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## SENATE COMMITTEE ON PUBLIC SAFETY

Senator Loni Hancock, Chair

2015 - 2016 Regular

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**Bill No:** AB 835                      **Hearing Date:** June 23, 2015  
**Author:** Gipson  
**Version:** April 14, 2015  
**Urgency:** No                              **Fiscal:** Yes  
**Consultant:** MK

**Subject:** *Vehicular Manslaughter: Statute of Limitation*

### HISTORY

**Source:** Crime Victims United

**Prior Legislation:** AB 184 (Gatto), Chapter 765, Statutes of 2013  
SB 387 (LaMalfa) held SCoPS ROCA 2012  
AB 2484 (Davis) not heard SCoPS ROCA 2012

**Support:** The California Association of Highway Patrolman; California District Attorneys Association; California Police Chiefs Association, Inc.; Los Angeles County District Attorney's Association

**Opposition:** American Civil Liberties Union; California Attorneys for Criminal Justice; Legal Services for Prisoners with Children

**Assembly Floor Vote:** 75 - 0

### PURPOSE

*The purpose of this bill is to allow for a longer statute of limitations when a person flees the scene of an accident where vehicular manslaughter has occurred.*

*Existing law* states that vehicular manslaughter is the unlawful killing of a human being without malice while driving a vehicle in the commission of an unlawful act, not amounting to a felony, and with gross negligence or driving a vehicle in the commission of a lawful act which might produce death, in an unlawful manner, and with gross negligence. (Penal Code, § 192 (c)(1).)

*Existing law* states that violation of vehicular manslaughter is punishable by either imprisonment in the county jail for not more than one year or by imprisonment in the state prison for two, four or six years. (Penal Code, § 193 (c)(1).)

*Existing law* states that vehicular manslaughter also is the unlawful killing of a human being without malice while (i) driving a vehicle in the commission of an unlawful act, not amounting to a felony, but without gross negligence or (ii) driving a vehicle in the commission of a lawful act which might produce death, in an unlawful manner, but without gross negligence. States that

violation of this offense is punishable by imprisonment in the county jail for not more than one year. (Penal Code §§ 192(c)(2) and 193 (c) (2).)

*Existing law* requires that prosecution for an offense punishable by imprisonment in the state prison or county jail pursuant to realignment be commenced within three years after commission of the offense, except as specified. (Penal Code, § 801.)

*Existing law* states that the driver of a vehicle involved in an accident resulting in injury to a person, other than himself or herself, or in the death of a person shall immediately stop the vehicle at the scene of the accident and provide assistance and information. (Vehicle Code, § 20001 (a).)

*Existing law* specifies that if the results is death or permanent, serious injury, a person who violates subdivision shall be punished by imprisonment in the state prison for two, three, or four years, or in a county jail for not less than 90 days nor more than one year, or by a fine of not less than one thousand dollars (\$1,000) nor more than ten thousand dollars (\$10,000), or by both that imprisonment and fine. However, the court, in the interests of justice and for reasons stated in the record, may reduce or eliminate the minimum imprisonment. (Vehicle Code, § 20001 (b)(2).)

*Existing law* states that a person who flees the scene of the crime after committing a violation of vehicular manslaughter while intoxicated of, or gross vehicular manslaughter upon conviction of any of those sections, in addition and consecutive to the punishment prescribed, shall be punished by an additional term of imprisonment of five years in the state prison. This additional term shall not be imposed unless the allegation is charged in the accusatory pleading and admitted by the defendant or found to be true by the trier of fact. The court shall not strike a finding that brings a person within the provisions of this subdivision or an allegation made pursuant to this subdivision. (Vehicle Code, § 20001 (c).)

*Existing law* requires that prosecution for a misdemeanor offense be commenced within one year after commission of the offense, except as specified. (Penal Code, § 802 (a).)

*Existing law* allows a criminal complaint to be filed within the standard period, or one year after the person is initially identified by law enforcement as a suspect in the commission of the offense, whichever is later, but in no case later than six years after the commission of the offense, if a person flees the scene of an accident that caused death or permanent, serious injury. (Penal Code, § 803 (j).)

*This bill* provides that notwithstanding any other limitation of time, if a person flees the scene of an accident where the person is charged with vehicular manslaughter, the statute of limitation is one year after the person is initially identified by law enforcement as a suspect in the offense or the existing statute of limitations, whichever is later.

