

AMENDED IN ASSEMBLY AUGUST 25, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 1667

Introduced by Assembly Member Kehoe

(Principal coauthor: Assembly Member Pavley)

(Principal coauthor: Senator Escutia)

*(Coauthors: Assembly Members Corbett, Frommer, Goldberg,
Nakano, and Reyes)*

(Coauthors: Senators Machado, Margett, and Ortiz)

February 21, 2003

An act ~~relating to employment~~ to amend Section 803 of, to add Sections 801.1, 801.2, and 803.5 to, and to repeal Section 805.5 of, the Penal Code, relating to criminal procedure.

LEGISLATIVE COUNSEL'S DIGEST

AB 1667, as amended, Kehoe. Employment Training Panel.

Existing law establishes various statute of limitations for various offenses. Existing law provides that where the identity of the suspect is conclusively proved by DNA analysis, the statute of limitations shall be one year from the date of the identification, or 10 years from the date of the offense, whichever day is later. Other provisions of existing law extend the statutes of limitations for certain sex offenses, and revive, for purposes of prosecution, certain offenses for which the statute of limitations had expired. The provisions reviving expired statutes of limitations have been held by the United States Supreme Court to be unconstitutional.

This bill would repeal those provisions of law that have been held to be unconstitutional. This bill would also provide that in regard to the

statutes of limitations for certain sex offenses alleged to have been committed when the victim was under 18 years of age, prosecution may be commenced any time prior to the victim’s 30th birthday.

The bill would also provide that if those provisions do not apply, then prosecution for specified sex offenses could commence within 10 years after the commission of the offense. This bill would delete the 10 year limitation in connection with DNA analysis identification, as described, and would make other technical changes.

~~Existing law provides for the Employment Training Program (ETP) to provide financial assistance to California businesses, to promote, develop, and provide training programs to workers.~~

~~This bill would state the intent of the Legislature to require that the director of the ETP devise an expedited application process and that the revised process be tested as a pilot program in San Diego and San Francisco Counties.~~

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.— It is the intent of the Legislature to require the~~
- 2 *SECTION 1. Section 801.1 is added to the Penal Code, to*
- 3 *read:*
- 4 *801.1. Notwithstanding any other limitation of time described*
- 5 *in this chapter, prosecution for an offense described in Section 261,*
- 6 *286, 288, 288.5, 288a, 289, or 289.5, alleged to have been*
- 7 *committed when the victim was under the age of 18 years, may be*
- 8 *commenced any time prior to the victim’s 30th birthday.*
- 9 *SEC. 2. Section 801.2 is added to the Penal Code, to read:*
- 10 *801.2. Notwithstanding any other limitation of time described*
- 11 *in this chapter, if section 801.1 does not apply, prosecution for an*
- 12 *offense described in subparagraph (A) of paragraph (2) of*
- 13 *subdivision (a) of Section 290 shall be commenced within 10 years*
- 14 *after commission of the offense.*
- 15 *SEC. 3. Section 803 of the Penal Code is amended to read:*
- 16 *803. (a) Except as provided in this section, a limitation of*
- 17 *time prescribed in this chapter is not tolled or extended for any*
- 18 *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 this
6 subdivision. This subdivision applies to an offense punishable by
7 imprisonment in the state prison, a material element of which is
8 fraud or breach of a fiduciary obligation, the commission of the
9 crimes of theft or embezzlement upon an elder or dependent adult,
10 or the basis of which is misconduct in office by a public officer,
11 employee, or appointee, including, but not limited to, the
12 following offenses:

13 (1) Grand theft of any type, forgery, falsification of public
14 records, or acceptance of a bribe by a public official or a public
15 employee.

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

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

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

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

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

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

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

30 (9) A violation of Section 10690 of the Health and Safety Code.

31 (10) A violation of Section 529a.

