

SPEEDY TRIAL AND THE STATUTE OF LIMITATIONS

By Jonathan Grossman 2014

I. CONSTITUTIONAL SPEEDY TRIAL

The federal right to a speedy trial is found in the speedy trial clause of the Sixth Amendment and the due process clause of the Fourteenth Amendment. The Sixth Amendment right to a speedy trial starts with a formal indictment, arrest, or holding to answer on a criminal charge. (*United States v. Marion* (1971) 404 U.S. 307, 320.) “[I]t is either a formal indictment or information or else the actual restraints imposed by arrest and holding to answer a criminal charge that engage the particular protections of the speedy trial provision of the Sixth Amendment.” (*Ibid.*) The California Supreme Court has interpreted this to mean that the Sixth Amendment right starts with the holding order or the indictment, not the filing of the felony complaint. (*People v. Martinez* (2000) 22 Cal.4th 750, 754, 761-763.) Delay before being held to answer or the filing of the indictment is measured by the due process clause under the Fourteenth Amendment. (*Id.* at p. 765.)

However, “[u]nder the state Constitution, the filing of a felony complaint is sufficient to trigger the protection of the speedy trial right.” (*Martinez, supra*, 22 Cal.4th at p. 754; see Cal. Const., art. I, § 15.) The due process clause (Cal. Const., art. I, §§ 7, 15) applies for delays before the filing of the complaint, but the test is the same as California's speedy trial claim. “[R]egardless of whether defendant's claim is based on a due process analysis or a right to a speedy trial not defined by statute, the test is the same, i.e., any prejudice to the defendant resulting from the delay must be weighed against justification for the delay.” (*Scherling v. Superior Court* (1978) 22 Cal.3d 493, 505.)

“[T]here are two important differences in the operation of the state and federal constitutional rights as construed by our courts. [¶] The first difference concerns the point at which the speedy trial right attaches. Under the state Constitution, the filing of a felony complaint is sufficient to trigger the protection of the speedy trial right. [Citations.] Under the federal Constitution, however, . . . federal speedy trial right begins to operate: ‘[at] either a formal indictment or information or else the actual restraints imposed by arrest and holding to answer a criminal charge’ [Citation.] [¶] The second difference is in the showing that a defendant must make to obtain a dismissal for violation of the speedy trial right. For the federal Constitution's speedy trial right, the United States Supreme Court has articulated a balancing test . . . [and] delay that is ‘uncommonly long’ triggers a presumption of prejudice. Under the state Constitution's speedy trial right, however, no presumption of prejudice arises from delay after the filing of a complaint and before arrest or formal accusation by

indictment or information [citation]; rather, in this situation a defendant seeking dismissal must affirmatively demonstrate prejudice [citation].” (*Martinez, supra*, 22 Cal.4th at pp. 754-755.)

The court can wait until trial before ruling on a speedy trial motion (*Martinez, supra*, 22 Cal.4th at pp. 769-770), but it may rule before trial (*People v. Boysen* (2008) 165 Cal.App.4th 761, 781-782).

A. Fourteenth Amendment Right to Due Process

The due process clause “has a limited role to play in protecting against oppressive delay.” (*United States v. Lovasco* (1977) 431 U.S. 783, 789.) At the threshold, the defendant must show actual prejudice. (*United States v. Marion* (1971) 404 U.S. 307, 324-325.)

“The defendant has a heavy burden to prove that a pre-indictment delay caused actual prejudice: the proof must be definite and not speculative, and the defendant must demonstrate how the loss of a witness and/or evidence is prejudicial to his case.” If this is shown, then the prejudice is balanced with the government's justification. (*United States v. Moran* (9th Cir. 1985) 759 F.2d 777, 782; accord, *United States v. Gregory* (9th Cir. 2003) 332 F.3d 1157, 1165.)

There is disagreement among the circuits over what governmental action qualifies as undue delay. Some require near purposeful oppression; the Fourth, Seventh, and Ninth do not. (See *United States v. Gross* (E.D. N.Y. 2001) 165 F.Supp.2d 372, 379-380.) In the Ninth Circuit, “we do not find that intent or reckless behavior by the government is an essential ingredient in the mix. If mere negligent conduct by the prosecutors is asserted, then obviously the delay and/or prejudice suffered by the defendant will have to be greater than that in cases where recklessness or intentional governmental conduct is alleged. [¶] After making the balancing determination, a pre-indictment delay will be permissible unless it violates fundamental conceptions of justice which lie at the base of our civil and political institutions.” (*United States v. Moran* (9th Cir. 1985) 759 F.2d 777, 782.)

B. Sixth Amendment Right to a Speedy Trial

The United States Supreme Court specified four factors to be considered in determining whether a criminal defendant's constitutional right to a speedy trial has been violated: “[1] Length of delay, [2] the reason for the delay, [3] the defendant's assertion of his right, and [4] prejudice to the defendant.” (*Barker v. Wingo* (1972) 407 U.S. 514, 530.)

The United States Supreme Court has extended this analysis to undue delay in civil cases which amount to a violation of due process. (*United States v. Eight Thousand Eight Hundred and Fifty Dollars in United States Currency* (1983) 461 U.S. 555, 564.) The California Supreme Court has acknowledged that a due process test can be applied to civil commitment proceedings. (See *People v. Allen* (2007) 42 Cal.4th 91, 105.) The Barker test has been applied to delays in involuntary commitment proceedings in California as part of a due process analysis. (See, e.g., *People v. Litmon* (2008) 162 Cal.App.4th 383, 395-399 [SVP]; *People v. Tatum* (2008) 161 Cal.App.4th 41, 57-66 [MDO proceeding]; *People v. Mitchell* (2005) 127 Cal.App.4th 936, 943-944 [NGI extension proceeding]; see also *People v. Allen* (2007) 42 Cal.4th 91, 105 [acknowledging the test has been applied to commitment proceedings].)

1. Length of delay

“The length of the delay is to some extent a triggering mechanism. Until there is some delay which is presumptively prejudicial, there is no necessity for inquiry into the other factors that go into the balance.” (*Barker, supra*, 407 U.S. at p. 530 [five year delay sufficient].) “The first of these is actually a double enquiry. Simply to trigger a speedy trial analysis, an accused must allege that the interval between accusation and trial has crossed the threshold dividing ordinary from ‘presumptively prejudicial’ delay [citation] since, by definition, he cannot complain that the government has denied him a ‘speedy’ trial if it has, in fact, prosecuted his case with customary promptness. If the accused makes this showing, the court must then consider, as one factor among several, the extent to which the delay stretches beyond the bare minimum needed to trigger judicial examination of the claim. [Citation.] This latter enquiry is significant to the speedy trial analysis because . . . the presumption that pretrial delay has prejudiced the accused intensifies over time.” (*Doggett v. United States* (1992) 505 U.S. 647, 651-652.) A delay of one year can create a presumption of prejudice. (*Id.* at pp. 655-656; *People v. Williams* (2013) 58 Cal.4th 197, 234-235 [seven year delay in bringing a capital case was presumptively prejudicial].)

“Under the federal Constitution, the defendant need not identify any specific prejudice from an unreasonable delay in bringing the defendant to trial after the speedy trial right has attached. (*Moore v. Arizona*, [(1973)] 414 U.S. 25, 26.) Instead, delay that is ‘uncommonly long’ triggers a presumption of prejudice, with the presumption intensifying as the length of the delay increases. (*Doggett v. United States, supra*, 505 U.S. 647, 651-652, 656-657.)” (*Martinez, supra*, 22 Cal.4th at p. 765; see *Leaututufu v. Superior Court* (2011) 202 Cal.App.4th Supp. 1, 8 [“it is important to distinguish between (i) the prejudice required to initiate a *Barker* analysis (presumed prejudice is sufficient), and (ii) the prejudice that the court considers when engaging in the *Barker* four factor analysis (prejudice is required, but extreme delay in light of the charge can create a conclusive presumption of such

prejudice)”).)

2. The reason for delay

The reason for the delay is the “flag all litigants seek to capture.” (*United States v. Loud Hawk* (1986) 474 U.S. 302, 304.) “A deliberate attempt to delay the trial in order to hamper the defense should be weighted heavily against the government. A more neutral reason such as negligence or overcrowded courts should be weighted less heavily but nevertheless should be considered since the ultimate responsibility for such circumstances must rest with the government rather than with the defendant. Finally, a valid reason, such as a missing witness, should serve to justify appropriate delay.” (*Barker, supra*, 407 U.S. at p. 531.) When the prosecution was diligent, the defense must show actual prejudice. (*United States v. Corona-Verbarna* (9th Cir. 2007) 509 F.3d 1105, 1116.)

A delay caused by the defendant would usually be fatal to a speedy trial claim. (See, e.g., *People v. Williams* (2013) 58 Cal.4th 197, 235.) A delay caused by the defense attorney is attributed to the defendant, not the state. (*Vermont v. Brillon* (2009) 556 U.S. 81, 90-94; see *United States v. Drake* (9th Cir. 2008) 543 F.3d 1080, 1085 [delay for the defendant to litigate motions is the defendant's fault]; *Stuard v. Stewart* (9th Cir. 2005) 401 F.3d 1064, 1068 [postponements for defense counsel to prepare for trial].) Delay caused by the judicial process is not weighed against the prosecution. (*People v. McDowell* (2012) 54 Cal.4th 395, 413-416 [15 year delay in penalty phase retrial]; *People v. Superior Court (Humberto S.)* (2008) 43 Cal.4th 737, 748 [“Prosecutors need not fear that the good faith availment of [appellate] review shall lead to [a penalty].”).) See part I.E.

3. The defendant's assertion of the right

The Supreme Court has rejected a requirement that the defendant “demand” a speedy trial; so long as there is not an express waiver, the defendant does not lose the right to a speedy trial. (*Barker, supra*, 407 U.S. at pp. 525-528.) “Presuming waiver from a silent record is impermissible. The record must show, or there must be an allegation and evidence which show, that an accused was offered counsel but intelligently and understandably rejected the offer. Anything less is not waiver.” (*Id.* at p. 526, internal quotation marks omitted.) Thus, the failure to assert a speedy trial right in the trial court is not necessarily fatal. (*People v. Williams* (2013) 58 Cal.4th 197, 237-239.) On the other hand, the defendant waiving time can diminish a speedy trial claim. (See, e.g., *People v. McDermott* (2002) 28 Cal.4th 946, 987.)

