

## Memorandum 83-44

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

Attached to this memorandum is a copy of the Commission's tentative recommendation relating to the statute of limitations for felonies. The tentative recommendation is for a flat six-year limitation for all felonies, without tolling for any reason; there would be no limitation period for felonies punishable by death. The tentative recommendation was distributed for comment this summer and the letters received are attached as Exhibits 1 to 5. The comments are mainly from prosecutors, but we expect to receive additional comments from defense attorneys before the meeting.

§ 799. No limitation period for capital crimes

A number of the commentators believe that there should be no limitation period for offenses punishable by imprisonment for life or life without possibility of parole, as well as for capital offenses. See, e.g., California District Attorney's Association (Exhibit 1), David J. Halperin (Exhibit 2), Sacramento County District Attorney (Exhibit 3), and Amador County District Attorney (Exhibit 5--no limitation period for all homicides).

If this rule were adopted, there would be no limitation period for the following crimes in addition to capital crimes (this list may not be complete--we are trying to get a computer search on crimes punishable by life imprisonment):

<u>Crime</u>	<u>Maximum Punishment</u>	<u>Current Limitation Period</u>
Murder (§ 190)		
First Degree		
When Not Punishable by		
Death	Life w/o parole	None
Second Degree	Life imprisonment	None
Kidnapping for Ransom (§ 209)		
Resulting in Death or		
Bodily Injury	Life w/o parole	None
Not Resulting in Death		
or Bodily Injury	Life imprisonment	None
Intent to Wreck Train (§ 218)	Life w/o parole	3 years

<u>Crime</u>	<u>Maximum Punishment</u>	<u>Current Limitation Period</u>
Train Wrecking (§ 219) Not Resulting in Death	Life w/o parole	3 years
Assault on Life Prisoner (§ 4500) Resulting in Death	Life w/o parole for 9 years	3 years
Bombing (§ 12310) Resulting in Death	Life w/o parole	3 years
Resulting in Bodily Injury	Life imprisonment	3 years

The persons advocating the rule that there be no limitation period for crimes punishable by life imprisonment with or without parole state a number of reasons in support of their position. Offenses the Legislature felt so strongly about as to impose a penalty of life in prison are so serious there should be no limitation period (California District Attorneys Association; Sacramento District Attorney). When the factors that argue for a long or for a short limitation period are applied to serious crimes punishable by life imprisonment, the factors that favor a long limitation period prevail (California District Attorneys Association). It would avoid confusion among the various degrees of murder and the specific aggravations that would cause the death penalty to be applied in some cases and not in others (David J. Halperin; Amador County District Attorney). If there is no limitation period for capital crimes and only a six-year limitation period for non-capital crimes, this would be some slight deterrent to abolition of capital punishment, should public opinion begin to swing in that direction (David J. Halperin). It would also simplify the charging and plea processes on belatedly prosecuted murders by eliminating an incentive for the prosecution to insist on a first degree conviction, if not to add death penalty allegations that are of marginal validity (David J. Halperin). And it would also be more consistent with existing law, there currently being no limitation period for murder of all degrees or kidnapping for ransom (David J. Halperin).

The Amador County District Attorney (Exhibit 5) would go beyond crimes punishable by life imprisonment and apply no statute of limitation to any homicide, including manslaughter (unlawful killing without malice--maximum punishment four years for involuntary, six years for voluntary manslaughter). "A victim is dead forever. It does not seem just that a defendant can hide for six years and become a free person."

The Sacramento County District Attorney (Exhibit 3) suggests that there be no statute of limitation for kidnapping, whether or not for ransom. (The maximum punishment for non-ransom kidnapping is seven years; the current statute of limitations is three years.) "Should we ever give up hope of prosecuting someone who has abducted and kept a child--even 10 or 15 years?"

§ 800. Six-year limitation period for felonies

The California Public Defenders Association (Exhibit 4) opposes the recommendation for extending the statute of limitation for all felonies (except capital offenses) from three years to six. They feel that the proposal would encourage delays in the investigation and the prosecution of cases. They feel that the filing of cases in excess of three years "will make it difficult if not impossible for defendants to defend themselves."

The staff reads this to be a position that the elimination of tolling for absence from the jurisdiction or delay in discovery of the crime does not justify a longer limitation period. They apparently prefer the flexible scheme of existing law--a shorter period of three years with tolling where appropriate--to an absolute six-year period applicable to all cases.