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

33 (d) If the defendant is out of the state when or after the offense
34 is committed, the prosecution may be commenced as provided in
35 Section 804 within the limitations of time prescribed by this
36 chapter, and no time up to a maximum of three years during which
37 the defendant is not within the state shall be a part of those
38 limitations.

39 (e) A limitation of time prescribed in this chapter does not
40 commence to run until the offense has been discovered, or could



1 have reasonably been discovered, with regard to offenses under
2 Division 7 (commencing with Section 13000) of the Water Code,
3 under Chapter 6.5 (commencing with Section 25100) of, Chapter
4 6.7 (commencing with Section 25280) of, or Chapter 6.8
5 (commencing with Section 25300) of, Division 20 of, or Part 4
6 (commencing with Section 41500) of Division 26 of, the Health
7 and Safety Code, or under Section 386, or offenses under Chapter
8 5 (commencing with Section 2000) of Division 2 of, Chapter 9
9 (commencing with Section 4000) of Division 2 of, Chapter 10
10 (commencing with Section 7301) of Division 3 of, or Chapter 19.5
11 (commencing with Section 22440) of Division 8 of, the Business
12 and Professions Code.

13 ~~(f) (1) Notwithstanding any other limitation of time described~~
14 ~~in this chapter, a criminal complaint may be filed within one year~~
15 ~~of the date of a report to a responsible adult or agency by a child~~
16 ~~under 18 years of age that the child is a victim of a crime described~~
17 ~~in Section 261, 286, 288, 288a, 288.5, 289, or 289.5.~~

18 ~~(2) For purposes of this subdivision, a “responsible adult” or~~
19 ~~“agency” means a person or agency required to report pursuant to~~
20 ~~Section 11166. This subdivision applies only if both of the~~
21 ~~following occur:~~

22 ~~(A) The limitation period specified in Section 800 or 801 has~~
23 ~~expired.~~

24 ~~(B) The defendant has committed at least one violation of~~
25 ~~Section 261, 286, 288, 288a, 288.5, 289, or 289.5 against the same~~
26 ~~victim within the limitation period specified for that crime in either~~
27 ~~Section 800 or 801.~~

28 ~~(3) (A) This subdivision applies to a cause of action arising~~
29 ~~before, on, or after January 1, 1990, the effective date of this~~
30 ~~subdivision, and it shall revive any cause of action barred by~~
31 ~~Section 800 or 801 if any of the following occurred or occurs:~~

32 ~~(i) The complaint or indictment was filed on or before January~~
33 ~~1, 1997, and it was filed within the time period specified in this~~
34 ~~subdivision.~~

35 ~~(ii) The complaint or indictment is or was filed subsequent to~~
36 ~~January 1, 1997, and it is or was filed within the time period~~
37 ~~specified within this subdivision.~~

38 ~~(iii) The victim made the report required by this subdivision to~~
39 ~~a responsible adult or agency after January 1, 1990, and a~~
40 ~~complaint or indictment was not filed within the time period~~



1 ~~specified in this subdivision, but a complaint or indictment is filed~~
2 ~~no later than 180 days after the date on which either a published~~
3 ~~opinion of the California Supreme Court, deciding whether~~
4 ~~retroactive application of this section is constitutional, becomes~~
5 ~~final or the United States Supreme Court files an opinion deciding~~
6 ~~the question of whether retroactive application of this subdivision~~
7 ~~is constitutional, whichever occurs first.~~

8 ~~(iv) The victim made the report required by this subdivision to~~
9 ~~a responsible adult or agency after January 1, 1990, and a~~
10 ~~complaint or indictment was filed within the time period specified~~
11 ~~in this subdivision, but the indictment, complaint, or subsequently~~
12 ~~filed information was dismissed, but a new complaint or~~
13 ~~indictment is or was filed no later than 180 days after the date on~~
14 ~~which either a published opinion of the California Supreme Court,~~
15 ~~deciding whether retroactive application of this section is~~
16 ~~constitutional, becomes final or the United States Supreme Court~~
17 ~~files an opinion deciding the question of whether retroactive~~
18 ~~application of this subdivision is constitutional, whichever occurs~~
19 ~~first.~~

