

ASSEMBLY BILL

No. 383

Introduced by Assembly Member Lieu

February 23, 2009

An act to amend Section 803 of the Penal Code, relating to criminal procedure.

LEGISLATIVE COUNSEL'S DIGEST

AB 383, as introduced, Lieu. Criminal procedure: DNA evidence.

Existing law establishes limitations on the time for commencing criminal actions, with certain exceptions. Existing law provides for the tolling or extension of these time limitations, as specified. Existing law provides that regarding sex crimes and certain other crimes, as specified, a criminal complaint may be filed within one year of the date on which the identity of the suspect is conclusively established by DNA testing if the offense was committed on or after January 1, 2001, and biological evidence collected in connection with the offense is analyzed for DNA type not later than 2 years from the date of the offense.

This bill would extend this limitation on the time period for analyzing biological evidence from 2 years to 5 years.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

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

- 1 SECTION 1. Section 803 of the Penal Code is amended to
- 2 read:
- 3 803. (a) Except as provided in this section, a limitation of time
- 4 prescribed in this chapter is not tolled or extended for any 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
6 this subdivision. This subdivision applies to an offense punishable
7 by imprisonment in the state prison, a material element of which
8 is 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 following
12 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, 134, or 186.10.

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 Professions
29 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, Section 6126
10 of, Chapter 10 (commencing with Section 7301) of Division 3 of,
11 or Chapter 19.5 (commencing with Section 22440) of Division 8
12 of, the Business 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 California law enforcement agency by
16 a person of any age alleging that he or she, while under the age of
17 18 years, was the victim of a crime described in Section 261, 286,
18 288, 288a, 288.5, or 289, or Section 289.5, as enacted by Chapter
19 293 of the Statutes of 1991 relating to penetration by an unknown
20 object.

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

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

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

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

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

35 (4) (A) In a criminal investigation involving any of the crimes
36 listed in paragraph (1) committed against a child, when the
37 applicable limitations period has not expired, that period shall be
38 tolled from the time a party initiates litigation challenging a grand
39 jury subpoena until the end of the litigation, including any
40 associated writ or appellate proceeding, or until the final disclosure

1 of evidence to the investigating or prosecuting agency, if that
2 disclosure is ordered pursuant to the subpoena after the litigation.

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

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

7 (g) (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 on which the identity of the suspect is conclusively
10 established by DNA testing, if both of the following conditions
11 are met:

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

14 (B) The offense was committed prior to January 1, 2001, and
15 biological evidence collected in connection with the offense is
16 analyzed for DNA type no later than January 1, 2004, or the offense
17 was committed on or after January 1, 2001, and biological evidence
18 collected in connection with the offense is analyzed for DNA type
19 no later than ~~two~~ *five* years from the date of the offense.

20 (2) For purposes of this section, "DNA" means deoxyribonucleic
21 acid.

22 (h) For any crime, the proof of which depends substantially
23 upon evidence that was seized under a warrant, but which is
24 unavailable to the prosecuting authority under the procedures
25 described in *People v. Superior Court (Laff)* (2001) 25 Cal.4th
26 703, *People v. Superior Court (Bauman & Rose)* (1995) 37
27 Cal.App.4th 1757, or subdivision (c) of Section 1524, relating to
28 claims of evidentiary privilege or attorney work product, the
29 limitation of time prescribed in this chapter shall be tolled from
30 the time of the seizure until final disclosure of the evidence to the
31 prosecuting authority. Nothing in this section otherwise affects
32 the definition or applicability of any evidentiary privilege or
33 attorney work product.