

THE UNINTENDED CONSEQUENCES OF STATE TORT LIMITS

CAPS ON DAMAGES AND STATUTES OF LIMITATIONS IN SEXUAL ASSAULT CASES

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Sexual assault survivors can face terrible financial burdens as a result of trauma, suffering, pain and lost quality of life. The criminal justice system isn't designed to compensate them, but the civil justice system is. Or at least it should be.

Filing civil cases against those responsible for a sexual assault is not easy, requiring someone to relive the horror and humiliation of an attack. But making things even more difficult for the brave survivors who do file civil cases are state tort limits that reduce or completely block their compensation. For example, a state may cap damages or have an overly-restrictive statute of limitations (SOL). Such laws can protect a shocking catalog of lawbreakers, from rapists who commit violent attacks to physicians who sexually abuse patients.

The following is a summary of state laws focusing specifically on three major categories of tort limits that protect violent perpetrators of sexual assault: caps on compensatory damages, most commonly covering non-economic injuries;¹ caps on punitive damages, which limit recovery for particularly horrendous wrongdoing;² and SOLs, which if overly restrictive will block sexual assault survivors from accessing the civil courts at all.³ This summary also breaks out separate laws that might apply in a medical malpractice case, since some patients who have been sexually violated by doctors may be permitted to sue under a state's medical malpractice law.⁴

¹ Non-economic injuries include trauma, sexual or reproductive harm, and other types of suffering and pain. While dollar limits vary from state to state (and are not listed here), any cap can both limit accountability for the assailant and compensation for the survivor.

² Punitive damages are awarded to deter and punish particularly egregious, reckless, or intentional misconduct. While dollar limits vary from state to state (and are not listed here), any cap can both limit accountability for the assailant and compensation for the survivor.

³ SOLs vary greatly from state to state. Several states have extended their statutes of limitations for cases involving the sexual assault of children. Other states have a different (and often slightly longer) SOL for cases against third parties, such as a negligent landlord or security company. This chart is particularly focused on laws that protect those directly committing assaults.

⁴ For medical malpractice cases, we assume the SOL begins running on the "date of injury." That assumes a patient is aware of an assault at or close to the time it occurred. We understand that this is not always the case. Many states

Alabama

CAPS:

No compensatory tort cap⁵

Cap on punitive damages

SOL:

Two years

Alaska

CAPS:

Cap on noneconomic damages*

Cap on punitive damages

SOL:

No limit for felony sexual abuse of a minor, sexual assault, trafficking; three years for misdemeanor sexual abuse of a minor, sexual assault, incest; if medical malpractice, two years with certain limited variations for minors

Arizona

CAPS:

No tort caps⁶

SOL:

Two years; if child abused, age 20

Arkansas

CAPS:

No tort caps

SOL:

Three years; if child abused, three years from discovery of abuse; if medical malpractice case, two years with limited variations for minors

provide an alternative SOL that begins running on the “date of discovery” of an injury. Therefore, there may be some SOL variations based on the facts of a case.

⁵ “No compensatory tort cap” means that the state does not cap compensatory damages, such as non-economic damages, but may still cap punitive damages in sexual assault cases.

⁶ “No tort caps” means that the state caps neither compensatory damages, such as non-economic damages, nor punitive damages in sexual assault cases.

California

CAPS:

No general tort cap⁷
Medical malpractice cap on noneconomic damages**

SOL:

Ten years or three years from when victim knew or should have known; if child abused, three years from discovery of abuse or 8 years after age of majority; if a medical malpractice case, three years with limited variations for minors

Colorado

CAPS:

Cap on noneconomic damages
Medical malpractice cap on all damages
Cap on punitive damages

SOL:

Two years; if child abused, six years after majority or removal of a “disability”

Connecticut

CAPS:

No tort caps

SOL:

Two years, except no limit if defendant has been convicted of sexual assault felony; if child abused, 30 years from date of majority

Delaware

CAPS:

No tort caps

SOL:

Two years; if child abused, no limit

District of Columbia

CAPS:

No tort caps

⁷ “No general tort cap” means that the state caps neither compensatory damages, such as non-economic damages, nor punitive damages in sexual assault cases. However, it may still cap damages in medical malpractice cases. It should be noted that states vary as to whether sexual assault by a physician is beyond the scope or definition of “medical malpractice” and therefore should be considered an intentional tort, not medical malpractice.

