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# SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair  
2019 - 2020 Regular

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**Bill No:** SB 273                      **Hearing Date:** April 23, 2019  
**Author:** Rubio  
**Version:** April 11, 2019  
**Urgency:** No                                      **Fiscal:** Yes  
**Consultant:** SJ

**Subject:** *Domestic violence*

## HISTORY

**Source:** Author

**Prior Legislation:** SB 1331 (Jackson), Ch. 137, Stats. 2018  
SB 813 (Leyva), Ch. 777, Stats. 2016

**Support:** 1 individual

**Opposition:** ACLU of California; California Public Defenders Association

## PURPOSE

*The purpose of this bill is to extend the statute of limitations for felony domestic violence from 3 years to 20 years under certain circumstances, and to improve peace officer training regarding domestic violence.*

*Existing law* provides that a battery is any willful and unlawful use of force or violence upon the person of another. (Pen. Code, § 242.)

*Existing law* provides that when a battery is committed against a spouse, a person with whom the defendant is cohabiting, a person who is the parent of the defendant's child, former spouse, fiancé, or fiancée, or a person with whom the defendant currently has, or has previously had, a dating or engagement relationship, the battery is punishable by a fine not exceeding \$2,000, or by imprisonment in a county jail for a period of not more than one year, or by both that fine and imprisonment. Provides that if probation is granted, or the execution or imposition of the sentence is suspended, it shall be a condition thereof that the defendant participate in, for no less than one year, and successfully complete, a batterer's treatment program, as described, or if none is available another appropriate counseling program designated by the court. (Pen. Code, § 243, subd. (e)(1).)

*Existing law* states that prosecution for an offense not punishable by death or imprisonment in the state prison or pursuant to Section 1170 (h) shall be commenced within one year after commission of the offense, except as provided. (Pen. Code, § 802, subd. (a).)

*Existing law* provides that any person who willfully inflicts corporal injury resulting in a traumatic condition upon a victim, as described, is guilty of a felony, and upon conviction

thereof shall be punished by imprisonment in the state prison for two, three, or four years, or in a county jail for not more than one year, or by a fine of up to \$6,000, or by both that fine and imprisonment. (Pen. Code, § 273.5, subd. (a).)

*Existing law* provides that the above penalty applies if the victim is or was one or more of the following:

- The offender's spouse or former spouse.
- The offender's cohabitant or former cohabitant.
- The offender's fiancé or fiancée, or someone with whom the offender has, or previously had, an engagement or dating relationship, as defined.
- The mother or father of the offender's child. (Pen. Code, § 273.5, subd. (b).)

*Existing law* provides that holding oneself out to be the spouse of the person with whom one is cohabiting is not necessary to constitute cohabitation as the term is used in this section. (Pen. Code, § 273.5, subd. (c).)

*Existing law* defines "traumatic condition" as a condition of the body, such as a wound, or external or internal injury, including, but not limited to, injury as a result of strangulation or suffocation, whether of a minor or serious nature, caused by a physical force. Provides that "strangulation" and "suffocation" include impeding the normal breathing or circulation of the blood of a person by applying pressure on the throat or neck. (Pen. Code, § 273.5, subd. (d).)

*Existing law* provides that any person convicted of felony domestic violence within seven years of a prior conviction for felony or misdemeanor domestic violence shall be punished by imprisonment in a county jail for not more than one year, or by imprisonment in the state prison for two, four, or five years, or by both imprisonment and a fine of up to \$10,000. (Pen. Code, § 273.5, subd. (f)(1).)

*Existing law* provides that any person convicted of felony domestic violence for acts occurring within seven years of a previous conviction of misdemeanor domestic violence shall be punished by imprisonment in the state prison for two, three, or four years, or in a county jail for not more than one year, or by a fine of up to 10,000, or by both that imprisonment and fine. (Pen. Code, § 273.5, subd. (f)(2).)

*Existing law* states that prosecution for an offense punishable by imprisonment in the state prison or pursuant to subdivision (h) of Section 1170 shall be commenced within three years after commission of the offense, except as provided. (Pen. Code, § 801.)

