

STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

RECOMMENDATION

relating to

Statutes of Limitation for Felonies

January 1984

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

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January 21, 1984

To: THE HONORABLE GEORGE DEUKMEJIAN
Governor of California and
THE LEGISLATURE OF CALIFORNIA

The California Law Revision Commission was directed by Chapter 909, Section 3, of the Statutes of 1981 to make a study of the statutes of limitations applicable to felonies and to submit its findings and recommendations with regard to legislation on this matter on a priority basis. Pursuant to this directive the Commission herewith submits its recommendation to provide a clear and consistent statute governing felony limitations. The recommendation proposes no limitation period for crimes punishable by death or life imprisonment, a six-year limitation period for crimes punishable by imprisonment for eight years or more, and a three-year limitation period for all other felonies. In the case of a crime involving fraud or breach of fiduciary duty, or misconduct in office by a public official, the limitation period would be tolled until discovery of the crime for a period not exceeding six years. The recommendation also includes a number of clarifying changes in the law of a mechanical nature, which are described in the text of the recommendation.

The Commission was assisted in its task by Professor Gerald F. Uelmen of Loyola Law School, Los Angeles, who acts as the Commission's consultant on this subject and whose excellent background study is published as Uelmen, *Making Sense Out of California's Criminal Statute of Limitations*, 15 Pac. L.J. 47 (1983).

Respectfully submitted,

DAVID ROSENBERG
Chairperson

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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 fewer 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, manslaughter, perjury, conflict of interest, securities violation, and welfare fraud.⁷ Other

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 the California Criminal Statute of Limitations*, 15 Pac. L.J. 35, 36-44 (1983).

⁴ Penal Code § 801.

⁵ Penal Code § 800(a).

⁶ Penal Code § 799.

⁷ Penal Code § 800(c).

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 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.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 pre-eminent 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.¹¹

The staleness factor is also recognized somewhat by the constitutional due process and speedy trial protections for

⁸ Penal Code § 800(b).

⁹ Penal Code § 799.

¹⁰ Uelmen, *supra* note 3.

¹¹ For an analysis of the staleness factor, see Uelmen, *supra* note 3, at 44-48.

a person accused of crime. However, the extent of these constitutional rights is limited and there are procedural problems in their implementation.¹² 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.¹³

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.¹⁴

Recent studies indicate that the statute of limitations may be a negligible motivation factor. Considerations other than

¹² Uelmen, *supra* note 3, at 45.

¹³ For an analysis of the repose factor, see Uelmen, *supra* note 3, at 51-52.

¹⁴ For an analysis of the motivation factor, see Uelmen, *supra* note 3, at 48-51.

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 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.¹⁶

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.

¹⁵ *Id.*

¹⁶ For an analysis of the seriousness factor, see Uelmen, *supra* note 3, at 56-58.

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 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.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

¹⁷ For analyses of the concealment and investigation factors, see Uelmen, *supra* note 3, at 52-56.

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

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, most of the rationales for the duration of a statute of limitations do not 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. 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.²⁰ 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.²¹

¹⁹ Uelmen, *supra* note 3, at 59.

²⁰ N.Y. Crim. Proc. Law § 30.10 (McKinney 1981).

²¹ Model Penal Code § 1.06.

The Commission has determined that such a scheme, which deals with the issues in a sophisticated manner, is not suited to California for several reasons; however, it does offer some useful concepts that can be adapted for California and thus help rationalize the California system. For example, California has never systematically categorized its felonies by degree of seriousness as does the Model Penal Code. However, the punishment for a crime is some indication of its seriousness, and can serve as a basis for categorization. The Model Penal Code also provides a longer statute of limitation for crimes that are ordinarily concealed or may require extensive investigation. Although the Commission has found that these factors depend more on the facts of a given case than on the category of crime, the Legislature has already identified a number of crimes of this type for which the limitation period commences to run on discovery of the crime, and this offers a basis for a systematic treatment in California.

RECOMMENDATIONS

The Law Revision Commission has concluded that, all factors considered, a felony limitations statute should generally be based on the seriousness of the crime. The effort to accommodate the other relevant factors with any precision or consistency leads (except in one situation) to undue complexity and undesirable litigation.

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 serious crime; imposition of a long term of imprisonment is a determination that it is one of the more serious felonies; and imposition of the death penalty or life in prison is a determination that society views the crime as the most serious.

A limitation period based on seriousness will achieve a proper result in most cases. 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 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 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.