A speedy trial motion cannot be denied merely because the defendant did not bring himself to court. The responsibility is on the prosecution and the court. (*Barker, supra*, 407

U.S. at p. 527; *Stabio v. Superior Court* (1994) 21 Cal.App.4th 1488, 1498 [defendant was unaware of pending charges].) But there is no speedy trial violation when defendant is willfully a fugitive. (*People v. Hsu* (2008) 168 Cal.App.4th 397, 403-408 [defendant failed to appear for sentencing]; *People v. Perez* (1991) 229 Cal.App.3d 302, 309; *In re Gere* (1923) 64 Cal.App. 418, 422 [fugitive status and deceit causing delay was good cause for delay under the statutory speedy trial act]; see *United States v. Sperow* (9th Cir. 2007) 494 F.3d 1223, 1225-1226; *United States v. Corona-Verbarna* (9th Cir. 2007) 509 F.3d 1105, 1115-1116 [waiting for Mexico to find defendant was sufficient diligence].)

4. Prejudice to the defendant

In the final step, the court must weigh the reasons for and the extent of the delay against evidence of actual prejudice. (*Doggett, supra*, 505 U.S. at p. 656.) A speedy trial motion cannot be denied merely because of a lack of actual prejudice. The court must still balance the other three factors. (*Moore v. Arizona* (1973) 414 U.S. 24, 26.) See part I.D.

C. State Constitutional Right to a Speedy Trial

The court must engage in a three-step analysis. First, the defendant must establish prejudice. Second, if prejudice is shown, even if slight, the burden shifts to the prosecution to justify the delay. Third, if a justification is presented, the court must weigh the prejudice against the justification for delay. (*People v. Lowe* (2007) 40 Cal.4th 937, 942; *Serna v. Superior Court* (1985) 40 Cal.3d 239, 249; *Scherling v. Superior Court* (1978) 22 Cal.3d 493, 505-506.)

Not making a motion on state speedy trial grounds can forfeit the claim of the state right to a speedy trial. (*People v. Seaton* (2001) 26 Cal.4th 598, 633; *People v. Wright* (1990) 52 Cal.3d 367, 389, disapproved on other grounds in *People v. Williams* (2010) 49 Cal.4th 405, 459.)

1. Prejudice to the defendant

First the defendant must show actual prejudice. (*Martinez, supra*, 22 Cal.4th at p. 755; *Scherling, supra*, 22 Cal.3d at pp. 505-506.) “[W]e hold that a defendant claiming a speedy trial violation under the California Constitution must show that the delay has impaired the ability to defend against the charged crime because, for instance, a witness has become unavailable, evidence has disappeared, or the memory of a potential witness has faded.” (*People v. Lowe* (2007) 40 Cal.4th 937, 946 [not enough that the defendant lost the possibility of serving concurrent sentence or was in custody].) “If defendant fails to show prejudice, the court need not inquire into the justification for the delay since there is nothing

to ‘weigh’ such justification against.” (*People v. Dunn-Gonzalez* (1996) 47 Cal.App.4th 899, 910.) However, if the prosecution deliberately waited until another sentence is finished, this bad faith might be sufficient prejudice. (See *Lowe, supra*, 40 Cal.4th at p. 946.) See part I.D.

At least for misdemeanors, one can presume prejudice if the delay is longer than the period of the statute of limitations. (*Serna v. Superior Court* (1985) 40 Cal.3d 239, 253-254 [one year for misdemeanors and wobblers].) But otherwise, there is no presumption of prejudice. (*Martinez, supra*, 22 Cal.4th at pp. 755, 767.)

2. The prosecution’s justification for delay

A minimal showing of prejudice shifts the burden to the prosecution to justify the delay, and the case may be dismissed in the absence of a legitimate justification. (*People v. Belton* (1992) 6 Cal.App.4th 1425, 1433; *People v. Hartman* (1985) 170 Cal.App.3d 572, 579; *Garcia v. Municipal Court* (1984) 163 Cal.App.3d 148; *Fowler v. Superior Court* (1984) 162 Cal.App.3d 215; *Penney v. Superior Court* (1972) 28 Cal.App.3d 941, 951-952.) “Even a minimal showing of prejudice may require dismissal if the proffered justification for delay is unsubstantial. By the same token, the more reasonable the delay, the more prejudice the defense would have to show to require dismissal.” (*Ibarra v. Superior Court* (1984) 162 Cal.App.3d 853, 858.) See part I.E.

3. Weighing the prejudice against the justification for delay

In balancing the interests, the court shall consider: (1) the time involved, (2) who caused the delay, (3) whether delay was purposeful, (4) prejudice to defendant, and (5) any waiver of time by the defendant. (*People v. Dean-Gonzalez* (1996) 47 Cal.App.4th 899, 910-911.)

D. Prejudice

“Prejudice, of course, should be assessed in the light of the interests of defendants which the speedy trial right was designed to protect. This Court has identified three such interests: (i) to prevent oppressive pretrial incarceration; (ii) to minimize anxiety and concern of the accused; and (iii) to limit the possibility that the defense will be impaired. Of these, the most serious is the last, because the inability of a defendant adequately to prepare his case skews the fairness of the entire system. If witnesses die or disappear during a delay, the prejudice is obvious. There is also prejudice if defense witnesses are unable to recall accurately events of the distant past. Loss of memory, however, is not always reflected in the record because what has been forgotten can rarely be shown.” (*Barker, supra*, 407 U.S. at

p. 532; accord *Doggett, supra*, 505 U.S. at p. 655.)

Fading memory or lost witnesses can be actual prejudice. (*People v. Morris* (1988) 46 Cal.3d 1, 37; *People v. Hill* (1984) 37 Cal.3d 491, 498.) But this showing cannot be based on speculation. It must be shown that certain evidence could have been introduced had there been no delay. (*People v. Williams* (2013) 58 Cal.4th 197, 235-237; *People v. Abel* (2012) 53 Cal.4th 891, 909-910 [not enough memories faded, must also show witness would have remembered more earlier]; *People v. Conrad* (2006) 145 Cal.App.4th 1175, 1184 [must show what the lost testimony would have been]; see *United States v. Corona-Verbarna* (9th Cir. 2007) 509 F.3d 1105, 1113 [prejudice from lost testimony cannot be speculative].)

Lost evidence can be sufficient to show evidence. (But see *People v. Alexander* (2010) 49 Cal.4th 846, 875-876 [no prejudice from the lost evidence when could not show there would have been helpful information or that the evidence actually existed].)

Disruption in one's life, break in employment, draining of resources, curtailment in association, public scorn, anxiety for the defendant and family and friends can be prejudice in the final analysis. (*United States v. Marion* (1971) 404 U.S. 307; *United States v. Ewell* (1966) 383 U.S. 116, 120; *Klopper v. North Carolina* (1967) 386 U.S. 213.) The "time spent in jail awaiting trial has a detrimental impact on the individual. It often means loss of a job; it disrupts family life; and it enforces idleness. Most jails offer little or no recreational or rehabilitative programs.[fn.] The time spent in jail is simply dead time. . . . Imposing these consequences on anyone who has not yet been convicted is serious." (*Barker, supra*, 407 U.S. at p. 533.) "Time is an irretrievable commodity. Broken bones may knit, mistakes may be rectified, burned houses may be rebuilt, damaged cars repaired, but time once past can never be recovered. Eight or nine months is a substantial delay." (*People v. Simpson* (1973) 30 Cal.App.3d 177, 183 [eight or nine unnecessary months in a mental institution must be characterized as oppressive when the defendant was not transported after being found competent].) But "delay alone, even delay that is 'uncommonly long,' is not enough to demonstrate prejudice." (*People v. Martinez* (2000) 22 Cal.4th 750, 755.)

Loss of a possible concurrent sentence can be prejudice in the final analysis. (See *Strunk v. United States* (1973) 412 U.S. 434; *Smith v. Hooey* (1969) 393 U.S. 374, 377-378; but see *United States v. Gregory* (9th Cir. 2003) 322 F.3d 1157, 1164 [speculative whether would have received concurrent time].) However, this is insufficient for the initial showing of prejudice. (*People v. Lowe* (2007) 40 Cal.4th 937, 945-946 .)

E. Justification for Delay

The state supreme court has asserted that the federal due process standard for what constitutes sufficient justification for delay is unclear. (*People v. Cowan* (2010) 50 Cal.4th 401, 430-431; *People v. Nelson* (2008) 43 Cal.4th 1242, 1251-1254.) In any event, “the law under the California Constitution is at least as favorable for the defendant in this regard” as federal law. (*Nelson*, at p. 1251.)

“[D]ifferent weights [are to be] assigned to different reasons” for delay. (*Barker, supra*, 407 U.S. at p. 531.) “Between diligent prosecution and bad-faith delay, official negligence in bringing an accused to trial occupies the middle ground. While not compelling relief in every case where bad-faith delay would make relief virtually automatic, neither is negligence automatically tolerable simply because the accused cannot demonstrate exactly how it has prejudiced him.” (*Doggett, supra*, 505 U.S. at pp. 656-657.)

A legitimate justification for delay is one that has a “reasonable ‘police purpose’ ” necessitating delay. (*Penney v. Superior Court* (1972) 28 Cal.App.3d 941, 953.) A delay to conduct appropriate investigation is legitimate. (*United States v. Lovasco* (1977) 431 U.S. 783, 792-796 [effort to obtain more evidence]; *Barker*, 407 U.S. at pp. 531, 533-534 [illness of the investigating officer justified seven months of a five year delay]; *People v. Abel* (2012) 53 Cal.4th 891, 910-911 [slow investigation is not negligence]; *People v. Nelson* (2008) 43 Cal.4th 1242, 1256 [delay of 25 years until DNA cold hit is legitimate]; *People v. New* (2008) 183 Cal.App.4th 442, 462, 465 [delay of 30 years until defendant killed his second wife was legitimate]; *People v. Harman* (1985) 170 Cal.App.3d 572, 581.)