#### RECEIVERSHIP/OVERCROWDING CRISIS AGGRAVATION

For the past eight years, this Committee has scrutinized legislation referred to its jurisdiction for any potential impact on prison overcrowding. Mindful of the United States Supreme Court ruling and federal court orders relating to the state's ability to provide a constitutional level of health care to its inmate population and the related issue of prison overcrowding, this Committee

has applied its “ROCA” policy as a content-neutral, provisional measure necessary to ensure that the Legislature does not erode progress in reducing prison overcrowding.

On February 10, 2014, the federal court ordered California to reduce its in-state adult institution population to 137.5% of design capacity by February 28, 2016, as follows:

- 143% of design bed capacity by June 30, 2014;
- 141.5% of design bed capacity by February 28, 2015; and,
- 137.5% of design bed capacity by February 28, 2016.

In February of this year the administration reported that as “of February 11, 2015, 112,993 inmates were housed in the State’s 34 adult institutions, which amounts to 136.6% of design bed capacity, and 8,828 inmates were housed in out-of-state facilities. This current population is now below the court-ordered reduction to 137.5% of design bed capacity.”( Defendants’ February 2015 Status Report In Response To February 10, 2014 Order, 2:90-cv-00520 KJM DAD PC, 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (fn. omitted).

While significant gains have been made in reducing the prison population, the state now must stabilize these advances and demonstrate to the federal court that California has in place the “durable solution” to prison overcrowding “consistently demanded” by the court. (Opinion Re: Order Granting in Part and Denying in Part Defendants’ Request For Extension of December 31, 2013 Deadline, NO. 2:90-cv-0520 LKK DAD (PC), 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (2-10-14). The Committee’s consideration of bills that may impact the prison population therefore will be informed by the following questions:

- Whether a proposal erodes a measure which has contributed to reducing the prison population;
- Whether a proposal addresses a major area of public safety or criminal activity for which there is no other reasonable, appropriate remedy;
- Whether a proposal addresses a crime which is directly dangerous to the physical safety of others for which there is no other reasonably appropriate sanction;
- Whether a proposal corrects a constitutional problem or legislative drafting error; and
- Whether a proposal proposes penalties which are proportionate, and cannot be achieved through any other reasonably appropriate remedy.

## COMMENTS

### 1. Need for This Bill

According to the author:

Assembly Bill 835 will ensure those who commit vehicular homicide and flee the scene of a fatality are held accountable for their crime. By tolling – or suspending – the statute of limitations so it does not begin to expire until a suspect is identified, AB 835 would give law enforcement a one year period to file charges against those who commit this crime. In LA County alone, there is an average of 6,000 hit and run accidents that result in death or injury every year. We need to give law

enforcement the tools to prosecute these cases, and provide justice for the families shattered by these crimes.”

## 2. The Statute of Limitations Generally; Law Revision Commission Report

The statute of limitations requires commencement of a prosecution within a certain period of time after the commission of a crime. A prosecution is initiated by filing an indictment or information, filing a complaint, certifying a case to superior court, or issuing an arrest or bench warrant. (Penal Code § 804.) The failure of a prosecution to be commenced within the applicable period of limitation is a complete defense to the charge. The statute of limitations is jurisdictional and may be raised as a defense at any time, before or after judgment. *People v. Morris* (1988) 46 Cal.3d 1, 13. The defense may only be waived under limited circumstances. (See *Cowan v. Superior Court* (1996) 14 Cal.4th 367.)

The Legislature enacted the current statutory scheme regarding statutes of limitations for crimes in 1984 in response to a report of the California Law Revision Commission:

The Commission identified various factors to be considered in drafting a limitations statute. These factors include: (a) The staleness factor. A person accused of crime should be protected from having to face charges based on possibly unreliable evidence and from losing access to the evidentiary means to defend. (b) The repose factor. This reflects society's lack of a desire to prosecute for crimes committed in the distant past. (c) The motivation factor. This aspect of the statute imposes a priority among crimes for investigation and prosecution. (d) The seriousness factor. The statute of limitations is a grant of amnesty to a defendant; the more serious the crime, the less willing society is to grant that amnesty. (e) The concealment factor. Detection of certain concealed crimes may be quite difficult and may require long investigations to identify and prosecute the perpetrators.