SOL: Three years; if child abused, age 25 or three years from when victim knew or should have known of abuse

Florida

CAPS: No compensatory tort cap
Cap on punitive damages*

SOL: Seven years after age of majority, or four years after person leaves dependency of abuser or discovery of abuse; no limit for child victims of sexual battery; if medical malpractice, two years, with limited variations for minors

Georgia

CAPS: No compensatory tort cap
Cap on punitive damages*

SOL: Two years; if child abused, five years after age of majority with certain exceptions if victim is 65 or older

Hawaii

CAPS: Cap on noneconomic damages*

SOL: Two years; if child abused, age 20.

Idaho

CAPS: Cap on noneconomic damages*
Cap on punitive damages

SOL: Two years; if child abused, five years from age of majority, or discovered or should have discovered abuse

Illinois

CAPS: No tort caps

SOL:

Two years; if child abused, 20 years or more including no limit in some cases; if medical malpractice, two to four years with limited variations for minors

Indiana

CAPS:

No general compensatory tort cap⁸
Medical malpractice cap on all damages
Cap on punitive damages

SOL:

Two years; if child abused, seven years or four years after ending dependency on abuser

Iowa

CAPS:

No general tort cap
Medical malpractice cap on noneconomic damages*

SOL:

Two years; if child abused, four years from discovering abuse, or five years from treatment or school enrollment for abuse by counselor, therapist or school employee

Kansas

CAPS:

Cap on noneconomic damages
Cap on punitive damages

SOL:

Two years; if child abused, age 21 or three years from realization of abuse

Kentucky

CAPS:

No tort caps

SOL:

One year; if child abused, 10 years since last act of perpetrator, date victim knew or should have known, perpetrator's conviction, or age 28

⁸ “No general compensatory tort cap” means that the state does not cap compensatory damages, such as non-economic damages, in cases except those involving medical malpractice. And the state also may cap punitive damages in sexual assault cases. It should be noted that states vary as to whether sexual assault by a physician is beyond the scope or definition of “medical malpractice” and therefore should be considered an intentional tort, not medical malpractice.

Louisiana

CAPS:

No general tort cap
Medical malpractice cap on all damages (except future damages)

SOL:

One year; if child abused, age 28

Maine

CAPS:

No tort caps

SOL:

Two years; if child abused, no limit; if medical malpractice case, three years with limited variations for minors

Maryland

CAPS:

Cap on noneconomic damages

SOL:

Three years; if child abused, seven years from age of majority; if medical malpractice, five years with limited variations for minors

Massachusetts

CAPS:

No general tort cap
Medical malpractice cap on noneconomic damages (except if jury finds special circumstances, which could apply to sexual assault)

SOL:

Three years; if child abused, 35 years or 7 years from discovering injury

Michigan

CAPS:

No general tort cap
Medical malpractice cap on noneconomic damages

SOL:

Two years

Minnesota

CAPS:

No tort caps

SOL:

Six years; if child abused, age 25; if medical malpractice case, four years with limited variations for minors

Mississippi

CAPS:

Cap on noneconomic damages; additional cap if medical malpractice
Cap on punitive damages*

SOL:

Three years; if child abused, three years from majority age; if medical malpractice case, two years with limited variations for minors

Missouri

CAPS:

No general tort cap
Medical malpractice cap on noneconomic damages

SOL:

Two years except 10 years if assault by family member; if child abused, age 31 or three years after discovery; if medical malpractice, two years with limited variations for minors

Montana

CAPS:

No general compensatory tort cap
Medical malpractice cap on noneconomic damages
Cap on punitive damages

SOL:

Three years; if medical malpractice case, two years with limited variations for minors

Nebraska

CAPS:

No general tort cap
Medical malpractice cap on all damages

SOL:

One year; if medical malpractice, two years with limited variations for those under 20

Nevada

CAPS:

No general compensatory tort cap
Medical malpractice cap on noneconomic damages
Cap on punitive damages

SOL:

Two years; if child abused, age 28 or 10 years from discovery of abuse; if medical malpractice, three years with limited variations for minors

