

AMENDED IN SENATE JULY 11, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

**ASSEMBLY BILL**

**No. 708**

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**Introduced by Assembly Member Knight**  
*(Coauthor: Assembly Member Beth Gaines)*

February 17, 2011

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

LEGISLATIVE COUNSEL'S DIGEST

AB 708, as amended, 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.

*This bill would incorporate additional changes to Section 803 of the Penal Code made by AB 109, which has been chaptered but is conditionally operative on October 1, 2011.*

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.

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

2 (d) If the defendant is out of the state when or after the offense  
3 is committed, the prosecution may be commenced as provided in  
4 Section 804 within the limitations of time prescribed by this  
5 chapter, and no time up to a maximum of three years during which  
6 the defendant is not within the state shall be a part of those  
7 limitations.

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

22 (f) (1) Notwithstanding any other limitation of time described  
23 in this chapter, a criminal complaint may be filed within one year  
24 of the date of a report to a California law enforcement agency by  
25 a person of any age alleging that he or she, while under the age of  
26 18 years, was the victim of a crime described in Section 261, 286,  
27 288, 288a, 288.5, or 289, or Section 289.5, as enacted by Chapter  
28 293 of the Statutes of 1991 relating to penetration by an unknown  
29 object.

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

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

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

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

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

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

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

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

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

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

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

30 (2) For purposes of this section, "DNA" means deoxyribonucleic  
31 acid.

32 (h) For any crime, the proof of which depends substantially  
33 upon evidence that was seized under a warrant, but which is  
34 unavailable to the prosecuting authority under the procedures  
35 described in *People v. Superior Court (Laff)* (2001) 25 Cal.4th  
36 703, *People v. Superior Court (Bauman & Rose)* (1995) 37  
37 Cal.App.4th 1757, or subdivision (c) of Section 1524, relating to  
38 claims of evidentiary privilege or attorney work product, the  
39 limitation of time prescribed in this chapter shall be tolled from  
40 the time of the seizure until final disclosure of the evidence to the

1 prosecuting authority. Nothing in this section otherwise affects  
2 the definition or applicability of any evidentiary privilege or  
3 attorney work product.

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

8 *SEC. 1.5. Section 803 of the Penal Code, as amended by*  
9 *Section 447 of Chapter 15 of the Statutes of 2011, is amended to*  
10 *read:*

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

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

16 (c) A limitation of time prescribed in this chapter does not  
17 commence to run until the discovery of an offense described in  
18 this subdivision. This subdivision applies to an offense punishable  
19 by imprisonment in the state prison or imprisonment pursuant to  
20 subdivision (h) of Section 1170, a material element of which is  
21 fraud or breach of a fiduciary obligation, the commission of the  
22 crimes of theft or embezzlement upon an elder or dependent adult,  
23 or the basis of which is misconduct in office by a public officer,  
24 employee, or appointee, including, but not limited to, the following  
25 offenses:

26 (1) Grand theft of any type, forgery, falsification of public  
27 records, or acceptance of a bribe by a public official or a public  
28 employee.

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

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

32 (4) A violation of Section 1090 or 27443 of the Government  
33 Code.

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

36 (6) Felony insurance fraud in violation of Section 548 or 550  
37 of this code or former Section 1871.1, or Section 1871.4, of the  
38 Insurance Code.

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

- 1 (8) A violation of Section 22430 of the Business and Professions  
2 Code.
- 3 (9) A violation of Section 10690 of the Health and Safety Code.
- 4 (10) A violation of Section 529a.
- 5 (11) A violation of subdivision (d) or (e) of Section 368.
- 6 (d) If the defendant is out of the state when or after the offense  
7 is committed, the prosecution may be commenced as provided in  
8 Section 804 within the limitations of time prescribed by this  
9 chapter, and no time up to a maximum of three years during which  
10 the defendant is not within the state shall be a part of those  
11 limitations.
- 12 (e) A limitation of time prescribed in this chapter does not  
13 commence to run until the offense has been discovered, or could  
14 have reasonably been discovered, with regard to offenses under  
15 Division 7 (commencing with Section 13000) of the Water Code,  
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20 and Safety Code, or under Section 386, or offenses under Chapter  
21 5 (commencing with Section 2000) of Division 2 of, Chapter 9  
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23 of, Chapter 10 (commencing with Section 7301) of Division 3 of,  
24 or Chapter 19.5 (commencing with Section 22440) of Division 8  
25 of, the Business and Professions Code.
- 26 (f) (1) Notwithstanding any other limitation of time described  
27 in this chapter, a criminal complaint may be filed within one year  
28 of the date of a report to a California law enforcement agency by  
29 a person of any age alleging that he or she, while under the age of  
30 18 years, was the victim of a crime described in Section 261, 286,  
31 288, 288a, 288.5, or 289, or Section 289.5, as enacted by Chapter  
32 293 of the Statutes of 1991 relating to penetration by an unknown  
33 object.
- 34 (2) This subdivision applies only if all of the following occur:  
35 (A) The limitation period specified in Section 800, 801, or 801.1,  
36 whichever is later, has expired.
- 37 (B) The crime involved substantial sexual conduct, as described  
38 in subdivision (b) of Section 1203.066, excluding masturbation  
39 that is not mutual.

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

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

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

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

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

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

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

28 (B) The offense was committed prior to January 1, 2001, and  
29 biological evidence collected in connection with the offense is  
30 analyzed for DNA type no later than January 1, 2004, or the offense  
31 was committed on or after January 1, 2001, and biological evidence  
32 collected in connection with the offense is analyzed for DNA type  
33 no later than two years from the date of the offense.

34 (2) For purposes of this section, "DNA" means deoxyribonucleic  
35 acid.

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

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

12 *SEC. 2. Section 1.5 of this bill incorporates amendments to*  
13 *Section 803 of the Penal Code proposed by both this bill and AB*  
14 *109, which has been chaptered but is conditionally operative on*  
15 *October 1, 2011. Section 1.5 shall become operative only if (1)*  
16 *this bill is enacted and becomes effective on or before January 1,*  
17 *2012, (2) this bill amends Section 803 of the Penal Code, and (3)*  
18 *AB 109 becomes operative, in which case Section 803 of the Penal*  
19 *Code, as amended by Section 1 of this bill, shall remain operative*  
20 *only until the operative date of AB 109, at which time Section 1.5*  
21 *of this bill shall become operative.*