The Commission concluded that a felony limitations statute generally should be based on the seriousness of the crime. Seriousness is easily determined based on classification of a crime as felony or misdemeanor and the punishment specified, and a scheme based on seriousness generally will accommodate the other factors as well. Also, the simplicity of a limitations period based on seriousness provides predictability and promotes uniformity of treatment.<sup>1</sup>

## 3. Existing Statute of Limitations for Fleeing a Scene

AB 184 (Gatto) in 2013 extended the statute of limitations when a person flees the scene of an accident and causes death or permanent serious injury. The law now allows a case to be filed within the applicable time period or one year after the person was initially identified by law enforcement, but in no case later than six years. The six year limitation was put in AB 184 (Gatto) to strike a balance between not letting a case get stale, encouraging law enforcement to continue to pursue leads and the difficulty a person facing in defending a years old case.

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<sup>1</sup> 1 Witkin Cal. Crim. Law Defenses, Section 214 (3rd Ed. 2004), citing 17 Cal. Law Rev. Com. Reports, pp.308-314.

#### **4. Expanding Statute of Limitations for Vehicular Manslaughter**

This bill would allow for an extension of the statute of limitations for vehicular manslaughter when a person flees the scene. The existing statute of limitations is 3 years for a felony and one year for a misdemeanor. This bill would provide that the statute of limitations would be one year after the person is initially identified by law enforcement as a suspect or the existing statute of limitations, whichever is later.

#### **5. Support**

In support the Los Angeles District Attorney's Office states:

AB 835 provides that, in addition to filing a criminal complaint within the existing statute of limitations, if a person flees the scene of an accident that results in a vehicular manslaughter a criminal complaint may be filed within one year after the person is initially identified by law enforcement as a suspect in the commission of the offense, whichever is later.

Although these cases are rare, when they do occur, it is a terrible injustice. AB 835 will give law enforcement one year after the subject is identified to arrest and charge that individual. Unfortunately, current law gives hit and run drivers and incentive to evade law enforcement in cases where they have caused the death of the victim. The defendant should not be permitted the benefit of the current statute of limitations since it is the defendant's own action in fleeing from the scene of the accident and then evading law enforcement that caused the statute of limitations to expire.

Under current law, there are similar statutes for other offenses where the identity of the perpetrator may not be learned within the regular statute of limitation. For example, in fraud cases, the statute of limitation does not begin to run until the discovery of the offense, even if the crime was committed years before it was discovered. Similarly, in sex crime cases involving minors, a criminal case may be filed within one year after it is reported to law enforcement after the minor turns 18, regardless of when the crime was committed. Similar states of limitation exist for welfare fraud, bribery of a public official and certain environmental crimes. Victims killed in cases involving vehicular manslaughter should be entitled to the same protection.

#### **6. Opposition**

The ACLU opposes this bill unless the six-year limit that was put in for the statute of limitations where a person flees the scene of an accident is added to this bill. Specifically they state:

AB 835 would effectively eliminate the statute of limitations for charges under Penal Code section 192(c)(1) or (2) in cases where a person flees the scene of an accident. The bill would permit the prosecution to pursue charges within one year of identifying a suspect, without any outer-limit on when charges may be filed. Practically speaking, this is effectively the same as no statute of limitations, as the prosecution may pursue charges decades after the events at issue. In contrast, Penal Code section 803(j) currently provides that, in cases where a person flees

the scene of an accident causing death, the prosecution may file charges within one year of identifying a suspect “but in no case later than six years after the commission of the offense.”

Creating two different statutes of limitations for these offenses will create confusion. A prosecutor may choose to charge the more severe offense of Penal Code section 192(c) for the specific purpose of evading the six year statute of limitations provided for the offense of fleeing the scene of an accident causing death. People charged with this more severe crime more than six years after the events may raise legitimate due process and equal protection concerns.

Moreover, statutes of limitations promote one of the core principles of our justice system: that crimes are solved and brought to trial quickly, to ensure that a person accused of a crime faces reliable evidence and has a fair opportunity to mount a defense. The United States Supreme Court stated that statutes of limitations are the primary guarantee against bringing overly stale criminal charges. (*United States v. Ewell* (1966) 383 U.S. 116, 122.) People should not face criminal charges based on evidence that may be unreliable or after they have lost access to evidence to defend against the charge. With time memory fades, witnesses become unavailable, and physical evidence becomes unobtainable or contaminated.

Offenses that charged under Penal Code section 192(c) are particularly likely to raise these concerns. These offenses do not require intent but, rather, a finding of gross negligence. Determining whether the accused person committed an act with gross negligence requires a careful assessment of all of the circumstances of the accident and many of the circumstances leading up to the accident. A person facing charges of gross vehicular manslaughter decades after the event will have lost the ability to identify and interview key witnesses and to collect physical evidence that may be relevant to his or her defense.

For these reasons, we oppose AB 835 unless amended to provide an outer-limit of six years for filing these charges.

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