Delay because defendant is in custody in another state is a legitimate justification for delay. (*People v. DePriest* (2007) 42 Cal.4th 1, 28-29; *People v. Horning* (2004) 34 Cal.4th 871, 893-895.) The defendant willfully failing to appear is often a sufficient justification. (See *Ogle v. Superior Court* (1992) 4 Cal.App.4th 1007.)

On the other hand, negligence in moving the case along is not a legitimate justification for delay. (*Scherling v. Superior Court* (1978) 22 Cal.3d 493, 507; *People v. Hill* (1984) 37 Cal.3d 491, 497; *Rhinehart v. Municipal Court* (1984) 35 Cal.3d 772, 781; *People v. Enriquez* (1977) 19 Cal.3d 221, 236-237 [failure to serve bench warrant]; *People v. Litmon* (2008) 162 Cal.App.4th 383, 405 [prosecution failed to serve subpoena on witness]; *Jackson v. Superior Court* (1991) 230 Cal.App.3d 1391, 1394 [sheriff did not transport defendant]; see *United States v. Mendoza* (9th Cir. 2008) 530 F.3d 758, 763-764 [failure to initiate extradition]; but see *People v. Contreras* (2009) 177 Cal.App.4th 1296, 1303 [delay in sentencing was justified when it was caused by difficulty in locating defendant in prison].)

F. Appellate Review

A violation of the constitutional right to a jury trial cannot be challenged on appeal after a plea. (*People v. Hernandez* (1992) 6 Cal.App.4th 1355, 1357-1358.)

In a due process claim, “ ‘First, the defendant must show that he has been prejudiced by the delay. Second, the burden then shifts to the prosecution to justify the delay. Third, the court balances the harm against the justification.’ [Citations.] [¶] The first factor, prejudice, is a question of fact to be determined by the trial court. [Citations.] With respect to the second factor, ‘the appraisal of the reasonableness of the delay is ordinarily confided to the trial court’s discretion.’ [Citations.] The third step involves the application of law to facts. . . . [T]his ultimate conclusion partakes of an issue of law on which this court exercises its independent judgment. [Citation.]” (*People v. Abraham* (1986) 185 Cal.App.3d 1221, 1226-1227.)

II. STATUTORY SPEEDY TRIAL

“The statutory speedy trial provisions, Penal Code sections 1381 to 1389.8, are ‘supplementary to and a construction of’ the state constitutional speedy trial guarantee.” (*People v. Martinez* (2000) 22 Cal.4th 750, 766.) There is no need to show prejudice in the trial court or in a pretrial writ petition if the statutory right is violated. (*Ibid.*; *Townsend v. Superior Court* (1975) 15 Cal.3d 774, 780-782.) However, prejudice must be shown on appeal. (*People v. Wilson* (1963) 60 Cal.2d 139, 150.) Prejudice may exist if there has been a previous dismissal or an unfair trial. (See *People v. Johnson* (1980) 26 Cal.3d 557, 574.)

The defendant must object to setting a trial later than the statutory limit and move to dismiss in order to argue the matter on appeal. (*People v. Williams* (1999) 77 Cal.App.4th 436, 459-460; see also *In re Maurice E.* (2005) 132 Cal.App.4th 474, 481-482.)

All cases hold that a statutory speedy trial claim cannot be raised on appeal after a plea in a felony case (except perhaps under § 1389), at least so long as there has been no prior dismissals of the case, even if there is a certificate of probable cause. (*People v. Hernandez* (1992) 6 Cal.App.4th 1355, 1357-1358; *People v. Hayton* (1979) 95 Cal.App.3d 413, 419; *People v. Lee* (1980) 100 Cal.App.3d 715, 717-718.) The court in *Avila v. Municipal Court* (1983) 148 Cal.App.3d 807 stated denial of a statutory speedy trial motion in a misdemeanor case was appealable after a plea. This was because the prosecution cannot refile after the dismissal of a misdemeanor case. The court in *People v. Aguilar* (1998) 61 Cal.App.4th 619 and *People v. Egbert* (1997) 59 Cal.App.4th 503, 506 have ruled speedy trial motions in all misdemeanor cases are not appealable after a plea.

There is a split of authority whether a violation of the Interstate Agreement on Detainers (Pen. Code, § 1389) can be challenged on appeal after a plea with a certificate of probable cause. (Compare *People v. Cella* (1981) 114 Cal.App.3d 905, 915, fn. 5 and *People v. Reyes* (1979) 98 Cal.App.3d 524, 531-532 with *People v. Hernandez* (1992) 6 Cal.App.4th 1355, 1357-1362.)

A. Penal Code Section 1382

1. The 60 day rule basic speedy trial right

The information must be filed within 15 days of the date the defendant was held to answer. (Pen. Code, § 1382, subd. (a)(1); *People v. Dethloff* (1992) 9 Cal.App.4th 620, 625-626.) The trial must commence within 60 days of the filing of the information; the date of the arraignment is irrelevant. (Pen. Code, § 1382, subd. (a)(2); see *Sykes v. Superior Court* (1973) 9 Cal.3d 83, 92.) The trial must commence within 60 days of the grand jury finding of indictment. (Pen. Code, § 1382, subd. (a)(2).)

Penal Code section 1382 “provides that, in a felony case, the court shall dismiss the action when a defendant is not brought to trial within 60 days of his or her arraignment on an indictment or information, unless (1) the defendant enters a general waiver of the 60-day trial requirement, (2) the defendant requests or consents (expressly or impliedly) to the setting of a trial date beyond the 60-day period (in which case the defendant shall be brought to trial on the date set for trial or within 10 days thereafter), or (3) ‘good cause’ is shown.” (*People v. Sutton* (2010) 48 Cal.4th 533, 545.)

If the defendant fails to appear causing a delay in the trial, a new 60 day period begins. (Pen. Code, § 1382, subd. (b).)

If the defendant is found to be incompetent, trial must be within 60 days after being found competent again. (Pen. Code, §§ 859b, 1382, subd. (a)(2).)

If the defendant wins reversal on appeal, retrial must be within 60 days of the remittitur, or within 90 days if a new preliminary examination is held. (Pen. Code, § 1382, subd. (a)(2).)

If there is a general time waiver, then the defendant must announce to the court he or she is no longer waiving time. The 60-day period starts when the defendant pulls the time waiver. If there is a specific time waiver (e.g., the defendant waives time until a certain date), then the trial must start within 60 days after the period of the specific time waiver though the ten day rule still applies. (Pen. Code, § 1382, subd. (a)(2)(A); *Medina v. Superior*

Court (2000) 79 Cal.App.4th 1280.)

If the defendant fails to object to the setting of the trial beyond the statutory time limit, it is deemed to be a general time waiver. (*Barsamyan v. Appellate Division* (2008) 44 Cal.4th 960, 970 [trial counsel was not unconditionally ready for trial because of commitments with other clients]; *Townsend v. Superior Court* (1975) 15 Cal.3d 774, 783; but see *People v. Superior Court (Alexander)* (1995) 31 Cal.App.4th 1119, 1133 [no time waiver when set beyond the statutory time limit without defendant or counsel present].)

There must be a good faith effort to start the trial and not a sham beginning. (*People v. Hijjaj* (2010) 50 Cal.4th 1184, 1193-1194 [because could not at 4:15 p.m. meaningfully start a trial in Indio, 76 miles away, the court room was not available]; *Perryman v. Superior Court* (2006) 141 Cal.App.4th 767, 776-777 [failure to pick a new jury after grant a *Wheeler-Batson* motion required dismissal]; *In re Chuong D.* (2006) 135 Cal.App.4th 1308, 1310 [trial did not start until the first witness was called, days after the court purported to start the trial]; *People v. Cory* (1984) 157 Cal.App.3d 1094 [trial did not start when the judge was doing another trial]; but see *Thomas v. Superior Court* (1984) 162 Cal.App.3d 728 [judge can do two trials at the same time for brief periods].)

2. The 10 day rule

Once the trial is set to start within the 60 days, the trial need not commence for another ten days unless the defendant objects to the trial starting more than 60 days later (implied waiver of the 60 day rule). (Pen. Code, § 1382, subd. (a)(2)(B); *Bailon v. Appellate Division* (2002) 98 Cal.App.4th 1331, 1343-1346.) There is an implied waiver if the defendant is not unconditionally ready for trial. (*Barsamyan v. Appellate Div.* (2008) 44 Cal.4th 960, 975-980.) A 'special time waiver,' permitting the trial to start sometime after 60 days without a general time waiver, automatically permits the ten day rule. (§ 1382, subd. (a)(2)(B).)

There does not need to be good cause to delay starting the trial into the ten-day period. (*People v. Superior Court (Alexander)* (1995) 31 Cal.App.4th 1119, 1131.) The prosecution or the defense can waive the ten day rule to make it longer, shorter, or start anew. (*Mendez v. Superior Court* (2008) 162 Cal.App.4th 827, 835.) If the 60th day is on a holiday or weekend, the ten day period starts on the next court day. (*Bailon v. Superior Court* (2002) 98 Cal.App.4th 1331, 1340, fn. 4.)

The court can continue one defendant's trial until the ten day grace period in order to have a joint trial with the codefendant. (*Smith v. Superior Court* (2012) 54 Cal.4th 592, 601-607.)

B. Penal Code Section 1381 Inmate Demand

Penal Code section 1382 does not apply to a defendant already serving a prison sentence or a jail sentence in another county. (*People v. Jacobs* (1972) 27 Cal.App.3d 246, 256-257; *People v. Rowden* (1969) 268 Cal.App.2d 868, 872-873.)

