

---

# SENATE COMMITTEE ON PUBLIC SAFETY

Senator Aisha Wahab, Chair

2023 - 2024 Regular

---

**Bill No:** SB 1343                      **Hearing Date:** April 16, 2024  
**Author:** Min  
**Version:** February 16, 2024  
**Urgency:** No                                      **Fiscal:** Yes  
**Consultant:** AB

**Subject:** *Criminal prosecution: statutes of limitation*

## HISTORY

**Source:** Orange County District Attorney's Office

**Prior Legislation:** SB 601 (McGuire), Ch. 403, Stats. of 2023  
SB 23 (Rubio), Ch. 483, Stats. of 2021  
AB 708 (Knight), Ch. 211, Stats. of 2011  
SB 337 (Romero), Ch. 152, Stats. of 2003

**Support:** California District Attorneys Association

**Opposition:** None known

## PURPOSE

*The purpose of this bill is to toll the statute of limitation for several specified environmental crimes until the offenses have been discovered or could have reasonably been discovered by law enforcement.*

*Existing law* provides that prosecution for an offense punishable by death or by imprisonment in state prison for life or for life without the possibility of parole, for embezzlement of public money, or for a range of specified sex offenses, may be commenced at any time. (Pen. Code, §799.)

*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* provides that prosecution for crimes involving fraud, breach of a fiduciary duty, embezzlement of funds from an elder or dependent adult, or misconduct by a public official does not start to run until the discovery of the offense and prosecution must be commenced within four years after discovery of the crime or within four years after completion, whichever is later. (Penal Code § 801.5 & 803, subd. (c).)

*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 prosecution for a misdemeanor violation of specified offenses related to specific professions must be commenced within three years after the discovery of the commission of the offense, or within 3 years after the completion of the offense, whichever is later. (Pen. Code, §§802, subd. (e), 802.5.)

*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* authorizes the prosecution of specified felonies where a material element of which is fraud or breach of a fiduciary obligation, the commission of the crimes of theft or embezzlement upon an elder or dependent adult, or the basis of which is misconduct in office by a public officer, employee, or appointee, to commence to run upon the discovery of the offense. (Pen. Code, § 803, subd. (c).)

*Existing law* provides that if defendant is out of the state when or after the offense is committed, the prosecution may be commenced within the applicable limitations of time, and no time up to a maximum of three years during which the defendant is not within the state shall be a part of those limitations. (Pen. Code, § 803, subd. (d).)

*Existing law* provides that a statute of limitation does not commence to run until the offense has been discovered or could have reasonably been discovered with regard to specified offenses related to water quality, hazardous waste substances and control, non-vehicular air pollution, faulty fire protection systems, medical and pharmaceutical practice, barbering and cosmetology, and immigration consulting. (Pen. Code, § 803, subd. (e).)

*Existing law* provides that if more than one time period for the commencement of a prosecution applies, the time for commencing an action shall be governed by that period that expires latest in time. (Pen. Code, § 803.6, subd. (a).)

*Existing law* states that, except as otherwise provided, prosecution for an offense is commenced when any of the following occurs:

- An indictment or information is filed;
- A complaint is filed charging a misdemeanor or infraction;
- The defendant is arraigned on a complaint that charges the defendant with a felony; or,
- An arrest warrant or bench warrant is issued, provided the warrant names or describes the defendant with the same degree of particularity required for an indictment, information, or complaint. (Pen. Code, § 804.)

*Existing law* states that for purposes of determining the applicable limitation of time the following apply:

- An offense is deemed punishable by the maximum punishment prescribed by statute for the offense, regardless of the punishment actually sought or imposed. Any enhancement of punishment prescribed by statute shall be disregarded in determining the maximum punishment prescribed by statute for an offense;
- The limitation of time applicable to an offense that is necessarily included within a greater offense is the limitation of time applicable to the lesser included offense, regardless of the limitation of time applicable to the greater offense. (Pen. Code, § 805.)