20 ~~(B) (i) If the victim made the report required by this~~
21 ~~subdivision to a responsible adult or agency after January 1, 1990,~~
22 ~~and a complaint or indictment was filed within the time period~~
23 ~~specified in this subdivision, but the indictment, complaint, or~~
24 ~~subsequently filed information was dismissed, a new complaint or~~
25 ~~indictment may be filed notwithstanding any other provision of~~
26 ~~law, including, but not limited to, subdivision (e) of Section 871.5~~
27 ~~and subdivision (b) of Section 1238.~~

28 ~~(ii) An order dismissing an action filed under this subdivision,~~
29 ~~which is entered or becomes effective at any time prior to 180 days~~
30 ~~after the date on which either a published opinion of the California~~
31 ~~Supreme Court, deciding the question of whether retroactive~~
32 ~~application of this section is constitutional, becomes final or the~~
33 ~~United States Supreme Court files an opinion deciding the~~
34 ~~question of whether retroactive application of this subdivision is~~
35 ~~constitutional, whichever occurs first, shall not be considered an~~
36 ~~order terminating an action within the meaning of Section 1387.~~

37 ~~(iii) Any ruling regarding the retroactivity of this subdivision~~
38 ~~or its constitutionality made in the course of the previous~~
39 ~~proceeding, including any review proceeding, shall not be binding~~
40 ~~upon refiling.~~



1 ~~(g)~~-(1) Notwithstanding any other limitation of time described
2 in this chapter, a criminal complaint may be filed within one year
3 of the date of a report to a California law enforcement agency by
4 a person of any age alleging that he or she, while under the age of
5 18 years, was the victim of a crime described in Section 261, 286,
6 288, 288a, 288.5, 289, or 289.5.

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

8 (A) The limitation period specified in Section 800 ~~or~~, 801,
9 *801.1, or 801.2, whichever is later*, has expired.

10 (B) The crime involved substantial sexual conduct, as
11 described in subdivision (b) of Section 1203.066, excluding
12 masturbation that is not mutual, and there is independent evidence
13 that clearly and convincingly corroborates the victim's allegation.
14 No evidence may be used to corroborate the victim's allegation
15 that otherwise would be inadmissible during trial. Independent
16 evidence does not include the opinions of mental health
17 professionals.

18 ~~(3) (A) This subdivision applies to a cause of action arising~~
19 ~~before, on, or after January 1, 1994, the effective date of this~~
20 ~~subdivision, and it shall revive any cause of action barred by~~
21 ~~Section 800 or 801 if any of the following occurred or occurs:~~

22 ~~(i) The complaint or indictment was filed on or before January~~
23 ~~1, 1997, and it was filed within the time period specified in this~~
24 ~~subdivision.~~

25 ~~(ii) The complaint or indictment is or was filed subsequent to~~
26 ~~January 1, 1997, and it is or was filed within the time period~~
27 ~~specified within this subdivision.~~

28 ~~(iii) The victim made the report required by this subdivision to~~
29 ~~a law enforcement agency after January 1, 1994, and a complaint~~
30 ~~or indictment was not filed within the time period specified in this~~
31 ~~subdivision, but a complaint or indictment is filed no later than 180~~
32 ~~days after the date on which either a published opinion of the~~
33 ~~California Supreme Court, deciding the question of whether~~
34 ~~retroactive application of this subdivision is constitutional,~~
35 ~~becomes final or the United States Supreme Court files an opinion~~
36 ~~deciding the question of whether retroactive application of this~~
37 ~~subdivision is constitutional, whichever occurs first.~~

38 ~~(iv) The victim made the report required by this subdivision to~~
39 ~~a law enforcement agency after January 1, 1994, and a complaint~~
40 ~~or indictment was filed within the time period specified in this~~



