

AMENDED IN ASSEMBLY AUGUST 11, 2016

AMENDED IN SENATE MARCH 31, 2016

SENATE BILL

No. 813

Introduced by Senator Leyva

(Principal coauthor: Senator Pavley)

(Principal coauthors: Assembly Members Burke, Gipson, and Williams)

(Coauthors: Senators Anderson, Beall, Berryhill, Block, Cannella,

Fuller, Mitchell, Moorlach, Nielsen, and Roth)

(Coauthors: Assembly Members Chávez and Lackey)

January 4, 2016

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

LEGISLATIVE COUNSEL'S DIGEST

SB 813, as amended, 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.
State-mandated local program: no.

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

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

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

7 (b) (1) Prosecution for a felony offense described in paragraph
8 (1), (2), (3), (4), (6) or (7) of subdivision (a) of Section 261,
9 paragraph (1), (2), (3), (4), or (5) of subdivision (a) of Section 262,
10 Section 264.1, paragraph (2) or (3) of subdivision (c) of, or
11 subdivision (d), (f), (g), (i), or (k) of, Section 286, subdivision (a)
12 of Section 288 involving substantial sexual conduct as defined by
13 in subdivision (b) of Section 1203.066, subdivision (b) of Section
14 288, Section 288.5, paragraph (2) or (3) of subdivision (c) of, or
15 subdivision (d), (f), (g), (i), or (k) of, Section 288a, or subdivision
16 (a), (b), (d), (e), or (g) of Section 289 may be commenced at any
17 time.

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

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

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

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

8 (2) Paragraph (1) shall only apply to crimes that were committed
9 on or after January 1, 2015, or for which the statute of limitations
10 that was in effect prior to January 1, 2015, has not run as of January
11 1, 2015.

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

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

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

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

23 (c) A limitation of time prescribed in this chapter does not
24 commence to run until the discovery of an offense described in
25 this subdivision. This subdivision applies to an offense punishable
26 by imprisonment in the state prison or imprisonment pursuant to
27 subdivision (h) of Section 1170, a material element of which is
28 fraud or breach of a fiduciary obligation, the commission of the
29 crimes of theft or embezzlement upon an elder or dependent adult,
30 or the basis of which is misconduct in office by a public officer,
31 employee, or appointee, including, but not limited to, the following
32 offenses:

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

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

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

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

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

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

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

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

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

14 (10) A violation of Section 529a.

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

16 (d) If the defendant is out of the state when or after the offense
17 is committed, the prosecution may be commenced as provided in
18 Section 804 within the limitations of time prescribed by this
19 chapter, and no time up to a maximum of three years during which
20 the defendant is not within the state shall be a part of those
21 limitations.

22 (e) A limitation of time prescribed in this chapter does not
23 commence to run until the offense has been discovered, or could
24 have reasonably been discovered, with regard to offenses under
25 Division 7 (commencing with Section 13000) of the Water Code,
26 under Chapter 6.5 (commencing with Section 25100) of, Chapter
27 6.7 (commencing with Section 25280) of, or Chapter 6.8
28 (commencing with Section 25300) of, Division 20 of, or Part 4
29 (commencing with Section 41500) of Division 26 of, the Health
30 and Safety Code, or under Section 386, or offenses under Chapter
31 5 (commencing with Section 2000) of Division 2 of, Chapter 9
32 (commencing with Section 4000) of Division 2 of, Section 6126
33 of, Chapter 10 (commencing with Section 7301) of Division 3 of,
34 or Chapter 19.5 (commencing with Section 22440) of Division 8
35 of, the Business and Professions Code.

36 (f) (1) Notwithstanding any other limitation of time described
37 in this chapter, if subdivision (b) of Section 799 does not apply, a
38 criminal complaint may be filed within one year of the date of a
39 report to a California law enforcement agency by a person of any
40 age alleging that he or she, while under 18 years of age, was the

1 victim of a crime described in Section 261, 286, 288, 288a, 288.5,
2 or 289, or Section 289.5, as enacted by Chapter 293 of the Statutes
3 of 1991 relating to penetration by an unknown object.

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

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

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

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

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

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

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

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

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

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

37 (B) The offense was committed prior to January 1, 2001, and
38 biological evidence collected in connection with the offense is
39 analyzed for DNA type no later than January 1, 2004, or the offense
40 was committed on or after January 1, 2001, and biological evidence

1 collected in connection with the offense is analyzed for DNA type
2 no later than two years from the date of the offense.

3 (2) For purposes of this section, “DNA” means deoxyribonucleic
4 acid.

5 (h) For any crime, the proof of which depends substantially
6 upon evidence that was seized under a warrant, but which is
7 unavailable to the prosecuting authority under the procedures
8 described in *People v. Superior Court (Laff)* (2001) 25 Cal.4th
9 703, *People v. Superior Court (Bauman & Rose)* (1995) 37
10 Cal.App.4th 1757, or subdivision (c) of Section 1524, relating to
11 claims of evidentiary privilege or attorney work product, the
12 limitation of time prescribed in this chapter shall be tolled from
13 the time of the seizure until final disclosure of the evidence to the
14 prosecuting authority. Nothing in this section otherwise affects
15 the definition or applicability of any evidentiary privilege or
16 attorney work product.

