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# SENATE COMMITTEE ON PUBLIC SAFETY

Senator Aisha Wahab, Chair

2023 - 2024 Regular

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**Bill No:** AB 2295                      **Hearing Date:** June 11, 2024  
**Author:** Addis  
**Version:** April 25, 2024  
**Urgency:** No                                      **Fiscal:** Yes  
**Consultant:** SC

**Subject:** *Crimes: commencement of prosecution*

## HISTORY

**Source:** Survivors Network of those Abused by Priests (SNAP)

**Prior Legislation:** AB 452 (Addis), Chapter 655, Statutes of 2023  
SB 558 (Rubio), Chapter 877, Statutes of 2023  
AB 1455 (Wicks), Chapter 595, Statutes of 2021  
AB 218 (Gonzalez), Chapter 861, Statutes of 2019  
SB 813 (Leyva), Chapter 813, Statutes of 2016  
SB 1779 (Burton), Chapter 149, Statutes of 2002

**Support:** American Association of University Women (AAUW) San Jose; American Association of University Women – California; California Legislative Women's Caucus; California Police Chiefs Association; California State Sheriffs' Association; Child USA; Consumer Attorneys of California; Peace Officers Research Association of California (PORAC)

**Opposition:** California Attorneys for Criminal Justice; Californians United for a Responsible Budget; Team Justice

**Assembly Floor Vote:** 73 - 0

## PURPOSE

*The purpose of this bill is to eliminate the statute of limitations for specified sex crimes committed when the victim was under the age of 18, if certain conditions are met and if the crime was committed on or after January 1, 2025 or if the statute of limitations has not expired as of January 1, 2025.*

*Existing law* provides that prosecution for crimes punishable by imprisonment for eight years or more and not otherwise covered must be commenced within six years after commission of the offense. (Pen. Code, § 800.)

*Existing law* provides that prosecution for other felonies punishable by less than eight years must be commenced within three years after commission of the offense. (Pen. Code, § 801.)

*Existing law* states that prosecution for a misdemeanor shall be commenced within one year after the commission of the offense, unless otherwise specified. (Pen. Code, § 802, subd. (a).)

*Existing law* provides that unless provided, as specified, a limitation of time is not tolled or extended for any reason. (Penal Code § 803, subd. (a).)

*Existing law* provides that prosecution of a felony offense of rape, sodomy, oral copulation, lewd and lascivious acts, continuous sexual abuse of a child, or penetration by foreign object, under certain circumstances, committed on or after January 1, 2017, and crimes for which the statute of limitations that was in effect prior to January 1, 2017, has not run as of January 1, 2017, may be commenced at any time. (Pen. Code, § 799, subd. (b).)

*Existing law* provides that that prosecution for a felony offense that requires registration as a sex offender must commence within 10 years of the commission of the offense, unless a longer statute of limitations applies as specified. (Pen. Code, § 801.1, subd. (b).)

*Existing law* provides that prosecution for a felony offense of rape, sodomy, oral copulation, lewd and lascivious acts, continuous sexual abuse of a child, or forcible sexual penetration that was committed on or after January 1, 2015, or for which the statute of limitations has not run as of January 1, 2015 where the victim was under 18 years old at the time of the offense, may be commenced at any time prior to the victim's 40th birthday. (Pen. Code, § 801.1, subd. (a).)

*Existing law* states that a criminal complaint may be filed within one year of the date of a report to a California law enforcement agency by a person of any age alleging that the person was the victim of specified sex crimes that occurred when the person was under 18 years of age, if all of the following occur:

- The limitation period, as specified, has expired;
- The crime involved substantial sexual conduct, excluding masturbation that is not mutual; and,
- There is independent evidence that corroborates the victim's allegation. If the victim was 21 years of age or older at the time of the report, the independent evidence shall clearly and convincingly corroborate the victim's allegation. (Pen. Code, § 803, subd. (f)(1) & (2).)

*Existing law* provides that evidence shall not be used to corroborate the victim's allegation if that evidence would otherwise be inadmissible during trial. Independent evidence excludes the opinions of mental health professionals. (Pen. Code, § 803, subd. (f)(3).)

*This bill* states that a criminal complaint for specified sex crimes that occurred when the victim was under the age of 18, that were committed on or after January 1, 2025, or for which the statute of limitations that was in effect prior to January 1, 2025, has not run as of January 1, 2025, may be filed on or after the victim's 40th birthday if the following conditions are met:

- The limitation period in Penal Code sections 800 or 801, whichever is later, has expired;
- The criminal complaint is filed within one year of the date of a report to a California law enforcement agency by a person;
- The crime involved substantial sexual conduct, as specified; and,

- There is independent evidence that clearly and convincingly corroborates the victim's allegation.

