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## **SENATE COMMITTEE ON PUBLIC SAFETY**

**Senator Nancy Skinner, Chair**

**2017 - 2018 Regular**

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**Bill No:** SB 610                    **Hearing Date:** April 18, 2017

**Author:** Nguyen

**Version:** February 17, 2017

**Urgency:** No

**Consultant:** SC

**Fiscal:** No

**Subject: Wrongful Concealment: Statute of Limitations**

### **HISTORY**

**Source:** Author

Prior Legislation: SB 1088 (Nguyen), vetoed, 2016  
                          SB 139 (Johnson), Ch. 396, Stats. 1999

Support: California State Sheriffs' Association

Opposition: California Attorneys for Criminal Justice; California Public Defenders Association

### **PURPOSE**

*The purpose of this bill is to modify the statute of limitations for the crime of concealing an accidental death from one year to one year after the person is initially identified by law enforcement as a suspect in the commission of the offense.*

*Existing law makes it a misdemeanor, punishable by a jail term of up to one year, or a fine of between \$1,000 and \$10,000, or both, to actively conceal an accidental death, or attempt to do so. (Pen. Code § 152, subd. (a).)*

Existing law states that to conceal an accidental death means to do one of the following:

- Perform an overt act that conceals the body or directly impedes the ability of authorities or family members to discover the body;
- Directly destroy or suppress evidence of the actual physical body of the deceased, including, but not limited to, bodily fluids or tissues; or,
- Destroy or suppress the actual physical instrumentality of death. (Pen. Code § 152, subd. (b).)

*Existing law provides that any person who, after the commission of a felony, harbors, conceals, or aids the perpetrator in such a felony, with the intent to help the perpetrator escape arrest or prosecution is an accessory to the felony. (Pen. Code, § 32.)*

*Existing law provides that in general the prosecution for a misdemeanor shall be commenced within one year after the commission of the offense. (Pen. Code § 802.)*

*Existing law* states that if a person flees the scene of an accident that caused death or permanent, serious injury, as defined, the prosecution must commence within the statutorily proscribed time period 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. (Pen. Code § 803, subd. (j).)

*Existing law* provides that on crimes of identity theft and forged records, the statute of limitations does not start to run until the discovery of the offense. (Pen. Code § 803.5.)

*This bill* specifies that for the crime of concealing an accidental death, a criminal complaint may be filed up to one year after a person is initially identified by law enforcement as a suspect in the commission of the offense, with a six-year limit from when the crime occurred.

## COMMENTS

### **1. Need for This Bill**

According to the author:

Erica Alonso, a resident of Laguna Hills, went missing on February 15, 2015. Her body was later found a few months later on April 27, 2015 in a dry creek bed near Ortega Highway and Hot Springs Canyon Road near San Juan Capistrano. Erica's death was not a homicide. However, someone with her moved the body to hide the fact that she had died. For this reason, Erica's family and friends had no way to locate her, resulting in additional trauma to the family and community at large.

Following the discovery of Erica's body, public outcry surfaced and a rally took place in Santa Ana that sought justice for Erica. One of the community's frustrations centered on the lack of an appropriate penalty. Currently the consequence for dumping a body is a maximum penalty of not more than one year in county jail or by a fine of not less than one thousand dollars (\$1,000), nor more than ten thousand dollars (\$10,000), or by both a fine and imprisonment.

Specifically, Senate Bill 610 amends the California Penal Code to increase the statute of limitations for the concealment of a body due to an accidental death. This bill would increase the statute of limitations to allow a criminal complaint to be filed within one year after the person is initially identified by law enforcement as a suspect of a crime, with a six year total limit from when the crime occurred.

### **2. Statute of Limitations Generally; Law Revision Commission Report**

The statute of limitations requires commencement of a prosecution within a certain period of time after the commission of a crime. A prosecution is initiated by filing an indictment or information, filing a complaint, certifying a case to superior court, or issuing an arrest or bench warrant. (Penal Code § 804.) The failure of a prosecution to be commenced within the applicable period of limitation is a complete defense to the charge. The statute of limitations is jurisdictional and may be raised as a defense at any time, before or after judgment. *People v. Morris* (1988) 46

Cal.3d 1, 13. The defense may only be waived under limited circumstances. (See *Cowan v. Superior Court* (1996) 14 Cal.4th 367.)

