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SB-813 Sex offenses: statute of limitations. (2015-2016)

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Senate Bill No. 813

CHAPTER 777

An act to amend Sections 799, 801.1, and 803 of the Penal Code, relating to crimes.

[Approved by Governor September 28, 2016. Filed with Secretary of State September 28, 2016.]

LEGISLATIVE COUNSEL'S DIGEST

SB 813, Leyva. Sex offenses: statute of limitations.

Existing law generally requires that the prosecution of a felony sex offense be commenced within 10 years after the commission of the offense. Under existing law, prosecution for the crimes of rape, sodomy, lewd or lascivious acts, continuous sexual abuse of a child, oral copulation, and sexual penetration, if committed against a victim who was under 18 years of age, may be commenced at any time prior to the victim's 40th birthday. Existing law allows prosecution of an offense punishable by death or by imprisonment for life or for life without the possibility of parole, or for the embezzlement of public money, to be commenced at any time.

This bill would allow the prosecution of rape, sodomy, lewd or lascivious acts, continuous sexual abuse of a child, oral copulation, and sexual penetration, that are committed under certain circumstances, as specified, to be commenced at any time. The bill would apply to these crimes committed after January 1, 2017, and to crimes for which the statute of limitations that was in effect prior to January 1, 2017, has not run as of January 1, 2017.

This bill would incorporate changes to Section 803 of the Penal Code proposed by both this bill and SB 1088, which would become operative only if both bills are enacted and become effective on or before January 1, 2017, and this bill is chaptered last.

Vote: majority Appropriation: no Fiscal Committee: no Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 799 of the Penal Code is amended to read:

799. (a) Prosecution for an offense punishable by death or by imprisonment in the state prison for life or for life without the possibility of parole, or for the embezzlement of public money, may be commenced at any time.

(b) (1) Prosecution for a felony offense described in paragraph (1), (2), (3), (4), (6) or (7) of subdivision (a) of Section 261, paragraph (1), (2), (3), (4), or (5) of subdivision (a) of Section 262, Section 264.1, paragraph (2) or (3) of subdivision (c) of, or subdivision (d), (f), (g), (i), or (k) of, Section 286, subdivision (a) of Section 288 involving substantial sexual conduct as defined by in subdivision (b) of Section 1203.066, subdivision (b) of Section 288, Section 288.5, paragraph (2) or (3) of subdivision (c) of, or subdivision (d), (f), (g), (i), or (k) of, Section 288a, or subdivision (a), (b), (d), (e), or (g) of Section 289 may be commenced at any time.

(2) This subdivision applies to crimes that were committed on or after January 1, 2017, and to crimes for which the statute of limitations that was in effect prior to January 1, 2017, has not run as of January 1, 2017.

(c) This section shall apply in any case in which the defendant was a minor at the time of the commission of the offense and the prosecuting attorney could have petitioned the court for a fitness hearing pursuant to Section 707 of the Welfare and Institutions Code.

SEC. 2. Section 801.1 of the Penal Code is amended to read:

801.1. (a) (1) Notwithstanding any other limitation of time described in this chapter, prosecution for a felony offense described in Section 261, 286, 288, 288.5, 288a, or 289, or Section 289.5, as enacted by Chapter 293 of the Statutes of 1991 relating to penetration by an unknown object, that is alleged to have been committed when the victim was under 18 years of age, may be commenced any time prior to the victim's 40th birthday.

(2) Paragraph (1) shall only apply to crimes that were committed on or after January 1, 2015, or for which the statute of limitations that was in effect prior to January 1, 2015, has not run as of January 1, 2015.

(b) Notwithstanding any other limitation of time described in this chapter, if either subdivision (a) of this section or subdivision (b) of Section 799 does not apply, prosecution for a felony offense described in subdivision (c) of Section 290 shall be commenced within 10 years after commission of the offense.

SEC. 3. Section 803 of the Penal Code is amended to read:

803. (a) Except as provided in this section, a limitation of time prescribed in this chapter is not tolled or extended for any reason.

(b) No time during which prosecution of the same person for the same conduct is pending in a court of this state is a part of a limitation of time prescribed in this chapter.