Penal Code section 1381 provides that if the defendant is in state prison or in a county jail on one matter with at least a 90 day sentence and there is a hold in another matter, he must be tried within 90 days of a proper demand to the district attorney, unless the defendant waives time. No showing of good cause can excuse the failure to bring the defendant to trial within 90 days of a proper demand. (See *People v. Cave* (1978) 81 Cal.App.3d 957, 963.)

For those committed to prison, section 1381 does not apply until the defendant is in prison. (*People v. Gutierrez* (1994) 30 Cal.App.4th 105, 111; *People v. Clark* (1985) 172 Cal.App.3d 975, 980-981.)

Section 1381 applies only if the defendant has a sentence of at least 90 days. (*Chavez v. Superior Court* (1984) 153 Cal.App.3d 130, 131-133 [statute applied though the defendant had less than 90 days remaining on the sentence when the demand was made]; but see *People v. Brusell* (1980) 108 Cal.App.3d 712, 716-718 [section 1381 did not apply when the defendant had a 180 day sentence with 115 days of presentence credits, including conduct credits, because there was less than 90 days of the sentence to be served].)

“Because of the drastic sanction imposed by section 1381, a prisoner must strictly comply with its conditions.” (*People v. Gutierrez* (1994) 30 Cal.App.4th 105, 111.)

The time commences under this section when the defendant delivers the demand to the district attorney. (See *People v. Godlewski* (1943) 22 Cal 2d 677, 680.) Sending the demand to the court, based on misinformation from jail staff, is insufficient. (*Reynolds v. Superior Court* (1980) 113 Cal.App.3d 510, 513-514.)

“[T]he People have the duty not only to tell the defendant of charges pending against him (*In re Mugica* (1968) 69 Cal. 2d 516, 523-524 . . .) but also to inform him of the means by which he can invoke the benefits of [Penal Code] section 1381. (*People v. Brusell* (1980) 108 Cal. App. 3d 712, 717-718. . . .)’ (*Smith v. Superior Court* (1984) 159 Cal. App. 3d 1172, 1175, fn. omitted.) In *People v. Johnson* (1987) 195 Cal. App. 3d 510, 515, the court explained: ‘The cases applying section 1381 have held that, even though the section is silent concerning any duty to notify a defendant of pending proceedings so that he can invoke his right to prompt disposition of those proceedings, the constitutional guarantee of a speedy trial requires that such notice be given. (*In re Mugica* [, *supra*,] 69 Cal. 2d 516 . . .; *People v. Cave*

(1978) 81 Cal. App. 3d 957) Where no notice is given to alert a prisoner of his right to exercise his rights under Penal Code section 1381, his failure to request prompt disposition of his case is excused, and the court is then required to determine whether his right to a speedy determination of the matter has been violated by weighing the prejudicial effect of the delay against any justification for the delay. (*People v. Cave, supra*, 81 Cal. App. 3d at p. 965.)' (See also *Smith v. Superior Court, supra*, 159 Cal. App. 3d at p. 1175, fn. 2, quoting California Department of Corrections case records manual provisions by which the department is required to inform defendant of the means by which he can invoke the benefits of section 1381.)" (*People v. Martinez* (1995) 37 Cal.App.4th 1589, 1596, disapproved on other grounds in *People v. Lowe* (2007) 40 Cal.4th 937, 946.)

The defendant waived a speedy trial claim under section 1381 when he did not object to setting the trial to be more than 90 days from his demand. (*People v. Lenschmidt* (1980) 103 Cal.App.3d 393, 396-397.)

Section 1381 does not apply to prisoners in other states. (*People v. Dial* (2004) 123 Cal.App.4th 116, 1121-1122.)

Dismissal is not required if the delay is caused by the defendant. (*People v. Manina* (1975) 45 Cal.App.4th 896, 900-901, disagreed with on other grounds in *People v. Clark* (1985) 172 Cal.App.3d 975, 981-983.) Dismissal was not required when the county was unable to obtain custody of the defendant because he was transported to a different county after he made two simultaneous section 1381 demands. (*People v. Boggs* (1985) 166 Cal.App.3d 851, 855-857.)

Section 1381 applies to pending sentencing and violation of probation hearings. (*People v. Wagner* (2009) 45 Cal.4th 1039, 1053-1056; *People v. Johnson* (1987) 195 Cal.App.3d 510, disapproved on other grounds in *In re Hoddinott* (1996) 12 Cal.4th 992, 1005; *People v. Ruster* (1974) 40 Cal.App.3d 865, 873, disapproved on other grounds in *Hoddinott, supra*, at p. 1005; *Boles v. Superior Court* (1974) 37 Cal.App.3d 479, 484; *Rudman v. Superior Court* (1973) 36 Cal.App.3d 22, 27.) The remedy is to dismiss the violation of probation. (*Wagner*, at p. 1058.) But a second violation of probation can be filed under Penal Code section 1387. (*Id.* at pp. 1059-1061.)

If the matter is dismissed under section 1381, the prosecution is permitted to refile charges unless the defendant can show actual prejudice. (*Crockett v. Superior Court* (1975) 14 Cal.3d 433, 436-437; *People v. Godlewski* (1943) 22 Cal.2d 677, 682-683.) If the defendant is still in prison or a county jail on another matter, he or she must make a new demand when charges are refiled. (*People v. Eldridge* (1997) 52 Cal.App.4th 91, 94-96.)

C. Penal Code Section 1381.5 Demand by Federal Prisoner in California

Penal Code section 1381.5 applies to defendants who are serving a sentence in federal custody in California and who have a trial or sentence on a state court matter pending. It requires the trial or sentence be within 90 days of a proper demand to the district attorney. Section 1381.5 is the “controlling provision with respect to the time within which persons incarcerated in federal institutions *in California* should be brought to trial.” (*Selfa v. Superior Court of Santa Clara County* (1980) 109 Cal.App.3d 182, 187, citing *Barker v. Municipal Court* (1966) 64 Cal.2d 806, 811, italics added; accord *People v. Vila* (1984) 162 Cal.App. 3d 76, 81.)

There is an implied requirement that notice of a pending case shall be made within a reasonable time. (*People v. Vila* (1984) 162 Cal.App. 3d 76, 80-84.)

The inmate's demand cannot be made until he or she is serving a sentence in the federal prison. (*People v. Neustice* (1972) 24 Cal.App.3d 178, 189.)

A letter from a prisoner in a federal correctional institution to a local prosecuting attorney, inquired whether his criminal case in state court had been dismissed because of his federal incarceration, and the letter mentioned the Speedy Trial Act; nonetheless, the letter did not constitute a sufficient request that the defendant be brought to trial within the meaning of section 1381.5. (*People v. Garcia* (1985) 171 Cal App 3d 1187, 1191-1192.)

Delay is permitted when the defendant acquiesces to scheduling delays. (*People v. Contreras* (2009) 177 Cal.App.4th 1296, 1301-1302.)

The remedy is dismissal. (*Baker v. Municipal Court* (1966) 64 Cal.2d 806, 816; *People v. Brown* (1968) 260 Cal.App.2d 745, 751.)

D. Penal Code Section 1389 Interstate Agreement on Detainers

“Penal Code section 1389 . . . provides that upon failure to bring an out-of-state prisoner to trial in California within 180 days after request therefor, the action shall be dismissed with prejudice.” (*People v. Manina* (1975) 45 Cal.App.3d 896, 902; *Selfa v. Superior Court of Santa Clara County* (1980) 109 Cal.App.3d 182, 187-189.)

Penal Code section 1389 requires a jury trial within 180 days if the defendant makes demand to warden and sends a certified notice to the court and district attorney. (Art. III(a); *Alabama v. Bozeman* (2001) 533 U.S. 146, 156; *New York v. Hill* (2000) 528 U.S. 110, 115; *United States v. Mauro* (1978) 436 U.S. 340, 359; *Netzey v. Superior Court* (2007) 154

Cal.App.4th 228, 234-237; *People v. Garner* 224 Cal.App.3d 1363, 1369; *People v. Rhoden* (1989) 216 Cal.App.3d 1242, 1252-1253; *People v. Cella* (1981) 114 Cal.App.3d 905, 917.)

The IAD is an interstate compact and is subject to federal statutory construction. (*Cuyler v. Adams* (1981) 449 U.S. 433, 442; *People v. Oiknine* (1999) 79 Cal.App.4th 21, 26.)

The IAD applies only if the inmate is serving a sentence in another jurisdiction; it does not apply to pre-sentence custody in other jurisdictions. (*People v. Zetsche* (1987) 188 Cal.App.3d 917, 923-924.)

“The section does not become effective until three things occur: (1) there is an untried indictment, information or complaint pending in a California court; (2) the defendant named in said untried indictment, information or complaint is a prisoner serving time in a foreign jurisdiction; and (3) the district attorney lodges a detainer based on such untried indictment, information or complaint against the prisoner in such foreign jurisdiction.” (*People v. Castoe* (1978) 86 Cal.App.3d 484, 489-490.) The term complaint means felony or misdemeanor complaint. (*In re Blake* (1979) 99 Cal.App.3d 1004, 1016.) A “detainer is a notification filed with the institution in which a prisoner is serving a sentence, advising that he [or she] is wanted to face pending criminal charges in another jurisdiction.” [Citations.]” (*United States v. Mauro* (1978) 436 U.S. 340, 359; *People v. Oiknine* (1999) 79 Cal.App.4th 21, 27-28 [a detainer is a hold].) A letter from the district attorney only notifying foreign authorities of a California matter did not constitute a detainer. (*People v. Garner* (1990) 224 Cal.App.3d 1363, 1368-1370; *People v. Rhoden* (1989) 216 Cal.App.3d 1242, 1251-1252.)

The prisoner has no remedy if there is never a hold or a detainer lodged. (*People v. Oiknine* (1999) 79 Cal.App.4th 21, 24-26; *People v. Rhoden* (1989) 216 Cal.App.3d 1242, 1252-1253; *People v. Castoe* (1978) 86 Cal.App.3d 484, 490.)