§ 802. Tolling of limitation period

Proposed Section 802 provides that the six-year limitation period is absolute--it is not tolled for any reason including belated discovery of the crime or absence of the defendant from the state. Comments received from law enforcement officers indicate that both these grounds for tolling--delayed discovery of the crime and absence of the defendant from the state--should be preserved in the law.

The California District Attorneys Association (Exhibit 1) believes strongly that the statute of limitations should not commence to run until discovery of the crimes to which the "when discovered" rule currently applies. See Penal Code § 800(c). They give the example of a criminal who handles financial matters for a victim who has, say, \$1 million deposited in a local bank. The criminal embezzles \$800,000, but the victim is not aware of it until after six years because the victim has been able to draw on the remaining money without incident during that period. "I would be most interested in any argument asserting that the public policy served by application of an absolute six-year limitation

period to crimes committed in secret by those in positions of trust-- should prevail over the countervailing public policy that this serious criminal act should not go unprosecuted." They state that these policy considerations are particularly applicable to economic crimes where the risk involved can be factored into the potential gain. "A statute of limitations should not be part of an equation from which the criminal concludes the intended crime is economically sensible."

Likewise, the Amador County District Attorney (Exhibit 5) believes the limitation period should be tolled when the suspect is out of the state. As a practical and financial matter, it is not feasible to track every felon who flees the jurisdiction or to extradite the felon even if discovered. Under the Commission's proposal, should a felon leave the state and evade detection for six years, the felon is free from prosecution. "This has the effect of encouraging defendants to flee the state and remain undetected for six years in order to escape punishment for their crimes within the state."

The Commission's recommendation to increase the statute of limitations to a flat six years was predicated both on the simplicity that would result from not having to litigate matters such as the actual time the defendant was absent from the jurisdiction and on the concept that the six-year period recognizes that it may take some time to discover hidden crimes or out of state criminals. In effect, the six-year period already has built into it tolling for delayed discovery and absence from the jurisdiction. The staff believes it would be completely inappropriate both to double the limitation period from three years to six and to allow tolling. This would totally defeat the basic purpose of the Commission's recommendation. Our choice is either to stick with the simplicity of an absolute six-year period or to go back to the basic three-year period with a six-year period for more serious crimes and a more refined tolling scheme than appears in existing law. The latter approach is basically the approach recommended by our consultant, Professor Uelmen. In this connection the comment of David J. Halperin (Exhibit 2) is worth noting: "It seems clear that making the periods absolute will expedite and simplify the trial of some cases, and is desirable."

#### § 804. Classification of offenses

Section 804 addresses the problem of an offense that is punishable by different penalties; such an offense is classified as punishable by

the maximum penalty for purposes of the statute of limitations. This codifies existing law.

A related but distinct question is raised by David J. Halperin (Exhibit 2)—how do we treat a situation where one offense is prosecuted but the defendant is convicted only of a lesser included offense. Mr. Halperin points out that there is a line of cases that still appears to be the law holding that if a manslaughter conviction is returned in a case prosecuted as murder, the statute of limitations for manslaughter is applicable, not the statute for murder. Mr. Halperin suggests that whatever we intend in this situation should be codified in connection with the overall revision.

The existing law appears appropriate. If the statute of limitations has run on the offense for which the defendant is guilty, why should the prosecution be able to avoid the statute simply by charging a greater offense and then proving the lesser included offense? On the other hand, this might lead to the practice of overcharging on marginal cases in the hope of getting a conviction for the more serious crime because the statute has run on the less serious crime. Such a practice might be appropriate if the prosecution is able to get a conviction, but might be inappropriate if defendants are routinely put to the trouble of a trial in which conviction for the greater offense is not obtained. The staff does not believe this is a serious problem in light of the limited prosecution resources available, and it is unlikely that the prosecution will routinely seek convictions in cases where it appears a conviction cannot be obtained. The staff believes on balance that existing law is satisfactory and would codify it in Section 804:

(b) If the defendant is not convicted of the offense charged but is convicted of an offense that is necessarily included within the offense charged, the limitation of time prescribed in this chapter is the limitation applicable to the offense of which the defendant is convicted.

Comment. Subdivision (b) codifies the rule that if the defendant is convicted of a lesser included offense, the applicable statute of limitation is that for the lesser included offense. See *People v. Miller*, 12 Cal. 291 (1859), and cases following.