*Existing law* requires the Commission on Peace Officer Standards and Training (POST) to implement by January 1, 1986, a course or courses of instruction for the training of law enforcement officers in California in the handling of domestic violence complaints and to develop guidelines for law enforcement response to domestic violence. Requires the course or courses of instruction and the guidelines to stress enforcement of criminal laws in domestic violence situations, availability of civil remedies and community resources, and protection of the victim. Requires that when appropriate, the training presenters include domestic violence experts with expertise in the delivery of direct services to victims of domestic violence, including utilizing the staff of shelters for battered women in the presentation of training. (Pen. Code, § 13519, subd. (a).)

*Existing law* defines “law enforcement officer” as any officer or employee of a local police department or sheriff’s office, any peace officer of the Department of Parks and Recreation, as defined, any peace officer of the University of California Police Department, as defined, any peace officer of the California State University Police Departments, as defined, and a peace officer, as defined in other sections of existing law, as specified. (Pen. Code, § 13519, subd. (b).)

*Existing law* requires the course of basic training for law enforcement officers to include adequate instruction in the procedures and techniques described below:

- The provisions set forth, as specified, relating to response, enforcement of court orders, and data collection.
- The legal duties imposed on peace officers to make arrests and offer protection and assistance including guidelines for making felony and misdemeanor arrests.
- Techniques for handling incidents of domestic violence that minimize the likelihood of injury to the officer and that promote the safety of the victim.
- The nature and extent of domestic violence.
- The signs of domestic violence.
- The assessment of lethality or signs of lethal violence in domestic violence situations.
- The legal rights of, and remedies available to, victims of domestic violence.
- The use of an arrest by a private person in a domestic violence situation.
- Documentation, report writing, and evidence collection.
- Domestic violence diversion, as provided.
- Tenancy issues and domestic violence.
- The impact on children of law enforcement intervention in domestic violence.
- The services and facilities available to victims and batterers.
- The use and applications of this code in domestic violence situations.
- Verification and enforcement of temporary restraining orders when the suspect is present and when the suspect has fled.
- Verification and enforcement of stay-away orders.
- Cite and release policies.
- Emergency assistance to victims and how to assist victims in pursuing criminal justice options.

(Pen. Code, § 13519, subd. (c).)

*Existing law* requires the guidelines developed by POST to also incorporate the factors listed above. (Pen. Code, § 13519, subd. (d).)

*Existing law* provides that local law enforcement agencies are encouraged to include, as a part of their advanced officer training program, periodic updates and training on domestic violence. Requires POST to assist where possible. (Pen. Code, § 13519, subd. (e)(4).)

*Existing law* requires the course of instruction, the learning and performance objectives, the standards for the training, and the guidelines to be developed by POST in consultation with appropriate groups and individuals having an interest and expertise in the field of domestic violence. Requires the groups and individuals to include, but does not limit inclusion to, the following: one representative each from the California Peace Officers’ Association, the Peace Officers’ Research Association of California, the State Bar of California, the California Women

Lawyers' Association, and the State Commission on the Status of Women and Girls; two representatives from POST; two representatives from the California Partnership to End Domestic Violence; two peace officers, recommended by POST, who are experienced in the provision of domestic violence training; and two domestic violence experts, recommended by the California Partnership to End Domestic Violence, who are experienced in the provision of direct services to victims of domestic violence and at least one representative of service providers serving the lesbian, gay, bisexual, and transgender community in connection with domestic violence. Requires at least one of the persons selected to be a former victim of domestic violence. (Pen. Code, § 13519, subd. (f)(1).)

*Existing law* requires POST, in consultation with these groups and individuals, to review existing training programs to determine in what ways domestic violence training might be included as a part of ongoing programs. (Pen. Code, § 13519, subd. (f)(2).)

*Existing law* requires each law enforcement officer below the rank of supervisor who is assigned to patrol duties and would normally respond to domestic violence calls or incidents of domestic violence to complete, every two years, an updated course of instruction on domestic violence that is developed according to the standards and guidelines developed. Requires the instruction required to be funded from existing resources available for the training required, as provided. (Pen. Code, § 13519, subd. (g).)

*This bill* includes the following findings and declarations:

- More than one in three women and one in four men in the United States have experienced rape, physical violence, or stalking by an intimate partner in their lifetime.
- One in five female high school students report being physically or sexually assaulted by a dating partner.
- Many perpetrators of domestic violence were themselves abused.
- Better education and resources can help prevent domestic violence from occurring.
- When domestic violence occurs, the statute of limitations varies depending on the crime committed, and can be as short as one year.
- Victims may not report a crime for myriad reasons, including their age at the time of abuse, ongoing trauma, threats from the perpetrator, or lack of evidence.
- Without resources or any intervention, many perpetrators of domestic violence will abuse multiple partners.
- It is the intent of the Legislature to allow for victims of domestic violence to come forward by extending the statute of limitations in order to ensure those victims see justice.
- It is the intent of the Legislature to increase training for law enforcement to ensure victims are protected and to prevent future domestic violence from occurring.