*Existing law* creates various misdemeanor crimes and imposes various penalties relevant to this bill, per the following:

- Establishes penalties for the improper transport and disposal of and other specified conduct related to radioactive materials and medical waste. (Health and Safety Code, §§ 115215, 118340).
- Makes it unlawful to import, possess or sell the dead body, or a part or product thereof, of several specified animal species. (Pen. Code, § 653o.)
- Imposes penalties for the willful or malicious installation or maintenance of a fire suppression system known to be faulty, as specified. (Pen. Code, § 386.)
- Makes it a crime to knowingly cause any hazardous substance to be deposited into or upon any specified roadway or the land of another, as specified. (Pen. Code, § 374.8.)
- Makes it a crime to willfully or negligently cut, destroy, mutilate or remove plant material that is growing upon state or county highway rights of way, public land or private land, as specified. (Pen. Code, § 384a.)
- Establishes various crimes related to trespassing, including cutting down or injuring the wood or timber of another; carrying away wood or timber lying on another's land; digging, taking away or carrying earth, soil, or stone from a lot within an incorporated city; taking earth, soil or stone from the land in a city or town without a license. (Pen. Code § 602, subds. (a), (b), (d), (e).)
- Proscribes engaging in specified conduct related to caves. (Pen. Code, § 623.)
- Prohibits entities from substantially diverting or obstructing the natural flow of, or substantially changing or using any material from the bed, channel or bank of specified waterways, or deposit or dispose of debris or waste where it may pass into these waterways. (Fish and Game Code, § 1602.)
- Prohibits specified conduct related to endangered native or rare plants. (Fish and Game Code, § 1908.)
- Establishes crimes and imposes penalties for various conduct related to ivory and rhinoceros horns. (Fish and Game Code, § 2022.)

- Prohibits any person or public agency from engaging in various conduct related to endangered species and other specified animals. (Fish and Game Code, §§ 2080, 2118.)
- Makes it unlawful to deposit in, permit to pass into, or place where it can pass into the waters of this state several specified substances. (Fish and Game Code, § 5650.)
- Establishes several crimes and imposes various penalties for conduct related to pesticides, pest control operations, agricultural chemicals, livestock remedies and commercial feeds. (Food and Agriculture Code, §§ 11891, 12996.)

*This bill* provides that the statute of limitation on the crimes listed above does not commence until the offense has been discovered or could have reasonably been discovered.

## COMMENTS

### 1. Need for This Bill

According to the Author:

This bill simply aligns the statute of limitations for several environmental crimes to commence at the time the environmental crime is discovered, and holds criminals accountable for the crime, even when the exact moment of the transgression is impossible to determine. Environmental crimes should not escape justice solely because the violations were not immediately discovered and this measure will ensure these crimes are prosecuted.

### 2. Statutes of Limitation and the Discovery Rule

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.<sup>1</sup> There is a measure of predictability provided by specifying a limit beyond which there is an irrebutable 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.”<sup>2</sup>

---

<sup>1</sup> *United States v. Ewell* (1966) 383 U.S. 116, 122.

<sup>2</sup> *Stogner v. California* (2003) 539 U.S. 607, 615.

The basic California statutory scheme, first enacted in 1851 and codified in the 1872 Penal Code, provided a one-year limitation period for misdemeanors, a three-year period for felonies, and no limitation for murder. Since then, a multitude of legislative enactments have modified and complicated this basic framework. The California Law Revision Commission (CLRC) has identified various factors to be considered in drafting a limitation 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.<sup>3</sup>

As the name “statute of limitation” implies, most California crimes have a statutorily prescribed timeframe in which a prosecutor may commence a prosecution, usually a period of 1 to 6 years from the date of the completion of the offense, depending on the crime.<sup>4</sup> However, under certain circumstances and for certain crimes, a statute of limitations may be “tolled,” or paused, until a specified event has occurred, such as the discovery of the offense by law enforcement. This is known as the “discovery rule,” and generally applies to theft and fraud-related crimes. Regarding the discovery rule, the CLRC has noted that:

The very nature of certain concealed crimes makes their detection especially difficult. These same crimes may also require longer investigation to identify the perpetrators and, even after they are identified, may require continuing investigation. The concealment and investigation factors argue against imposition of a statute of limitations. [...] Tolling is an appropriate means of dealing of crimes [...] of which a material element is fraud or breach of a fiduciary obligation. However, tolling should not be permitted to run on such a crime indefinitely, with the result that a person may be prosecuted for a crime of concealment committed in the distant past.<sup>5</sup>

