

AMENDED IN SENATE AUGUST 20, 2010

AMENDED IN ASSEMBLY JUNE 1, 2010

AMENDED IN ASSEMBLY MAY 11, 2010

AMENDED IN ASSEMBLY APRIL 28, 2010

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 2479

Introduced by Assembly Member Bass

February 19, 2010

An act to amend Section 1708.8 of the Civil Code, *and to amend Section 23103 of, and to add Section 40008 to, the Vehicle Code*, relating to stalking.

LEGISLATIVE COUNSEL'S DIGEST

AB 2479, as amended, Bass. Stalking: surveillance.

Under existing law, a defendant who commits an assault against a plaintiff with the intent to capture any type of visual image, sound recording, or other physical impression of the plaintiff is liable for up to 3 times the amount of any general and special damages that are proximately caused by this act, as well as punitive damages and a civil fine of not less than \$5,000 and not more than \$50,000.

This bill would expand these provisions to impose liability when a defendant falsely imprisons the plaintiff with the intent to capture any type of visual image, sound recording, or other physical impression of the plaintiff.

Existing law makes it a crime to willfully interfere with the driver of a vehicle or with the mechanism thereof so as to affect the driver's control of the vehicle, to follow another vehicle more closely than is

reasonable and prudent, as specified, and to engage in reckless driving, as described.

This bill would make it a misdemeanor to violate any of those provisions with the intent to capture any type of visual image, sound recording, or other physical impression of another person for a commercial purpose. The bill would provide that this crime is punishable by imprisonment in a county jail and a fine of not more than \$2,500, except as specified. The bill would further provide that a person who commits that act and, in addition, causes a minor to be placed in a situation in which his or her person or health is endangered is also guilty of a misdemeanor punishable by imprisonment in a county jail for not more than one year and a fine of not more than \$5,000, except as specified. Because the bill would create new crimes, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

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

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

- 1 SECTION 1. Section 1708.8 of the Civil Code is amended to
- 2 read:
- 3 1708.8. (a) A person is liable for physical invasion of privacy
- 4 when the defendant knowingly enters onto the land of another
- 5 person without permission or otherwise committed a trespass in
- 6 order to physically invade the privacy of the plaintiff with the
- 7 intent to capture any type of visual image, sound recording, or
- 8 other physical impression of the plaintiff engaging in a personal
- 9 or familial activity and the physical invasion occurs in a manner
- 10 that is offensive to a reasonable person.
- 11 (b) A person is liable for constructive invasion of privacy when
- 12 the defendant attempts to capture, in a manner that is offensive to
- 13 a reasonable person, any type of visual image, sound recording,
- 14 or other physical impression of the plaintiff engaging in a personal
- 15 or familial activity under circumstances in which the plaintiff had

1 a reasonable expectation of privacy, through the use of a visual or
2 auditory enhancing device, regardless of whether there is a physical
3 trespass, if this image, sound recording, or other physical
4 impression could not have been achieved without a trespass unless
5 the visual or auditory enhancing device was used.

6 (c) An assault or false imprisonment committed with the intent
7 to capture any type of visual image, sound recording, or other
8 physical impression of the plaintiff is subject to subdivisions (d),
9 (e), and (h).

10 (d) A person who commits any act described in subdivision (a),
11 (b), or (c) is liable for up to three times the amount of any general
12 and special damages that are proximately caused by the violation
13 of this section. This person may also be liable for punitive damages,
14 subject to proof according to Section 3294. If the plaintiff proves
15 that the invasion of privacy was committed for a commercial
16 purpose, the defendant shall also be subject to disgorgement to the
17 plaintiff of any proceeds or other consideration obtained as a result
18 of the violation of this section. A person who comes within the
19 description of this subdivision is also subject to a civil fine of not
20 less than five thousand dollars (\$5,000) and not more than fifty
21 thousand dollars (\$50,000).

22 (e) A person who directs, solicits, actually induces, or actually
23 causes another person, regardless of whether there is an
24 employer-employee relationship, to violate any provision of
25 subdivision (a), (b), or (c) is liable for any general, special, and
26 consequential damages resulting from each said violation. In
27 addition, the person that directs, solicits, actually induces, or
28 actually causes another person, regardless of whether there is an
29 employer-employee relationship, to violate this section shall be
30 liable for punitive damages to the extent that an employer would
31 be subject to punitive damages pursuant to subdivision (b) of
32 Section 3294. A person who comes within the description of this
33 subdivision is also subject to a civil fine of not less than five
34 thousand dollars (\$5,000) and not more than fifty thousand dollars
35 (\$50,000).