In addition to being a rough satisfaction of the relevant substantive factors, a statute of limitation for felonies based on seriousness of the crime 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 three-year period for most felonies, a six-year period for more serious felonies (those punishable by eight or more years imprisonment), and no limitation for capital crimes or crimes punishable by life imprisonment. The Commission believes these periods are sufficiently long to recognize that some felonies are concealed, some require lengthy investigation, and all are serious, and yet are sufficiently short to recognize that some evidence becomes stale and that at some point repose is a virtue.

The effect of this scheme on the existing California statutory limitation periods is tabulated in Appendix 2. In summary, misdemeanor and most felony limitations would be unchanged. There would be a reclassification of about a dozen crimes within the no-limitation and six-year limitation categories for purposes of consistency with the penalties for the crimes. Likewise, there would be some change in the felonies for which the statute of limitations is tolled until discovery (see discussion below).

Tolling the Statute

Integral to the Commission's recommendation of uniform limitation periods based on the seriousness of the

crime is the requirement that the statute not be tolled except for special categories of crime.²² Absence from the jurisdiction would not affect the running of the statute.²³ This is a litigation issue 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 issuing a warrant for arrest of the person.²⁴

Existing law tolls the statute of limitations until discovery of certain crimes, principally crimes that are ordinarily concealed such as embezzlement and forgery.²⁵ Tolling is an appropriate means of dealing with crimes of this type, of which a material element is fraud or breach of a fiduciary obligation or the basis of which is misconduct in office by a public officer, and this rule should be preserved.²⁶ However, tolling should not be permitted to run on such a crime indefinitely, with the result that a person may be prosecuted for a crime of concealment committed in the distant past. At some point repose is desirable. The Commission recommends that a crime to which tolling applies should not be subject to prosecution more than nine years after it is committed. This appears to be a reasonable balance of interests in this situation.

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

²² An 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 text accompanying notes 27-30, *infra*.

²⁵ Penal Code § 800(c).

²⁶ This is the approach also of the Model Penal Code. Section 1.06. This would preserve existing law for those crimes for which the statute of limitations is currently tolled, with the exception of voluntary and involuntary manslaughter which do not fall within this category.

court.²⁷ 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.²⁸

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.²⁹

Issuance of an arrest warrant should remain an alternate means of commencing prosecution, provided the warrant specifies the name of the defendant or identifies and describes the defendant with sufficient particularity. 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

²⁷ See Uelmen, *supra* note 3, at 43-44.

²⁸ 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. 660-62 (1982).

²⁹ *Cf. Ops. Cal. Atty. Gen.* (No. 83-1208) (Aug. 3, 1983).

not promptly executed, the defendant may be protected from stale evidence by the constitutional due process and speedy trial rights.³⁰

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.³¹

RECOMMENDED LEGISLATION

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:

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.

³⁰ See, e.g., *Jones v. Superior Court*, 3 Cal.3d 734, 478 P.2d 10, 91 Cal. Rptr. 578 (1970).

³¹ See discussion in Uelmen, *supra* note 3, at 71-72.

Comment. Former Sections 799 to 803 are replaced by new Sections 799 to 806, 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 §§ 799-806 (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. Crimes not subject to limitation period

799. Prosecution for an offense punishable by death or by imprisonment in the state prison for life or for life without possibility of parole 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 or for crimes punishable by life imprisonment (with or without the possibility of parole). This rule preserves former law as to murder (Section 187) and kidnapping for ransom (Section 209). 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 not punishable by death or life imprisonment and therefore are not subject to Section 799; they are 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 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).

§ 800. Felonies subject to six-year limitation period

800. Except as provided in Section 799, prosecution for an offense punishable by imprisonment in the state prison for eight years or more must be commenced within six years after commission of the offense.

Comment. Section 800 supersedes subdivision (b) of former Section 800. Section 800 applies to the same crimes as the former provision, with the exception of a violation of Section 286(f) or 288a(f), which is governed by Section 801 (felonies subject to three-year limitation period), and acceptance of a bribe by a public official or a public employee, which is governed by Sections 801 (felonies subject to three-year limitation period) and 803 (tolling of limitation period).

Section 800 also applies to the following crimes, formerly subject to a three-year limitation period: arson causing bodily injury (Section 451), explosion of destructive device with intent to murder or causing bodily injury (Sections 12308-12309), attempting a crime punishable by life imprisonment (Section 664), assault with a firearm upon a peace officer or fireman engaged in performance of duties (Section 245(c)), and voluntary manslaughter and vehicular manslaughter involving drunk driving and gross negligence (Section 193).

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.