*This bill* provides that if the above requirements are not met, the prosecuting agency may nevertheless provide victim assistance to the person, including support with pursuing restorative justice.

## COMMENTS

### 1. Need for This Bill

According to the author of this bill:

For many survivors, disclosing abuse is a long and painful process. Numerous factors prevent survivors, especially those abused as children, from reporting their abuse including: feelings of shame, lacking trusted adults and opportunities to disclose, and fear of additional victimization or not being believed. Even when survivors become adults, various societal, institutional, and psychological barriers impede their ability to report their abuser. Many survivors miss the deadline to obtain justice because trauma affects them in a way that causes them to delay disclosure of their abuse until they are older. It is an unacceptable tragedy that victims of abuse are unable to hold their abuser accountable simply because the law arbitrarily says their time to report has run out.

### 2. Purpose and Effect of Statutes of Limitations

Statutes of limitations require 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 United States Supreme Court has 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.) There is a measure of predictability provided by specifying a limit beyond which there is an irrebuttable presumption that a defendant's right to a fair trial would be prejudiced. Such laws reflect legislative assessments of relative interests of the state and the defendant in administering and receiving justice: "Significantly, a statute of limitations reflects a legislative judgment that, after a certain time, no quantum of evidence is sufficient to convict. And that judgment typically rests, in large part, upon evidentiary concerns – for example, concern that the passage of time has eroded memories or made witnesses or other evidence unavailable. (*Stogner v. California* (2003) 539 U.S. 607, 615.)

In general, the statutory limitations period is related to the seriousness of the offense as reflected in the length of punishment established by the Legislature. (*People v. Turner* (2005) 134 Cal.App.4th 1591, 1594-1595; see, e.g., Pen. Code, §§ 799-805.) After a comprehensive review

of criminal statutes of limitation in 1984, the Law Revision Commission recommended that the length of a “limitations statute should generally be based on the seriousness of the crime.” (17 Cal. Law Revision Com. Rep. (1984) p. 313.) The Legislature overhauled the entire statutory scheme with this recommendation in mind. In *People v. Turner, supra*, 134 Cal.App.4th 1591, the court summarized the recommendations of the Law Revision Commission:

The use of seriousness of the crime as the primary factor in determining the length of the applicable statute of limitations was designed to strike the right balance between the societal interest in pursuing and punishing those who commit serious crimes, and the importance of barring stale claims. It also served the procedural need to provid[e] predictability and promote uniformity of treatment for perpetrators and victims of all serious crimes. The commission suggested that the seriousness of an offense could easily be determined in the first instance by the classification of the crime as a felony rather than a misdemeanor. Within the class of felonies, a long term of imprisonment is a determination that it is one of the more serious felonies; and imposition of the death penalty or life in prison is a determination that society views the crime as the most serious. (*People v. Turner, supra*, 134 Cal.App.4th at pp. 1594-1595, citations omitted.)

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 prosecution bears the burden of proving, by a preponderance of the evidence, that a charged offense was committed within the applicable period of limitations. (*People v. Lopez* (1997) 52 Cal.App.4th 233, 248.) The court is required to construe application of the statute of limitations strictly in favor of the defendants. (*People v. Zamora* (1976) 18 Cal.3d 538, 574; *People v. Lee* (2000) 82 Cal.App.4th 1352, 1357-1358.)

### **3. Existing Statutes of Limitations and This Bill**

Generally, the statute of limitations for misdemeanor offenses requires commencement of prosecution within one year of the commission of the offense (Pen. Code § 802) and for felony offenses, within three years of the commission of the offense (Pen. Code § 801). There are specified exceptions that either provides for a longer statute of limitations (Pen. Code, §§ 801.5, 802), tolls the time (stops the clock) until the crime is discovered or when some other triggering event occurs (Pen. Code § 803), or provides no statute of limitations at all such as crimes punishable by death or life imprisonment without parole (Pen. Code § 799).

Specified felony sex crimes, including rape, aiding and abetting rape, sodomy, lewd or lascivious acts, continuous sexual abuse of a child, oral copulation, and sexual penetration, that are committed under certain circumstances also do not have a statute of limitations when the offense was committed on or after January 1, 2017, or if the statute of limitations had not expired as of January 1, 2017. (Pen. Code, § 799, subd. (b).)