36 (f) (1) The transmission, publication, broadcast, sale, offer for
37 sale, or other use of any visual image, sound recording, or other
38 physical impression that was taken or captured in violation of
39 subdivision (a), (b), or (c) shall not constitute a violation of this
40 section unless the person, in the first transaction following the

1 taking or capture of the visual image, sound recording, or other
2 physical impression, publicly transmitted, published, broadcast,
3 sold or offered for sale, the visual image, sound recording, or other
4 physical impression with actual knowledge that it was taken or
5 captured in violation of subdivision (a), (b), or (c), and provide
6 compensation, consideration, or remuneration, monetary or
7 otherwise, for the rights to the unlawfully obtained visual image,
8 sound recording, or other physical impression.

9 (2) For the purposes of paragraph (1), “actual knowledge” means
10 actual awareness, understanding, and recognition, obtained prior
11 to the time at which the person purchased or acquired the visual
12 image, sound recording, or other physical impression, that the
13 visual image, sound recording, or other physical impression was
14 taken or captured in violation of subdivision (a), (b), or (c). The
15 plaintiff shall establish actual knowledge by clear and convincing
16 evidence.

17 (3) Any person that publicly transmits, publishes, broadcasts,
18 sells or offers for sale, in any form, medium, format or work, a
19 visual image, sound recording, or other physical impression that
20 was previously publicly transmitted, published, broadcast, sold or
21 offered for sale, by another person, is exempt from liability under
22 this section.

23 (4) If a person’s first public transmission, publication, broadcast,
24 or sale or offer for sale, of a visual image, sound recording, or
25 other physical impression that was taken or captured in violation
26 of subdivision (a), (b), or (c), does not constitute a violation of this
27 section, that person’s subsequent public transmission, publication,
28 broadcast, sale or offer for sale, in any form, medium, format or
29 work, of the visual image, sound recording, or other physical
30 impression, does not constitute a violation of this section.

31 (5) This section applies only to a visual image, sound recording,
32 or other physical impression that is captured or taken in California
33 in violation of subdivision (a), (b), or (c) after January 1, 2010,
34 and shall not apply to any visual image, sound recording, or other
35 physical impression taken or captured outside of California.

36 (6) Nothing in this subdivision shall be construed to impair or
37 limit a special motion to strike pursuant to Section 425.16, 425.17,
38 or 425.18 of the Code of Civil Procedure.

1 (7) This section shall not be construed to limit all other rights
2 or remedies of the plaintiff in law or equity, including, but not
3 limited to, the publication of private facts.

4 (g) This section shall not be construed to impair or limit any
5 otherwise lawful activities of law enforcement personnel or
6 employees of governmental agencies or other entities, either public
7 or private who, in the course and scope of their employment, and
8 supported by an articulable suspicion, attempt to capture any type
9 of visual image, sound recording, or other physical impression of
10 a person during an investigation, surveillance, or monitoring of
11 any conduct to obtain evidence of suspected illegal activity or
12 other misconduct, the suspected violation of any administrative
13 rule or regulation, a suspected fraudulent conduct, or any activity
14 involving a violation of law or business practices or conduct of
15 public officials adversely affecting the public welfare, health or
16 safety.

17 (h) In any action pursuant to this section, the court may grant
18 equitable relief, including, but not limited to, an injunction and
19 restraining order against further violations of subdivision (a), (b),
20 or (c).

21 (i) The rights and remedies provided in this section are
22 cumulative and in addition to any other rights and remedies
23 provided by law.

24 (j) It is not a defense to a violation of this section that no image,
25 recording, or physical impression was captured or sold.

26 (k) For the purposes of this section, “for a commercial purpose”
27 means any act done with the expectation of a sale, financial gain,
28 or other consideration. A visual image, sound recording, or other
29 physical impression shall not be found to have been, or intended
30 to have been captured for a commercial purpose unless it is
31 intended to be, or was in fact, sold, published, or transmitted.

32 (l) For the purposes of this section, “personal and familial
33 activity” includes, but is not limited to, intimate details of the
34 plaintiff’s personal life, interactions with the plaintiff’s family or
35 significant others, or other aspects of the plaintiff’s private affairs
36 or concerns. “Personal and familial activity” does not include
37 illegal or otherwise criminal activity as delineated in subdivision
38 (g). However, “personal and familial activity” shall include the
39 activities of victims of crime in circumstances under which
40 subdivision (a), (b), or (c) would apply.