*This bill* provides, notwithstanding any other law, that prosecution for a violation of felony domestic violence may be commenced within 20 years of the crime if one or more of the following criteria apply:

- The state becomes aware of an audio or video recording, photographs, or written or electronic communication that provides evidence sufficient to charge the perpetrator.
- The perpetrator confesses to the offense.

- Three or more victims present corroborating evidence to the state of domestic violence by the same perpetrator or perpetrators in separate events, the last of which occurred after the applicable statute of limitations had elapsed.

*This bill* provides that its provisions regarding the statute of limitations for felony domestic violence apply to crimes that are committed on or after January 1, 2020, and to crimes for which the statute of limitations that was in effect prior to January 1, 2020, has not run as of January 1, 2020.

*This bill* provides, with respect to the domestic violence training that law enforcement officers receive, that the types of techniques for handling incidents of domestic violence that minimize the likelihood of injury to the officer and that promote the safety of the victim must include, but are not limited to:

- Methods for ensuring victim interviews occur in a venue separate from the alleged perpetrator and with appropriate sound barriers to prevent the conversation from being overheard.
- Questions for the victim, including, but not limited to, the following:
  - Whether the victim would like a followup visit to provide needed support or resources.
  - Information on obtaining a gun violence restraining order and a protective order, as described.
- A verbal review of the resources available for victims outlined on the written notice, as provided.

*This bill* provides, with respect to the domestic violence training that law enforcement officers receive, that the signs of domestic violence that officers are trained to recognize, include, but are not limited to, an assessment of coercive control. Defines “coercive control” to mean that the domestic violence victim is the victim of any of the following criminal conduct:

- “Coercion,” as described, for purposes of committing or impeding the investigation or prosecution of domestic violence.
- False imprisonment, as defined.
- Extortion, as defined, and the use of fear, as described.
- Identity theft, as defined, impersonation through an internet website or by other electronic means, as defined, false personation, as defined, receiving money or property as a result of false personation, and mail theft.
- Stalking, as defined, including by telephone or electronic communication.
- Revenge porn, as described.

*This bill* provides that one representative of an organization working to advance criminal justice reform and one representative of an organization working to advance racial justice be added to the groups and individuals with whom POST must consult in developing domestic violence training for law enforcement officers.

*This bill* makes other technical and conforming changes.

## COMMENTS

### 1. Need for This Bill

According to the author:

Current law allows the statute of limitations for domestic violence to be as short as one year (depending on the crime committed). There are multiple reasons why a victim may not come forward within the statute of limitations, including their age at the time of abuse, ongoing trauma, threats from the perpetrator, or lack of evidence. Victims of abuse often left without a home or resources, making housing and economic security more of a priority. It could also be that a victim did not know that the acts committed against them were a crime that was reportable to law enforcement.

Law enforcement plays a critical role in identifying and addressing domestic violence situations. Training for law enforcement should be expanded to include additional methods for protecting a victim from further harm and for identifying a potential domestic violence situation.

### 2. Current Statute of Limitations for Domestic Violence

Misdemeanor domestic violence is defined as “a battery is committed against a spouse, a person with whom the defendant is cohabiting, a person who is the parent of the defendant’s child, former spouse, fiancé, or fiancée, or a person with whom the defendant currently has, or has previously had, a dating or engagement relationship.” (Pen. Code, § 243, subd. (e)(1).) The statute of limitations for misdemeanor domestic violence is one year from the commission of the offense. (Pen. Code, § 802, subd. (a).)

Felony domestic violence is defined as “willfully inflict[ing] corporal injury resulting in a traumatic condition upon a victim.” (Pen. Code, § 273.5, subd. (a).) The victim must be the offender’s spouse or former spouse; the offender’s cohabitant or former cohabitant; the offender’s fiancé or fiancée, or someone with whom the offender has, or previously had, an engagement or dating relationship; or the mother or father of the offender’s child. (Pen. Code, § 273.5, subd. (b).) “Traumatic condition” is defined as “a condition of the body, such as a wound, or external or internal injury, including, but not limited to, injury as a result of strangulation or suffocation, whether of a minor or serious nature, caused by a physical force.” (Pen. Code, § 273.5, subd. (d).) The statute of limitations for felony domestic violence is three years from the commission of the offense. (Pen. Code, § 801.)