“Article III, subdivision (a), provides that the 180-day period is to run from the date the prisoner ‘shall have caused to be delivered’ a written notice and request for final disposition to the district attorney and the court. Article III, subdivision (b), clearly states that the prisoner shall give or send the notice and request to the warden, commissioner of corrections or other official having custody of the prisoner. Even if it is assumed that a detainer was lodged in this case, article III, subdivision (b), does not permit a prisoner’s self-help effort to start the running of the 180-day period. The prisoner must give or send the notice and request to the proper official in the prison where he is incarcerated. The official then is to promptly forward that notice and request along with the certificate to the district attorney and the court by registered or certified mail, return receipt requested.” (*People v. Castoe* (1978) 86 Cal.App.3d 484, 490; *People v. Wilson* (1977) 69 Cal.App.3d 631, 636;

see also *People v. Lavin* (2001) 88 Cal.App.4th 607, 619 [demand ineffective though based on misinformation; defendant fought extradition].) If the warden fails to forward the demand, causing the defendant not to be tried within the time limits, dismissal is required. (*Wilson*, at p. 637.)

Section 1389 does not apply to a pending sentencing hearing. (*People v. Dial* (2004) 123 Cal.App.4th 1116, 1120-1121; *People v. Mahan* (1980) 111 Cal.App.3d 28, 33-34; *People v. Castoe* (1978) 86 Cal.App.3d 484, 487-491.)

Section 1389 does not apply to parole violations. (See *In re Shapiro* (1975) 14 Cal.3d 711, 714, fn. 2.)

Section 1389 does not apply to prisoners in extradition proceedings. (*In re Gilchrist* (1982) 134 Cal.App.3d 867, 870.)

The court shall dismiss the case if (1) the prisoner is returned to sender state before the end of trial, (2) the receiving state refuses the prisoner after filing detainer, or (3) the trial did not start within 180 days of the prisoner's request or 120 days of transportation. (*Alabama v. Bozeman* (2001) 533 U.S. 146, 156 [IAD requires dismissal if prisoner leaves the state for even one day]; *Carchman v. Nash* (1985) 473 U.S. 716, 726; *People v. Lavin* (2001) 88 Cal.App.4th 607, 619; see, e.g., *In re Blake* (1979) 99 Cal.App.3d 1004, 1018; *People v. Reyes* (1979) 98 Cal.App.3d 524, 528-530 [dismissal was required when the prisoner was returned to federal authorities within the state after the preliminary hearing]; but see *People v. Cella* (1981) 114 Cal.App.3d 905, 915-920 [housing the inmate at a federal facility while making state court appearances was permissible]; *People v. Litke* (1980) 122 Cal.App.3d 489, 492-494 [housing the inmate in a federal facility several blocks from the county courthouse was permissible].)

The 180-day limit is tolled while the defendant is "unable to stand trial." There is a split of authority regarding what this means. The Fifth Circuit requires the defendant to be physically or mentally unable to stand trial. The Second, Fourth, and Ninth Circuits follow the federal Speedy Trial Act. The Seventh and Eighth Circuits say it is whenever the defendant is legally or administratively unavailable, such as in administrative segregation. (*United States v. Collins* (9th Cir. 1996) 90 F.3d 1420, 1426; *Netzley v. Superior Court* (2008) 160 Cal.App.4th 348 [delay caused by the defendant counts toward the 180 days, including security measures by the prison].)

IAD protections are waived if the defendant waives time for trial. (*Drescher v. Superior Court* (1990) 218 Cal.App.3d 1140, 1146-1148; *People v. Rhoden* (1989) 216 Cal.App.3d 1242, 1253.)

Refiling a complaint is not permissible once the criminal matter has been dismissed under this provision. (Pen. Code, § 1389, arts. III(a), V(c); see *People v. Manina* (1975) 45 Cal.App.3d 896, 902.)

E. Penal Code Section 1203.2a Probation Violations

Penal Code section 1203.2a provides a mechanism for litigating a pending violation of probation when the defendant is in a prison on another matter. The defendant shall make a written demand in the presence of the warden's representative, or the attorney shall make the demand, to the probation department or court. When this occurs, the court shall sentence the defendant in absentia on the violation of probation within a certain time limits.

A defendant in prison with a pending violation of probation may choose this mechanism for being sentenced in absentia; the failure to do so results in termination of probation. Alternatively, he or she may make a demand under section 1381. This would not waive the right to be present, but failure to comply with the demand does not preclude refiling the alleged violation of probation. (*People v. Wagner* (2009) 45 Cal.4th 1039.)

The sentence shall be reversed if a court sentences a defendant in absentia pursuant to section 1203.2a without a demand from the defendant. (*In re Perez* (1969) 65 Cal.2d 224, 231-232.)

“Section 1203.2a provides for 3 distinct jurisdictional clocks: (1) the probation officer has 30 days from the receipt of written notice of defendant's subsequent commitment within which to notify the probation-granting court (2d par.); (2) the court has 30 days from the receipt of a valid, formal request from defendant within which to impose sentence, if sentence has not previously been imposed (3d par., 4th sentence); and (3) the court has 60 days from the receipt of notice of the confinement to order execution of sentence (or make other final order) if sentence has previously been imposed (3d par., 3d sentence). Failure to comply with any one of these three time limits divests the court of any remaining jurisdiction. (5th par.)” (*In re Hoddinott* (1996) 12 Cal.4th 992, 999.) “The probation officer’s 30-day reporting requirement is jurisdictional and applies once the defendant or other specified person has notified the probation officer in writing of the probationer’s subsequent state prison commitment, even though the written notice may not be a valid request for absentee sentencing.” (*Id.* at p. 1004; *People v. Blanchard* (1996) 42 Cal.App.4th 1842, 1874 [applies only if in prison]; *People v. Young* (1991) 228 Cal.App.3d 171, 175.)

A recent amendment codified the different paragraphs into subdivisions and extended the statute to apply to supervised release and mandatory supervision

The court must dismiss the violation of probation if the probation officer knew the defendant was in prison but never gave notice to the court. (*People v. Holt* (1991) 226 Cal.App.3d 962, 967-968; *People v. Johnson* (1987) 195 Cal.App.3d 510, 515-516; but see *People v. Madrigal* (2000) 77 Cal.App.4th 1050, 1053-1054 [no relief to the defendant when the probation department did not learn of the subsequent imprisonment].)

Under the equal protection clause, section 1203.2a also applies to probationers serving a prison sentence in another state. (*Hayes v. Superior Court* (1971) 6 Cal.3d 216, 223-225.)

The requirement to be sentenced in absentia upon making the demand did not violate due process or equal protection. (*Hayes v. Superior Court* (1971) 6 Cal.3d 216, 225; *People v. Dial* (2004) 123 Cal.App.4th 1116, 1122-1123.)

The defendant is required to strictly comply with the requirements of the statute. (*Pompi v. Superior Court* (1982) 139 Cal.App.3d 503, 507.)

The statute does not apply to inmates in county jail. (*People v. Blanchard* (1996) 42 Cal.App.4th 1842, 1847-1848; *People v. Madrigal* (2000) 77 Cal.App.4th 1050, 1054.)

The statute does not apply to those committed to the California Rehabilitation Center (CRC). (*People v. Vasquez* (1971) 16 Cal.App.3d 897, 899-900.)

The statute does not apply to those awaiting sentence before a potential grant of probation or term of imprisonment. (*People v. Mahan* (1980) 111 Cal.App.3d 28, 33.)

III. STATUTE OF LIMITATIONS

A. Case Law on Statute of Limitations

1. Cognizability, standard of review, remedy

It used to be that the failure to prosecute within the statute of limitations was jurisdictional, and the claim could be raised in the reviewing court without an objection below. (See *People v. Williams* (1999) 21 Cal.4th 335, 337.) In 1999, the California Supreme Court held the trial court had fundamental jurisdiction to prosecute a matter that was time barred, but in some circumstances the claim is not forfeited despite the failure to raise it below. “[W]hen the charging document indicates on its face that the action is time-barred, a person convicted of a charged offense may raise the statute of limitations at any time.” (*Id.* at p. 341.) If the prosecution fails to plead the statute of limitations but there is no objection, the court will affirm if review of the record shows the crime was within the

period. (*Id.* at p. 346; *People v. Smith* (2002) 98 Cal.App.4th 1182, 1189.) This is so even if an appeal is from a plea of guilty or no contest. (*Williams, supra*, 21 Cal.4th at pp. 339-340.)

The *Williams* rule “does not apply to an information that, as it should, either shows that the offense was committed within the time period or contains tolling allegations. Although under our cases, defendants may not forfeit the statute of limitations if it has expired as a matter of law, they may certainly lose the ability to litigate factual issues such as questions of tolling.” (*Williams, supra*, 21 Cal.4th at p. 344.) If the prosecution fails to prove the statute of limitations at trial, but there is no objection, the appellate court will affirm if review of the record shows the crime was within the statute of limitations. (*Id.* at p. 341; *Smith, supra*, 98 Cal.App.4th at pp. 1191-1192.) If the question relies on the evidence, the question is waived without an objection. (*Smith, supra*, 98 Cal.App.4th at pp. 1192-1193.) Failure to request a jury instruction on the statute of limitations waives the issue. (*Id.* at p. 1193; *People v. Thomas* (2007) 146 Cal.App.4th 1278, 1287-1289, disapproved on other grounds in *People v. Shockley* (2013) 58 Cal.4th 400, 406.)

It is not clear if the statute of limitations is waived on a lesser included offense when there is no objection below. (Compare *People v. Stanfill* (1999) 76 Cal.App.4th 1137, 1150 [forfeited] with *People v. Beasley* (2003) 105 Cal.App.4th 1078, 1089-1090 [when there is nothing in the record that defendant acquiesced or requested instruction on lesser included, defendant did not waive statute of limitations on the lesser because the court has a sua sponte duty to give the instruction].) But the claim is waived if the defendant pleads to a lesser offense as part of a plea bargain. (*Cowan v. Superior Court* (1996) 14 Cal.4th 367, 373-374.)