1 (m) (1) A proceeding to recover the civil fines specified in
2 subdivision (d) or (e) may be brought in any court of competent
3 jurisdiction by a county counsel or city attorney.

4 (2) Fines collected pursuant to this subdivision shall be allocated,
5 as follows:

6 (A) One-half shall be allocated to the prosecuting agency.

7 (B) One-half shall be deposited in the Arts and Entertainment
8 Fund, which is hereby created in the State Treasury.

9 (3) Funds in the Arts and Entertainment Fund created pursuant
10 to paragraph (2) may be expended by the California Arts Council,
11 upon appropriation by the Legislature, to issue grants pursuant to
12 the Dixon-Zenovich-Maddy California Arts Act of 1975 (Chapter
13 9 (commencing with Section 8750) of Division 1 of Title 2 of the
14 Government Code).

15 (4) The rights and remedies provided in this subdivision are
16 cumulative and in addition to any other rights and remedies
17 provided by law.

18 (n) The provisions of this section are severable. If any provision
19 of this section or its application is held invalid, that invalidity shall
20 not affect other provisions or applications that can be given effect
21 without the invalid provision or application.

22 *SEC. 2. Section 23103 of the Vehicle Code is amended to read:*

23 23103. (a) A person who drives a vehicle upon a highway in
24 willful or wanton disregard for the safety of persons or property
25 is guilty of reckless driving.

26 (b) A person who drives a vehicle in an offstreet parking
27 facility, as defined in subdivision (c) of Section 12500, in willful
28 or wanton disregard for the safety of persons or property is guilty
29 of reckless driving.

30 (c) ~~Persons~~ *Except as otherwise provided in Section 40008,*
31 *persons* convicted of the offense of reckless driving shall be
32 punished by imprisonment in a county jail for not less than five
33 days nor more than 90 days or by a fine of not less than one
34 hundred forty-five dollars (\$145) nor more than one thousand
35 dollars (\$1,000), or by both that fine and imprisonment, except as
36 provided in Section 23104 or 23105.

37 *SEC. 3. Section 40008 is added to the Vehicle Code, to read:*

38 *40008. (a) Notwithstanding any other provision of law, except*
39 *as otherwise provided in subdivision (c), any person who violates*
40 *Section 21701, 21703, or 23103, with the intent to capture any*

1 *type of visual image, sound recording, or other physical impression*
2 *of another person for a commercial purpose, is guilty of a*
3 *misdemeanor and not an infraction and shall be punished by*
4 *imprisonment in a county jail for not more than six months and*
5 *by a fine of not more than two thousand five hundred dollars*
6 *(\$2,500).*

7 *(b) Notwithstanding any other provision of law, except as*
8 *otherwise provided in subdivision (c), any person who violates*
9 *Section 21701, 21703, or 23103, with the intent to capture any*
10 *type of visual image, sound recording, or other physical impression*
11 *of another person for a commercial purpose and who causes a*
12 *minor child or children to be placed in a situation in which the*
13 *child's person or health is endangered, is guilty of a misdemeanor*
14 *and not an infraction and shall be punished by imprisonment in a*
15 *county jail for not more than one year and by a fine of not more*
16 *than five thousand dollars (\$5,000).*

17 *(c) Pursuant to Section 654 of the Penal Code, an act or*
18 *omission described in subdivision (a) or (b) that is punishable in*
19 *different ways by different provisions of law shall be punished*
20 *under the provision that provides for the longest potential term of*
21 *imprisonment, but in no case shall the act or omission be punished*
22 *under more than one provision. An acquittal or conviction and*
23 *sentence under any one provision bars a prosecution for the same*
24 *act or omission under any other provision.*

25 *SEC. 4. No reimbursement is required by this act pursuant to*
26 *Section 6 of Article XIII B of the California Constitution because*
27 *the only costs that may be incurred by a local agency or school*
28 *district will be incurred because this act creates a new crime or*
29 *infraction, eliminates a crime or infraction, or changes the penalty*
30 *for a crime or infraction, within the meaning of Section 17556 of*
31 *the Government Code, or changes the definition of a crime within*
32 *the meaning of Section 6 of Article XIII B of the California*
33 *Constitution.*