

ASSEMBLY BILL

No. 708

Introduced by Assembly Member Knight

February 17, 2011

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

LEGISLATIVE COUNSEL'S DIGEST

AB 708, as introduced, Knight. Crimes involving hidden recordings: statute of limitations.

Existing law sets forth various statutes of limitations for various crimes. Existing law provides that the applicable period of limitations does not begin to run on various crimes until the offense has been discovered, or could have reasonably been discovered. Existing law makes it a misdemeanor to use a concealed camcorder, motion picture camera, or photographic camera of any type, to secretly videotape another, as specified, without consent, with specified intent, including to invade the other's privacy or arouse the sexual desires of the perpetrator, under circumstances in which the other person has a reasonable expectation of privacy.

This bill would provide that a criminal complaint may be filed within one year of the date on which a hidden recording is discovered related to those specified provisions prohibiting the use of concealed camcorders, motion picture cameras, or photographic cameras of any type, to secretly videotape another, as specified above.

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.

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

8 (c) A limitation of time prescribed in this chapter does not
9 commence to run until the discovery of an offense described in
10 this subdivision. This subdivision applies to an offense punishable
11 by imprisonment in the state prison, a material element of which
12 is fraud or breach of a fiduciary obligation, the commission of the
13 crimes of theft or embezzlement upon an elder or dependent adult,
14 or the basis of which is misconduct in office by a public officer,
15 employee, or appointee, including, but not limited to, the following
16 offenses:

17 (1) Grand theft of any type, forgery, falsification of public
18 records, or acceptance of a bribe by a public official or a public
19 employee.

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

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

23 (4) A violation of Section 1090 or 27443 of the Government
24 Code.

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

27 (6) Felony insurance fraud in violation of Section 548 or 550
28 of this code or former Section 1871.1, or Section 1871.4, of the
29 Insurance Code.

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

32 (8) A violation of Section 22430 of the Business and Professions
33 Code.

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

35 (10) A violation of Section 529a.

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

37 (d) If the defendant is out of the state when or after the offense
38 is committed, the prosecution may be commenced as provided in

1 Section 804 within the limitations of time prescribed by this
2 chapter, and no time up to a maximum of three years during which
3 the defendant is not within the state shall be a part of those
4 limitations.

5 (e) A limitation of time prescribed in this chapter does not
6 commence to run until the offense has been discovered, or could
7 have reasonably been discovered, with regard to offenses under
8 Division 7 (commencing with Section 13000) of the Water Code,
9 under Chapter 6.5 (commencing with Section 25100) of, Chapter
10 6.7 (commencing with Section 25280) of, or Chapter 6.8
11 (commencing with Section 25300) of, Division 20 of, or Part 4
12 (commencing with Section 41500) of Division 26 of, the Health
13 and Safety Code, or under Section 386, or offenses under Chapter
14 5 (commencing with Section 2000) of Division 2 of, Chapter 9
15 (commencing with Section 4000) of Division 2 of, Section 6126
16 of, Chapter 10 (commencing with Section 7301) of Division 3 of,
17 or Chapter 19.5 (commencing with Section 22440) of Division 8
18 of, the Business and Professions Code.

19 (f) (1) Notwithstanding any other limitation of time described
20 in this chapter, a criminal complaint may be filed within one year
21 of the date of a report to a California law enforcement agency by
22 a person of any age alleging that he or she, while under the age of
23 18 years, was the victim of a crime described in Section 261, 286,
24 288, 288a, 288.5, or 289, or Section 289.5, as enacted by Chapter
25 293 of the Statutes of 1991 relating to penetration by an unknown
26 object.

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

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

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

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

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

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

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

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

13 (g) (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 on which the identity of the suspect is conclusively
16 established by DNA testing, if both of the following conditions
17 are met:

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

20 (B) The offense was committed prior to January 1, 2001, and
21 biological evidence collected in connection with the offense is
22 analyzed for DNA type no later than January 1, 2004, or the offense
23 was committed on or after January 1, 2001, and biological evidence
24 collected in connection with the offense is analyzed for DNA type
25 no later than two years from the date of the offense.

26 (2) For purposes of this section, "DNA" means deoxyribonucleic
27 acid.

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

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

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