When the prosecution fails to adequately plead whether the statute of limitations was met, and it cannot be determined from the record on appeal if the offense occurred within the statute of limitations, the remedy is to remand the matter for a hearing in the trial court. (*Williams, supra*, 21 Cal.4th at pp. 341, 345; *People v. Chadd* (1981) 28 Cal.3d 739, 458; *People v. Lynch* (2010) 182 Cal.App.4th 1262, 1271-1277.) When the prosecutor fails to prove the statute of limitations at trial, the judgment is reversed if there was not substantial evidence. (*People v. Zamora* (1976) 18 Cal.3d 538, 565-574; cf. *People v. Lee* (2000) 82 Cal.App.4th 1352, 1360-1362 [remand for a new hearing if it was not raised at trial and it cannot be determined from the entire record on appeal if the prosecution was timely, dismiss if was raised at trial and insufficient evidence].) When the court erroneously denies a pretrial statute of limitations motion, and the reviewing court cannot determine from the record on appeal if the offense occurred within the statute of limitations, the court shall remand the matter for hearing. (*Williams, supra*, 21 Cal.4th at p. 341.)

2. Purpose

“The statute of limitations serves valuable purposes in a criminal prosecution. Chief among them are the avoidance of prejudice to both the People and the defendant resulting from the loss of evidence with the passage of time, as well as respect for the right of a defendant to a speedy trial. (*People v. Zamora* [(1976)] 18 Cal.3d [538,] at pp. 546-547.)” (*People v. Wetherell* (2014) 223 Cal.App.4th Supp. 12, 17.)

The court is required to construe application of the statute of limitations strictly in favor of the defendants. (*People v. Zamora* (1976) 18 Cal. 3d 538, 574; *People v. Lee* (2000) 82 Cal.App.4th 1352, 1357-1358.)

3. Which time limit applies

The longest statute of limitation applies. (Pen. Code, § 803.6.)

The statute of limitation for a wobbler is what it would be if it were a felony, even if it is charged as a misdemeanor. (*People v. Soni* (2005) 134 Cal.App.4th 1510, 1514-1517 [four years for fraud].)

The statute of limitations does not depend on enhancements. (Pen. Code, § 805, subd. (a); see *People v. Turner* (2005) 134 Cal.App.4th 1591, 1600.)

The statute of limitations can depend on alternate sentencing schemes or penalty provisions. (*People v. Hale* (2012) 204 Cal.App.4th 961, 971-974 [for a sex crime punishable by life under Pen. Code, § 269, there is no limitation]; *Anthony v. Superior Court* (2010) 188 Cal.App.4th 700, 720 [attempted murder with premeditation is a penalty provision, not an enhancement, so the statute of limitations is life]; *People v. Perez* (2010) 182 Cal.App.4th 231, 236-242 [for molest with one strike offense, there is no statute of limitations because it carries a life term]; *People v. Johnson* (2006) 145 Cal.App.4th 895, 907 [indecent exposure charged as a felony]; see also *People v. Shaw* (2009) 177 Cal.App.4th 92, 97-101 [felony Pen. Code, § 647.6 with a prior]; *In re McSherry* (2007) 157 Cal.App.4th 324, 328 [same]; *People v. San Nicholas* (1986) 185 Cal.App.3d 403, 407 [same]; but see *People v. Turner* (2005) 134 Cal.App.4th 1591, 1597-1600 [statute of limitations for robbery with two prior strikes is three years, though it is a life crime].)

4. When the clock starts

The applicable statute of limitations for a continuing crime is when the last act occurred. (*People v. Keehley* (1987) 193 Cal.App.3d 1381, 1385.) Thus, “in conspiracy

cases . . . a limitation period begins to run from the time of the last overt act committed in furtherance of the conspiracy.” (*People v. Zamora* (1976) 18 Cal.3d 538, 548.) The statute of limitation for receiving stolen property is three years from when it is received, bought, sold, or continued to be possessed with the required intent. (*Williams v. Superior Court* (1978) 81 Cal.App.4th 330, 343-344; see *People v. Allen* (1994) 21 Cal.4th 846, 860-861, fn. 14.)

When an offense or series of offenses is alleged to have been committed within a range of dates, as opposed to a specific date, some courts hold the statute of limitations runs from the earliest date the offense could have been committed. (See, e.g., *People v. Simmons* (2012) 210 Cal.App.4th 778, 788-791; *People v. Angel* (1999) 70 Cal.App.4th 1141, 1146-1147; see also *People v. Gordon* (1985) 165 Cal.App.3d 839, 852, disapproved on other grounds in *People v. Lopez* (1998) 19 Cal.4th 282, 292.) Other courts have tried to determine if there is sufficient evidence the crime was committed within the statute of limitations. (See, e.g., *People v. Ortega* (2013) 218 Cal.App.4th 1418, 1433; *People v. Smith* (2002) 98 Cal.App.4th 1182, 1188-1190, 1191-1192.)

5. Fraud

The limitation for fraud is four years from discovery by the victim. (*People v. Zamora* (1976) 18 Cal.3d 538, 561.) The statute “appears to set the limitation period running from the actual ‘discovery’ of a theft. The new provision has nevertheless been interpreted to include the same requirement of ‘reasonable diligence’ in discovering the facts of a theft that the courts have read into the ‘discovery’ provision of the statute of limitations for tort actions based on fraud as set forth in Code of Civil Procedure section 338, subdivision 4. [Citation.] In that context we have held that the word ‘discovery’ is not synonymous with actual knowledge. [Citation.].) ‘The statute commences to run . . . after one has knowledge of facts sufficient to make a reasonably prudent person suspicious of fraud, thus putting him on inquiry. Section 19 of the Civil Code provides: “Every person who has actual notice of circumstances sufficient to put a prudent man upon inquiry as to a particular fact, has constructive notice of the fact itself in all cases in which, by prosecuting such inquiry, he might have learned such fact.” ’ [Citation, emphasis deleted].)” (*Id.* at pp. 561-562; but see *People v. Petronella* (2013) 218 Cal.App.4th 945, 956-957 [red flags are not enough to trigger the statute of limitations when it might not be fraud].)

“[I]n cases involving fiscal crimes against government, a victim for purposes of the discovery provisions of [section 803, subdivision (c)], is a public employee occupying a supervisory position who has the responsibility to oversee the fiscal affairs of the governmental entity and thus has a legal duty to report a suspected crime to law enforcement authorities.” (*People v. Lopez* (1997) 52 Cal.App.4th 233, 247-248.) The same rule applies

to private fiduciaries. (*People v. Wong* (2010) 186 Cal.App.4th 1433, 1445.)

The list in Penal Code section 803, subdivision (c) is not exclusive. (See, e.g., *People v. Shetty* (2009) 174 Cal.App.4th 1488, 1492-1493 [fraudulent home equity contract under Civ. Code, § 1695.8]; *People v. Price* (2007) 155 Cal.App.4th 987, 991-998 [forgery and grand theft but not burglary to commit those crimes]; *People v. Soni* (2005) 134 Cal.App.4th 1510, 1518-1519 [Pen. Code, § 115]; *People v. Guevara* (2004) 121 Cal.App.4th 17, 25-27 [filing false election papers]; *People v. Fine* (1997) 52 Cal.App.4th 1258, 1266 [selling unqualified securities]; *People v. Bell* (1996) 45 Cal.App.4th 1030, 1060-1061 [Pen. Code, § 115 connected with a rent skimming scheme]; see *People v. Wetherell* (2014) 223 Cal.App.4th Supp. 12, 18-19; but see *People v. Milstein* (2012) 211 Cal.App.4th 1158, 1165-1168 [the limitation for conspiracy to defraud by false pretenses or false promises (Pen. Code, § 182, subd. (a)(4)) is three years].)

6. Sex crimes

The ex post facto clause (U.S. Const., art. I, § 10) prohibits reviving a statute of limitations after the time for prosecuting a crime has expired. (*Stogner v. California* (2003) 539 U.S. 607, 632, overruling *Stogner v. Superior Court* (2001) 93 Cal.App.4th 1229 and *People v. Frazer* (1999) 21 Cal.4th 737 concerning Pen. Code, § 803, former subdivision (g).) The “ex post facto [clause] does not prevent the State from extending time limits for the prosecution of future offenses, or for prosecutions not yet time barred.” (*Ibid.*; see, e.g., *People v. Simmons* (2012) 210 Cal.App.4th 778, 788-791; *In re White* (2008) 163 Cal.App.4th 1576, 1580-1583.)

Corroboration for Penal Code section 803, subdivision (f)(2) does not require evidence of every element. (*People v. Smith* (2011) 198 Cal.App.4th 415, 427-428 [corroboration when defendant admitted molesting the child by touching her though he denied the substantial sexual conduct necessary to show the statute of limitations permitted prosecution].) Evidence of other sex crimes by the defendant under Evidence Code section 1108 can serve as corroboration. (*People v. Mabini* (2001) 92 Cal.App.4th 654, 659; see *People v. Yovanov* (1999) 69 Cal.App.4th 392, 403.)

Under Penal Code section 801.1, a molest victim has until he or she is 28 years old to report the molestations. (*People v. Simmons* (2012) 210 Cal.App.4th 778, 786-788; *People v. Hernandez* (2011) 200 Cal.App.4th 953, 970; *People v. Shaw* (2009) 177 Cal.App.4th 92, 102.)

7. Commencing prosecution

Issuing an arrest warrant tolls the statute of limitations. (See *People v. Robinson* (2010) 47 Cal.4th 1104, 1135-1142.) It is sufficient that the warrant only lists the person's DNA profile. (*People v. Robinson* (2010) 47 Cal.4th 1104, 1135-1142.)

Arresting defendant on another case does not toll the statute of limitations. (*People v. Lee* (2000) 82 Cal.App.4th 1352, 1356-1358.)

Filing the complaint or requesting the defendant be transported does not toll the statute of limitations; there must be an information or arrest warrant (except for sex crimes). (*People v. Johnson* (2006) 145 Cal.App.4th 895, 900-901.)

