

AMENDED IN ASSEMBLY APRIL 14, 2015

AMENDED IN ASSEMBLY MARCH 26, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

**ASSEMBLY BILL**

**No. 835**

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**Introduced by Assembly Member Gipson**

February 26, 2015

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An act to amend ~~Sections 191.5 and 193~~ *Section 803* of the Penal Code, relating to vehicular manslaughter.

LEGISLATIVE COUNSEL'S DIGEST

AB 835, as amended, Gipson. Vehicular manslaughter: ~~fleeing the scene of an accident.~~ *statute of limitation.*

*Existing law defines the crime of vehicular manslaughter as the unlawful killing of a human being without malice while driving a vehicle under specified circumstances, including the commission of an unlawful act, not amounting to a felony, with or without gross negligence. Existing law provides that vehicular manslaughter is punishable as a misdemeanor or felony.*

*Existing law provides various time limits within which crimes may be prosecuted, except as specified. Existing law authorizes, if a person flees the scene of an accident that caused death or permanent, serious injury, a criminal complaint brought pursuant to specified provisions to be filed within one or 3 years after the completion of the offense, as specified, 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 6 years after the commission of the offense.*

*This bill would additionally authorize, if a person flees the scene of an accident, a criminal complaint brought for a violation of specified vehicular manslaughter crimes to be filed either one or 3 years after the commission of the offense, as specified, or one year after the person is initially identified by law enforcement as a suspect in the commission of that offense, whichever is later.*

~~Existing law proscribes various types of vehicular manslaughter, including gross vehicular manslaughter while intoxicated, vehicular manslaughter while intoxicated, and vehicular manslaughter, as defined. Existing law prescribes the punishment for those crimes, including imprisonment in the state prison for 4, 6, or 10 years for gross vehicular manslaughter and imprisonment in the state prison for 2, 4, or 6 years, or in a county jail for not more than one year, as specified, for vehicular manslaughter. Existing law imposes an additional term of imprisonment of 5 years in the state prison upon a person who flees the scene of the crime after committing certain types of vehicular manslaughter, as specified.~~

~~Existing law also provides that the crime of 2nd degree murder is generally punishable by imprisonment in the state prison for a term of 15 years to life, as specified.~~

~~This bill would make a person who commits an act of vehicular manslaughter and flees the scene of the accident guilty of 2nd degree murder and subject to imprisonment in the state prison for a term of 15 years to life, as specified. By changing the penalty for existing crimes, the bill would impose a state-mandated local program.~~

~~The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that no reimbursement is required by this act for a specified reason.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: *yes-no*.

*The people of the State of California do enact as follows:*

- 1     SECTION 1. Section 803 of the Penal Code is amended to
- 2     read:
- 3     803. (a) Except as provided in this section, a limitation of time
- 4     prescribed in this chapter is not tolled or extended for any reason.

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

4 (c) A limitation of time prescribed in this chapter does not  
5 commence to run until the discovery of an offense described in  
6 this subdivision. This subdivision applies to an offense punishable  
7 by imprisonment in the state prison or imprisonment pursuant to  
8 subdivision (h) of Section 1170, a material element of which is  
9 fraud or breach of a fiduciary obligation, the commission of the  
10 crimes of theft or embezzlement upon an elder or dependent adult,  
11 or the basis of which is misconduct in office by a public officer,  
12 employee, or appointee, including, but not limited to, the following  
13 offenses:

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

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

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

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

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

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

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

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

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

34 (10) A violation of Section 529a.

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

36 (d) If the defendant is out of the state when or after the offense  
37 is committed, the prosecution may be commenced as provided in  
38 Section 804 within the limitations of time prescribed by this  
39 chapter, and no time up to a maximum of three years during which

1 the defendant is not within the state shall be a part of those  
2 limitations.

3 (e) A limitation of time prescribed in this chapter does not  
4 commence to run until the offense has been discovered, or could  
5 have reasonably been discovered, with regard to offenses under  
6 Division 7 (commencing with Section 13000) of the Water Code,  
7 under Chapter 6.5 (commencing with Section 25100) of, Chapter  
8 6.7 (commencing with Section 25280) of, or Chapter 6.8  
9 (commencing with Section 25300) of, Division 20 of, or Part 4  
10 (commencing with Section 41500) of Division 26 of, the Health  
11 and Safety Code, or under Section 386, or offenses under Chapter  
12 5 (commencing with Section 2000) of Division 2 of, Chapter 9  
13 (commencing with Section 4000) of Division 2 of, Section 6126  
14 of, Chapter 10 (commencing with Section 7301) of Division 3 of,  
15 or Chapter 19.5 (commencing with Section 22440) of Division 8  
16 of, the Business and Professions Code.

