

October 23, 2015

Hon. Kamala D. Harris
Attorney General
1300 I Street, 17th Floor
Sacramento, California 95814

Attention: Ms. Ashley Johansson
Initiative Coordinator

Dear Attorney General Harris:

Pursuant to Elections Code Section 9005, we have reviewed the proposed statutory initiative regarding the statute of limitations for certain sex crimes committed against minors (A.G. File No. 15-0059).

Background

Sex Crimes Against Minors. State law defines a number of sexual acts committed against minors as criminal offenses. Punishment for such crimes typically involves incarceration in county jail or state prison and can include supervision by county probation officers or state parole agents upon release. State law requires individuals who have committed such crimes to register with local law enforcement as sex offenders. Additionally, state law prohibits these offenders from residing within 2,000 feet of any school or park where children regularly gather. State law also authorizes local governments to enact ordinances that further restrict where convicted offenders can reside.

Existing state law specifies the “statute of limitations” for various sex crimes against minors. (A statute of limitations refers to the deadline for when most criminal cases and civil claims must be filed, which can vary depending on the particular offense or complaint.) For example, the statute of limitations for certain felony sex crimes against minors is (1) the victim’s 28th birthday for crimes allegedly committed prior to January 1, 2015 and (2) the victim’s 40th birthday for crimes allegedly committed on or after January 1, 2015.

Civil Claims Regarding Alleged Sex Crimes Against Minors. State law authorizes individuals to file civil claims to seek compensation for injury or damage incurred because of certain sex crimes allegedly committed against them when they were minors. Such civil claims may be settled outside of the court or may be adjudicated through the trial courts. Individuals may file claims against: (1) the person who allegedly committed the sex crime; (2) any person or entity who allegedly carried out a wrongful, negligent, or intentional act that enabled the alleged sex crime to occur; or (3) any person or entity that allegedly failed to implement reasonable steps

to prevent a staff member from committing the alleged sex crime if there was knowledge of prior misconduct.

Depending on whom the claim is filed against (such as a state government entity or a local government entity), plaintiffs must adhere to a particular process and statute of limitations:

- ***Claims Against State Government Entities.*** State law generally requires plaintiffs filing claims against most state government entities to first file an administrative claim with the California Victim Compensation and Government Claims Board within six months of injury. If the claim is denied by the board, plaintiffs have six months to file a claim with the trial courts. If the claim is not responded to in a given time period, the plaintiff has two years from the date of the injury to file a claim with the trial courts.
- ***Claims Against Local Government Entities.*** For injury from alleged acts committed before January 1, 2009, state law generally requires plaintiffs to first file an administrative claim with the local entity. The same timeframes for claims against state government entities apply. For injury from alleged acts committed on or after January 1, 2009, plaintiffs file claims directly with trial courts rather than with the local entity. These claims are subject to the statute of limitations for similar claims against individuals or non-governmental entities as discussed below. Because payments to plaintiffs in civil cases can be substantial, some local government entities choose to purchase liability insurance to minimize the effect any payments would have on their operations. Some liability insurance policies cover payments related to sex crimes allegedly committed against minors.
- ***Claims Against Individuals or Non-Governmental Entities.*** Plaintiffs file claims against individuals or non-governmental entities directly with trial courts. The statute of limitations for claims related to alleged sex crimes against minors is generally the plaintiff's 26th birthday. However, plaintiffs can also file a claim three years from the date they discover, or reasonably should have discovered, that the psychological injury or illness they have suffered as adults is caused by sex crimes allegedly committed against them as minors.

Proposal

This measure removes the criminal statute of limitations for certain sex crimes committed against minors on or after the date this measure is enacted. It also removes the criminal statute of limitations for existing cases in which the prior statute of limitations was not reached before the measure's enactment. Similarly, this measure removes the civil statute of limitations for claims against individuals, non-governmental entities, and all nonstate governmental entities for injury or damage resulting from certain sex crimes allegedly committed against minors on or after the measure's enactment.

Fiscal Effects

The magnitude of the fiscal effects of this measure would depend heavily on the number of individuals who otherwise would not have been able to pursue criminal or civil cases and how

various entities respond to its implementation. Thus, the potential impacts described below are subject to considerable uncertainty.

Criminal Justice and Court Costs. The measure would likely increase state court costs to process additional criminal and civil cases that otherwise would not have been pursued due to existing statutes of limitations. To the extent that more individuals are convicted of criminal offenses, this measure would also result in increased costs to the state and local criminal justice system. While the magnitude of the above costs is uncertain, they are likely to be minor, given the current length of the statute of limitations for criminal prosecution in these cases.

Other Fiscal Effects. Given that the proposal would remove existing statutes of limitations for civil claims against local governments related to certain sex crimes allegedly committed against minors, local governments would be at greater risk of litigation related to such claims. As a result, local government entities could face increases in annual liability insurance premiums or increased payment to plaintiffs for those entities that are self-insured. In total, the net impact of these fiscal effects on an annual basis to local governments is not likely to be significant on a statewide basis. However, the effect on individual local government entities could vary substantially.

Summary of Fiscal Effects. We estimate that this measure would have the following major fiscal effects, which could vary considerably depending on (1) the number of individuals who otherwise would not have been able to pursue criminal or civil cases and (2) how various entities respond to the implementation of this measure:

- Probably minor increase in costs to the state courts, as well as the state and local criminal justice system, from an increase in cases filed and individuals convicted.
- The fiscal impact on local governments related to civil claims is not likely to be significant on a statewide basis, but the effect on individual local government entities could vary substantially.

Sincerely,

Mac Taylor
Legislative Analyst

Michael Cohen
Director of Finance