

5/18/83

Memorandum 83-31

Subject: Study M-100 - Statute of Limitations for Felonies (Draft of Tentative Recommendation)

Attached to this Memorandum is a staff draft of the tentative recommendation relating to statutes of limitations for felonies. The draft reflects the Commission decisions made at the May meeting to provide no limitation period for capital crimes, a six-year limitation period for felonies, and a one-year limitation period for misdemeanors, with no tolling provisions or prompt complaint requirements. If the Commission approves the draft we will distribute the draft for review and comment over the summer.

In connection with the draft, we have not changed the law relating to misdemeanors. This means that the statute of limitations for a misdemeanor is tolled during the absence of the defendant from the jurisdiction, even though this is not a basis for tolling the felony limitation statute. This difference in treatment does not appear desirable in light of the Commission's objective to make the statutes of limitation uniform and simple.

It is arguable that, since issuance of an arrest warrant satisfies the statute of limitations, this is the proper means to preserve the statute as to defendants outside the jurisdiction. However, the tentative recommendation requires that the arrest warrant must be executed without unreasonable delay if its issuance is to satisfy the statute of limitations. Presumably, absence of the defendant from the jurisdiction would affect the reasonableness of any delay, and the Comments to the draft statute so state.

The staff is not satisfied with the concept of execution of an arrest warrant "without unreasonable delay." The concept will inject a litigation issue in every case in which an arrest is made beyond the statute of limitation. If the delay is ultimately found to be unreasonable, will the arresting authority be liable for false arrest or civil rights violations? A fixed timed period (e.g., one year) might be preferable.

However, if a fixed time period for execution of an arrest warrant is provided in order for the statute of limitations to be satisfied, then the staff believes it is necessary to toll the statute during the time the defendant is absent from the jurisdiction. Although proof of the actual time spent by the defendant outside the jurisdiction may be difficult, it is more certain than a determination whether an arrest warrant has been executed without unreasonable delay.

On the policy of the statute of limitations generally, we have received the letter attached as Exhibit I from Clark Sueyres, Deputy District Attorney in San Joaquin County. Mr. Sueyres argues that the statute of limitations is unnecessary and results in dismissal of meritorious cases. He believes that the speedy trial and due process constitutional protections are sufficient to avoid prejudice to a defendant.

There are a number of problems with Mr. Sueyres' argument. First, the constitutional protections are rather circumscribed, according to the analysis in Professor Uelman's study. Second, without a statute of limitations there will be an incentive to raise the constitutional question in every criminal case. Third, the statute of limitations serves other purposes besides protection of the defendant from prejudice, such as the social policies of repose and direction of prosecutorial energizes to more recent offenses that are more important to society than offenses long past.

Respectfully submitted,

Nathaniel Sterling
Assistant Executive Secretary

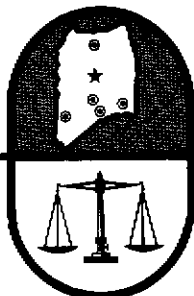
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May 9, 1983

California Law Revision Commission
4000 Middlefield Rd., Suite D-2
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Dear Sirs:

It is my opinion that the statute of limitations is an antiquated device for the protection of the rights of an accused. It no longer safeguards an accused's legitimate interest, but merely rewards those who successfully conceal their involvement in a crime with amnesty. In short, it is no longer a shield, but a sword in the hands of a criminal.

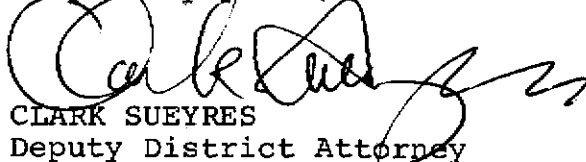
I have come to this conclusion because of recent developments in case law, in both Federal and State Courts which have extended constitutional protections to pre-complaint/indictment delays. The rule and rationale of the speedy trial clause has now been extended to such delays under the theory of the due process clause, Scherling v. Superior Court, 22 Cal. 3d 493 (1978) and United States v. Lovasco, 97 Sup.Ct. 2044 (1977). Under the rule established in those cases, if a defendant shows prejudice, which may be presumed from the passage of time as well as actual, it will be balanced against justification for the delay. If the prejudice preponderates the charges will be dismissed. This constitutes a significant safeguard for an accused protecting him from "stale" prosecutions.

Unlike the statute of limitations, the due process test authorizes a broad inquiry into the particular facts of each case. This inquiry guarantees justice will be more often served, than is the case where prosecutions are precluded from mere passage of time. Because the People bear the burden of proof, the passage of time most often harms the prosecution and benefits the defendant.

Because there are situations in which the state has a legitimate interest in prosecuting and which could not have possibly been brought within the time period of the statute, we must conclude that the statute does not protect the community at large and is unnecessary in protection of the individual suspected of crime.

I hope you will find this of some benefit in your study.