17 (f) (1) Notwithstanding any other limitation of time described  
18 in this chapter, a criminal complaint may be filed within one year  
19 of the date of a report to a California law enforcement agency by  
20 a person of any age alleging that he or she, while under 18 years  
21 of age, was the victim of a crime described in Section 261, 286,  
22 288, 288a, 288.5, or 289, or Section 289.5, as enacted by Chapter  
23 293 of the Statutes of 1991 relating to penetration by an unknown  
24 object.

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

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

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

31 (C) There is independent evidence that corroborates the victim's  
32 allegation. If the victim was 21 years of age or older at the time  
33 of the report, the independent evidence shall clearly and  
34 convincingly corroborate the victim's allegation.

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

39 (4) (A) In a criminal investigation involving any of the crimes  
40 listed in paragraph (1) committed against a child, when the

1 applicable limitations period has not expired, that period shall be  
2 tolled from the time a party initiates litigation challenging a grand  
3 jury subpoena until the end of the litigation, including any  
4 associated writ or appellate proceeding, or until the final disclosure  
5 of evidence to the investigating or prosecuting agency, if that  
6 disclosure is ordered pursuant to the subpoena after the litigation.

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

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

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

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

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

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

26 (h) For any crime, the proof of which depends substantially  
27 upon evidence that was seized under a warrant, but which is  
28 unavailable to the prosecuting authority under the procedures  
29 described in *People v. Superior Court (Laff)* (2001) 25 Cal.4th  
30 703, *People v. Superior Court (Bauman & Rose)* (1995) 37  
31 Cal.App.4th 1757, or subdivision (c) of Section 1524, relating to  
32 claims of evidentiary privilege or attorney work product, the  
33 limitation of time prescribed in this chapter shall be tolled from  
34 the time of the seizure until final disclosure of the evidence to the  
35 prosecuting authority. Nothing in this section otherwise affects  
36 the definition or applicability of any evidentiary privilege or  
37 attorney work product.

38 (i) Notwithstanding any other limitation of time described in  
39 this chapter, a criminal complaint may be filed within one year of

1 the date on which a hidden recording is discovered related to a  
 2 violation of paragraph (2) or (3) of subdivision (j) of Section 647.  
 3 (j) Notwithstanding any other limitation of time described in  
 4 this chapter, if a person flees the scene of an accident that caused  
 5 death or permanent, serious injury, as defined in subdivision (d)  
 6 of Section 20001 of the Vehicle Code, a criminal complaint brought  
 7 pursuant to paragraph (2) of subdivision (b) of Section 20001 of  
 8 the Vehicle Code may be filed within the applicable time period  
 9 described in Section 801 or 802 or one year after the person is  
 10 initially identified by law enforcement as a suspect in the  
 11 commission of the offense, whichever is later, but in no case later  
 12 than six years after the commission of the offense.

13 *(k) Notwithstanding any other limitation of time described in*  
 14 *this chapter, if a person flees the scene of an accident, a criminal*  
 15 *complaint brought pursuant to paragraph (1) or (2) of subdivision*  
 16 *(c) of Section 192 may be filed within the applicable time period*  
 17 *described in Section 801 or 802, or one year after the person is*  
 18 *initially identified by law enforcement as a suspect in the*  
 19 *commission of that offense, whichever is later.*

20 ~~(k)~~  
 21 (l) A limitation of time prescribed in this chapter does not  
 22 commence to run until the discovery of an offense involving the  
 23 offering or giving of a bribe to a public official or public employee,  
 24 including, but not limited to, a violation of Section 67, 67.5, 85,  
 25 92, or 165, or Section 35230 or 72530 of the Education Code.

26 SECTION 1. ~~Section 191.5 of the Penal Code is amended to~~  
 27 ~~read:~~

28 ~~191.5. (a) Gross vehicular manslaughter while intoxicated is~~  
 29 ~~the unlawful killing of a human being without malice aforethought,~~  
 30 ~~in the driving of a vehicle, where the driving was in violation of~~  
 31 ~~Section 23140, 23152, or 23153 of the Vehicle Code, and the~~  
 32 ~~killing was either the proximate result of the commission of an~~  
 33 ~~unlawful act, not amounting to a felony, and with gross negligence,~~  
 34 ~~or the proximate result of the commission of a lawful act that might~~  
 35 ~~produce death, in an unlawful manner, and with gross negligence.~~

36 ~~(b) Vehicular manslaughter while intoxicated is the unlawful~~  
 37 ~~killing of a human being without malice aforethought, in the~~  
 38 ~~driving of a vehicle, where the driving was in violation of Section~~  
 39 ~~23140, 23152, or 23153 of the Vehicle Code, and the killing was~~  
 40 ~~either the proximate result of the commission of an unlawful act,~~

1 not amounting to a felony, but without gross negligence, or the  
2 proximate result of the commission of a lawful act that might  
3 produce death, in an unlawful manner, but without gross  
4 negligence.