Respectfully submitted,

Nathaniel Sterling  
Assistant Executive Secretary



# CALIFORNIA DISTRICT ATTORNEYS ASSOCIATION

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916/443-2017

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Dear Mr. Sterling:

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## EXECUTIVE DIRECTOR

STEVE WHITE

Re: Statute of Limitations for Felonies

Thank you very much for your response to my June 2 letter on the subject of Statute of Limitations for Felonies. I very much appreciate the Commission's consideration of my comments, and I'm pleased that the Commission has deleted its recommendation that legislation be passed requiring that arrest warrants be executed "without unreasonable delay".

You asked for additional comments concerning our position that no limitation should be placed upon an offense where the potential penalty is life or life without parole. As you know, the Determinate Sentencing laws have left us with a very few offenses to which the penalty of life in prison applies. These offenses include Murder (Penal Code Section 190), Aggravated Kidnapping (Penal Code Section 209), Train Wrecking (Penal Code Sections 218, 219), and a few others.

Professor Uelmen suggests a number of factors to be considered in setting short or long limitation periods:

### Factors In Support of Short Limitation Period

1. Staleness Factor: to prevent prosecution of "stale" crimes -- because evidence supporting conviction may have become unreliable, and because some evidence helpful to the defense may no longer be available.

2. Motivation Factor: to motivate investigation.

3. Repose Factor: to exercise governmental leniency after a reasonable time.

#### Factors In Support of Long Limitation Period

1. The Concealment Factor: because the commission of some crimes may be concealed for some period of time (e.g. crimes such as embezzlement), a long statute of limitations is required so that the guilty may not escape just punishment. An alternative to a long limitation period is a "discovery" statute, tolling the limitation until the crime is discovered.

2. Investigation Factor: a second reason for the existence of a lengthy limitation period is to allow adequate time for investigation in complex cases.

3. Seriousness Factor: the theory here is that there should be a long statutory period -- or no limitation at all -- for such crimes as murder, and other extremely serious offenses -- as a matter of public policy.

In our judgment it follows logically that offenses about which the Legislature felt so strongly as to affix a penalty of life in prison are so serious that two of the three factors Professor Uelmen sets forth in support of a short limitation period have little or no application:

1. the motivation factor -- in cases as serious as these, law enforcement is already highly motivated to investigate thoroughly and promptly; these, by definition, are priority investigations, and it is not necessary to encourage by imposition of limiting statutes the active investigation of such a case.

2. the repose factor -- given the strong expression of legislative policy predicated upon a conclusion that these are extremely grave offenses, governmental leniency is inappropriate.

The remaining factor in support of a short limitation period is the "staleness factor". As one can readily infer by reference to crimes punishable by the death penalty, the staleness factor, alone, is not of overriding importance. On another point, I'd like to offer further comment concerning our strong belief that the "when discovered" triggering language must be retained for those crimes to which it presently applies. I appreciate the fact that the major thrust of the Commission's recommendation for a single six-year felony limitation period is to simplify the statute by eliminating tolling as well as deferred commencement. Even so, I ask you to consider the following hypothetical:

Suspect handles financial matters for victim whose income derives exclusively from interest generated by a substantial sum of money (say, one million dollars) deposited in a local bank. On January 1, 1983, suspect, with legitimate access to victim's funds, embezzles \$800,000.

Able to draw on the remaining \$200,000 until January 2, 1989, victim then learns that her money is gone.

The statute of limitations has run on the theft committed by suspect because the crime committed in 1983 was not discovered until six years and a day later.

I would be most interested in any argument asserting that the public policy served by application of an absolute six-year limitation period to crimes committed in secret by those in positions of trust -- should prevail over the countervailing public policy that this serious criminal act should not go unprosecuted.

These policy considerations are particularly ap-



plicable to economic crimes where the risk involved can be factored into the potential gain. A statute of limitations should not be part of an equation from which the criminal concludes the intended crime is economically sensible.

Again, thank you very much for requesting our views.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Steve White", with a stylized flourish at the end.

STEVE WHITE  
Executive Director

SW:mk

cc: Professor Uelmen

DAVID J. HALPERIN

*Attorney at Law*

40 Robert Road  
Orinda, Calif. 94563  
(415) 254-2761

July 5, 1983

California Law Revision Commission  
4000 Middlefield Road  
Suite D-2  
Palo Alto, California 94306

Re: Statute of Limitations for Felonies

Gentlemen:

The following are my personal comments on your proposals; they are not made as an employee or other representative of the state agency by which I am employed.