Very truly yours,


CLARK SUEYRES
Deputy District Attorney

CS/ema

STAFF DRAFT

TENTATIVE RECOMMENDATION

relating to

STATUTES OF LIMITATION FOR FELONIES

EXISTING CALIFORNIA LAW

Since its enactment in 1872, California's basic three-year statute of limitations for felonies has been subject to piecemeal amendment, with no comprehensive examination of the underlying rationale for the period of limitation, nor its continued suitability as applied to specific crimes or categories of crimes.¹

The basic California statutory scheme, first enacted in 1851 and codified in the 1872 Penal Code as Sections 799 to 803, provided a one-year limitation period for misdemeanors, a three-year period for felonies, and no limitation for murder.² This simple scheme has been made complex by numerous modifications over the past century; no less than eleven legislative enactments have amended the felony statute of limitations since 1969.³

The result of this development is that the California law is complex and filled with inconsistencies. Misdemeanors remain subject to a one-year limitation period;⁴ most felonies remain subject to a three-year limitation period;⁵ and murder remains subject to no limitation period.⁶ But in addition to these basic rules, some felonies are subject to a limitation period of three years commencing upon discovery of the crime; these include such varied crimes as grand theft, forgery,

1. This is the finding of the Legislature in 1981 Cal. Stats. ch. 909, § 3.
2. 1851 Cal. Stats. ch. 29, p. 222, §§ 96-100.
3. The history of the California felony statute of limitations is traced in Uelmen, Making Sense Out of California's Criminal Statute of Limitations, 3-14 (1983) (unpublished study on file in the office of the California Law Revision Commission).
4. Penal Code § 801.
5. Penal Code § 799.
6. Penal Code § 800(a).

manslaughter, perjury, conflict of interest, securities violation, and welfare fraud.⁷ Other felonies are now subject to a limitation period of six years after commission of the crime; these include certain varieties of rape, sodomy, and oral copulation, as well as acceptance of a bribe by a public official.⁸ Joining murder as crimes for which there is no statute of limitations are embezzlement of public moneys, falsification of public records, and kidnapping.⁹ The current statutes are tabulated in Appendix I.

Although it is possible to devise a rationale for any of these provisions, the simple fact is that the present scheme is the result of piecemeal, ad hoc amendment. Many of the amendments were responses to widely publicized cases in which the statute of limitations was successfully asserted as a bar to prosecution.¹⁰ This recommendation analyzes the rationales for felony statutes of limitation and provides a justification for revision of the law on a systematic and comprehensive basis.

FUNCTIONS OF FELONY LIMITATIONS STATUTES

Many functions of felony statutes of limitation have been identified in the cases and legal literature. The major functions and the way they shape the statutes are summarized below.

Staleness Factor

The preeminent function of felony limitation statutes is to protect a person accused of crime both from having to face charges based on evidence that may be unreliable and from losing access to the evidentiary means to defend against the accusation. This has been characterized as the staleness factor: with the passage of time memory becomes less reliable, witnesses die or become otherwise unavailable, and physical evidence becomes more difficult to obtain and identify and is more likely to become contaminated.¹¹

7. Penal Code § 800(c).

8. Penal Code § 800(b).

9. Penal Code § 799.

10. Uelmen, supra note 3, at 1.

11. For an analysis of the staleness factor, see Uelmen, supra note 3, at 15-20.

The staleness factor is also recognized somewhat by the constitutional due process and speedy trial protections for a person accused of crime. However, the extent of these constitutional protections is limited and there are procedural problems in their implementation.¹² The constitutional protections require an evidentiary hearing to determine whether the defendant has been prejudiced under the facts and circumstances of the particular case.

In contrast, the statute of limitations represents (in part) a societal determination that after passage of a sufficient length of time, staleness is presumed and further proceedings are not desirable from the perspective of administration of justice. At this point a person should not be subject to further prosecution, regardless of the facts and circumstances of the particular case.

Repose Factor

As time goes by, the retributive impulse against a criminal that may have existed in a community is likely to yield to a sense of compassion for the person prosecuted for an offense long forgotten. If the person has refrain from further criminal activity, the likelihood increases with the passage of time that the person has reformed, diminishing the necessity for criminal punishment. If the person has repeated the criminal behavior, prosecution can be made for recent offenses committed.

At some point society no longer seeks to prosecute for crimes committed in the distant past, a point reflected in the statute of limitations. This has been identified as the repose factor.¹³ The repose factor is society's evaluation of the time after which it is neither profitable nor desirable to prosecute for a crime. More recent crimes are more important to society to prosecute (and are more likely to yield a conviction).

Motivation Factor

The statute of limitations has been viewed as a deadline to motivate efficient police work and insure against bureaucratic delays in investigating crimes. It imposes a priority upon investigation and

12. Ibid.

13. For an analysis of the repose factor, see Uelman, supra note 3, at 25-26.

prosecution of crimes. This has been identified as the motivation factor.¹⁴

Recent studies indicate that the statute of limitations may be a negligible motivation factor. Other considerations than the statute of limitations appear to control motivation of investigation and prosecution.¹⁵

OTHER FACTORS THAT AFFECT FELONY LIMITATION STATUTES

The major functions of the felony statutes of limitation are to recognize the staleness and repose factors that society believes are important. However, there are other significant factors that also affect the statute of limitations.

Seriousness Factor

Because the felony statute of limitations operates as a statutory grant of amnesty to a defender, society may be unwilling to make this grant where the crime is sufficiently serious. The seriousness factor is significant under the deterrence, incapacitation, rehabilitation, and retribution theories of criminal law: the more serious the offense, the greater the need for deterrence and the more undesirable to offer the possibility of escape from punishment after a short period of limitation; the more serious the offense, the greater the likelihood that the perpetrator is a continuing danger to society, and thus the need to incapacitate the offender whenever apprehended; the more serious the offense, the less likely the perpetrator is to reform of his or her own accord, and thus the need for compulsory treatment whenever apprehended; and the more serious the offense, the greater is society's need to impose retribution on the offender.¹⁶

The seriousness factor pulls in the opposite direction from the repose factor in the formulation of a statutory limitation period. The operation of the seriousness factor is most apparent in the one-year limitation period for misdemeanors and no limitation period for murder. For crimes in between, there are no clear answers, a fact which has contributed to the complexity and inconsistency of existing law.

