

AMENDED IN ASSEMBLY JANUARY 15, 2004

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,  
Koretz, La Suer, Nakano, ~~and Reyes Reyes, and Spitzer~~)**

(Coauthors: Senators Machado, Margett, and Ortiz)

February 21, 2003

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An act 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~~  
*Criminal procedure.*

Existing law establishes various ~~statute~~ *statutes* 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~~ *from* the date of the identification, or 10 years ~~from~~ *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 *felony* 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.

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 801.1 is added to the Penal Code, to  
2 read:

3 801.1. Notwithstanding any other limitation of time described  
4 in this chapter, prosecution for an offense described in Section 261,  
5 286, 288, 288.5, 288a, 289, or 289.5, alleged to have been  
6 committed when the victim was under the age of 18 years, may be  
7 commenced any time prior to the victim’s 30th birthday.

8 SEC. 2. Section 801.2 is added to the Penal Code, to read:

9 801.2. Notwithstanding any other limitation of time described  
10 in this chapter, if Section 801.1 does not apply, prosecution for ~~an~~  
11 a *felony* offense described in subparagraph (A) of paragraph (2) of  
12 subdivision (a) of Section 290 shall be commenced within 10 years  
13 after commission of the offense.

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

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

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

21 (c) A limitation of time prescribed in this chapter does not  
22 commence to run until the discovery of an offense described in this  
23 subdivision. This subdivision applies to an offense punishable by



1 imprisonment in the state prison, a material element of which is  
2 fraud or breach of a fiduciary obligation, the commission of the  
3 crimes of theft or embezzlement upon an elder or dependent adult,  
4 or the basis of which is misconduct in office by a public officer,  
5 employee, or appointee, including, but not limited to, the  
6 following offenses:

7 (1) Grand theft of any type, forgery, falsification of public  
8 records, or acceptance of a bribe by a public official or a public  
9 employee.

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

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

13 (4) A violation of Section 1090 or 27443 of the Government  
14 Code.

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

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

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

22 (8) A violation of Section 22430 of the Business and  
23 Professions Code.

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

25 (10) A violation of Section 529a.

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

27 (d) If the defendant is out of the state when or after the offense  
28 is committed, the prosecution may be commenced as provided in  
29 Section 804 within the limitations of time prescribed by this  
30 chapter, and no time up to a maximum of three years during which  
31 the defendant is not within the state shall be a part of those  
32 limitations.

33 (e) A limitation of time prescribed in this chapter does not  
34 commence to run until the offense has been discovered, or could  
35 have reasonably been discovered, with regard to offenses under  
36 Division 7 (commencing with Section 13000) of the Water Code,  
37 under Chapter 6.5 (commencing with Section 25100) of, Chapter  
38 6.7 (commencing with Section 25280) of, or Chapter 6.8  
39 (commencing with Section 25300) of, Division 20 of, or Part 4  
40 (commencing with Section 41500) of Division 26 of, the Health



1 and Safety Code, or under Section 386, or offenses under Chapter  
2 5 (commencing with Section 2000) of Division 2 of, Chapter 9  
3 (commencing with Section 4000) of Division 2 of, Chapter 10  
4 (commencing with Section 7301) of Division 3 of, or Chapter 19.5  
5 (commencing with Section 22440) of Division 8 of, the Business  
6 and Professions Code.

7 (f) (1) Notwithstanding any other limitation of time described  
8 in this chapter, a criminal complaint may be filed within one year  
9 of the date of a report to a California law enforcement agency by  
10 a person of any age alleging that he or she, while under the age of  
11 18 years, was the victim of a crime described in Section 261, 286,  
12 288, 288a, 288.5, 289, or 289.5.

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

14 (A) The limitation period specified in Section 800, 801, 801.1,  
15 or 801.2, whichever is later, has expired.

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

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

29 (A) The crime is one that is described in subparagraph (A) of  
30 paragraph (2) of subdivision (a) of Section 290.

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

37 ~~(3)~~

38 (2) For purposes of this section, "DNA" means  
39 deoxyribonucleic acid.



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

13 (i) (1) In a criminal investigation involving child sexual abuse  
14 as described in subdivision (f), when the limitations period set  
15 forth therein has not expired, that period shall be tolled from the  
16 time a party initiates litigation challenging a grand jury subpoena  
17 until the end of that litigation, including any associated writ or  
18 appellate proceeding, or until the final disclosure of evidence to  
19 the investigating or prosecuting agency, if that disclosure is  
20 ordered pursuant to the subpoena after the litigation.

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

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

25 (j) As used in this chapter, Section 289.5 refers to the statute  
26 enacted by Chapter 293 of the Statutes of 1991 relating to  
27 penetration by an unknown object.

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

29 803.5. (a) If more than one time period described in this  
30 chapter applies, the time for commencing an action shall be  
31 governed by that period that expires the latest in time.

32 (b) Any change in the time period for the commencement of  
33 prosecution described in this chapter applies to any crime if  
34 prosecution for the crime was not barred on the effective date of  
35 the change by the statute of limitations in effect immediately prior  
36 to the effective date of the change.

37 (c) This section is declaratory of existing law.

38 SEC. 5. Section 805.5 of the Penal Code is repealed.

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