### 3. Existing Law and Effect of This Bill

While the default statute of limitation for most misdemeanors in California is one year, in 2004, the Legislature passed AB 2216 (Nakanishi, Ch. 586, Stats of 2004), which extended the statute of limitations for a number of contractor-related misdemeanors from one year to 2-4 years from the commission of the offense. The Legislature modified misdemeanor statutes of limitation yet again in 2012 when it passed AB 1950 (Davis, Ch. 569, Stats. of 2012), which extended the statute for certain crimes related to the licensure of lawyers and realtors from one year to three years from the discovery of the commission of the offense or three years after the completion of the offense, whichever is later.

---

<sup>3</sup> “Recommendation Relating to Felony Statute of Limitation. (Jan. 1984) 17 Cal. Law Review Com. Rep. (1984) pp. 308-311.) [Pub146.pdf \(ca.gov\)](#)

<sup>4</sup> Many felonies have no statute of limitations and prosecutions for these crimes may be commenced anytime.

<sup>5</sup> *Ibid*, pp. 314-315.

Currently, and as referenced above, most crimes to which the discovery rule applies are theft or fraud-related felonies, including grand theft, forgery, bribery, perjury, falsification of documents, specified computer crimes, securities fraud, certain public corruption crimes, welfare and Medical fraud, among others.<sup>6</sup> For the vast majority of these discovery rule crimes, existing law provides that they must be prosecuted within four years after discovery of the commission of the offense, or within four years after the completion of the offense, whichever is later.<sup>7</sup> For a limited number of other discovery rule crimes, existing law allows for prosecution within a certain amount of time from the discovery of the offense, but no later than a specified number of years from the commission of the offense.<sup>8</sup>

A separate provision of existing law provides that, for specified offenses that fall into the following categories, the statute of limitation does not commence to run until the offense has been discovered or could have reasonably been discovered: water quality, hazardous waste control and underground storage, non-vehicular air pollution, faulty fire protection systems, and the medical, pharmaceutical, cosmetology and immigration consulting professions.<sup>9</sup> These specified offenses include both felonies and misdemeanors. This application of the discovery rule to environmental crimes via statute is consistent with the application of the rule to civil environmental penalty claims by courts. One legal commentator has summarized the arguments for the application of the rule to environmental violations:

Since many environmental violations are inherently difficult to detect, this factor weighs in favor of applying the discovery rule in environmental contexts. For example, pinpointing the source of contamination in a body of water that has received many different discharges from many different sources may require extensive sampling and investigation. Also, many environmental regulatory requirements are based on a self-policing honor system, under which a regulated entity conducts sophisticated tests or makes complex determinations regarding the applicability of a regulatory requirement to its own activities. [...]

Some courts have been more inclined to apply the discovery rule where the facts relating to the violation are peculiarly within the knowledge of the defendant, and the plaintiff relies on the defendant for correct information. On this count, too, environmental claims provide an appropriate context for application of the rule, since many environmental violations are based on a failure to provide notice to the [regulating body].<sup>10</sup>

Existing law also sets forth numerous environmental crimes to which the discovery rule does not apply, making them subject to the default limitations for misdemeanors and felonies. According to the Author, the fact that existing law applies the discovery rule to certain environmental crimes but not others means that, in the context of misdemeanors, “if the crime is not discovered within one year of the occurrence, the statute of limitation expires and there are no consequences for the perpetrator [...] This seemingly incongruous scenario creates an inconsistent application

---

<sup>6</sup> See Penal Code §§ 502, 803(c).

<sup>7</sup> Penal Code § 801.5

<sup>8</sup> See, e.g. Penal Code §801.7, which, for specified computer crimes provides that prosecution shall be commenced within three years after discovery of the commission of the offense, or within three years after the offense could have reasonably been discovered, provided, however, that in any case the prosecution shall not be commenced more than six years after the commission of the offense.