§ 801. Felonies subject to three-year limitation period

801. Except as provided in Sections 799 and 800, prosecution for an offense punishable by imprisonment in the state prison must be commenced within three years after commission of the offense.

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, 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.

§ 802. Misdemeanors and infractions subject to one-year limitation period

802. 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 802 continues the substance of former Section 801. Section 802 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 801 (three-year limitation period for felonies) is the applicable statute of limitation. See Section 805 (classification of offenses). For determination of the time prosecution is commenced within the meaning of this section, see Section 804.

§ 803. Tolling of limitation period

803. (a) Except as provided in this section, 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.

(c) A limitation of time prescribed in this chapter is tolled until discovery of an offense described in this subdivision, or until six years after commission of such an offense, whichever occurs first. This subdivision applies to an offense punishable by imprisonment in the state prison a material element of which is fraud or breach of a fiduciary obligation or the basis of which is misconduct in office by a public officer, employee, or appointee, including but not limited to the following offenses:

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

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

(3) A violation of Section 25540 or 25541 of the Corporations Code.

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

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

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.

§ 804. Commencement of prosecution

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

(a) An indictment or information is filed.

(b) A complaint is filed with an inferior court charging a public offense of which the inferior court has original trial jurisdiction.

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

(d) An arrest warrant is issued, provided the warrant names or describes the defendant with the same degree of particularity required for an indictment, information, or complaint.

Comment. Subdivision (a) of Section 804 continues the substance of portions of former Sections 800, 801, and 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. 66 Ops. Cal. Atty. Gen. 256 (1983).

§ 805. Classification of offenses

805. For the purpose of determining the applicable limitation of time pursuant to this chapter:

(a) An offense is deemed punishable by the maximum punishment prescribed by statute for the offense, regardless of the punishment actually sought or imposed. Any enhancement of punishment prescribed by statute shall be disregarded in determining the maximum punishment prescribed by statute for an offense.

(b) The limitation of time applicable to an offense that is necessarily included within a greater offense is the limitation of time applicable to the lesser included offense, regardless of the limitation of time applicable to the greater offense.

Comment. Section 805 clarifies the rules applicable in classifying offenses for the purpose of determining the relevant statute of limitation under this chapter.

Under subdivision (a), 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). The punishment for an offense is determined without regard to enhancements over the base term for the purpose of determining the relevant statute of limitation. See, *e.g.*, §§ 666-668 (enhancement of punishment for habitual criminals). For the definitions of “base term” and “enhancement,” see Rules of Court 405.

Subdivision (b) codifies the existing rule that the statute of limitation for a lesser included offense is the statute applicable to the lesser offense and not the statute applicable to the greater offense. See, *e.g.*, *People v. Picetti*, 124 Cal. 361, 57 P. 156 (1899); *People v. Miller*, 12 Cal. 291 (1859).

§ 806. Transitional provision

806. (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 for the offense would be barred on the operative date by the limitation of time applicable before the operative date.

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

Comment. Section 806 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 on the operative date. 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 on the operative date.

APPENDIX 1

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.

A. *No Limitation* - Penal Code §799

- Penal Code §187 - Murder (1872)
- Penal Code §424 - Embezzlement of Public Moneys (1891)
- Gov't. Code §6200 et seq. - Falsification of Public Records (1891)
- Penal Code §209 - Kidnapping (1970)

B. *Six Years After Commission of Crime* - Penal Code §800(b)

- Penal Code §§68, 85, 93, 165;
- Elec. Code §29160 - Acceptance of bribe by public Official (1941)
- Penal Code §261 - Rape (1981)
- Penal Code §264.1 - Rape Acting in Concert (1981)
- Penal Code §286(c) - Sodomy by force or with Person under 14 (1981)
- Penal Code §286(d) - Sodomy Acting in Concert (1981)
- Penal Code §286(f) - Sodomy with Unconscious Victim (1981)
- Penal Code §288 - Lewd Acts with Person under 14 (1981)
- Penal Code §288a(c) - Oral Copulation by force or with Person Under 14 (1981)
- Penal Code §288a(d) - Oral Copulation Acting in Concert (1981)
- Penal Code §288a(f) - Oral Copulation with Unconscious Victim (1981)
- Penal Code §289 - Rape by foreign object (1981)