(c) A limitation of time prescribed in this chapter does not commence to run until the discovery of an offense described in this subdivision. This subdivision applies to an offense punishable by imprisonment in the state prison or imprisonment pursuant to subdivision (h) of Section 1170, 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, including, but not limited to, the following offenses:

(1) Grand theft of any type, forgery, falsification of public records, or acceptance of, or asking, receiving, or agreeing to receive, a bribe, by a public official or a public employee, including, but not limited to, a violation of Section 68, 86, or 93.

(2) A violation of Section 72, 118, 118a, 132, 134, or 186.10.

(3) A violation of Section 25540, of any type, or Section 25541 of the Corporations Code.

(4) A violation of Section 1090 or 27443 of the Government Code.

(5) Felony welfare fraud or Medi-Cal fraud in violation of Section 11483 or 14107 of the Welfare and Institutions Code.

(6) Felony insurance fraud in violation of Section 548 or 550 of this code or former Section 1871.1, or Section 1871.4, of the Insurance Code.

(7) A violation of Section 580, 581, 582, 583, or 584 of the Business and Professions Code.

(8) A violation of Section 22430 of the Business and Professions Code.

(9) A violation of Section 103800 of the Health and Safety Code.

(10) A violation of Section 529a.

(11) A violation of subdivision (d) or (e) of Section 368.

(d) If the defendant is out of the state when or after the offense is committed, the prosecution may be commenced as provided in Section 804 within the limitations of time prescribed by this chapter, 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.

(e) A limitation of time prescribed in this chapter does not commence to run until the offense has been discovered, or could have reasonably been discovered, with regard to offenses under Division 7 (commencing with Section 13000) of the Water Code, under Chapter 6.5 (commencing with Section 25100) of, Chapter 6.7 (commencing with Section 25280) of, or Chapter 6.8 (commencing with Section 25300) of, Division 20 of, or Part 4 (commencing with Section 41500) of Division 26 of, the Health and

Safety Code, or under Section 386, or offenses under Chapter 5 (commencing with Section 2000) of Division 2 of, Chapter 9 (commencing with Section 4000) of Division 2 of, Section 6126 of, Chapter 10 (commencing with Section 7301) of Division 3 of, or Chapter 19.5 (commencing with Section 22440) of Division 8 of, the Business and Professions Code.

(f) (1) Notwithstanding any other limitation of time described in this chapter, if subdivision (b) of Section 799 does not apply, 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 he or she, while under 18 years of age, was the victim of a crime described in Section 261, 286, 288, 288a, 288.5, or 289, or Section 289.5, as enacted by Chapter 293 of the Statutes of 1991 relating to penetration by an unknown object.

(2) This subdivision applies only if all of the following occur:

(A) The limitation period specified in Section 800, 801, or 801.1, whichever is later, has expired.

(B) The crime involved substantial sexual conduct, as described in subdivision (b) of Section 1203.066, excluding masturbation that is not mutual.

(C) 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.

(3) No evidence may be used to corroborate the victim's allegation that otherwise would be inadmissible during trial. Independent evidence does not include the opinions of mental health professionals.

(4) (A) In a criminal investigation involving any of the crimes listed in paragraph (1) committed against a child, when the applicable limitations period has not expired, that period shall be tolled from the time a party initiates litigation challenging a grand jury subpoena until the end of the litigation, including any associated writ or appellate proceeding, or until the final disclosure of evidence to the investigating or prosecuting agency, if that disclosure is ordered pursuant to the subpoena after the litigation.

(B) Nothing in this subdivision affects the definition or applicability of any evidentiary privilege.

(C) This subdivision shall not apply if a court finds that the grand jury subpoena was issued or caused to be issued in bad faith.

(g) (1) Notwithstanding any other limitation of time described in this chapter, a criminal complaint may be filed within one year of the date on which the identity of the suspect is conclusively established by DNA testing, if both of the following conditions are met:

(A) The crime is one that is described in subdivision (c) of Section 290.

(B) The offense was committed prior to January 1, 2001, and biological evidence collected in connection with the offense is analyzed for DNA type no later than January 1, 2004, or the offense was committed on or after January 1, 2001, and biological evidence collected in connection with the offense is analyzed for DNA type no later than two years from the date of the offense.

(2) For purposes of this section, "DNA" means deoxyribonucleic acid.