14. For an analysis of the motivation factor, see Uelmen, supra note 3, at 21-25.

15. Ibid.

16. For an analysis of the seriousness factor, see Uelmen, supra note 3, at 33-35.

Concealment and Investigation Factors

The very nature of certain concealed crimes makes their detection especially difficult. These same crimes may also require longer investigation to identify the perpetrators and, even after they are identified, may require continuing investigation. The concealment and investigation factors argue against imposition of a statute of limitations.¹⁷ These factors have resulted in crimes such as embezzlement of public funds being exempt from statutory limitation. They have resulted in the ordinary limitations period being tolled until discovery of crimes such as perjury, conflict of interest, falsification of evidence, and corporate securities fraud.

INTERRELATION OF FACTORS

The functions served by the statutes of limitation and the factors that affect the statutes tend in opposite directions. The staleness and repose factors suggest a shorter limitation period, the seriousness, concealment, and investigation factors suggest a longer limitation period. As a part of its study of statutes of limitation for felonies, the Law Revision Commission has made an effort to ascertain whether the interrelation of these factors can be determined with sufficient precision that the best statutory treatment for specific crimes or categories of crime can be identified.

The major finding of the Commission is that, with the exception of the seriousness (and repose) factor, it is difficult to relate specific factors to specific crimes.¹⁸ The risk of staleness, the likelihood of concealment, and the difficulty of investigation are all dependent upon the specifics of the particular case. A generalization can be made that some types of crime frequently involve certain of these factors. However, the frequency is not sufficiently great that it can be said with any degree of accuracy that certain factors are almost always relevant.

For example, many prosecutors, defense attorneys, and judges agree, based on their experience, that the crimes of rape and robbery are frequently proven or defended with evidence that becomes less reliable

17. For analyses of the concealment and investigation factors, see Uelmen, supra note 3, at 27-30 (concealment factor) and 31-32 (investigation factor).

18. This finding is based on empirical data developed by Uelmen, supra, note 3.

and less available with the passage of time. This is primarily because eyewitness identification and alibi witnesses may be crucial to the case. However, in the experience of many other prosecutors, defense attorneys, and judges, staleness is not as important a factor in these crimes as in others such as sale of narcotics and conspiracy.

Likewise, although the experience of criminal law experts is that embezzlement of public funds and corporate securities fraud frequently involve problems of concealment and investigation, the experience of others is that falsification of public records and fraudulent claims against government are more likely to involve problems of this type.

It is not possible to conclude with any assurance, based on this finding, that specific crimes or categories of crimes should be systematically subject to a longer or shorter statute of limitations. The staleness, concealment, and investigation factors that bear on the statute of limitations are evidence specific, rather than crime specific, and vary from case to case. "Except for the factors of seriousness and repose, it does not appear that most of the rationales for the duration of a statute of limitations lend themselves to categorization by crime."¹⁹

The seriousness and repose factors, on the other hand, do enable categorization by crime. Most jurisdictions, including California at the time of the original enactment of its felony limitations statute, base the statute of limitations on the seriousness of the crime. The major difficulty with such a scheme is that it ignores the staleness, concealment, and investigation factors. And efforts to accommodate these factors have resulted in the complexity and inconsistency of existing California law.

The Law Revision Commission has examined the scheme offered by the Model Penal Code, which has been adopted in New York and Pennsylvania. The Model Penal Code seeks to devise a felony limitation scheme based upon seriousness of the crime, but that makes accommodation for crimes that are ordinarily concealed, that may require extensive investigation, or the evidence for which may become stale.²⁰

The Commission has determined that such a scheme, while dealing with the issues in a sophisticated manner, is not suited to California for several reasons: (1) California has never systematically categorized

19. Uelmen, supra note 3, at 39.

20. Model Penal Code § 1.06.

its felonies by degree of seriousness as the Model Penal Code does. The punishment for a crime is some indication of its seriousness, but punishments are based on numerous other factors as well. (2) A scheme that provides a longer statute of limitation for a crime that is ordinarily concealed or may require extensive investigation assumes that certain crimes can be so categorized; but the Commission has found that these factors are not crime specific. Moreover, simply applying a general standard without categorization requires a determination whether the specific crime charged falls within the standard; this adds another litigation factor in criminal cases in an already overburdened judicial system. (3) The Model Penal Code accommodation of factors such as concealment and staleness is to apply special provisions such as tolling or prompt complaint for specified crimes that frequently involve these factors. But the provisions are discriminatory against victims of, and persons accused of, the specific crimes.

RECOMMENDATIONS

The Law Revision Commission has concluded that, all factors considered, a felony limitations scheme must be based on the seriousness of the crime. Moreover, the effort to accommodate the other relevant factors with any precision leads to undue complexity and undesirable litigation. The Commission believes there should be a single limitation period for all felonies, with the exception of capital crimes which should be subject to no limitation period. The classification of a crime as a felony rather than a misdemeanor is a determination that it is a serious crime; imposition of the death penalty is a determination that society views the crime as the most serious.