<sup>9</sup> Penal Code §803(e)

<sup>10</sup> MacAyeal, James. *The Discovery Rule And The Continuing Violation Doctrine As Exceptions To The Statute Of Limitations For Civil Environmental Penalty Claims*. Virginia Environmental Law Journal, Summer 1996, Vol. 15, No. 4 (Summer 1996), pp. 589-712, at 610-615.

of law which SB 1343 would remedy.” Accordingly, this bill adds 17 new code sections, consisting of roughly 46 distinct crimes to the provision described above that applies the discovery rule to various environmental crimes, thereby tolling the statute of limitations in these cases until the offense has been discovered or could have reasonably been discovered. At that point, as in all misdemeanor cases, the statute starts to run and a prosecution may be commenced within 1 year.

As evidence for the need for the bill, the Author cites a case in which an individual who lived adjacent to conserved land in the Author’s district destroyed thousands of plants to create an unauthorized walking path, negatively impacting an endangered bird species in the area. By the time the path was discovered, more than a year had passed since the commission of the offense (a violation of Penal Code Section 384a<sup>11</sup>, a misdemeanor), and therefore prosecutors could not file charges because the statute of limitation had run. However, beyond this example, committee staff was unable to identify other data that might indicate that the conduct covered by Penal Code 384a was so widespread as to warrant the unrestricted application of the discovery rule, which could lead to situations where misdemeanor conduct is not discovered, and thus charged, for decades after its commission. This possibility seems to cut against the purpose of statutes of limitation, i.e. to prevent the deterioration of evidence over time and ensure that criminal prosecutions are fair and accurate, and commence and proceed in a timely fashion. Moreover, the sheer breadth of crimes included in the bill raises the question of whether it is sufficiently tailored to address the particular problem cited by the Author. To address these issues, Author and Committee may wish to amend the bill to narrow the scope of crimes included – perhaps to be more closely related to crimes involving flora, fauna and vulnerable waterways – and to tie the statute in some way to the date of the commission of the offense

#### 4. Committee Amendments

To address the issues set forth above, the Author has agreed to amend the bill to narrow the scope of the bill to apply only to the following crimes:

- Knowingly causing any hazardous substance to be deposited into or upon any specified roadway or the land of another, as specified. (Pen. Code, § 374.8.)
- Willfully or negligently cutting, destroying, mutilating or removing plant material that is growing upon state or county highway rights of way, public land or private land, as specified. (Pen. Code, § 384a.)
- Cutting down or injuring the wood or timber of another and the unlicensed digging, taking or carrying away from a lot situated within an incorporated city any earth, soil or stone. (Pen. Code, §602(a), (d).)
- Substantially diverting or obstructing the natural flow of, or substantially changing or using any material from the bed, channel or bank of specified waterways, or deposit or dispose of debris or waste where it may pass into these waterways. (Fish and Game Code, § 1602.)

---

<sup>11</sup> Willfully or negligently cutting, destroying, mutilating, or removing plant material that is growing upon state or county highway rights-of-way, or upon public land or upon land that is not his or hers without written permission, as specified.

- Engaging in various conduct related to endangered species and other specified animals. (Fish and Game Code, §§ 2080, 2118.)
- Depositing in, permitting to pass into, or placing where it can pass into the waters of this state several specified substances. (Fish and Game Code, § 5650.)

Additionally, the Author has agreed to an amendment providing that while the statute of limitations for these crimes is tolled until discovery of the offense, in any event a prosecution shall not be commenced more than 5 years from the date of the commission of the offense.

## **5. Argument in Support**

According to the California District Attorneys Association:

Environmental offenses, such as the unlawful dumping of hazardous materials, or animal control offenses, such as the unlawful release of specified wild animals into California, are often discovered long after the crimes are committed. The difficulty in discovering these violations within the current statute of limitations is often compounded by the difficulty in investigating these crimes. A prolonged investigation is often necessary to identify and locate the offender and determine when the offense actually occurred.

Prosecutors know all too well the lack of accountability that accompanies a potential charge that is time-barred by the statute of limitations. The lapse of time that typically occurs between the commission of the offense and the filing of charges on the specified offenses identified in SB 1343 is not caused by a lack of diligence on behalf of law enforcement or prosecutors, but on the very nature of the offenses. By tolling the statute of limitations, your measure will better protect the environment and hold offenders accountable.

-- END --