(h) For any crime, the proof of which depends substantially upon evidence that was seized under a warrant, but which is unavailable to the prosecuting authority under the procedures described in *People v. Superior Court (Laff)* (2001) 25 Cal.4th 703, *People v. Superior Court (Bauman & Rose)* (1995) 37 Cal.App.4th 1757, or subdivision (c) of Section 1524, relating to claims of evidentiary privilege or attorney work product, the limitation of time prescribed in this chapter shall be tolled from the time of the seizure until final disclosure of the evidence to the prosecuting authority. Nothing in this section otherwise affects the definition or applicability of any evidentiary privilege or attorney work product.

(i) Notwithstanding any other limitation of time described in this chapter, a criminal complaint may be filed within one year of the date on which a hidden recording is discovered related to a violation of paragraph (2) or (3) of subdivision (j) of Section 647.

(j) Notwithstanding any other limitation of time described in this chapter, if a person flees the scene of an accident that caused death or permanent, serious injury, as defined in subdivision (d) of Section 20001 of the Vehicle Code, a criminal complaint brought pursuant to paragraph (2) of subdivision (b) of Section 20001 of the Vehicle Code may be filed within the applicable time period described in Section 801 or 802 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.

(k) Notwithstanding any other limitation of time described in this chapter, if a person flees the scene of an accident, a criminal complaint brought pursuant to paragraph (1) or (2) of subdivision (c) of Section 192 may be filed within the applicable time period described in Section 801 or 802, or one year after the person is initially identified by law enforcement as a suspect in the commission of that offense, whichever is later, but in no case later than six years after the commission of the offense.

(l) A limitation of time prescribed in this chapter does not commence to run until the discovery of an offense involving the offering or giving of a bribe to a public official or public employee, including, but not limited to, a violation of Section 67, 67.5, 85, 92, or 165, or Section 35230 or 72530 of the Education Code.

SEC. 3.5. Section 803 of the Penal Code is amended to read:

803. (a) Except as provided in this section, a limitation of time prescribed in this chapter is not tolled or extended for any reason.

(b) No time during which prosecution of the same person for the same conduct is pending in a court of this state is a part of a limitation of time prescribed in this chapter.

(c) A limitation of time prescribed in this chapter does not commence to run until the discovery of an offense described in this subdivision. This subdivision applies to an offense punishable by imprisonment in the state prison or imprisonment pursuant to subdivision (h) of Section 1170, 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, including, but not limited to, the following offenses:

(1) Grand theft of any type, forgery, falsification of public records, or acceptance of, or asking, receiving, or agreeing to receive, a bribe, by a public official or a public employee, including, but not limited to, a violation of Section 68, 86, or 93.

(2) A violation of Section 72, 118, 118a, 132, 134, or 186.10.

(3) A violation of Section 25540, of any type, or Section 25541 of the Corporations Code.

(4) A violation of Section 1090 or 27443 of the Government Code.

(5) Felony welfare fraud or Medi-Cal fraud in violation of Section 11483 or 14107 of the Welfare and Institutions Code.

(6) Felony insurance fraud in violation of Section 548 or 550 of this code or former Section 1871.1, or Section 1871.4, of the Insurance Code.

(7) A violation of Section 580, 581, 582, 583, or 584 of the Business and Professions Code.

(8) A violation of Section 22430 of the Business and Professions Code.

(9) A violation of Section 103800 of the Health and Safety Code.

(10) A violation of Section 529a.

(11) A violation of subdivision (d) or (e) of Section 368.

(d) If the defendant is out of the state when or after the offense is committed, the prosecution may be commenced as provided in Section 804 within the limitations of time prescribed by this chapter, 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.

(e) A limitation of time prescribed in this chapter does not commence to run until the offense has been discovered, or could have reasonably been discovered, with regard to offenses under Division 7 (commencing with Section 13000) of the Water Code, under Chapter 6.5 (commencing with Section 25100) of, Chapter 6.7 (commencing with Section 25280) of, or Chapter 6.8 (commencing with Section 25300) of, Division 20 of, or Part 4 (commencing with Section 41500) of Division 26 of, the Health and Safety Code, or under Section 386, or offenses under Chapter 5 (commencing with Section 2000) of Division 2 of, Chapter 9 (commencing with Section 4000) of Division 2 of, Section 6126 of, Chapter 10 (commencing with Section 7301) of Division 3 of, or Chapter 19.5 (commencing with Section 22440) of Division 8 of, the Business and Professions Code.