In general, the tentative recommendations concerning statutes of limitations dated June 2 are thoughtful and logical. The following comments address two points which appear not to have been covered fully.

1. Felonies punishable by life. Proposed section 799 defines the felonies for which there is no limitation as those punishable by death.

At a minimum, I would suggest that this be expanded to read "by death or imprisonment for life without possibility of parole," and it would seem still better to change the definition to those felonies punishable:

by death, life in prison, or a specified number of years to life in prison.

With respect to murder, this would leave the law unchanged, whereas your proposal appears to change the limitation

period for second degree murder,<sup>1/</sup> and might be interpreted to change the limitation for first degree murder without special circumstances (despite a probable intent otherwise expressed in proposed section 804). This version would also leave the law unchanged for kidnap for ransom with bodily injury.

In addition to having less effect on existing law, it seems to me that it is desirable to include the life sentence offenses because doing so would:

1. Eliminate some slight deterrent to moving away from the death penalty, should public opinion begin to swing in that direction.

2. Simplify the charging and plea processes on belatedly prosecuted murders, by eliminating an incentive for the prosecution to insist on a first degree conviction, if not to add death penalty allegations which are of marginal validity.<sup>2/</sup>

2. Lesser included offenses. A line of cases beginning with People v. Miller (1859) 12 Cal. 291, holds that if a manslaughter conviction is returned in a case prosecuted as murder, the statute of limitations for manslaughter is applicable, not the statute for murder. This still appears to be the rule. See, e.g., People v. Stevens (1935) 5 Cal.2d 92, 99; In Re McCartney (1966) 64 Cal.2d 830, 832.

It is possible that the intended rule concerning lesser included offenses should be codified in connection with an overall revision of the statutes of limitation.

3. Elimination of tolling periods. It seems clear

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<sup>1/</sup> Under section 190, it seems reasonable to treat murder (2nd) as a separate crime from murder (1st), and thus murder(2nd) would not be included in section 799 by proposed section 804.

<sup>2/</sup> Proposed section 804 appears intended to eliminate the need for special circumstance allegations to avoid any limitation period. But it is not wholly clear that a court might not interpret proposed § 799 as requiring those allegations to make the crime one "punishable by death." In any event, second degree murder appears to be a separate offense, not within the scope of proposed § 799.

that making the periods absolute (proposed § 802(a)) will expedite and simplify the trial of some cases, and is desirable.

Thank you for the opportunity to comment on this generally excellent proposal.

Very truly yours,

A handwritten signature in black ink, appearing to read 'David J. Halperin', with a long horizontal flourish extending to the right.

David J. Halperin

DJH:vm



OFFICE OF THE  
DISTRICT ATTORNEY  
SACRAMENTO COUNTY

JOHN DOUGHERTY  
District Attorney

KATHRYN CANLIS  
Chief Deputy

July 19, 1983

California Law Revision Commission  
4000 Middlefield Road, Suite D-2  
Palo Alto, California 94306

Gentlemen

Thank you for the opportunity to respond to your tentative recommendation. Your suggestions appear well-founded and reasoned. Your plan is, for the most part, an improvement on our current system.


There is one aspect that needs to be changed, however. At one point in the report you refer to "capital" offenses as having no limitation. In our view, this should be expanded to any offense which carries a "life" term of imprisonment--with or without possibility of parole. This would embrace first and second degree murder, kidnaping for ransom, etc. That is a simple category of crimes to designate and the penalty assigned by the legislature designates these offenses worthy of special consideration.

Further, consideration should be given to having no statute of limitations on all kidnaping cases. I am thinking specifically of the problems encountered in Merced County in the kidnaping of Timmy White. Should we ever give up hope of prosecuting someone who has abducted and kept a child--even 10 or 15 years? I suggest that you contact the authorities in Merced for their views in this extremely important area.

If I can offer any further input, please feel free to contact me.

Very truly yours

JOHN A. DOUGHERTY  
District Attorney

  
GREGORY THOMPSON  
Assistant Chief Deputy

GT:bf



California Public Defenders Association  
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August 30, 1983

California Law Revision Commission  
4000 Middlefield Road  
Suite D-2  
Palo Alto, California 94306

Re: Tentative Recommendations  
Relating To Statute Of  
Limitations For Felonies  
June 2, 1983

Dear Commission Members,

On behalf of the California Public Defender's Association, I am writing to oppose your recommendations for a comprehensive statute of limitations of six years for all felonies (except murder).