1 ~~subdivision, but the indictment, complaint, or subsequently filed~~
2 ~~information was dismissed, but a new complaint or indictment is~~
3 ~~filed no later than 180 days after the date on which either a~~
4 ~~published opinion of the California Supreme Court, deciding the~~
5 ~~question of whether retroactive application of this subdivision is~~
6 ~~constitutional, becomes final or the United States Supreme Court~~
7 ~~files an opinion deciding the question of whether retroactive~~
8 ~~application of this subdivision is constitutional, whichever occurs~~
9 ~~first.~~

10 ~~(B) (i) If the victim made the report required by this~~
11 ~~subdivision to a law enforcement agency after January 1, 1994,~~
12 ~~and a complaint or indictment was filed within the time period~~
13 ~~specified in this subdivision, but the indictment, complaint, or~~
14 ~~subsequently filed information was dismissed, a new complaint or~~
15 ~~indictment may be filed notwithstanding any other provision of~~
16 ~~law, including, but not limited to, subdivision (c) of Section 871.5~~
17 ~~and subdivision (b) of Section 1238.~~

18 ~~(ii) An order dismissing an action filed under this subdivision,~~
19 ~~which is entered or becomes effective at any time prior to 180 days~~
20 ~~after the date on which either a published opinion of the California~~
21 ~~Supreme Court, deciding the question of whether retroactive~~
22 ~~application of this section is constitutional, becomes final or the~~
23 ~~United States Supreme Court files an opinion deciding the~~
24 ~~question of whether retroactive application of this subdivision is~~
25 ~~constitutional, whichever occurs first, shall not be considered an~~
26 ~~order terminating an action within the meaning of Section 1387.~~

27 ~~(iii) Any ruling regarding the retroactivity of this subdivision~~
28 ~~or its constitutionality made in the course of the previous~~
29 ~~proceeding, by any trial court or any intermediate appellate court,~~
30 ~~shall not be binding upon refiling.~~

31 ~~(h) (1) Notwithstanding any other limitation of time described~~
32 ~~in this chapter, a criminal complaint may be filed within one year~~
33 ~~of the date of a report to a California law enforcement agency by~~
34 ~~a person under 21 years of age, alleging that he or she, while under~~
35 ~~18 years of age, was the victim of a crime described in Section 261,~~
36 ~~286, 288, 288a, 288.5, 289, or 289.5.~~

37 ~~(2) This subdivision applies only if both of the following occur:~~

38 ~~(A) The limitation period specified in Section 800 or 801 has~~
39 ~~expired.~~



1 ~~(B) The crime involved substantial sexual conduct, as~~
2 ~~described in subdivision (b) of Section 1203.066, excluding~~
3 ~~masturbation that is not mutual, and there is independent evidence~~
4 ~~that corroborates the victim's allegation. No evidence may be used~~
5 ~~to corroborate the victim's allegation that otherwise would be~~
6 ~~inadmissible during trial. Independent evidence does not include~~
7 ~~the opinions of mental health professionals.~~

8 ~~(3) This subdivision applies to a cause of action arising before,~~
9 ~~on, or after January 1, 2002, the effective date of this subdivision,~~
10 ~~and it shall revive any cause of action barred by Section 800 or 801~~
11 ~~if the complaint or indictment was filed within the time period~~
12 ~~specified by this subdivision.~~

13 ~~(i)~~

14 ~~(g) (1) Notwithstanding the any other limitation of time~~
15 ~~described in Section 800, the limitations period for commencing~~
16 ~~prosecution for a felony offense this chapter, a criminal complaint~~
17 ~~may be filed within one year of the date on which the identity of the~~
18 ~~suspect is conclusively established by DNA testing, if both of the~~
19 ~~following conditions are met:~~