8. Tolling for “the same conduct”

Filing the information tolls the statute of limitations for lesser included offenses. (Pen. Code, § 805, subd. (b); *Cowan v. Superior Court* (1996) 14 Cal.4th 367 [if plea to lesser included offense, waive the statute of limitations]; see *People v. Stanfill* (1999) 76 Cal.App.4th 1137, 1150.)

Filing the information tolls the statute of limitations on “for the same conduct [that] is pending in a court of this state” (Pen. Code, § 803, subd. (b); *People v. Hamilton* (2009) 170 Cal.App.4th 1412, 1438-1442 [same conduct charged in a different complaint]; *People v. Whitfield* (1993) 19 Cal. App. 4th 1652, 1659 [same].) This is derived from former Penal Code section 802.5. (*Whitfield, supra*, 19 Cal. App. 4th at p. 1659, fn. 8.)

Courts have said the meaning of “same conduct” requires some “flexibility” and can include separate incidents from continuing criminal conduct. (See, e.g., *People v. Hamlin* (2009) 170 Cal.App.4th 1412, 1439-1440 [child abuse]; *People v. Greenberger* (1997) 58 Cal.App.4th 298, 369 [kidnapping in the course of a murder]; *People v. Bell* (1996) 45 Cal.App.4th 1030, 1064 [forgery and filing false documents in connection with a rent skimming scheme]; see also *People v. Smith* (2002) 98 Cal.App.4th 1182, 1191-1193 [molestations, disagreeing with *Angel* in interpreting Pen. Code, § 803, former subd. (f)(2)(B)]; *People v. Whitfield* (1993) 19 Cal.App.4th 1652, 1659-1660 [prostitution in connection with rape].) Generally, section 803(b) must be pled and proved. (See *Hamlin, supra*, at pp. 1439-1440.)

Section 803, former subdivisions (f) and (g) permitted prosecution for sex crimes within one year of them being reported if certain conditions were met. It did not permit the prosecution for other sex crimes not reported. (*People v. Superior Court (Maldonado)*

(2007) 157 Cal.App.4th 694, 702; *People v. Terry* (2005) 127 Cal.App.4th 750, 767, 769.)

An amended information alleging the same conduct relates back to the original information and must be deemed timely. (*People v. Ortega* (2013) 218 Cal.App.4th 1418, 1427-1433, 1429 [though information alleged three counts in 1994 and three counts in 1995, evidence was that there were at least six incidents in 1995, so all of the counts were within the statute of limitations]; *Harris v. Superior Court* (1988) 201 Cal.App.3d 624, 627-628.)

9. Burden of proof

Defendant has the burden of proof in a pretrial motion. (*People v. Moore* (2009) 176 Cal.App.4th 687, 693.)

The prosecution has the burden of proof by a preponderance of the evidence at trial. (*People v. Zamora* (1976) 18 Cal.3d 538, 562; *People v. Fine* (1997) 52 Cal.App.4th 1258, 1267.) Corroboration under section 803, subdivision (f)(2)(C) requires clear and convincing evidence. The burden of less than a reasonable doubt does not violate the right to a jury trial as interpreted by the Supreme Court in *Apprendi v. New Jersey* (2000) 530 U.S. 466, 490. (*People v. Thomas* (2007) 146 Cal.App.4th 1278, 1285-1286; *People v. Riskin* (2006) 143 Cal.App.4th 234, 240-241; *People v. Linder* (2006) 139 Cal.App.4th 75, 85-86.; see *Renderos v. Ryan* (9th Cir. 2006) 469 F.3d 788, 796-797.)

The statute of limitations is not an element of a crime. (*People v. Frazer* (1999) 21 Cal.4th 737, 757-760, overruled on other grounds in *Stogner v. California* (2003) 539 U.S. 607.)

10. Miscellaneous

Penal Code section 803, subdivision (f) refers to *People v. Superior Court (Laff)* (2001) 25 Cal.4th 703 and *People v. Superior Court (Bauman & Rose)* (1995) 37 Cal.App.4th 1757. In those cases, it was held that when the police seize material from an attorney, and some of the material might be covered by attorney-client privilege, a court should review the material to determine what may be examined by the police. Section 803, subdivision (f) tolls the statute of limitations before the seized material is released to law enforcement.

“The current scheme of criminal statutes of limitation is set forth in sections 799 through 805. In 1981, in recognition of the fact ‘that piecemeal amendment over the years had produced a scheme that was confusing, inconsistent, and lacking in cohesive rationale,’ the Legislature referred the matter to the Law Revision Commission for comprehensive

review. [Citation.] In 1984, the Legislature overhauled the entire scheme. (Stats. 1984, ch. 1270, §§ 1–2, pp. 4335–4337.) The revised scheme reflected the primary recommendation of the Law Revision Commission that the length of a 'limitations statute should generally be based on the seriousness of the crime.' [Citation.] The use of seriousness of the crime as the primary factor in determining the length of the applicable statute of limitations was designed to strike the right balance between the societal interest in pursuing and punishing those who commit serious crimes, and the importance of barring stale claims. [Citation.] It also served the procedural need to 'provid[e] predictability' and promote 'uniformity of treatment for perpetrators and victims of all serious crimes.' [Citation.] The commission suggested that the seriousness of an offense could easily be determined in the first instance by the classification of the crime as a felony rather than a misdemeanor. Within the class of felonies, '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.' [Citation.]" (*People v. Turner* (2005) 134 Cal.App.4th 1591, 1594-1595.)

B. The Basic Statutes *Verbatim*

1. Penal Code section 799. Offenses punishable by death or life imprisonment; Embezzlement of public money.

Prosecution for an offense punishable by death or by imprisonment in the state prison for life or for life without the possibility of parole, or for the embezzlement of public money, may be commenced at any time.

This section shall apply in any case in which the defendant was a minor at the time of the commission of the offense and the prosecuting attorney could have petitioned the court for a fitness hearing pursuant to Section 707 of the Welfare and Institutions Code.

Added Stats. 1984, ch. 1270, § 2. Amended Stats. 1994, ch. 409, § 1.

2. Penal Code section 800. Felonies punishable by eight years or more.

Except as provided in Section 799, prosecution for an offense punishable by imprisonment in the state prison for eight years or more or by imprisonment pursuant to subdivision (h) of Section 1170 for eight years or more shall be commenced within six years after commission of the offense.

Added Stats. 1984, ch. 1270, § 2. Amended Stats. 2011, ch. 15, § 445, effective April 4, 2011, operative October 1, 2011, ch. 39, § 24, effective June 30, 2011, operative October 1, 2011; Stats. 2011 (1st Ex Sess) ch. 12 § 11, effective September 21, 2011, operative October 1, 2011.

3. Penal Code section 801. Felonies punishable by less than eight years.

Except as provided in Sections 799 and 800, prosecution for an offense punishable by imprisonment in the state prison or pursuant to subdivision (h) of Section 1170 shall be commenced within three years after commission of the offense.

Added Stats. 1984, ch. 1270, § 2. Amended Stats. 2011, ch. 15, § 446, effective April 4, 2011, operative October 1, 2011.

4. Penal Code section 801.5. False or fraudulent insurance claims.

Notwithstanding Section 801 or any other provision of law, prosecution for any offense described in subdivision (c) of Section 803 shall be commenced within four years after discovery of the commission of the offense, or within four years after the completion of the offense, whichever is later.

Added Stats. 1986, ch. 1324, § 2. Amended Stats. 1990, ch. 587, § 1; Stats. 1994, ch. 841, § 5, ch. 1031, § 3; Stats. 1995, ch. 704 § 1.

5. Penal Code section 804. Commencement of prosecution.

Except as otherwise provided in this chapter, 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 charging a misdemeanor or infraction.

(c) The defendant is arraigned on a complaint that charges the defendant with a felony.

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

Added Stats. 1984, ch. 1270, § 2. Amended Stats. 1998, ch. 931, § 358, effective September 28, 1998; Stats. 2006, ch. 901, § 8.1, effective January 1, 2007; Stats. 2008, ch. 110, § 1, effective January 1, 2009.

6. Penal Code section 805. Determination of applicable limitation period.

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.

Added Stats. 1984, ch. 1270, § 2.

C. Penal Code Section 803. Tolling.

1. 2014 version

(a) Except as provided in this section, a limitation of time prescribed in this chapter is not tolled or extended for any reason.

(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 does not commence to run until the discovery of an offense described in this subdivision. This subdivision applies to an offense punishable by imprisonment in the state prison or imprisonment pursuant to subdivision (h) of Section 1170, a material element of which is fraud or breach of a fiduciary obligation, the commission of the crimes of theft or embezzlement upon an elder or dependent adult, 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, 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, 134, or 186.10.

(3) A violation of Section 25540, of any type, or Section 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.

(6) Felony insurance fraud in violation of Section 548 or 550 of this code or former Section 1871.1, or Section 1871.4, of the Insurance Code.

(7) A violation of Section 580, 581, 582, 583, or 584 of the Business and Professions Code.

(8) A violation of Section 22430 of the Business and Professions Code.

(9) A violation of Section 103800 of the Health and Safety Code.

(10) A violation of Section 529a.

(11) A violation of subdivision (d) or (e) of Section 368.

(d) If the defendant is out of the state when or after the offense is committed, the prosecution may be commenced as provided in Section 804 within the limitations of time prescribed by this chapter, and no time up to a maximum of three years during which the defendant is not within the state shall be a part of those limitations.

(e) A limitation of time prescribed in this chapter does not commence to run until the

offense has been discovered, or could have reasonably been discovered, with regard to offenses under Division 7 (commencing with Section 13000) of the Water Code, under Chapter 6.5 (commencing with Section 25100) of, Chapter 6.7 (commencing with Section 25280) of, or Chapter 6.8 (commencing with Section 25300) of, Division 20 of, or Part 4 (commencing with Section 41500) of Division 26 of, the Health and Safety Code, or under Section 386, or offenses under Chapter 5 (commencing with Section 2000) of Division 2 of, Chapter 9 (commencing with Section 4000) of Division 2 of, Section 6126 of, Chapter 10 (commencing with Section 7301) of Division 3 of, or Chapter 19.5 (commencing with Section 22440) of Division 8 of, the Business and Professions Code.