Our feeling is that this statute would encourage delays in the investigation and the prosecution of cases. It is our feeling also that the filing of cases in excess of the three years will make it difficult if not impossible for defendants to defend themselves.

Yours very truly,

*Jeff Brown*  
Jeff Brown, President  
California Public  
Defender's Association

JB:sg

cc: Larry Briskin

**DISTRICT ATTORNEY** • PUBLIC ADMINISTRATOR

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DAVID S. RICHMOND, DISTRICT ATTORNEY

August 31, 1983

California Law Revision Commission  
4000 Middlefield Road, Suite 0-2  
Palo alto, California 94302

Re: Statute of Limitation for Felonies

Dear Sir:

You are to be commended for the time and effort expended to date in attempting to revise the Statute of Limitations in criminal matters. The tentative recommendation reflects careful research and study of the problem. However, in the brief period that I have had to review the material there are two problems which cause me some concern.

The first concern is proposed section 799 of the Penal Code which applies only to offenses punishable by death. Since second degree murder and manslaughter are not punishable by death they would fall under proposed section 800 of the Penal Code which has a six year limitation. Thus, if a defendant is brought to trial more than six years after the commission of the crime and the jury finds the defendant guilty of second degree murder or manslaughter, the defendant becomes a free person as the statute of limitations has run. In all murder prosecutions the court is required to give an instruction to the jury that defendant must be given the benefit of doubt, if there is any, and return a verdict of second degree murder (e.g., CALJIC 8.71).

A victim is dead forever. It does not seem just that a defendant can hide for six years and become a free person. All homicides should, therefore, have no statute of limitations.

The second concern is with proposed section 802 of the Penal Code which provides, in part, that the limitation period is not tolled or extended for any reason. I feel time should be tolled when the defendant is out of state. In addition to the legal arguments set forth by the courts as to California's interest in prosecuting crimes within the state, there is an economic concern. Due to the depressed economy, the state, cities, and counties are working with limited funds and limited manpower. It is not always economical and time feasible to track every felon who flees the state. Under the proposal, should a

defendant leave the state and evade detection for six years, that defendant is also free from prosecution. This has the effect of encouraging defendants to flee the state and remain undetected for six years in order to escape punishment for their crimes within the state. Even if a defendant is located in another state, it is not always economically feasible to extradite due to budget limitations.

The defendants currently are given a sufficient number of rights and safeguards without this additional right being handed to them. There is no concomitant rights and safeguards residing with the people. It is therefore, incumbent upon all of us to protect the rights of the law abiding citizen, as well as the defendant. Thus, the time a defendant is absent from the state should toll the statute of limitations.

If I can be of further assistance to you with your project please call on me.

Yours truly,

DAVID S. RICHMOND  
District Attorney

A handwritten signature in dark ink, appearing to read "Jimmie L. Sides", written in a cursive style.

JIMMIE L. SIDES  
Senior Deputy District Attorney

JLS:ft



STATE OF CALIFORNIA

CALIFORNIA LAW  
REVISION COMMISSION

TENTATIVE RECOMMENDATION

relating to

STATUTES OF LIMITATION FOR FELONIES

June 2, 1983

Important Note: This tentative recommendation is being distributed so that interested persons will be advised of the Commission's tentative conclusions and can make their views known to the Commission. Any comments sent to the Commission will be considered when the Commission determines what recommendation, if any, it will make to the California Legislature. It is just as important to advise the Commission that you approve the tentative recommendation as it is to advise the Commission that you object to the tentative recommendation or that you believe that it needs to be revised. COMMENTS ON THIS TENTATIVE RECOMMENDATION SHOULD BE SENT TO THE COMMISSION NOT LATER THAN AUGUST 31, 1983.

The Commission often substantially revises tentative recommendations as a result of the comments it receives. Hence, this tentative recommendation is not necessarily the recommendation the Commission will submit to the Legislature.

