

Memorandum 90-32

Subject: Study M-100 - Statutes of Limitations for Felonies (Correction of Comments)

The law governing statutes of limitations for felonies and other crimes was enacted in 1984 on recommendation of the Commission. See Penal Code §§ 799-806, enacted by 1984 Cal. Stats. ch. 1270. The Commission's Comments to these sections were printed in the Commission's report recommending enactment of the statute. See *Recommendation Relating to Statutes of Limitation for Felonies*, 17 Cal. L. Revision Comm'n Reports 301 (1984). The Comments have been reprinted by West and Bancroft-Whitney in their editions of the annotated codes.

It has come to our attention that the Comments have never been revised to reflect amendments made to the Commission's bill during the legislative process. Although the Commission ordinarily revises its Comments to conform to the enacted statute, through inadvertence this was not done for the felony limitations bill. As a consequence, the Commission Comments published in the annotated codes do not accurately reflect the statutes.

The Comments should be revised, even though it has been several years since the Commission's recommendation was enacted. The staff would revise the Comments as set out in Exhibit 1, for inclusion in the Commission's next annual report. We will then forward the corrected Comments to the legal publishers so the annotated codes will be accurate.

Respectfully submitted,

Nathaniel Sterling
Assistant Executive Secretary

EXHIBIT 1

REPORT OF

THE CALIFORNIA LAW REVISION COMMISSION
CONCERNING ASSEMBLY BILL 2764 (1983-84 REGULAR SESSION)

Assembly Bill 2764 was introduced in the 1983-84 regular session by Assembly Members Sher and La Follette to enact the California Law Revision Commission's Recommendation Relating to Statutes of Limitations for Felonies, 17 Cal. L. Revision Comm'n Reports 301 (1984). The Comments printed in the recommendation remain applicable to the various sections of the bill except that the Comments set out below are revised to reflect amendments made to the bill during the legislative process and replace the corresponding Comments printed in the recommendation.

[Note. Changes are shown in strikeout and underscore for the Commission's convenience. The final text printed in the Annual Report and sent to the legal publishers will contain only the final text of the Comments.]

Penal Code § 799 (added). Crimes not subject to limitation period

Comment. Section 799 replaces former Section 799 with the rule that there is no limitation period for capital crimes or ~~for~~ crimes punishable by life imprisonment (with or without the possibility of parole), or for embezzlement of public money. This rule preserves former law as to murder (Section 187) and kidnapping for ransom (Section 209), and embezzlement of public money (Section 424). See former Section 799.

Section 799 extends the limitation period for treason (Section 37), procuring execution by perjury (Section 128), train wrecking (Sections 218, 219), assault with a deadly weapon by a life term prisoner (Section 4500), bombing resulting in death or bodily injury (Section 12310), and making defective war materials that cause death (Military and Veterans Code Section 1672). These crimes are punishable

by death or life imprisonment and therefore are subject to no limitation period under Section 799. Under former law they were subject to a three-year limitation period. See former Section 800(a).

Section 799 reduces the limitation period for ~~embezzlement of public moneys (Section 424)~~ and falsification of public records (Government Code Section 6200). ~~These crimes are~~ This crime is not punishable by death or life imprisonment and therefore ~~are~~ is not subject to Section 799; ~~they are~~ it is subject to a three-year limitation period under Section 801 (three-year limitation period for felonies), which is tolled until discovery of the crime. Section 803 (tolling of limitation period). Under former law ~~they were~~ it was subject to no limitation period. Former Section 799.

A crime punishable by death or by life imprisonment (with or without parole) is a crime for which the maximum penalty that may be imposed is death or life imprisonment (with or without parole), disregarding enhancement of the penalty in the case of an habitual offender. See Section 805 (classification of offenses).

Penal Code § 801 (added). Felonies subject to three-year limitation period

Comment. Section 801 continues the substance of former Section 800(a), which provided a limitation period of three years applicable to all felonies not otherwise dealt with expressly. Section 801 does not apply to capital crimes or crimes punishable by life imprisonment, or to embezzlement of public money, for which there is no limitation period (Section 799), or to felonies punishable by eight years or more imprisonment, for which there is a six-year limitation period (Section 800). In addition, the three-year limitation period of Section 801 is tolled until discovery of crimes involving fraud or public officials (Section 803).

A crime punishable by imprisonment in the state prison within the meaning of Section 801 is a crime for which such imprisonment is the maximum penalty that may be imposed, disregarding enhancement of the penalty in the case of an habitual offender. See Section 805 (classification of offenses). For determination of the time prosecution is commenced within the meaning of this section, see Section 804.

Penal Code § 803 (added). Tolling of limitation period

Comment. Subdivision (a) of Section 803 supersedes former Section 802. ~~If the defendant is absent from the state, the statute of limitations may be satisfied by issuing an arrest warrant. See Section 804 (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, not federal, court.

Subdivision (c) continues the substance of former Section 800(c), with the exception of voluntary and involuntary manslaughter (Section 192), which are governed by Section 800 (felonies subject to six-year limitation period), ~~and with the addition of a six-year limit on tolling.~~ Subdivision (c) also includes ~~embezzlement of public money (Section 424) and falsification of public records (Gov't Code §§ 6200-6201) (formerly subject to no limitation period) ,~~ and acceptance of a bribe by a public official or public employee (Sections 68, 85, 93, 165; Elec. Code § 29160) (formerly subject to a six-year limitation period). See former Sections 799 and 800(b). Although subdivision (c) generally governs crimes involving fraud or breach of fiduciary duty, all types of grand theft are included within subdivision (c) in order to avoid the need to characterize the material elements of the particular crime in every case.

Subdivision (d) supersedes former Section 802. The statute of limitations may be satisfied as to a defendant absent from the state by issuing an arrest warrant. See Section 804 (commencement of prosecution).

Penal Code § 804 (added). Commencement of prosecution

Comment. Subdivision (a) of Section 804 continues the substance of portions of former Sections 800, 801, 802.5, and of former Section 803.

Subdivision (b) is drawn from former Section 802 (tolling while defendant out of state) and from Section 691(4) ("accusatory pleading" defined).

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

Subdivision (d) continues the substance of portions of former Sections 800 and 802.5, but adds the limitation that the warrant specify the name of the defendant or describe the defendant with particularity. 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. See, e.g., *People v. McCrae*, 218 Cal. App. 2d 725, 32 Cal. Rptr. 500 (1963); *People v. Erving*, 189 Cal. App. 2d 283, 11 Cal. Rptr. 203 (1961); cf. Sections 959(4), 960 (sufficiency of accusatory pleading). Nothing in subdivision (d) 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). ~~It should be noted that "arrest warrant" includes a bench warrant within the meaning of this section.~~ The reference in subdivision (d) to a "bench warrant" in addition to "arrest warrant" codifies existing law. 66 Ops. Cal. Atty. Gen. 256 (1983).