
SENATE COMMITTEE ON APPROPRIATIONS

Senator Anthony Portantino, Chair
2019 - 2020 Regular Session

SB 922 (Chang) - Criminal procedure: limitations of actions

Version: May 21, 2020

Urgency: No

Hearing Date: June 9, 2020

Policy Vote: PUB. S. 7 - 0

Mandate: No

Consultant: Shaun Naidu

Bill Summary: SB 922 would extend the statute of limitations, as specified, for felony crimes related to extortion by ransomware and unauthorized access to computers, computer systems, or networks, as specified.

Fiscal Impact:

- State prison: Unknown, potential increase in state costs for new commitments to state prison that otherwise would not have resulted in incarceration. The FY 2020-2021 per capita cost to detain a person in a state prison is \$91,100 annually, with an annual marginal rate per person of over \$12,000. The actual costs would depend on how many defendants are sentenced to prison for a computer crime relevant to this measure after the current statute of limitations has lapsed. (General Fund)
- Court: Unknown, potentially-significant workload cost pressures to the court to adjudicate charges brought against defendants that would be time barred under current law. While the courts are not funded on a workload basis, an increase in workload could result in delayed court services and would put pressure on the General Fund to fund additional staff and resources. For example, the proposed 2020-21 budget would appropriate \$35.2 million from the General Fund to backfill continued reduction in fine and fee revenue for trial court operations. (General Fund*)

*Trial Court Trust Fund

Background: According to the analysis of this bill by the Senate Committee on Public Safety:

Statutes of limitations require 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.

The Commission's recommendation that the statute of limitation period should correspond to the seriousness of the crime would best be effectuated by a one-year period for misdemeanors, a three-year period for most felonies, a six-year period for felonies punishable by eight or more years imprisonment), and no limitation for capital crimes or crimes punishable by life imprisonment.

As to tolling of the statute of limitations until discovery of the offense, the Commission noted that tolling is appropriate for crimes where a material element is fraud or breach of a fiduciary obligation, *however tolling should not be permitted to run indefinitely*. The Commission recommended that a crime to which tolling applies should not be subject to prosecution more than nine years after it is committed and that such a limit would be a reasonable balance of interests. [Fn. omitted.]

...

Generally, the statute of limitations for misdemeanor offenses requires commencement of prosecution within one year of the commission of the offense (Pen. Code § 802) and for felony offenses, within three years of the commission of the offense (Pen. Code § 801). There are specified exceptions that either provides for a longer statute of limitations (Pen. Code, §§ 801.5, 802), 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).

Generally, unauthorized access to a computer, computer system, or computer network, when a felony, is punishable by imprisonment pursuant to the 2011 Realignment Legislation for 16 months, two years, or three years and a base fine of up to \$10,000. Extortion by ransomware is punishable by imprisonment pursuant to the 2011 Realignment Legislation for two, three, or four years.

Proposed Law: This bill would allow felony prosecution of specified crimes related to extortion by ransomware and unauthorized access to any data, computer, computer system, or computer network to begin the later of (1) within three years after the discovery of the commission of the offense or (2) within three years after the completion of the offense, but, in any event, no more than nine years after the commission of the offense. It would apply to crimes committed beginning on January 1, 2021, or for which the statute of limitations has not lapsed by that date.

Related Legislation: SB 239 (Chang, 2019), similar to this measure, would have extended the statute of limitations for felony crimes related to unauthorized access to computers, computer systems, or networks, as specified. SB 239 was held on the Suspense File of the Assembly Committee on Appropriations.

AB 32 (Waldron, Ch. 614, Stats. 2015) increased the base fine for felony convictions of specified computer crimes from a maximum of \$5,000 to a maximum of \$10,000.

AB 1649 (Waldron, Ch. 379, Stats. 2014) specified the penalties for any person who disrupts or causes the disruption of, adds, alters, damages, destroys, provides or assists in providing a means of accessing, or introduces any computer contaminant into a "government computer system" or a "public safety infrastructure computer system," as specified, and changed and added the definition of specified terms.

Staff Comments: The fiscal impact of this bill cannot be known with certainty, as the actual impact will be dependent on numerous factors, including, but not limited to, judicial and prosecutorial discretion, the criminal history of the defendant, and the factors unique to each case. To the extent even one additional defendant is committed to state prison as a result of this bill, state incarceration costs would surpass the Suspense File threshold. Additionally, as the crimes that are the subject of this bill are punishable with the potential of incarceration, certain rights to the defendants are attached to the proceedings, including the right to a jury trial and the right to counsel (at public expense if the defendants are unable to afford the costs of representation) which could lead to lengthier court proceedings. Consequently, to the extent that the court adjudicates more than a few felony offenses that otherwise would have been time barred but for this measure, costs to the court resulting from this bill would be significant.

With respect to the prison population, California is subject to a federal court order to reduce its in-state adult institution population to 137.5 percent of design capacity. The state has undertaken efforts to implement a durable remedy to reduce and avoid prison overcrowding. On May 27, 2020, 111,230 individuals were incarcerated in the state's 35 adult institutions and camps, and 3,995 were detained in in-state contract beds. The prison population changes daily as new people are admitted and others are released, but, on that date, the state's prison population was at approximately 127.0 percent of

design capacity. By potentially increasing the inmate population in in-state institutions, this bill could make it more difficult for the state to comply with the court order.

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