

## RESOLUTION 07-11-05

### DIGEST

#### Tolling Statute of Limitations: Exploitation of Children and Secret Videotaping

Amends Penal Code section 803 on tolling the statute of limitations in crimes involving the sexual exploitation of children and the use of secret visual images of another person.

### RESOLUTIONS COMMITTEE RECOMMENDATION

APPROVE IN PRINCIPLE

#### History:

No similar resolutions found.

#### Reasons:

This resolution amends Penal Code section 803 on tolling the statute of limitations in crimes involving the sexual exploitation of children and the use of secret visual images of another person. This resolution should be approved in principle because it affords greater protection to children who are sexually exploited and to those victims of crimes involving secret filming and taping.

Penal Code section 803 has a long list of crimes which are subject to the tolling of the statutes of limitation, but not included on that list are the crimes of child pornography and unlawful taping. Most, if not all, of the crimes included in section 803 deal with situations where the perpetrators are able to conceal or hide their actions from the victims and law enforcement. For example, many of the crimes mentioned in this section deal with fraud. (See Penal Code, §§803(c)(1)-(11).) The present statute of limitations of three years for felony offenses involving child pornography and the one-year statute of limitations involving child pornography and unlawful taping commences on the date of the offense. Thus, it appears the law gives greater weight to fraud offenses than to child pornography and unlawful taping.

In addition, many times children are not fully aware of the criminal intent of the perpetrator at the time of the offense. Sometimes these crimes are not fully reported until the child is mature enough to fully understand the offense perpetrated against them. Also, those who were secretly taped or filmed may not be aware until much later that the secret filming or taping took place. Further, these crimes require the element that the individual not be aware of the filming or taping. Therefore, it should be sound public policy to allow the tolling of the statute of limitations in these situations to begin upon discovery, not at the time of the offense.

### TEXT OF RESOLUTION

RESOLVED that the Conference of Delegates of California Bar Associations recommends that legislation be sponsored to amend Penal Code section 803 to read as follows:

- 1 § 803
- 2 (a) Except as provided in this section, a limitation of time prescribed in this chapter is not
- 3 tolled or extended for any reason.
- 4 (b) No time during which prosecution of the same person for the same conduct is pending
- 5 in a court of this state is a part of a limitation of time prescribed in this chapter.
- 6 (c) A limitation of time prescribed in this chapter does not commence to run until the
- 7 discovery of an offense described in this subdivision. This subdivision applies to an offense
- 8 punishable by imprisonment in the state prison, a material element of which is fraud or breach of a
- 9 fiduciary obligation, the commission of the crimes of theft or embezzlement upon an elder or
- 10 dependent adult, or the basis of which is misconduct in office by a public officer, employee, or
- 11 appointee, including, but not limited to, the following offenses:
- 12 (1) Grand theft of any type, forgery, falsification of public records, or acceptance of a bribe
- 13 by a public official or a public employee.
- 14 (2) A violation of Section 72, 118, 118a, 132, or 134.
- 15 (3) A violation of Section 25540, of any type, or Section 25541 of the Corporations Code.

16 (4) A violation of Section 1090 or 27443 of the Government Code.  
17 (5) Felony welfare fraud or Medi-Cal fraud in violation of Section 11483 or 14107 of the  
18 Welfare and Institutions Code.  
19 (6) Felony insurance fraud in violation of Section 548 or 550 of this code or former Section  
20 1871.1, or Section 1871.4, of the Insurance Code.  
21 (7) A violation of Section 580, 581, 582, 583, or 584 of the Business and Professions Code.  
22 (8) A violation of Section 22430 of the Business and Professions Code.  
23 (9) A violation of Section 10690 of the Health and Safety Code  
24 (10) A violation of Section 529a.  
25 (11) A violation of subdivision (d) or (e) of Section 368.  
26 (d) If the defendant is out of the state when or after the offense is committed, the  
27 prosecution may be commenced as provided in Section 804 within the limitations of time prescribed  
28 by this chapter, and no time up to a maximum of three years during which the defendant is not  
29 within the state shall be a part of those limitations.  
30 (e) A limitation of time prescribed in this chapter does not commence to run until the offense  
31 has been discovered, or could have reasonably been discovered, with regard to offenses under  
32 Division 7 (commencing with Section 13000) of the Water Code, under Chapter 6.5 (commencing  
33 with Section 25100) of, Chapter 6.7 (commencing with Section 25280) of, or Chapter 6.8  
34 (commencing with Section 25300) of, Division 20 of, or Part 4 (commencing with Section 41500) of  
35 Division 26 of, the Health and Safety Code, or under Section 386, or offenses under Chapter 5  
36 (commencing with Section 2000) of Division 2 of, Chapter 9 (commencing with Section 4000) of  
37 Division 2 of, Section 6126 of, Chapter 10 (commencing with Section 7301) of Division 3 of, or  
38 Chapter 19.5 (commencing with Section 22440) of Division 8 of, the Business and Professions  
39 Code.  
40 (f) A limitation of time prescribed in this chapter does not commence to run until the  
41 discovery of an offense described in this subdivision. This subdivision applies to an offense  
42 involving matter that contains, incorporates or depicts sexual conduct by a minor as defined in  
43 subdivision (b) of Penal Code section 311.3 or subdivision (d) of Penal Code section 311.4.  
44 (g) A limitation of time prescribed in this chapter does not commence to run until the offense  
45 has been discovered, or could have reasonably been discovered, with regard to an offense under  
46 section 647(k)(2) of the Penal Code.  
47 [Subdivisions (f) through (k) remain unchanged, except to be renumbered to (h) through  
48 (m).]

(Proposed new language underlined; language to be deleted stricken.)

PROPONENT: Los Angeles County Bar Association

#### STATEMENT OF REASONS

Existing Law: There is a 3-year statute of limitations for felony offenses involving child pornography, which commences on the date of the offense. There is a one-year statute of limitations for misdemeanor offenses involving child pornography and unlawful videotaping, which commences on the date of the offense.

This Resolution: Would allow for the tolling of the period of the statute of limitations so that it does not run until the discovery of the offense in crimes involving (1) the sexual exploitation of children and (2) the use of a concealed camcorder, motion picture camera, or photographic camera to secretly videotape, film, photograph another person under 647(k)(2).

The Problem: In crimes involving sexual exploitation of a minor, in many cases, the victims are unaware of the criminal intent of the perpetrator. Further, many are unaware that their image is even being captured. As such, said crimes commonly go unreported by the victim. It could be years before the victim, his or her parents, and/or guardian discover the offense. Additionally, in crimes involving secret videotaping/invasion of privacy (647(k)(2)), this crime, by definition, cannot be committed unless it is done

without the knowledge or consent of the victim. The statute should be tolled to commence upon discovery of the offense.

#### IMPACT STATEMENT

This proposed resolution does not affect any other law, statute or rule.

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#### COUNTERARGUMENT

##### **SAN DIEGO COUNTY BAR ASSOCIATION**

This resolution contradicts the guidelines as established in the U.S. Supreme Court decision of *Stogner v. California* in which the court ruled that the government can not retroactively void statutes of limitations in criminal cases. The court in *Stogner* held that "a law enacted after expiration of a previously applicable limitations period violates the Ex Post Facto Clause when it is applied to revive a previously time-barred prosecution."