C. *Three Years After Discovery of Crime* - Penal Code §800(c)

- Penal Code §487 - Grand Theft (1969)
- Penal Code §470 - Forgery (1970)
- Penal Code §192(1) - Voluntary Manslaughter (1971)
- Penal Code §192(2) - Involuntary Manslaughter (1971)
- Penal Code §72 - Fraudulent Claim Against Government (1972)
- Penal Code §118 - Perjury (1972)
- Penal Code §118a - False Affidavit (1972)
- Gov't. Code §1090 - Conflict of Interest by Public Official (1972)

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|---------------------------|---|
| Gov't. Code §27443 | - Conflict of Interest by Public Administrator (1972) |
| Penal Code §132 | - Offering False Evidence (1975) |
| Penal Code §134 | - Preparing False Evidence (1975) |
| Corp. Code §25540 | - All violations of Corporate Securities Law (1978) |
| Corp. Code §25541 | - Fraud in offer, purchase or sale of Securities (1978) |
| Welf. & Inst. Code §11483 | - Welfare Fraud (1981) |
| Welf. & Inst. Code §14107 | - Medi-Cal Fraud (1982) |
- D. *Three Years After Commission of Crime* - Penal Code §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

Under the recommendation, the existing limitation periods would be *unchanged** for all felonies and misdemeanors except as indicated below:

Offense	Proposed Limitation	Current Limitation
Treason	None	3 years
Procuring Execution by Perjury.....	None	3 years
Train Wrecking Resulting in Death	None	3 years
Assault with Deadly Weapon by Life- Term Prisoner	None	3 years
Bombing Resulting in Death or Bodily In- jury	None	3 years
Making Defective War Materials that Cause Death.....	None	3 years
Arson Causing Bodily Injury	6 years	3 years
Explosion of Destructive Device with Intent to Murder or Causing Bodily Injury	6 years	3 years
Attempting Crime Punishable by Life Im- prisonment	6 years	3 years
Assault with Firearm on Peace Officer or Fireman in Performance of Duties ..	6 years	3 years
Voluntary Manslaughter	6 years	3 years after discovery
Vehicular Manslaughter Involving Drunk Driving and Gross Negligence	6 years	3 years
Involuntary Manslaughter	3 years	3 years after discovery
Embezzlement of Public Money	3 years after discovery*	None
Falsification of Public Records	3 years after discovery*	None
Acceptance of Bribe by Public Official ..	3 years after discovery*	6 years
Sodomy with Unconscious Victim	3 years	6 years
Oral Copulation with Unconscious Victim	3 years	6 years

* Crimes for which the limitation period is 3 years after discovery would be subject to a 9 year maximum.

APPENDIX 3

EXISTING LAW AND ITS DISPOSITION

Penal Code §§ 799-803 (repealed)

CHAPTER 2. TIME OF COMMENCING CRIMINAL ACTIONS

§ 799 (repealed). Crimes not subject to limitation period

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 or kidnapping for ransom and extends the rule to other capital crimes and crimes punishable by life imprisonment. New Section 799 does not continue the rule that there is no limitation period for embezzlement of public moneys or falsification of public records. These felonies are subject to a three-year limitation period that is tolled until discovery of the crime. New Sections 801 (felonies subject to three-year limitation period) and 803 (tolling of limitation period).

§ 800 (repealed). Limitation period for felonies

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, 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. The substance of subdivision (a) of former Section 800 is continued in Section 801 (felonies subject to three-year limitation period).

Subdivision (b) is superseded by new Section 800 (felonies subject to six-year limitation period). New Section 800 continues the six-year limitation period for all crimes except sodomy or oral copulation with an unconscious victim, which are subject to a three-year period (Section 801), and acceptance of a bribe by a public official or public employee, which is governed by new Sections 801 (felonies subject to three-year limitation period) and 803 (tolling of limitation period).

The substance of subdivision (c) is continued in new Sections 801 (three-year limitation period for felonies) and 803 (tolling of limitation period), with the exception of voluntary and involuntary manslaughter, which are governed by new Sections 800 (felonies subject to six-year limitation period) and 801 (felonies subject to three-year limitation period).

§ 801 (repealed). Limitation period for misdemeanors

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 802 (one-year limitation period for misdemeanors) and 804 (commencement of prosecution). The substance of subdivision (b) is continued in new Section 805 (classification of offenses).

§ 802 (repealed). Absence of defendant from state

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. See new Section 803 (tolling of limitation period). The statute of limitations may be satisfied as to a defendant outside the state by issuance of an arrest warrant. New Section 804 (commencement of prosecution).

§ 802.5 (repealed). 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 803(b) (tolling of limitation period) and 804 (commencement of prosecution).

§ 803 (repealed). When an indictment is found

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 804 (commencement of prosecution).

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