If any of the longer statute of limitations for minor victims or Penal Code section 799(b) do not otherwise apply, the prosecution for a felony sex offense subject to mandatory sex offender registration must be commenced within 10 years after the commission of the offense. (Pen. Code, § 801.1, subd. (b).) The statute of limitations for the sex offenses implicated in this bill (rape, sodomy, lewd and lascivious acts, continuous sexual abuse of a child, oral copulation, or

forcible sexual penetration) requires commencement of prosecution prior to victim's 40th birthday, if the crime was committed when the victim was under 18. (Pen. Code, § 801.1, subd. (a).)

In addition to these two statutes of limitations, there is a tolling provision for prosecution of specified sex offenses. (Pen. Code, § 803.) Existing law authorizes prosecution to be commenced within one year of the date a person of any age reports to California law enforcement that he or she, while under the age of 18 years, was a victim of a sex crime, as specified, if all of the following occur:

- 1) The limitation period specified in Section 800, 801, or 801.1, whichever is later, has expired;
- 2) The crime involved substantial sexual conduct, as specified, excluding masturbation that is not mutual; and,
- 3) There is independent evidence that corroborates the victim's allegation. (Pen. Code, § 803, subd. (f).)

This bill amends the law that requires prosecution for specified sex offenses (rape, sodomy, oral copulation, lewd and lascivious acts, continuous sexual abuse of a child, or forcible sexual penetration) committed when the victim was under 18, to commence prior to victim's 40th birthday, by authorizing prosecution after the victim's 40th birthday if the following conditions are met:

- 1) The limitation period in Penal Code sections 800 or 801, whichever is later, has expired;
- 2) The criminal complaint is filed within one year of the date of a report to a California law enforcement agency by a person;
- 3) The crime involved substantial sexual conduct, as specified; and,
- 4) There is independent evidence that clearly and convincingly corroborates the victim's allegation.

This bill also provides that if the above requirements are not met, the prosecuting agency may nevertheless provide victim assistance to the person, including support with pursuing restorative justice.

#### **4. Ex Post Facto Protections**

The United States Constitution prohibits the ex post application of criminal laws. (U.S. Const., art. 1, § 10.) This prohibition forbids the enactment of laws “which imposes a punishment for an act which was not punishable at the time it was committed; or imposes additional punishment to that then prescribed.” (*Weaver v. Graham* (1981), 450 U.S. 24, 28.) The purpose of this prohibition is to assure that legislative acts give fair warning of their effect and to restrict potentially vindictive legislation. (*Id.* at p. 29.)

In *Stogner v. California*, *supra*, 539 U.S. 607 the Supreme Court ruled that a law enacted after expiration of a previously applicable limitations period violates the Ex Post Facto Clause when it

is applied to revive a previously time-barred prosecution. (*Id.* at pp. 610-611, 616.) However, extension of an existing statute of limitations is not ex post facto as long as the prior limitations period has not expired. (*Id.* at pp. 618-619.) Existing statutory law also provides that any change in the time period for the commencement of prosecution applies to any crime if prosecution for the crime was not barred on the effective date of the change by the statute of limitations in effect immediately prior to the effective date of the change. (Pen. Code § 803.6, subd. (b).)

Under these principles, a change to the statute of limitations cannot apply to crimes where the statute of limitations period has already expired.

This bill specifies that the extended statute of limitations applies to crimes committed on or after January 1, 2025 which would be the effective date of this bill, or crimes for which the statute of limitations has not yet expired.

## 5. Argument in Support

According to American Association of University Women California:

Statutes of limitations exist for both criminal and civil causes of action. They begin to run from the date of the injury, the date it was discovered, or the date it would have been discovered with reasonable efforts. Historically, statutes of limitations, the deadlines for prosecuting crimes, have been arbitrary and unfairly short, especially with child sexual abuse.

In 2014, California passed SB 926 (Beall) which extended the statute of limitations for survivors of child sexual abuse to allow survivors to take criminal action against their abusers up to the day they turn forty years old.

For millions of survivors, the statute of limitations on their claims expired long before they came forward to seek justice. The trauma from child sexual assault often takes years for survivors to process, which unfortunately results in many survivors never disclosing their abuse. Most survivors therefore miss the deadline to obtain justice because trauma affects them in a way that causes them to delay disclosure of their abuse until they are older. According to Child USA, over half of child sex abuse survivors first disclose they were abused at age 50 or older.

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