CALIFORNIA LAW REVISION COMMISSION  
4000 Middlefield Road, Suite D-2  
Palo Alto, California 94306

## 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.<sup>1</sup>

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.<sup>2</sup> This simple scheme has been made complex by numerous modifications over the past century. No fewer than eleven legislative enactments have amended the felony statute of limitations since 1969.<sup>3</sup>

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,<sup>4</sup> most felonies remain subject to a three-year limitation period,<sup>5</sup> and murder remains subject to no limitation period.<sup>6</sup> 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, §§ 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.<sup>7</sup> 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.<sup>8</sup> Joining murder as crimes for which there is no statute of limitations are embezzlement of public moneys, falsification of public records, and kidnapping.<sup>9</sup> The current statutes are tabulated in Appendix 1.

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 fragmentary, 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.<sup>10</sup> 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 a felony limitations statute 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.<sup>11</sup>

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 rights is limited and there are procedural problems in their implementation.<sup>12</sup> They also require a hearing to determine whether the defendant has been prejudiced under the facts and circumstances of the particular case.

In contrast, the statute of limitations is to a large extent a societal determination that after passage of a sufficient length of time, staleness is presumed and further proceedings are no longer desirable. At this point the statute of limitations acts mechanically to protect a person from further prosecution, regardless of the facts and circumstances of the particular case. The statute of limitations shields a defendant from the need to demonstrate the staleness of the evidence in the case.

#### Repose Factor

As time goes by, the impulse for retribution against a criminal that may have existed in a community may yield to a sense of compassion for the person prosecuted for an offense long forgotten. 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.<sup>13</sup>

The repose factor is society's evaluation of the time after which it is neither profitable nor desirable to prosecute for a crime. It is more important to society to prosecute recent crimes, and prosecution of recent crimes is more likely to result in conviction.

#### Motivation Factor

The statute of limitations has been viewed as a deadline to motivate the police and ensure against bureaucratic delays in investigating crimes. It imposes a priority among crimes for investigation and prosecution. This has been identified as the motivation factor.<sup>14</sup>

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12. Id.

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

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

Recent studies indicate that the statute of limitations may be a negligible motivation factor. Considerations other than the statute of limitations appear to control motivation of investigation and prosecution.<sup>15</sup>

#### 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 an offender, 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. The more serious the offense, the greater is society's need to impose retribution on the offender.<sup>16</sup>

The seriousness factor tends 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 contrast between the one-year limitation period for misdemeanors and the absence of any limitation period for murder. For felonies less serious than murder, there are no clear answers, a fact which has contributed to the complexity and inconsistency of existing law.

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15. Id.

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.<sup>17</sup> These factors have resulted in the exemption from any limitation for crimes such as embezzlement of public funds. These factors have also resulted in tolling the ordinary limitations period 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 factors, it is difficult to relate specific factors to specific crimes.<sup>18</sup> 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

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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.

frequently proven or defended against with evidence that becomes less reliable 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 some 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.

Thus it is not possible to conclude with any assurance 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 depend on the facts of a case more than on the type of crime. "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."<sup>19</sup>

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. 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.<sup>20</sup> The Model Penal Code seeks to devise a felony limitation scheme based upon seriousness of the crime, subject to adjustment for crimes that are ordinarily concealed, that may require extensive investigation, or for which the evidence may become stale.<sup>21</sup>

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19. Uelmen, supra note 3, at 39.

20. N.Y. Crim. Proc. L. \_\_\_\_; 18 Pa. C.S.A. \_\_\_\_ (1972).

21. Model Penal Code § 1.06.

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 its felonies by degree of seriousness as does the Model Penal Code. 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. The Commission has found, however, that these factors depend more on the facts of a given case than on the category of crime. 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 accommodates factors such as concealment and staleness by applying special provisions such as tolling or prompt complaint for specified crimes that frequently involve these factors. But the provisions operate indiscriminately against all victims of, and all persons accused of, the specific crimes, even though concealment or staleness may be irrelevant in many cases. The crimes are singled out for special treatment without an adequate basis.

#### RECOMMENDATIONS

The Law Revision Commission has concluded that, all factors considered, a felony limitations statute should be based on the seriousness of the crime. The effort to accommodate the other relevant factors with any precision or consistency 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 for which there should be no limitation period.

Seriousness is easily determined under this proposal. The classification of a crime as a felony rather than a misdemeanor is a determination that it is a more serious crime; imposition of the death penalty is a determination that society views the crime as the most serious.

A limitation period based exclusively on seriousness will necessarily operate mechanically and will be arbitrary to a certain degree. However, it will achieve a proper result in most cases. In a case where the staleness factor is important before the statute of limitations has run,



the defendant's constitutional rights to due process and a speedy trial 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 be investigated 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 all serious crimes.

