploitation of children (such as sexual abuse images and child pornography).

The law marks a chance for the plaintiffs' bar to make an even greater impact for their clients. But the new law is not all-encompassing and may not provide relief to those who previously filed suits against major entities like youth organizations and religious institutions. A brief review of the new law's protections—

and what it does not do—will help lawyers and victims better strategize when filing child sex abuse claims.

New Advantages and Drawbacks

Effective Sept. 16, the day the act was signed into law, any child who is a victim of alleged sexual abuse will not face a time limit to come forward with a new civil claim in federal court.

S. 3103 was initially introduced by Sens. Dick Durbin (D-Illinois) and Marsha Blackburn (R-Tennessee). Following the passage of the bill in the House in September, Durbin referenced the “science of trauma” which inspired the bill and acknowledged that victims may need years to come forward. “By signing this legislation into law,” Durbin said, “we can finally help survivors have their day in court and a moment of healing—when they are ready.”

That minors have the lifetime right to file a civil claim against



Courtesy photo

Mary E. Alexander of Mary Alexander & Associates.

an aggressor or institution is a positive step toward legislative reform. But the law is not without its faults. For example, the law does not affect the federal criminal statute of limitations. Furthermore, it is not retroactive, and cannot change prior allegations and claims filed in state and federal courts.

Federal and state courts have concurrent jurisdiction to hear many types of actions. Plaintiffs have always been able to file in federal courts and may simply be the new preferred venue if the

state still has its statute of limitations intact. One advantage for plaintiffs filing in federal court is that the process is more streamlined and faster than state court, and federal courts are usually less tolerant of delays.

This will also signal a change for defendants—particularly well-funded ones—who historically have favored federal hearings, since expenses are typically higher and a unanimous agreement by a jury is needed to secure a verdict.

Why California Is Unique

California had previously taken legislative measures to help protect the rights of sex abuse victims, which might have helped pave the way for the new federal framework. In 2019, California Gov. Gavin Newsom signed into law AB 218, which enhanced protections for survivors of crime and abuse. Like the new federal law, AB 218 expanded the definition of childhood sexual abuse, and began referring to it as childhood sexual assault. Furthermore, its enactment strengthened legal rights for survivors, who may have struggled with the decision to come forward.

AB 218 also raised the age limit for abuse survivors and now gives victims of childhood sexual abuse until age 40—or five years from discovery of the abuse—to file civil lawsuits. The previous

age limit had been 26, or within three years from discovery of the abuse. Perhaps most importantly, AB 218 provides a three-year lookback window for previously expired claims—but that window will close on Dec. 31, regardless of the age of the victim or the date of the alleged assault.

The clock is ticking for abuse claims to be filed in California. This may be the last chance to secure justice if recent events are any indication.

The Catholic Church made attempts to subvert AB 218 in 2022, when nine dioceses in California asked the U.S. Supreme Court to review their case challenging the state law. They argued that the law is unconstitutional because the state already gave victims a chance to sue in 2002, when it opened a one-year portal for sex abuse survivors to file claims with no time limit attached, and because it retroactively adds new liabilities.

Though unsuccessful in their arguments, it is reasonable to assume the institution is crafting new legal strategies with the news of Biden's signing.

Clergy Abuse Is Different

One of the shortcomings of the Eliminating Limits to Justice for Child Sex Abuse Victims Act is that it does not change current state law regarding an institution's liability for sexual abuse.

Upon closer inspection, while it may prove to be effective when holding individuals accountable, those same legal methods will be ineffective in suits against a group or institution which participated in any sort of cover-up. Suing entities such as the Catholic Church, and the Boy Scouts of America, which have settled for combined billions of dollars in compensatory damages through the years, will be even more difficult if not implausible.

In California, the first (and possibly the best) course of action for any new claim in 2022—particularly against an institution like the Catholic Church—is to file in state court, since protections for AB 218 will remain.

Looking forward, this new federal framework may inspire states to create a safer legal landscape for child abuse survivors by either extending or abolishing their own statutes of limitation. There is some solace in knowing that beginning in 2023, filing in federal court will be a legal safety net for plaintiffs.

*Widely recognized as one of San Francisco's top personal injury attorneys, **Mary Alexander** established her stellar reputation in the legal community after obtaining some of the largest and highest profile verdicts and settlements in the state of California over the course of her career.*