The limitation period for felonies should be sufficiently short that it accommodates the staleness and repose factors automatically. It should be sufficiently long that it accommodates the seriousness, concealment, and investigation factors automatically.

Such a limitation period will necessarily be mechanical and arbitrary to a certain degree but will result in justice in most cases. In a case where the staleness factor is important before the statute of limitations runs, the defendant's constitutional due process and speedy trial protections remain. The statute of limitations is simply a societal declaration that it will no longer pursue a criminal after a certain period of time.

The period selected may be somewhat arbitrary but still achieve society's purpose of imposing an outside limit that recognizes the staleness problem, that requires that a crime must come to light and investigation be completed within a reasonable time, and that represents the point after which society declares it no longer has an interest in prosecution and seeks repose.

In addition to being a rough satisfaction of the relevant substantive factors, a single statute of limitation for felonies also serves procedural needs. Its simplicity encourages public understanding, meets public expectations by providing predictability, and promotes uniformity of treatment for perpetrators and victims of serious crimes.

Duration of Limitation Period

The Commission's basic recommendation that the statutory limitation period correspond to the seriousness of the crime would be best effectuated by a one-year period for misdemeanors, a six-year period for felonies, and no limitation for capital crimes. The Commission believes a six-year period is sufficiently long to recognize that some felonies are concealed, some require lengthy investigation, and all are serious, and yet is sufficiently short to recognize that some evidence becomes stale and that at some point repose is a virtue.

The six-year period is consistent with the period applicable in many other jurisdictions in the United States. Nineteen states have uniform five, six, or seven-year limitation periods, and this is the trend in states that have revised their criminal statutes of limitation in recent years. The federal criminal statute of limitations is five years. The Commission has considered the advantages of uniformity with the federal five-year statute but has concluded that the advantages are outweighed by consistency with the existing California six-year limitation period that reflects the most recent legislative consideration of this matter.

The effect of this scheme on the existing California statutory limitation periods is tabulated in Appendix II. In summary, misdemeanor limitations would be unchanged, the few felonies subject to no limitation period would be rearranged,²¹ the period for rape and related

21. The rule of no limitation period for murder would remain unchanged. The one significant change in this area would be for kidnapping, which under existing law is subject to no statutory limitation

offenses would be unchanged, and the period for all other felonies would be increased from three years to six. However, no tolling of the statute would be permitted for any reason, including absence of the defendant from the state and delayed discovery of the crime. Thus, although the six-year recommendation would increase the limitation for most felonies, it would also impose an outside limit for all crimes. There is no such outside limit under existing law.

Tolling the Statute

Integral to the Commission's recommendation of a single, uniform six-year period is the requirement that the statute not be tolled for any reason.²² Absence from the jurisdiction and delayed discovery of the crime would not affect the running of the statute.²³ These are litigation issues that the scheme recommended by the Commission seeks to avoid. If a person accused of crime is absent from the jurisdiction, the statute of limitations can be satisfied by finding an indictment or issuing a warrant for arrest of the person.²⁴ The six-year period was selected at twice the existing general felony limitation statute in order to accommodate possible absence from the jurisdiction and concealment of the crime. The six-year period is a maximum. After six years, repose is desirable.

Commencement of Prosecution

The statutes of limitation require that prosecution must be commenced within the statutory period. What acts amount to commencement of prosecution sufficient to satisfy the statute?

period. Under the Commission recommendation, kidnapping would be subject to a six-year limitation period. The death penalty was eliminated for kidnapping in 1977, marking a legislative determination that kidnapping is not of the same degree of seriousness as murder.

22. The only exception to this rule is that the statute would be tolled during the time another prosecution is pending in this state for the same conduct. This exception would continue the effect of existing Penal Code Section 802.5. It ensures that if a pending proceeding is dismissed for a technical defect, the running of the statute of limitations will not bar reprosecution.
23. Under existing law absence of the defendant tolls the statute. Penal Code § 802. The statute for certain crimes does not commence to run until discovery. Penal Code § 800(c).
24. See discussion, infra, notes 25 and 26.

Until 1982, prosecution was commenced for the purpose of the statute of limitations when an indictment was found, an information filed, or a case certified to the superior court.²⁵ Legislation enacted in 1981 removes filing of an information and certification to the superior court as means of satisfying the statute of limitations and provides that issuance of an arrest warrant satisfies the statute; this change in the law is effective, however, only until a final appellate decision or an amendment to the California Constitution provides that a person charged by indictment with a felony is not entitled to a preliminary hearing.²⁶

The acts that amount to commencement of prosecution sufficient to satisfy the statute of limitations should be permanently stated in the statute. The statute should be satisfied when the accused is informed of the decision to prosecute and the general nature of the charge with sufficient promptness to allow the accused to prepare a defense before evidence of his or her innocence becomes weakened with age. Actions that satisfy this general standard should amount to commencement of prosecution for the purpose of the statute of limitations.

The finding of an indictment, the filing of an information, and the certification of a case to the superior court are all acts that commence prosecution and should all be restored to the law as it existed before 1982. These events mark a formal decision by the prosecution as to the general nature of the charge and the identity of the accused, and will ordinarily come to the attention of the accused. They may occur regardless whether an arrest warrant is issued; in fact, an arrest warrant may never be issued in many such cases.