#### Duration of Limitation Period

The Commission's basic recommendation, that the statutory limitation period should 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 2. In summary, misdemeanor

limitations would be unchanged, the few felonies subject to no limitation period would be rearranged,<sup>22</sup> the period for rape and related 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 period 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.<sup>23</sup> Absence from the jurisdiction and delayed discovery of the crime would not affect the running of the statute.<sup>24</sup> 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.<sup>25</sup> The six-year period is 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.

22. 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 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. 1977 Cal. Stats. ch. 316, § 15.
23. 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.
24. 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).
25. See text accompanying notes 26 and 27, infra.

### 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?

Until 1982, prosecution was commenced for the purpose of the statutes of limitation when an indictment was found, an information filed, or a case certified to the superior court.<sup>26</sup> 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.<sup>27</sup>

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. Each of these events marks 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.

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26. See Uelmen, supra note 3, at 12-14.

27. 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 Review of Selected 1981 California Legislation, 13 Pac. L. J. 660-662 (1982).

Issuance of an arrest warrant should remain an alternate means of commencing prosecution, provided the warrant specifies the name of the defendant. Otherwise there is the possibility that a "Doe" warrant would satisfy the statute without ever reasonably informing a person that he or she is being prosecuted. In cases where issuance of a warrant satisfies the statute but the warrant is not promptly executed, the defendant may be protected from stale evidence by the constitutional due process and speedy trial rights.<sup>28</sup>

#### 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 a longer statute of limitations provided by old law. 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 a shorter statute of limitations provided by old law; otherwise the new law would have an impermissible ex post facto effect.<sup>29</sup>

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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:

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28. See, e.g., *Jones v. Superior Court*, 3 Cal.3d 734, 478 P.2d 10, 91 Cal. Rptr. 578 (1970).

29. 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 3.

Penal Code §§ 799-805 (added)

SEC. 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).

§ 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 former 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). A crime punishable by imprisonment in the state prison within the meaning of this section is a crime for which such imprisonment is the maximum penalty that may be imposed. See Section 804 (classification of offenses).

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.

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

801. 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.

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

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§ 802. Tolling of limitation period

802. (a) Except as otherwise provided in subdivision (b), 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 of the same person for the same conduct is pending in a court of this state is a part of a limitation of time prescribed in this chapter.

Comment. Subdivision (a) of Section 802 supersedes former Section 802. If the defendant is absent from the state, the statute of limitations may be satisfied by filing an accusatory pleading or issuing an arrest warrant. See Section 803 (commencement of prosecution).

Subdivision (b) continues the substance of former Section 802.5. 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. It should be noted that subdivision (b) provides tolling only for a prosecution pending in state court. Whether the federal statute of limitations is tolled during pendency of prosecution in federal court is determined by federal law.

§ 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 accusatory pleading is filed.
- (b) A case is certified to the superior court.
- (c) An arrest warrant is issued, provided the warrant specifies the true name of the defendant or the name by which the defendant is known.

Comment. Subdivision (a) of Section 803 continues the substance of portions of former Sections 800, 800 (contingent version), and 801, and of former Section 803. See Section 691(4) ("accusatory pleading" includes indictment, information, and complaint).

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

Subdivision (c) continues the substance of portions of former Section 800, but adds the limitation that the warrant specify the true name of the defendant. Issuance of a "Doe" warrant does not reasonably inform a person that he or she is being prosecuted and therefore does not satisfy the statute of limitations. If the name specified in the warrant is not the precise name of the defendant, it is sufficient that the name identifies the defendant with reasonable certainty. Cf. Sections 959(4), 960 (sufficiency of accusatory pleading). Nothing in subdivision (c) limits the constitutional due process and speedy trial requirements that the warrant be executed without unreasonable delay. See, e.g., *Jones v. Superior Court*, 3 Cal.3d 734, 478 P.2d 10, 91 Cal. Rptr. 578 (1970).

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§ 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, if:

(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 2

## 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 3

#### EXISTING LAW AND ITS DISPOSITION

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#### 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 803. 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 Sections 801 (one-year limitation period for misdemeanors) and 803 (commencement of prosecution). 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 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 Sections 802(b) (tolling of limitation period) and 803 (commencement of prosecution).

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).