

Could Harvey Weinstein be criminally prosecuted?

By Harriet Alexander

Harvey Weinstein could face criminal prosecution for sexual assault as the New York Police Department confirmed that it was investigating.

“Based on information referenced in published news reports the NYPD is conducting a review to determine if there are any additional complaints relating to the Harvey Weinstein matter,” said J. Peter Donald, a spokesman for the NYPD.

“No filed complaints have been identified as of this time and as always, the NYPD encourages anyone who may have information pertaining to this matter to call the CrimeStoppers Hotline.”

Weinstein, 65, has been accused by at least 30 women of sexual harassment – including Kate Beckinsale, Gwyneth Paltrow, Angelina Jolie and Mira Sorvino.

Gloria Allred, the famed women’s rights lawyer, said on Wednesday that many more women had come forward –

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although not all wished to speak out publicly.

Three women – Asia Argento, Lucia Evans and a third unnamed accuser – claim that Weinstein raped them.

Argento, who alleges that Weinstein forcibly performed oral sex on her in the Hotel du Cap-Eden-Roc, on the French Riviera, in 1997, would be unable to press charges, owing to the French statute of limitations.

If more victims came out in California, the accusations would have to fall within that state’s 10 year statute of limitations – a rule that was only lifted by Jerry Brown, the governor, in January this year. Accusations prior to January still must fall within the time frame, otherwise the women could not file a case.

But Evans could in theory press charges.

She told The New Yorker that Weinstein forced her to perform oral sex on him inside the

Miramax offices in the Tribeca district of New York City, in 2004. New York state does not have a statute of limitations for rape claims, and so she in theory could seek a criminal prosecution.

It was unclear when or where the third incident, in which he “forced himself sexually” on a woman who worked for him, took place.

Yet prosecutors said it could be difficult to secure a conviction.

“It is very unlikely that a prosecutor would go forward on a case that’s 13, 14 years old,” said Manny Medrano, a Los Angeles-based criminal defence lawyer and former federal prosecutor.

He told The Wrap: “That’s a very difficult case to prosecute due to the passage of time, especially when it may come down to a ‘she-said, he said’ scenario.

“The vast majority of prosecutors would not pursue the case.”

Norman Pattis, a criminal defense lawyer in Connecticut, said that the behaviour that Evans alleged would constitute rape or aggravated rape.

“Arguably, the case can be brought,” he told The Wrap.

“I say arguably because she’s got, obviously, a lot of explaining to do about why there was a [13]-year interval between the

time of the alleged conduct and now. She’s going to have some issues on her hands. Delayed disclosure is always a fundamental issue in sex cases.”

David Shapiro, a San Diego lawyer, added: “She’d need to make a statement, at least, to law enforcement.

“They don’t want to file a case they’re not sure they’re going to be able to win.”

But he said prospects were slim.

“We’re not going to have any DNA. The prosecution is going to have to answer what took this accuser so long to reveal these accusations. They’re going to have to deal with what I’m sure is the best defence money can buy picking apart this accuser’s accusations.”

He added that jurors “want to see DNA, they want to see a confession, they want to see something.”

In March 2015 an Italian-Filipina actress, Ambra Battilana Gutierrez, secured an audio recording of Weinstein admitting groping her. But prosecutors in New York decided not to proceed with the case.

“If we could have prosecuted Harvey Weinstein for the conduct that occurred in 2015, we would have,” said Karen Friedman-Agnifilo, chief assistant district attorney, in a statement defending the decision.

She said the recorded meeting between Gutierrez and Weinstein, as well as a controlled call between the two the night before, were made “without our knowledge or input.”

“The seasoned prosecutors in our Sex Crimes Unit were not afforded the opportunity before the meeting to counsel investigators on what was necessary to capture in order to prove a misdemeanor sex crime,” she said.

“While the recording is horrifying to listen to, what emerged from the audio was insufficient to prove a crime under New York law, which requires prosecutors to establish criminal intent.”

Lawyers do agree, however, that Weinstein could be faced with a slew of civil suits.

“The potential liability is significant,” said Ann Fromholz, a Pasadena lawyer who has handled sexual harassment cases.

Under California law, The Weinstein Company could be liable for Weinstein’s alleged actions, according to Doug Silverstein, a lawyer who specialises in employment and discrimination.

“They are on the hook just like him,” he told The Los Angeles Times.

Employees of The Weinstein

Company could seek damages including loss of wages if the victim could prove she was unable to work or find work because of the harassment.

Companies can also be sued for damages for emotional distress, among other claims.

Weinstein could also face lawsuits from the company itself.

Other shareholders of Weinstein Co. could sue him for breach of contract if he broke the company's covenants or policies, according to one legal expert speaking to The Los Angeles Times – as long as they did not know about his behaviour, or were complicit.

However, on Thursday The New York Times reported that executives were aware of the payouts to some of the abused women - at least eight of whom received settlements. ■