This bill would extend the statute of limitations for felony domestic violence from 3 years to 20 years under specified circumstances. Specifically, this bill provides that prosecution of felony domestic violence may be commenced within 20 years of the commission of the crime if one or more of the following criteria apply:

- The state becomes aware of an audio or video recording, photographs, or written or electronic communication that provides evidence sufficient to charge the perpetrator.
- The perpetrator confesses to the offense.

- Three or more victims present corroborating evidence to the state of domestic violence by the same perpetrator or perpetrators in separate events, the last of which occurred after the applicable statute of limitations had elapsed.

This bill limits its application to crimes that are committed on or after January 1, 2020, and to crimes for which the statute of limitations that was in effect prior to January 1, 2020, has not run as of January 1, 2020.

### 3. Statute of Limitations: Public Policy Considerations

The statute of limitations requires commencement of a prosecution within a certain period of time after the commission of a crime. The prosecution of an individual is initiated by filing an indictment or information, filing a complaint, arraigning the defendant on a complaint that charges the defendant with a felony, or issuing an arrest or bench warrant. (Pen. 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.)

In 1984, the California Law Revision Commission published a series of recommendations to revise the statute of limitations. The impetus for reform derived from numerous changes made to the statute by the Legislature – 11 legislative enactments amending the felony statute of limitations in 14 years. The Commission commented, “[t]his simple scheme has been made complex by numerous modifications . . . the result of this development is that the California law is complex and filled with inconsistencies.” (Recommendation relating to Statutes of Limitations for Felonies (Jan. 1984) 17 Cal. Law Revision Com. Rep. (1984) p. 307 <<http://www.clrc.ca.gov/pub/Printed-Reports/Pub146.pdf>>.) The Commission described the rationale of the statute:

The statute of limitations is simply a societal declaration that it will no longer pursue a criminal after a certain period of time. The period selected may be somewhat arbitrary but still achieves society's purpose of imposing an outside limit that recognizes the staleness problem, that requires that crime must come to light and be investigated within a reasonable time, and that represents the point after which society declares it no longer has an interest in prosecution and seeks repose.

(*Id.* at pp. 313-314.)

The three principal policy reasons for felony limitations statutes include:

- *Staleness*: The statute of limitations protects persons accused of crime: (i) from having to face charges based on evidence that may be unreliable, and (ii) from losing access to the evidentiary means to defend against the accusation. With the passage of time, memory fades, witnesses die or otherwise become unavailable, and physical evidence becomes unobtainable or contaminated.

- *Prompt Investigation*: The statute of limitations imposes a priority among crimes for investigation and prosecution. The deadline serves to motivate the police and to ensure against bureaucratic delays in investigating crimes.
- *Repose*: The statute of limitations reflect society's lack of desire to prosecute for crimes committed in the distant past. The interest in repose represents a societal evaluation of the time after which it is neither profitable nor desirable to commence a prosecution.

(*Id.* at pp. 308-310.)

These principals are reflected in court decisions. The U.S. 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 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. More recently, in *Stogner v. California* (2003) 539 U.S. 67, the Court underscored the basis for statutes of limitations:

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. (*Id.* at p. 615.)

Committee members may wish to consider this bill in the context of these broader policy considerations, including:

How would extending the statute of limitations affect the availability and reliability of evidence in domestic violence cases?

How would extending the statute of limitations affect the reporting and investigation of domestic violence cases?

How would extending the statute of limitations affect the successful prosecution of domestic violence cases?

#### **4. Peace Officer Training on Domestic Violence**

Penal Code section 13519 requires POST to develop domestic violence training for law enforcement officers as well as guidelines for law enforcement response to domestic violence. Existing law mandates that the course of instruction include adequate instruction in various techniques and procedures, including the legal duties imposed on peace officers to make arrests and offer protection and assistance, techniques for handling incidents of domestic violence that minimize the likelihood of injury to the officer and that promote the safety of the victim, the signs of domestic violence, the assessment of lethality or signs of lethal violence in domestic violence situations, and documentation, report writing, and evidence collection, among other things. (Pen. Code, § 13519, subd. (c).) Existing law further mandates that the course of instruction, the learning and performance objectives, the standards for the training, and the guidelines are to be developed by POST in consultation with appropriate groups and individuals having an interest and expertise in the field of domestic violence, and specifies the groups and

individuals that must be included in the development of the course and guidelines. (Pen. Code, § 13519, subd. (c).)