Issuance of an arrest warrant should remain an alternate means of commencing prosecution, provided the warrant is executed without unreasonable delay. Otherwise, there is a danger that the warrant may be issued

25. See discussion in Uelmen, *supra* note 3, at 12-14.

26. Penal Code § 800; 1981 Cal. Stats. ch. 1017, § 4. This legislation was a reaction to the case of Hawkins v. Superior Court, 22 Cal. 3d 584, 586 P. 2d 916, 150 Cal. Rptr. 435 (1978), holding that an indicted defendant has the right to demand a postindictment preliminary hearing before entering a plea. See discussion in Review of Selected 1981 California Legislation, 13 Pac. L. J. 660-662 (1982).

and allowed to lie around without diligent effort to execute it. In determining what is a reasonable time for execution, factors such as the inability to find the accused, the fact that the accused is in prison, the absence of the accused from the state, and other relevant factors should be taken into account. This is the standard of the Model Penal Code, which has been adopted in several jurisdictions.²⁷

Retroactivity of Changes

For the purpose of convenience of administration and avoidance of litigation, the changes recommended by the Commission should be made applicable to crimes committed before or after the operative date of the changes, to the extent practical and constitutionally permissible. Thus, in the case of a crime committed before the operative date, if the new law would have the effect of shortening the applicable statute of limitations, the new law would apply unless prosecution had already been commenced under the old longer statute of limitations. If the new law would have the effect of lengthening the applicable statute of limitations, the new law would likewise apply unless prosecution had already been barred under the old shorter statute of limitations; otherwise the new law would have an impermissible ex post facto effect.²⁸

The Commission's recommendations would be effectuated by enactment of the following measure:

An act to repeal Chapter 2 (commencing with Section 799) of Title 3 of Part 2 of, and to add Chapter 2 (commencing with Section 799) to Title 3 of Part 2 of, the Penal Code, relating to crimes.

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

27. Model Penal Code § 1.07; see discussion in Uelmen, supra note 3, at 54-56.

28. See discussion in Uelmen, supra note 3, at 59-61.

Penal Code §§ 799-803 (repealed)

SECTION 1. Chapter 2 (commencing with Section 799) of Title 3 of Part 2 of the Penal Code is repealed.

Comment. Former Sections 799 to 803 are replaced by new Sections 799 to 805, governing the time of commencing criminal actions.

Note. For the text of the former sections, and Comments indicating their disposition, see Appendix III to this report.

Penal Code §§ 799-805 (added)

SECTION 2. Chapter 2 (commencing with Section 799) is added to Title 3 of Part 2 of the Penal Code, to read:

CHAPTER 2. TIME OF COMMENCING CRIMINAL ACTIONS

§ 799. No limitation period for capital crimes

799. Prosecution for an offense punishable by death may be commenced at any time.

Comment. Section 799 replaces former Section 799 with the rule that there is no limitation period for capital crimes. This rule preserves former law as to first degree murder (Section 190). Former Section 799.

Section 799 extends the limitation period for treason (Section 37), procuring execution by perjury (Section 128), train wrecking resulting in death (Section 219), assault with a deadly weapon by a life term prisoner (Section 4500), and making defective war materials that cause death (Military and Veterans Code Section 1672). These crimes are punishable by death and therefore are subject to no limitation period under Section 799. Under former law they were subject to a three year limitation period. Former Section 800 (a).

Section 799 reduces the limitation period for embezzlement of public moneys (Section 424), kidnapping (Section 209), and falsification of public records (Government Code Section 6200). These crimes are not punishable by death and therefore are not subject to Section 799; they are subject to a six-year limitation period under Section 800 (six-year limitation period for felonies). Under former law they were subject to no limitation period. Former Section 799.

A crime punishable by death is a crime for which the maximum penalty that may be imposed is death. See Section 804 (classification of offenses). For the determination of the time prosecution is commenced within the meaning of this section, See Section 803.

§ 800. Six-year limitation period for felonies

800. Prosecution for an offense punishable by imprisonment in the state prison must be commenced within six years after commission of the offense.

Comment. Section 800 replaces Section 800 with a single limitation period of six years applicable to all felonies other than capital crimes. There is no statutory limitation period for capital crimes. Section 799 (no limitation period for capital crimes).

Section 800 preserves former law as to rape (Section 261), rape acting in concert (Section 264.1), lewd acts with person under 14 (Section 288), rape by foreign object (Section 289), sodomy (Section 286 (c), (d), (f)), oral copulation (Section 288a (c), (d), (f)), and acceptance of bribe by public official (Sections 68, 85, 93, 165; Elections Code Section 29160). Former Section 800(b).

Section 800 extends the limitation period for the following crimes if discovered within three years after their commission and reduces the limitation period for these crimes if discovered more than three years after their commission: grand theft (Section 487), welfare fraud (Welfare and Institutions Code Section 11483), Medi-Cal fraud (Welfare and Institutions Code Section 14107), forgery (Section 470), voluntary and involuntary manslaughter (Section 192), fraudulent claim against government (Section 72), perjury (Section 118), false affidavit (Section 118a), offering false evidence (Section 132), preparing false evidence (Section 134), violation of Corporate Securities Law (Corporations Code Section 25540), securities fraud (Corporations Code Section 25541), conflict of interest by public official (Government Code Section 1090), and conflict of interest by public administrator (Government Code Section 27443). Under former law these crimes were subject to a three-year limitation period commencing upon discovery of the crime. Former Section 800(c).