The Legislature enacted the current statutory scheme regarding statutes of limitations for crimes in 1984 in response to a report of the California Law Revision Commission:

The Commission identified various factors to be considered in drafting a limitations statute. These factors include: (a) The staleness factor. A person accused of crime should be protected from having to face charges based on possibly unreliable evidence and from losing access to the evidentiary means to defend. (b) The repose factor. This reflects society's lack of a desire to prosecute for crimes committed in the distant past. (c) The motivation factor. This aspect of the statute imposes a priority among crimes for investigation and prosecution. (d) The seriousness factor. The statute of limitations is a grant of amnesty to a defendant; the more serious the crime, the less willing society is to grant that amnesty. (e) The concealment factor. Detection of certain concealed crimes may be quite difficult and may require long investigations to identify and prosecute the perpetrators.

The Commission concluded that a felony limitations statute generally should be based on the seriousness of the crime. Seriousness is easily determined based on classification of a crime as felony or misdemeanor and the punishment specified, and a scheme based on seriousness generally will accommodate the other factors as well. Also, the simplicity of a limitations period based on seriousness provides predictability and promotes uniformity of treatment.<sup>1</sup>

Generally, the statute of limitations for misdemeanor offenses requires commencement of prosecution within one year (Pen. Code § 802) and within three years for felony offenses (Pen. Code § 801). There are specified exceptions that either provides for a longer statute of limitations, tolls the time that the statute starts to run such as when the crime is discovered (Pen. Code § 803), or provides no statute of limitations at all (Pen. Code § 799).

This bill specifies for the crime of concealing an accidental death, the statute of limitations is one year from when the person is initially identified by law enforcement as a suspect, with an overall six-year limit from when the crime occurred.

### **3. Governor's Veto of Prior Legislation**

This bill is similar to SB 1088 (Nguyen) which was vetoed last year. The Governor's veto message stated:

This bill states that a criminal complaint may be filed within one year after an individual is identified by law enforcement as a suspect in the concealment of an accidental death.

Such identification could take place years or even decades later. I believe that the statute of limitations for most crimes, especially misdemeanors, should have a defined limit. Allowing the statute to commence when a suspect has been

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<sup>1</sup> 1 Witkin Cal. Crim. Law Defenses, Section 214 (3rd Ed. 2004), citing 17 Cal. Law Rev. Com. Reports, pp.308-314.

identified, with no other parameters, serves to undermine the very purpose of a limitations period.

This bill specifies that a criminal complaint for this offense may not be filed more than six years after the commission of the offense.

#### **4. Argument in Support**

The California State Sheriffs' Association writes in support,

Under existing law, the offense of actively concealing an accidental death is punishable as a misdemeanor. Existing law also states that, absent other applicable statutes of limitations, a criminal complaint can only be filed against someone within one year from the time the crime was committed. As a result, a person who witnesses an accidental death and actively conceals or attempts to conceal it cannot be charged after one year.

SB 610 allows a criminal complaint to be filed against an individual within one year from the time law enforcement identifies that individual as a suspect in the offense of concealing an accidental death, but does not allow a criminal complaint to be filed more than six years after the commission of the offense.

#### **5. Argument in Opposition**

The California Public Defenders Association is in opposition to this bill and writes,

This bill is problematic. Since the definition of the crime includes concealment, how is the date of the commission of the offense to be established? Once a person is reported missing, the police should not need six years to determine that a misdemeanor has occurred. Most deaths under suspicious circumstances are treated as felony homicides, for which there is either no statute of limitations (murder) or three years, six years, or longer (manslaughter). In the rare case where the police determine a suspicious death is not criminal, but accidental, it should not take more than a year to establish that. Even if it legitimately does take that long, the date of a concealed accident sets an extremely indeterminate starting point.

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