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

21 (j) Notwithstanding any other limitation of time described in
22 this chapter, if a person flees the scene of an accident that caused
23 death or permanent, serious injury, as defined in subdivision (d)
24 of Section 20001 of the Vehicle Code, a criminal complaint brought
25 pursuant to paragraph (2) of subdivision (b) of Section 20001 of
26 the Vehicle Code may be filed within the applicable time period
27 described in Section 801 or 802 or one year after the person is
28 initially identified by law enforcement as a suspect in the
29 commission of the offense, whichever is later, but in no case later
30 than six years after the commission of the offense.

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

39 (l) A limitation of time prescribed in this chapter does not
40 commence to run until the discovery of an offense involving the

1 offering or giving of a bribe to a public official or public employee,
2 including, but not limited to, a violation of Section 67, 67.5, 85,
3 92, or 165, or Section 35230 or 72530 of the Education Code.

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

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

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

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

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

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

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

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

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

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

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

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

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

40 (10) A violation of Section 529a.

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

2 (d) If the defendant is out of the state when or after the offense
3 is committed, the prosecution may be commenced as provided in
4 Section 804 within the limitations of time prescribed by this
5 chapter, and no time up to a maximum of three years during which
6 the defendant is not within the state shall be a part of those
7 limitations.

8 (e) A limitation of time prescribed in this chapter does not
9 commence to run until the offense has been discovered, or could
10 have reasonably been discovered, with regard to offenses under
11 Division 7 (commencing with Section 13000) of the Water Code,
12 under Chapter 6.5 (commencing with Section 25100) of, Chapter
13 6.7 (commencing with Section 25280) of, or Chapter 6.8
14 (commencing with Section 25300) of, Division 20 of, or Part 4
15 (commencing with Section 41500) of Division 26 of, the Health
16 and Safety Code, or under Section 386, or offenses under Chapter
17 5 (commencing with Section 2000) of Division 2 of, Chapter 9
18 (commencing with Section 4000) of Division 2 of, Section 6126
19 of, Chapter 10 (commencing with Section 7301) of Division 3 of,
20 or Chapter 19.5 (commencing with Section 22440) of Division 8
21 of, the Business and Professions Code.

22 (f) (1) Notwithstanding any other limitation of time described
23 in this chapter, *if subdivision (b) of Section 799 does not apply*, a
24 criminal complaint may be filed within one year of the date of a
25 report to a California law enforcement agency by a person of any
26 age alleging that he or she, while under 18 years of age, was the
27 victim of a crime described in Section 261, 286, 288, 288a, 288.5,
28 or 289, or Section 289.5, as enacted by Chapter 293 of the Statutes
29 of 1991 relating to penetration by an unknown object.

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

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

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

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

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

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

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

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

17 (g) (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 on which the identity of the suspect is conclusively
20 established by DNA testing, if both of the following conditions
21 are met:

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

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

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

32 (h) For any crime, the proof of which depends substantially
33 upon evidence that was seized under a warrant, but which is
34 unavailable to the prosecuting authority under the procedures
35 described in *People v. Superior Court (Laff)* (2001) 25 Cal.4th
36 703, *People v. Superior Court (Bauman & Rose)* (1995) 37
37 Cal.App.4th 1757, or subdivision (c) of Section 1524, relating to
38 claims of evidentiary privilege or attorney work product, the
39 limitation of time prescribed in this chapter shall be tolled from
40 the time of the seizure until final disclosure of the evidence to the

1 prosecuting authority. Nothing in this section otherwise affects
2 the definition or applicability of any evidentiary privilege or
3 attorney work product.

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

8 (j) Notwithstanding any other limitation of time described in
9 this chapter, if a person flees the scene of an accident that caused
10 death or permanent, serious injury, as defined in subdivision (d)
11 of Section 20001 of the Vehicle Code, a criminal complaint brought
12 pursuant to paragraph (2) of subdivision (b) of Section 20001 of
13 the Vehicle Code may be filed within the applicable time period
14 described in Section 801 or 802 or one year after the person is
15 initially identified by law enforcement as a suspect in the
16 commission of the offense, whichever is later, but in no case later
17 than six years after the commission of the offense.

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

26 (l) A limitation of time prescribed in this chapter does not
27 commence to run until the discovery of an offense involving the
28 offering or giving of a bribe to a public official or public employee,
29 including, but not limited to, a violation of Section 67, 67.5, 85,
30 92, or 165, or Section 35230 or 72530 of the Education Code.

31 (m) *Notwithstanding any other limitation of time prescribed in
32 this chapter, if a person actively conceals or attempts to conceal
33 an accidental death in violation of Section 152, a criminal
34 complaint may be filed within one year after the person is initially
35 identified by law enforcement as a suspect in the commission of
36 that offense.*

37 *SEC. 4. Section 3.5 of this bill incorporates amendments to
38 Section 803 of the Penal Code proposed by both this bill and Senate
39 Bill 1088. It shall only become operative if (1) both bills are
40 enacted and become effective on or before January 1, 2017, (2)*

1 *each bill amends Section 803 of the Penal Code, and (3) this bill*
2 *is enacted after Senate Bill 1088, in which case Section 3 of this*
3 *bill shall not become operative.*

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