Section 800 extends the limitation period for all other felonies to six years. Under former law the limitation period for all other felonies was three years. Former Section 800(a).

Although Section 800 extends the statutory limitation period for many felonies, it also provides an absolute time limit for prosecution. The limitation period provided in Section 800 is not tolled by any event other than the pendency of another prosecution in this state for the same conduct. Section 802 (tolling of limitation period). Under former law, the limitation period was tolled by absence of the defendant from the state. Former Section 802.

For determination of the time prosecution is commenced within the meaning of this section, see Section 803.

968/853

§ 801. One-year limitation period for misdemeanors and infractions

801. (a) Prosecution for an offense not punishable by death or imprisonment in the state prison must be commenced within one year after commission of the offense.

(b) The time during which the defendant is not within this state is not a part of the limitation of time prescribed in subdivision (a).

Comment. Subdivision (a) of Section 801 continues the substance of former Section 801. Section 801 is applicable to misdemeanors and infractions. See Section 19d (infractions). An offense for which a misdemeanor complaint may be filed or that may be tried as a misdemeanor pursuant to Section 17 (b)(4)-(5) is nonetheless an offense punishable by imprisonment in the state prison within the meaning of this section and therefore Section 800 (six-year limitation period for felonies) is the applicable statute of limitation. See Section 804 (classification of offenses).

Subdivision (b) continues the substance of former Section 802 insofar as it applied to misdemeanors and infractions.

32465

§ 802. Tolling of limitation period

802. (a) Except as otherwise provided by statute, a limitation of time prescribed in this chapter is not tolled or extended for any reason, including but not limited to discovery of the commission of the offense or absence of the defendant from this state.

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

Comment. Subdivision (a) of Section 802 supersedes former Section 802 insofar as it applied to felonies. If the defendant is absent from the state, the statute of limitations may be satisfied by finding an indictment or issuing an arrest warrant. Absence of the defendant will affect the reasonableness of any delay in executing the warrant. The introductory portion of subdivision (a) recognizes statutory exceptions to the rule of no tolling. One exception is Section 801(b) (one-year limitation period for misdemeanors and infractions). Another exception is subdivision (b).

Subdivision (b) continues the substance of former Section 802.5. See Section 803 (commencement of prosecution). The limitation of former Section 802.5 that permitted recommencing the same "criminal action" is replaced by a broader standard of prosecution for the "same conduct," drawn from Model Penal Code § 1.06(6)(b). The former law that provided tolling only for a subsequent prosecution for the same offense was too narrow, since the dismissal may have been based upon a substantial variation between the previous allegations and the proof. The test of the "same conduct", involving as it does some flexibility of definition, states a principle that should meet the reasonable needs of prosecution, while affording the defendant fair protection against an enlargement of the charges after running of the statute.

§ 803. Commencement of prosecution

803. For the purpose of this chapter, prosecution for an offense is commenced when any of the following occurs:

(a) An indictment is found. An indictment is found, for the purpose of this chapter, when it is presented by the grand jury in open court and there received and filed.

(b) An information or complaint is filed.

(c) A case is certified to the superior court.

(d) An arrest warrant is issued, provided the warrant is executed without unreasonable delay.

Comment. Subdivision (a) of Section 803 continues the substance of portions of former Sections 800 and 801 and of former Section 803.

Subdivision (b) continues the substance of portions of former Sections 800 (contingent version) and 801.

Subdivision (c) continues the substance of portions of former Section 800 (contingent version).

Subdivision (d) continues the substance of portions of former Section 800, but adds the limitation that the warrant be executed without unreasonable delay, drawn from Model Penal Code § 1.06(5). Otherwise, there is a danger that a warrant may be issued and allowed to lie around without diligent effort to execute it. In determining what is reasonable, factors such as the inability to find the accused, the fact that the accused is in prison, absence of the accused from the state, and others too numerous to specify in a statute may be taken into account.

32576

§ 804. Classification of offenses

804. For the purpose of this chapter, if more than one punishment is prescribed by statute for an offense, the offense is deemed punishable by the maximum punishment prescribed by statute, regardless of the punishment actually sought or imposed for the offense.

Comment. Section 804 makes clear that in classifying offenses for the purpose of determining the applicable statute of limitation under this chapter, an offense is classified consistent with its maximum punishment. This continues the substance of former Section 801(b) (an offense for which a misdemeanor complaint may be filed or that may be tried as a misdemeanor pursuant to Section 17(b)(4)-(5) is subject to the felony statute of limitation).

§ 805. Transitional provision

805. (a) As used in this section, "operative date" means January 1, 1985.

(b) Except as provided in subdivision (c), this chapter applies to an offense that was committed before, on, or after the operative date.

(c) This chapter does not apply, and the law applicable before the operative date does apply, to an offense that was committed before the operative date, in the following situations:

(1) Prosecution of the offense would be barred by the limitation of time applicable before the operative date.

(2) Prosecution of the offense was commenced before the operative date.

Comment. Section 805 is intended to make this chapter applicable both prospectively and retroactively to the extent permissible and practical. Subdivision (c)(1) limits retroactive application that would have the effect of lengthening the statute of limitation to reflect the constitutional ex post facto prohibition where the statute of limitation has already run. Subdivision (c)(2) precludes retroactive application that would have the effect of shortening the statute of limitation where prosecution under an operative statute has already begun.

