

SUBJECT: Extending statute of limitations in sexual assault civil suits

COMMITTEE: Civil Practices — committee substitute recommended

VOTE: 7 ayes — Hunter, Hilbert, Alvarado, Culberson, Hartnett, Moffat, Zbranek
0 nays
2 absent — Sadler, Tillery

WITNESSES: For — Mike Slack, Texas Trial Lawyers Association
Against — None

BACKGROUND: Under current law a person seeking civil damages for personal injury or death is required by statute to file a suit within two years of the cause of action or two years after the 18th birthday of the plaintiff. In situations resulting in death, the cause of action accrues from the date of death. These limits also apply to persons seeking civil damages in cases involving sexual abuse or aggravated sexual assault.

DIGEST: HB 2330 would allow a person to bring a civil suit for personal injury not later than five years after the date the cause of action accrues if the injury arises as a result of conduct that violated sexual assault or aggravated sexual assault offenses under the state's Penal Code.

In an action for injury resulting in death arising as a result of sexual assault or aggravated sexual assault under the state's Penal Code, the cause of action would accrue on the death of the injured person.

The statute of limitations in these cases would stop running if a suit was filed in the appropriate court alleging that the identity of the defendant in the suit was unknown and designating the defendant as "John or Jane Doe" in the petition. The person filing the petition would be required to proceed with due diligence to discover the identify of the defendant and amend the petition by substituting the real name of the defendant within 30 days of learning the defendant's true identity. The statute of limitations period would begin to run on the date the petition was amended.

The bill would take effect immediately if approved by a two-thirds vote of each house.

**SUPPORTERS
SAY:**

Criminal prosecutions can be brought within five years for cases involving sexual assault or rape. It makes sense to provide the same period of time for civil actions. In many cases the victim of a rape or sexual assault requires more than two years to fully resolve the emotional conflicts involved with such acts of violence. Extending the statute of limitations by three years would provide victims with a better opportunity to muster the necessary emotional strength to face their accused.

Often victims of rape or sexual assault suppress the incidents until they get professional help and/or regain their emotional health. Extending the statute of limitations in these instances would allow victims more time to recall fully the acts of violence that occurred.

**OPPONENTS
SAY:**

Part of the reason for a two-year statute of limitations in personal injury cases is to ensure that claims are fresh, witnesses can be easily located and their memories are reliable and can be trusted by a jury when they give testimony. In addition, there is a better opportunity for locating key evidence including documents and records without having them destroyed or lost. Extending the civil statute of limitations for cases of rape or sexual assault would place the defendant at an unfair disadvantage in procuring evidence and key witnesses with reliable memories. This unfairness to a potential defendant would be further compounded by the lower standard of proof allowed to find civil defendants liable.

NOTES:

The committee substitute would allow for tolling the statute of limitations in cases where the defendant is not identified and would change the effective date to seek immediate effect.