(f) (1) Notwithstanding any other limitation of time described in this chapter, if subdivision (b) of Section 799 does not apply, 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 he or she, while under 18 years of age, was the victim of a crime described in Section 261, 286, 288, 288a, 288.5, or 289, or Section 289.5, as enacted by Chapter 293 of the Statutes of 1991 relating to penetration by an unknown object.

(2) This subdivision applies only if all of the following occur:

(A) The limitation period specified in Section 800, 801, or 801.1, whichever is later, has expired.

(B) The crime involved substantial sexual conduct, as described in subdivision (b) of Section 1203.066, excluding masturbation that is not mutual.

(C) 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.

(3) No evidence may be used to corroborate the victim's allegation that otherwise would be inadmissible during trial. Independent evidence does not include the opinions of mental health professionals.

(4) (A) In a criminal investigation involving any of the crimes listed in paragraph (1) committed against a child, when the applicable limitations period has not expired, that period shall be tolled from the time a party initiates litigation challenging a grand jury subpoena until the end of the litigation, including any associated writ or appellate proceeding, or until the final disclosure of evidence to the investigating or prosecuting agency, if that disclosure is ordered pursuant to the subpoena after the litigation.

(B) Nothing in this subdivision affects the definition or applicability of any evidentiary privilege.

(C) This subdivision shall not apply if a court finds that the grand jury subpoena was issued or caused to be issued in bad faith.

(g) (1) Notwithstanding any other limitation of time described in this chapter, a criminal complaint may be filed within one year of the date on which the identity of the suspect is conclusively established by DNA testing, if both of the following conditions are met:

(A) The crime is one that is described in subdivision (c) of Section 290.

(B) The offense was committed prior to January 1, 2001, and biological evidence collected in connection with the offense is analyzed for DNA type no later than January 1, 2004, or the offense was committed on or after January 1, 2001, and biological evidence collected in connection with the offense is analyzed for DNA type no later than two years from the date of the offense.

(2) For purposes of this section, "DNA" means deoxyribonucleic acid.

(h) For any crime, the proof of which depends substantially upon evidence that was seized under a warrant, but which is unavailable to the prosecuting authority under the procedures described in *People v. Superior Court (Laff)* (2001) 25 Cal.4th 703, *People v. Superior Court (Bauman & Rose)* (1995) 37 Cal.App.4th 1757, or subdivision (c) of Section 1524, relating to claims of evidentiary privilege or attorney work product, the limitation of time prescribed in this chapter shall be tolled from the time of the seizure until final disclosure of the evidence to the prosecuting authority. Nothing in this section otherwise affects the definition or applicability of any evidentiary privilege or attorney work product.

(i) Notwithstanding any other limitation of time described in this chapter, a criminal complaint may be filed within one year of the date on which a hidden recording is discovered related to a violation of paragraph (2) or (3) of subdivision (j) of Section 647.

(j) Notwithstanding any other limitation of time described in this chapter, if a person flees the scene of an accident that caused death or permanent, serious injury, as defined in subdivision (d) of Section 20001 of the Vehicle Code, a criminal complaint brought pursuant to paragraph (2) of subdivision (b) of Section 20001 of the Vehicle Code may be filed within the applicable time period described in Section 801 or 802 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.

(k) Notwithstanding any other limitation of time described in this chapter, if a person flees the scene of an accident, a criminal complaint brought pursuant to paragraph (1) or (2) of subdivision (c) of Section 192 may be filed within the applicable time period described in Section 801 or 802, or one year after the person is initially identified by law enforcement as a suspect in the commission of that offense, whichever is later, but in no case later than six years after the commission of the offense.

(l) A limitation of time prescribed in this chapter does not commence to run until the discovery of an offense involving the offering or giving of a bribe to a public official or public employee, including, but not limited to, a violation of Section 67, 67.5, 85, 92, or 165, or Section 35230 or 72530 of the Education Code.

(m) Notwithstanding any other limitation of time prescribed in this chapter, if a person actively conceals or attempts to conceal an accidental death in violation of Section 152, 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 that offense.

SEC. 4. Section 3.5 of this bill incorporates amendments to Section 803 of the Penal Code proposed by both this bill and Senate Bill 1088. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2017, (2) each bill amends Section 803 of the Penal Code, and (3) this bill is enacted after Senate Bill 1088, in which case Section 3 of this bill shall not become operative.