APPENDIX I

CURRENT CALIFORNIA STATUTES OF LIMITATIONS

California felonies presently fall into one of four categories with respect to the statute of limitations. The date each offense was added to a particular category is indicated in parentheses.

No Limitation (P.C. § 799)

Murder (P.C. § 187) (1872)
Embezzlement of Public Moneys (P.C. § 424) (1891)
Falsification of Public Records (Gov. C. §§ 6200-6201) (1891)
Kidnapping (P.C. § 209) (1970)

Six Years After Commission of Crime (P.C. § 800(b))

Acceptance of Bribe by Public Official (P.C. §§ 68, 85, 93, 165;
Elec. C. § 29160) (1941)
Rape (P.C. § 261) (1981)
Rape Acting in Concert (P.C. § 264.1) (1981)
Sodomy by Force or With Person Under 14 (P.C. § 286(c)) (1981)
Sodomy Acting in Concert (P.C. § 286(d)) (1981)
Sodomy With Unconscious Victim (P.C. § 286(f)) (1981)
Lewd Acts With Person Under 14 (P.C. § 288) (1981)
Oral Copulation by Force or With Person Under 14 (P.C. § 288a(c))
(1981)
Oral Copulation Acting in Concert (P.C. § 288a(d)) (1981)
Oral Copulation With Unconscious Victim (P.C. § 288a(f)) (1981)
Rape by Foreign Object (P.C. § 289) (1981)

Three Years After Discovery of Crime (P.C. § 800(c))

Grand Theft (P.C. § 487) (1969)
Forgery (P.C. § 470) (1970)
Voluntary Manslaughter (P.C. § 192(1)) (1971)
Involuntary Manslaughter (P.C. § 192(2)) (1971)
Fraudulent Claim Against Government (P.C. § 72) (1972)
Perjury (P.C. § 118) (1972)
False Affidavit (P.C. § 118a) (1972)
Conflict of Interest by Public Official (Gov. C. § 1090) (1972)
Conflict of Interest by Public Administrator (Gov. C. § 27443) (1972)
Offering False Evidence (P.C. § 132) (1975)
Preparing False Evidence (P.C. § 134) (1975)
All Violations of Corporate Securities Law (Corp. C. § 25540) (1978)
Fraud in Offer, Purchase or Sale of Securities (Corp. C. § 25541) (1978)
Welfare Fraud (Welf. & Inst. C. § 11483) (1981)
Medi-Cal Fraud (Welf. & Inst. C. § 14107) (1982)

Three Years After Commission of Crime (P.C. § 800(a))

All felonies not specified above.

California misdemeanors are all subject to a statute of limitations of one year after commission. P.C. § 801(a). If an offense may be punished as either a felony or a misdemeanor, the felony statute of limitations applies. P.C. § 801(b).

APPENDIX II

CHANGES MADE BY RECOMMENDATION

<u>Offense</u>	<u>Current Limitation</u>	<u>Proposed Limitation</u>	<u>Change</u>
Murder (P.C. § 187)	None	None	Same
Embezzlement of Public Moneys (P.C. § 424)	None	6 years	Reduction
Falsification of Public Records (Gov. C. §§ 6200-01)	None	6 years	Reduction
Kidnapping (P.C. § 209)	None	6 years	Reduction
Acceptance of Bribe by Public Official (P.C. §§ 68, 85, 93, 165; Elec. C. § 29160)	6 years	6 years	Same
Rape (P.C. § 261)	6 years	6 years	Same
Rape Acting in Concert (P.C. § 264.1)	6 years	6 years	Same
Sodomy by Force or With Person Under 14 (P.C. § 286(c))	6 years	6 years	Same
Sodomy Acting in Concert (P.C. § 286(d))	6 years	6 years	Same
Sodomy With Unconscious Victim (P.C. § 286(f))	6 years	6 years	Same
Lewd Acts With Person Under 14 (P.C. § 288)	6 years	6 years	Same
Oral Copulation by Force or With Person Under 14 (P.C. § 288a(c))	6 years	6 years	Same
Oral Copulation Acting in Concert (P.C. § 288a(d))	6 years	6 years	Same
Oral Copulation With Unconscious Victim (P.C. § 288a(f))	6 years	6 years	Same
Rape by Foreign Object (P.C. § 289)	6 years	6 years	Same
Grand Theft (P.C. § 487)	3 years after discovery	6 years	Increase
Forgery (P.C. § 470)	3 years after discovery	6 years	Increase
Voluntary Manslaughter (P.C. § 192(1))	3 years after discovery	6 years	Increase
Involuntary Manslaughter (P.C. § 192(2))	3 years after discovery	6 years	Increase
Fraudulent Claim Against Government (P.C. § 72)	3 years after discovery	6 years	Increase
Perjury (P.C. § 118)	3 years after discovery	6 years	Increase
False Affidavit (P.C. § 118a)	3 years after discovery	6 years	Increase
Conflict of Interest by Public Official (Gov. C. § 1090)	3 years after discovery	6 years	Increase
Conflict of Interest by Public Administrator (Gov. C. § 27443)	3 years after discovery	6 years	Increase
Offering False Evidence (P.C. § 132)	3 years after discovery	6 years	Increase
Preparing False Evidence (P.C. § 134)	3 years after discovery	6 years	Increase
All Violations of Corporate Securities Law (Corp. C. § 25540)	3 years after discovery	6 years	Increase
Fraud in Offer, Purchase or Sale of Securities (Corp. C. § 25541)	3 years after discovery	6 years	Increase