New Hampshire

CAPS:

No tort caps

SOL:

Three years; if child abused, age 30 or three years from abuse discovery; if medical malpractice case, two years with limited variations for minors

New Jersey

CAPS:

No compensatory tort cap
Cap on punitive damages

SOL:

Two years; if child abused, two years from discovery of abuse

New Mexico

CAPS:

No general tort cap
Medical malpractice cap on all damages

SOL:

Three years; if child abused, age 24 or three years after discovery (whichever comes first)

New York

CAPS:

No tort caps

SOL:

Five years; if child abused, age 55; if medical malpractice, two and a half years with limited variations for minors

North Carolina

CAPS:

No general compensatory tort cap
Cap on punitive damages
Medical malpractice cap on noneconomic damages*

SOL:

Three years; if child abused, age 21

North Dakota

CAPS:

No general compensatory tort cap
Cap on punitive damages
Medical malpractice cap on noneconomic damages

SOL:

Two years; if child abused, 10 years from abuse or discovery of abuse

Ohio

CAPS:

Cap on noneconomic damages
Cap on punitive damages

SOL:

One year; two years if against mental health professional; if child abused, 12 years after age of majority

Oklahoma

CAPS:

Cap on noneconomic damages
Cap on punitive damages*

SOL:

One year; if child abused, two years but tolled until age 18, or five years after perpetrator released from custody/prison; if medical malpractice case, two years with limited variations for minors

Oregon

CAPS:

Cap on noneconomic damages (declared unconstitutional in 99; reversed in 16)
Medical malpractice cap on punitive damages (abolished against doctors)*

SOL:

Two years; if child abused, by age 40 or 5 years from discovery of abuse

Pennsylvania

CAPS:

No general compensatory tort cap
Medical malpractice cap on punitive damages

SOL:

Two years; if child abused, age 30; if medical malpractice, seven years with limited variations for minors

Rhode Island

CAPS:

No tort caps

SOL:

Three years; if child abused, seven years from act or discovery of it

South Carolina

CAPS:

No general compensatory tort cap
Medical malpractice cap on noneconomic damages
Cap on punitive damages*

SOL:

Three years after discovery of abuse; if child abused, age 27 or three years after discovery

South Dakota

CAPS:

No general tort cap
Medical malpractice cap on noneconomic damages

SOL:

Two years ; if child abused, three years from act or discovery

Tennessee

CAPS:

Cap on punitive damages
Cap on noneconomic damages*

SOL:

One year or two years if criminal charges brought; if child abused, age 21 or three years after abuse discovered; if medical malpractice, one year with minor variations for minors and incapacitation

Texas

CAPS:

No general compensatory tort cap
Medical malpractice cap on noneconomic damages
Cap on punitive damages

SOL:

Five years; if child abused, 15 years; if medical malpractice, two years

Utah

CAPS:

No general tort cap
Medical malpractice cap on noneconomic damages

SOL:

Four years; if child abused, no limit; if medical malpractice, two years

Vermont

CAPS:

No tort caps

SOL:

Three years; if child abused, six years from act or discovery

Virginia

CAPS:

No general compensatory tort cap
Medical malpractice cap on all damages
Cap on punitive damages

SOL:

Two years; if child abused, 20 years

Washington

CAPS:

No tort caps

SOL:

Three years; if child abused, three years from act or discovery, beginning at age 18

West Virginia

CAPS:

No general compensatory tort cap
Medical malpractice cap on noneconomic damages
Cap on punitive damages

SOL:

Two years; if child abused, four years from age of majority or discovery; if medical malpractice case, two years with minor variations for minors

Wisconsin

CAPS:

Medical malpractice cap on noneconomic damages***
Cap on punitive damages

SOL:

Three years; if child abused, age 35

Wyoming

CAPS:

No caps

SOL:

Four years; if child abused, age 26 or three years after discovery

* State provides some type of exception to the cap that may apply in a sexual assault case. These exceptions vary from state to state, and include factors such as whether a defendant's harm was intentional, willful, or constituted a criminal felony; or if the defendant was under the influence of drugs or alcohol.

** Statute may exclude intentional torts.

*** Sexual assault by a doctor considered an intentional tort, not governed by medical malpractice law.