This bill provides additional requirements and guidelines for the domestic violence training that law enforcement officers receive. Specifically, this bill requires that the instruction that law enforcement officers receive on techniques for handling incidents of domestic violence that minimize the likelihood of injury to the officer and that promote the safety of the victim, include methods for ensuring victim interviews occur in a venue separate from the alleged perpetrator and with appropriate sound barriers to prevent the conversation from being overheard; questions for the victim, including, but not limited to, whether the victim would like a follow up visit to provide needed support or resources, information on obtaining a gun violence restraining order and a protective order; and a verbal review of the resources available for victims as required by Penal Code section 13701.

This bill additionally requires that the instruction that law enforcement officers receive on identifying the signs of domestic violence include “an assessment of coercive control.” “Coercive control” is defined in this bill to mean that the domestic violence victim is the victim of any of the following crimes: “coercion” for purposes of committing or impeding the investigation or prosecution of domestic violence; false imprisonment; extortion; identity theft; impersonation through an internet website or by other electronic means; false personation; receiving money or property as a result of false personation; mail theft; stalking; and revenge porn.

Finally, this bill adds one representative of an organization working to advance criminal justice reform and one representative of an organization working to advance racial justice to the groups and individuals with whom POST must consult in developing domestic violence training for law enforcement officers.

## **5. Argument in Support**

According to one of the bill’s supporters:

California has the opportunity to significantly strengthen the law regarding domestic violence criminal prosecution, and law enforcement training. The steps in this bill will give victims the ability to pursue charges when the statute of limitations has passed when very specific, evidence-based criteria are met and give law enforcement the tools needed to identify and act appropriately to prevent further harm to a potential victim.

## **6. Argument in Opposition**

The ACLU of California writes:

[The ACLU of California respectfully opposes] SB 273, unless it is amended to remove the extension of the statute of limitations for a violation of Penal Code section 273.5. While we respect and support your goal of promoting justice for survivors of domestic violence, we fear that the extension proposed by this bill will both threaten defendants’ rights and remove the incentive for law enforcement and prosecutors to more swiftly address reports of domestic partner violence in the first instance.

Criminal statutes of limitations in the United States date back to colonial times, with the first statute appearing as early as 1652. The statutes' fundamental purpose is to protect people accused of crimes from having to face charges based on evidence that may be unreliable, and from losing access to the evidentiary means to defend against the accusation. ... [S]tatutes of limitations are considered "the primary guarantee against bringing overly stale criminal charges" and that they "protect individuals from having to defend themselves against charges when the basic facts may have become obscured by the passage of time..." ...

In recent years, psychologists and other researchers who study human memory have raised concerns about the elimination or extension of statutes of limitations. In a 2016 piece in the Daily Journal, psychology Professor Elizabeth Loftus illustrated the ways in which criminal statutes of limitations protect against deficits in witness' memories. As Professor Loftus explained, "a growing body of research, including [her] own, has found that, contrary to what some may think, the human memory is not like a recording device. You can't perfectly preserve events, to be played or rewound and replayed at will. Instead, our memories are more like a Wikipedia page: they can be edited by us and other people, and more so with each year that goes by... Scientists have long known about the 'forgetting curve,' which revealed that, as time passes, people are unable to retrieve information that they would have earlier be[en] able to remember accurately. The loss of memory can be quite significant, especially after many years go by."

The memory issues raised by Professor Loftus apply equally to all parties involved in a criminal prosecution: defendants, detectives, witnesses, and victims alike. As such, both defendant and victim may suffer the consequences of these deficits, often leading to unjust outcomes.

... [I]n addition to ensuring fairness, statutes of limitations also serve the purpose of encouraging swift investigations and prosecutions. Survivors of domestic violence already face significant barriers when attempting to access the criminal justice system. ... Problems with law enforcement perceptions and reactions bleed into prosecutorial decisions as well. In a statewide study, more than thirty percent of domestic violence cases involving aggravated physical assault were not prosecuted. ... Extending the statute of limitations in these cases will not improve these outcomes, and may serve only to further discourage "the swift and effective enforcement of the law."

-- END --