<u>Offense</u>	<u>Current Limitation</u>	<u>Proposed Limitation</u>	<u>Change</u>
Welfare Fraud (Welf. & Inst. C. § 11483)	3 years after discovery	6 years	Increase
Medi-Cal Fraud (Welf. & Inst. C. § 14107)	3 years after discovery	6 years	Increase
Treason (P.C. § 37)	3 years	None	Increase
Procuring Execution by Perjury (P.C. § 128)	3 years	None	Increase
Train Wrecking Resulting in Death (P.C. § 219)	3 years	None	Increase
Assault With a Deadly Weapon by Life-Term Prisoner (P.C. § 4500)	3 years	None	Increase
Making Defective War Materials Which Cause Death (Mil. & Vet. C. § 1672)	3 years	None	Increase
All Other Felonies	3 years	6 years	Increase
All Misdemeanors and Infractions	1 year	1 year	Same

The current limitation periods may be tolled while the defendant is out of state; the proposed limitation period is absolute.

APPENDIX III

EXISTING LAW AND ITS DISPOSITION

32185

Penal Code §§ 799-803 (repealed)

CHAPTER 2. TIME OF COMMENCING CRIMINAL ACTIONS

799. There is no limitation of time within which a prosecution for murder, the embezzlement of public moneys, a violation of Section 209, or the falsification of public records must be commenced. Prosecution for murder may be commenced at any time after the death of the person killed. Prosecution for the embezzlement of public money, a violation of Section 209, or the falsification of public records may be commenced at any time after the discovery of the crime.

Comment. Former Section 799 is replaced by new Section 799. New Section 799 continues the rule that there is no limitation period for first degree murder and extends the rule to other capital crimes. New Section 799 does not continue the rule that there is no limitation period for embezzlement of public moneys, kidnapping, or falsification of public records. These felonies are subject to the same six-year limitation period as other felonies.

32186

800. (a) An indictment for any felony, except murder, the embezzlement of public money, or a violation of Section 209 of the Penal Code, and except as provided in subdivisions (b) and (c), shall be found, or an arrest warrant issued by the municipal or, where appropriate, the justice court within three years after its commission.

(b) An indictment for a violation of Section 261, 264.1, 288, or 289 of, or subdivision (c), (d), or (f) of Section 286, or subdivision (c), (d), or (f) of Section 288a, or for the acceptance of a bribe by a public official or a public employee, a felony, shall be found, or an arrest warrant issued by the municipal or, where appropriate, the justice court within six years after its commission.

(c) An indictment for grand theft, felony welfare fraud in violation of Section 11483 of the Welfare and Institutions Code, felony Medi-Cal fraud in violation of Section 14107 of the Welfare and Institutions Code, felony of the Welfare and Institutions Code, forgery, voluntary manslaughter, or involuntary manslaughter, a violation of Section 72,

118, 118a, 132 or 134, of the Penal Code, Section 25540 or 25541 of the Corporations Code, or Section 1090 or 27443 of the Government Code, shall be found, or an arrest warrant issued by the municipal or, where appropriate, the justice court within three years after its discovery.

Comment. Former Section 800 is replaced by new Sections 800 and New Section 800 extends the six-year limitation period provided by former Section 800(b) to all felonies other than capital crimes. New Section 803 provides for the determination of the time prosecution is commenced.

32188

801. (a) Except as provided in subdivision (b), an indictment for any misdemeanor shall be found or an information or complaint filed within one year after its commission.

(b) For an offense for which a misdemeanor complaint may be filed or that may be tried as a misdemeanor, pursuant to paragraphs (4) and (5) of subdivision (b) of Section 17, respectively, a complaint shall be filed within the time specified in Section 800 for such offense.

Comment. The substance of subdivision (a) of former Section 801 is continued in new Section 801(a) (one-year limitation period for misdemeanors). The substance of subdivision (b) is continued in new Section 804 (classification of offenses).

32198

802. If, when or after the offense is committed, the defendant is out of the State, an indictment may be found, a complaint or an information filed or a case certified to the superior court, in any case originally triable in the superior court, or a complaint may be filed, in any case originally triable in any other court, within the term limited by law; and no time during which the defendant is not within this State, is a part of any limitation of the time for commencing a criminal action.

Comment. The language in former Section 802 permitting charges to be brought although the defendant was outside the state at the time of the offense is not continued. It is made unnecessary by Section 27 (persons punishable). The substance of the tolling provision of former Section 802, insofar as it applied to misdemeanors and infractions, is continued in new Section 801(b). Insofar as it applied to felonies, the tolling provision of former Section 802 is not continued. The six-year felony limitation period is absolute. See new Section 802 (tolling of limitation period).

802.5. The time limitations provided in this chapter for the commencement of a criminal action shall be tolled upon the issuance of an arrest warrant or the finding of an indictment, and no time during which a criminal action is pending is a part of any limitation of the time for recommencing that criminal action in the event of a prior dismissal of that action, subject to the provisions of Section 1387.

Comment. The substance of former Section 802.5 is continued in new Section 802(b).

803. An indictment is found, within the meaning of this chapter, when it is presented by the grand jury in open court, and there received and filed.

Comment. The substance of former Section 803 is continued in new Section 803 (commencement of prosecution).