5 (e) (1) Except as provided in subdivision (d), gross vehicular  
6 manslaughter while intoxicated in violation of subdivision (a) is  
7 punishable by imprisonment in the state prison for 4, 6, or 10 years.

8 (2) Vehicular manslaughter while intoxicated in violation of  
9 subdivision (b) is punishable by imprisonment in a county jail for  
10 not more than one year or by imprisonment pursuant to subdivision  
11 (h) of Section 1170 for 16 months or two or four years.

12 (d) (1) A person convicted of violating subdivision (a) who has  
13 one or more prior convictions of this section or of paragraph (1)  
14 of subdivision (e) of Section 192, subdivision (a) or (b) of Section  
15 192.5 of this code, or of violating Section 23152 punishable under  
16 Sections 23540, 23542, 23546, 23548, 23550, or 23552 of, or  
17 convicted of Section 23153 of, the Vehicle Code, shall be punished  
18 by imprisonment in the state prison for a term of 15 years to life.  
19 Article 2.5 (commencing with Section 2930) of Chapter 7 of Title  
20 1 of Part 3 shall apply to reduce the term imposed pursuant to this  
21 subdivision.

22 (2) Notwithstanding any other law, a person who violates  
23 subdivision (a) or (b) and flees the scene of the accident, is guilty  
24 of murder in the second degree.

25 (e) This section shall not be construed as prohibiting or  
26 precluding a charge of murder under Section 188 upon facts  
27 exhibiting wantonness and a conscious disregard for life to support  
28 a finding of implied malice, or upon facts showing malice  
29 consistent with the holding of the California Supreme Court in  
30 *People v. Watson*, 30 Cal. 3d 290.

31 (f) This section shall not be construed as making any homicide  
32 in the driving of a vehicle or the operation of a vessel punishable  
33 which is not a proximate result of the commission of an unlawful  
34 act, not amounting to felony, or of the commission of a lawful act  
35 which might produce death, in an unlawful manner.

36 (g) For the penalties in subdivision (e) to apply, the existence  
37 of any fact required under subdivision (e) shall be alleged in the  
38 information or indictment and either admitted by the defendant in  
39 open court or found to be true by the trier of fact.

40 SEC. 2. Section 193 of the Penal Code is amended to read:

1     ~~193. (a) Voluntary manslaughter is punishable by~~  
2 ~~imprisonment in the state prison for 3, 6, or 11 years.~~  
3     ~~(b) Involuntary manslaughter is punishable by imprisonment~~  
4 ~~pursuant to subdivision (h) of Section 1170 for two, three, or four~~  
5 ~~years.~~  
6     ~~(c) Vehicular manslaughter is punishable as follows:~~  
7     ~~(1) A violation of paragraph (1) of subdivision (c) of Section~~  
8 ~~192 is punishable either by imprisonment in the county jail for not~~  
9 ~~more than one year or by imprisonment in the state prison for two,~~  
10 ~~four, or six years.~~  
11     ~~(2) A violation of paragraph (2) of subdivision (c) of Section~~  
12 ~~192 is punishable by imprisonment in the county jail for not more~~  
13 ~~than one year.~~  
14     ~~(3) A violation of paragraph (3) of subdivision (c) of Section~~  
15 ~~192 is punishable by imprisonment in the state prison for 4, 6, or~~  
16 ~~10 years.~~  
17     ~~(4) Notwithstanding any other law, a person who commits~~  
18 ~~vehicular manslaughter and flees the scene of the accident, is guilty~~  
19 ~~of murder in the second degree.~~  
20     ~~SEC. 3. No reimbursement is required by this act pursuant to~~  
21 ~~Section 6 of Article XIII B of the California Constitution because~~  
22 ~~the only costs that may be incurred by a local agency or school~~  
23 ~~district will be incurred because this act creates a new crime or~~  
24 ~~infraction, eliminates a crime or infraction, or changes the penalty~~  
25 ~~for a crime or infraction, within the meaning of Section 17556 of~~  
26 ~~the Government Code, or changes the definition of a crime within~~  
27 ~~the meaning of Section 6 of Article XIII B of the California~~  
28 ~~Constitution.~~

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