20 ~~(A) The crime is one that is described in subparagraph (A) of~~
21 ~~paragraph (2) of subdivision (a) of Section 290, where the~~
22 ~~limitations period set forth in Section 800 has not expired as of~~
23 ~~January 1, 2001, or the offense is committed on or after January~~
24 ~~1, 2001, shall be 10 years from the commission of the offense, or~~
25 ~~one year from the date on which the identity of the suspect is~~
26 ~~conclusively established by DNA testing, whichever is later,~~
27 ~~provided, however, that the one-year period from the~~
28 ~~establishment of the identity of the suspect shall only apply when~~
29 ~~either of the following conditions is met:~~

30 ~~(A) For an~~

31 ~~(B) The offense was committed prior to January 1, 2001, and~~
32 ~~biological evidence collected in connection with the offense is~~
33 ~~analyzed for DNA type no later than January 1, 2004.~~

34 ~~(B) For an, or the offense committed on or after January 1,~~
35 ~~2001, biological evidence collected in connection with the offense~~
36 ~~is analyzed for DNA type no later than two years from the date of~~
37 ~~the offense.~~

38 ~~(2) In the event the conditions set forth in subparagraph (A) or~~
39 ~~(B) of paragraph (1) are not met, the limitations period for~~
40 ~~commencing prosecution for a felony offense described in~~



1 ~~subparagraph (A) of paragraph (2) of subdivision (a) of Section~~
 2 ~~290, where the limitations period set forth in Section 800 has not~~
 3 ~~expired as of January 1, 2001, or the offense is committed on or~~
 4 ~~after January 1, 2001, shall be 10 years from the commission of the~~
 5 ~~offense.~~

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

8 ~~(j)~~

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

21 ~~(k)~~

22 (i) (1) In a criminal investigation involving child sexual abuse
 23 as described in subdivision ~~(g) or (h)~~ (f), when the limitations
 24 period set forth therein has not expired, that period shall be tolled
 25 from the time a party initiates litigation challenging a grand jury
 26 subpoena until the end of that litigation, including any associated
 27 writ or appellate proceeding, or until the final disclosure of
 28 evidence to the investigating or prosecuting agency, if that
 29 disclosure is ordered pursuant to the subpoena after the litigation.

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

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

34 ~~(l)~~

35 (j) As used in ~~subdivisions (f), (g), and (h)~~ this chapter, Section
 36 289.5 refers to the statute enacted by Chapter 293 of the Statutes
 37 of 1991 relating to penetration by an unknown object.

38 *SEC. 4. Section 803.5 is added to the Penal Code, to read:*



1 803.5. (a) *If more than one time period described in this*
2 *chapter applies, the time for commencing an action shall be*
3 *governed by that period that expires the latest in time.*

4 (b) *Any change in the time period for the commencement of*
5 *prosecution described in this chapter applies to any crime if*
6 *prosecution for the crime was not barred on the effective date of*
7 *the change by the statute of limitations in effect immediately prior*
8 *to the effective date of the change.*

9 (c) *This section is declaratory of existing law.*

10 SEC. 5. *Section 805.5 of the Penal Code is repealed.*

11 ~~805.5. (a) As used in this section, "operative date" means~~
12 ~~January 1, 1985.~~

13 ~~(b) Except as provided in subdivision (e), this chapter applies~~
14 ~~to an offense that was committed before, on, or after the operative~~
15 ~~date.~~

16 ~~(c) This chapter does not apply, and the law applicable before~~
17 ~~the operative date does apply, to an offense that was committed~~
18 ~~before the operative date, if:~~

19 ~~(1) Prosecution for the offense would be barred on the~~
20 ~~operative date by the limitation of time applicable before the~~
21 ~~operative date.~~

22 ~~(2) Prosecution for the offense was commenced before the~~
23 ~~operative date.~~

24 ~~director of the Employment Training Panel to devise an expedited~~
25 ~~application process that would be tested in San Diego County and~~
26 ~~San Francisco County with a goal of creating an application~~
27 ~~process that can be completed in 90 days or less. This expedited~~
28 ~~process would be part of a three-year pilot project aimed at~~
29 ~~improving the skills of workers.~~

