

AMENDED IN ASSEMBLY MAY 2, 2012

AMENDED IN ASSEMBLY APRIL 9, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 1682

Introduced by Assembly Member Portantino

February 14, 2012

An act to amend ~~Sections 801.1 and~~ *Section 803* of the Penal Code, relating to sex offenses.

LEGISLATIVE COUNSEL'S DIGEST

AB 1682, as amended, Portantino. Sex offenses: statute of limitations.

~~Existing law, the Sex Offender Registration Act, requires persons convicted of specified crimes, including rape and other sexual offenses, to register with local authorities for life while residing, attending school, or working in California. Under existing law, prosecution for specified sex offenses, including, among other offenses, rape, sodomy, and lewd or lascivious acts alleged to have been committed when the victim was under 18 years of age, may be commenced at any time prior to the victim's 28th birthday. All other prosecutions for which a person is required to register as a sex offender are required to be commenced within 10 years after the commission of the offense.~~

~~This bill would authorize the prosecution of an offense for which a person is required to register as a sex offender, other than rape, sodomy, and lewd or lascivious acts committed when the victim was under 18 years of age, to be commenced within 15 years after the commission of the offense.~~

~~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 801.1 of the Penal Code is amended to~~
2 ~~read:~~

3 ~~801.1. (a) Notwithstanding any other limitation of time~~
4 ~~described in this chapter, prosecution for a felony offense described~~
5 ~~in Section 261, 286, 288, 288.5, 288a, or 289, or Section 289.5,~~
6 ~~as enacted by Chapter 293 of the Statutes of 1991 relating to~~
7 ~~penetration by an unknown object, that is alleged to have been~~
8 ~~committed when the victim was under 18 years of age, may be~~
9 ~~commenced any time prior to the victim's 28th birthday.~~

10 ~~(b) Notwithstanding any other limitation of time described in~~
11 ~~this chapter, if subdivision (a) does not apply, prosecution for a~~
12 ~~felony offense described in subdivision (c) of Section 290 shall~~
13 ~~be commenced within 15 years after commission of the offense.~~

14 ~~SEC. 2.~~

15 ~~SECTION 1. Section 803 of the Penal Code is amended to read:~~

16 ~~803. (a) Except as provided in this section, a limitation of time~~
17 ~~prescribed in this chapter is not tolled or extended for any 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~~
23 ~~this subdivision. This subdivision applies to an offense punishable~~
24 ~~by imprisonment in the state prison or imprisonment pursuant to~~
25 ~~subdivision (h) of Section 1170, a material element of which is~~
26 ~~fraud or breach of a fiduciary obligation, the commission of the~~

1 crimes of theft or embezzlement upon an elder or dependent adult,
2 or the basis of which is misconduct in office by a public officer,
3 employee, or appointee, including, but not limited to, the following
4 offenses:

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

8 (2) A violation of Section 72, 118, 118a, 132, 134, or 186.10.

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

11 (4) A violation of Section 1090 or 27443 of the Government
12 Code.

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

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

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

20 (8) A violation of Section 22430 of the Business and Professions
21 Code.

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

23 (10) A violation of Section 529a.

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

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

31 (e) A limitation of time prescribed in this chapter does not
32 commence to run until the offense has been discovered, or could
33 have reasonably been discovered, with regard to offenses under
34 Division 7 (commencing with Section 13000) of the Water Code,
35 under Chapter 6.5 (commencing with Section 25100) of, Chapter
36 6.7 (commencing with Section 25280) of, or Chapter 6.8
37 (commencing with Section 25300) of, Division 20 of, or Part 4
38 (commencing with Section 41500) of Division 26 of, the Health
39 and Safety Code, or under Section 386, or offenses under Chapter
40 5 (commencing with Section 2000) of Division 2 of, Chapter 9

(commencing with Section 4000) of Division 2 of, Section 6126 of, Chapter 10 (commencing with Section 7301) of Division 3 of, or Chapter 19.5 (commencing with Section 22440) of Division 8 of, the Business and Professions Code.

(f) (1) Notwithstanding any other limitation of time described in this chapter, a criminal complaint may be filed within one year of the date of a report to a California law enforcement agency by a person of any age alleging that he or she, while under the age of 18 years, was the victim of a crime described in Section 261, 286, 288, 288a, 288.5, or 289, or Section 289.5, as enacted by Chapter 293 of the Statutes of 1991 relating to penetration by an unknown object.

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

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

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

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

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

(4) (A) In a criminal investigation involving any of the crimes listed in paragraph (1) committed against a child, when the applicable limitations period has not expired, that period shall be tolled from the time a party initiates litigation challenging a grand jury subpoena until the end of the litigation, including any associated writ or appellate proceeding, or until the final disclosure of evidence to the investigating or prosecuting agency, if that disclosure is ordered pursuant to the subpoena after the litigation.

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

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

(g) (1) Notwithstanding any other limitation of time described in this chapter, a criminal complaint may be filed within one year

1 of the date on which the identity of the suspect is conclusively
2 established by DNA testing, if both of the following conditions
3 are met:

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

6 (B) The offense was committed prior to January 1, 2001, and
7 biological evidence collected in connection with the offense is
8 analyzed for DNA type no later than January 1, 2004, or the offense
9 was committed on or after January 1, 2001, and biological evidence
10 collected in connection with the offense is analyzed for DNA type
11 no later than five years from the date of the offense.

12 (2) For purposes of this section, “DNA” means deoxyribonucleic
13 acid.

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

26 (i) Notwithstanding any other limitation of time described in
27 this chapter, a criminal complaint may be filed within one year of
28 the date on which a hidden recording is discovered related to a
29 violation of paragraph (2) or (3) of subdivision (j) of Section 647.