(f)(1) Notwithstanding any other limitation of time described in this chapter, a criminal complaint may be filed within one year of the date of a report to a California law enforcement agency by a person of any age alleging that he or she, while under the age of 18 years, was the victim of a crime described in Section 261, 286, 288, 288a, 288.5, or 289, or Section 289.5, as enacted by Chapter 293 of the Statutes of 1991 relating to penetration by an unknown object.

(2) This subdivision applies only if all of the following occur:

(A) The limitation period specified in Section 800, 801, or 801.1, whichever is later, has expired.

(B) The crime involved substantial sexual conduct, as described in subdivision (b) of Section 1203.066, excluding masturbation that is not mutual.

(C) There is independent evidence that corroborates the victim's allegation. If the victim was 21 years of age or older at the time of the report, the independent evidence shall clearly and convincingly corroborate the victim's allegation.

(3) No evidence may be used to corroborate the victim's allegation that otherwise would be inadmissible during trial. Independent evidence does not include the opinions of mental health professionals.

(4)(A) In a criminal investigation involving any of the crimes listed in paragraph (1) committed against a child, when the applicable limitations period has not expired, that period shall be tolled from the time a party initiates litigation challenging a grand jury subpoena until the end of the litigation, including any associated writ or appellate proceeding, or until the final disclosure of evidence to the investigating or prosecuting agency, if that disclosure is ordered pursuant to the subpoena after the litigation.

(B) Nothing in this subdivision affects the definition or applicability of any evidentiary privilege.

(C) This subdivision shall not apply where a court finds that the grand jury subpoena was issued or caused to be issued in bad faith.

(g)(1) Notwithstanding any other limitation of time described in this chapter, a criminal complaint may be filed within one year of the date on which the identity of the suspect is conclusively established by DNA testing, if both of the following conditions are met:

(A) The crime is one that is described in subdivision (c) of Section 290.

(B) The offense was committed prior to January 1, 2001, and biological evidence collected in connection with the offense is analyzed for DNA type no later than January 1, 2004, or the offense was committed on or after January 1, 2001, and biological evidence collected in connection with the offense is analyzed for DNA type no later than two years from the date of the offense.

(2) For purposes of this section, "DNA" means deoxyribonucleic acid.

(h) For any crime, the proof of which depends substantially upon evidence that was seized under a warrant, but which is unavailable to the prosecuting authority under the procedures described in *People v. Superior Court (Laff)* (2001) 25 Cal.4th 703, *People v. Superior Court (Bauman & Rose)* (1995) 37 Cal.App.4th 1757, or subdivision (c) of Section 1524, relating to claims of evidentiary privilege or attorney work product, the limitation of time prescribed in this chapter shall be tolled from the time of the seizure until final disclosure of the evidence to the prosecuting authority. Nothing in this section otherwise affects the definition or applicability of any evidentiary privilege or attorney work product.

(i) Notwithstanding any other limitation of time described in this chapter, a criminal complaint may be filed within one year of the date on which a hidden recording is discovered related to a violation of paragraph (2) or (3) of subdivision (j) of Section 647.

(j) Notwithstanding any other limitation of time described in this chapter, if a person flees the scene of an accident that caused death or permanent, serious injury, as defined in subdivision (d) of Section 20001 of the Vehicle Code, a criminal complaint brought pursuant to paragraph (2) of subdivision (b) of Section 20001 of the Vehicle Code may be filed within the applicable time period described in Section 801 or 802 or one year after the person is initially identified by law enforcement as a suspect in the commission of the offense, whichever is later, but in no case later than six years after the commission of the offense.

Added Stats. 2005, ch. 2, § 3, effective February 28, 2005. Amended Stats. 2005, ch. 479, § 3, effective January 1, 2006; Stats. 2007, ch. 579, § 41, effective October 13, 2007; Stats. 2011, ch. 15, § 447, effective April 4, 2011, operative October 1, 2011, ch. 211, § 1.5, operative October 1, 2011; Stats. 2013, ch. 765, § 1, effective January 1, 2014.

2. 1989 Version

(a) Except as provided in this section, a limitation of time prescribed in this chapter is not tolled or extended for any reason.

(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 does not commence to run until discovery of an offense described in this subdivision. 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, 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, of any type, 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.

(6) Felony insurance fraud in violation of Section 548 of this code or Section 556 of the Insurance Code. [In 1990, section 556 was changed to "Section 1871.1 of the Insurance Code" to track a recodification. (Stats. 1990, ch. 587, §2.) In 1994, it was reworded to state: "Felony insurance fraud in violation of Section 548 or 550 of this code or former Section 1871.1, or Section 1871.4, of the Insurance Code." (Stats. 1994, ch. 1031, § 4)]

(7) A violation of Section 580, 581, 582, 583, or 584 of the Business and Professions Code.

(8) A violation of Section 22430 of the Business and Professions Code.

(9) A violation of Section 10690 of the Health and Safety Code.

(10) A violation of Section 529a.

(d) If the defendant is out of the state when or after the offense is committed, the prosecution may be commenced as provided in Section 804 within the limitations of time prescribed by this chapter, and no time up to a maximum of three years during which the defendant is not within the state shall be a part of those limitations.

(e) A limitation of time prescribed in this chapter does not commence to run until the offense has been discovered, or could have reasonably been discovered, with regard to offenses under Division 7 (commencing with Section 13000) of the Water Code, under Chapter 6.5 (commencing with Section 25100), Chapter 6.7 (commencing with Section 25280), or Chapter 6.8 (commencing with Section 25300) of Division 20 of, or Part 4 (commencing with Section 41500) of Division 26 of the Health and Safety Code, or under Section 386. (Stats. 1988, ch. 166, § 6.)

3. 1990 adds subdivision (f)

[Subdivision (f) was added to permit prosecution of molestation within one year of it being reported by a minor:]

(f) Notwithstanding any other limitation of time described in this section, a criminal complaint may be filed within one year of the date of a report to a responsible adult or agency by a child under 17 years of age, that the child is a victim of a crime described in Sections 261, 286, 288, 288a, or 289.

For purposes of this subdivision, a "responsible adult" or "agency" means a person or agency required to report pursuant to Section 11166. This subdivision shall only apply if:

(1) The limitation period specified in Section 800 or 801 has expired, and

(2) The defendant has committed at least one violation of Section 261, 286, 288, 288a, or 289, against the same victim within the limitation period specified for that crime in either Section 800 or 801. (Stats, 1989 ch. 1312, § 1.)

4. 1994 adds subdivision (g)

[Subdivision (f) was amended to add section 288.5 and 289.5, and to apply to a child under 18 years of age. Further, subdivision (g) was added to permit prosecution of molestation within one year of it being reported by an adult:]

(g) Notwithstanding any other limitation of time described in this section, a criminal complaint may be filed within one year of the date of a report to a law enforcement agency by a person of any age alleging that he or she, while under the age of 18 years, was the victim of a crime described in Section 261, 286, 288, 288a, 288.5, 289, or 289.5. this subdivision shall apply only if both of the following occur:

(1) The limitation period specified in Section 800 or 801 has expired.

(2) The crime involved substantial sexual conduct, as described in Subdivision (b) of Section 1203.066, excluding masturbation which is not mutual, and there is independent evidence that clearly and convincingly corroborates the victim's allegation. No evidence may be used to corroborate the victim's allegation which would otherwise be inadmissible during trial. Independent evidence shall not include the opinions of mental health professionals. (Stats. 1993, ch. 390, § 1.)

[Later that year, subdivision (f) was amended to add “Section 647.6 if the offense involved great bodily injury.” (Stats. 1994, ch. 46 (1st extra), §§ 2, 2.5, operative Nov 30, 1994)]

5. 1997 purportedly revives old molestation cases

[Subdivisions (f) and (g) were rewritten to also revive old molestation cases that were previously beyond the statute of limitations:]

(f)(1) Notwithstanding any other limitation of time described in this chapter, a criminal complaint may be filed within one year of the date of a report to a responsible adult or agency by a child under 18 years of age that the child is a victim of a crime described in Section 261, 286, 288, 288a, 288.5, 289, or 289.5.

(2) For purposes of this subdivision, a "responsible adult" or "agency" means a person or agency required to report pursuant to Section 11166. This subdivision applies only if both of the following occur:

(A) The limitation period specified in Section 800 or 801 has expired.

(B) The defendant has committed at least one violation of Section 261, 286, 288, 288a, 288.5, 289, or 289.5 against the same victim within the limitation period specified for that crime in either Section 800 or 801.

(3) (A) Effective July 1, 1997, this subdivision applies to a cause of action arising before, on, or after January 1, 1990, the effective date of this subdivision, and if the complaint is filed within the time period specified in this subdivision, it shall revive any cause of action barred by Section 800 or 801.

(B) Effective January 1, 1997, through June 30, 1997, this subdivision applies to a cause of action arising before, on, or after January 1, 1990, the effective date of this subdivision, and it shall revive any cause of action barred by Section 800 or 801 if either of the following occurs:

(i) The complaint is filed within the time period specified in this subdivision.

(ii) The victim made the report required by this subdivision to a responsible adult or agency

between January 1, 1990, and January 1, 1997, and a complaint was not filed within the time period specified in this subdivision or was filed within the time period but was dismissed, and a complaint is filed or refiled on or before June 30, 1997.

(g)(1) Notwithstanding any other limitation of time described in this chapter, a criminal complaint may be filed within one year of the date of a report to a law enforcement agency by a person of any age alleging that he or she, while under the age of 18 years, was the victim of a crime described in Section 261, 286, 288, 288a, 288.5, 289, or 289.5.

(2) This subdivision applies only if both of the following occur:

(A) The limitation period specified in Section 800 or 801 has expired.

(B) The crime involved substantial sexual conduct, as described in subdivision (b) of Section 1203.066, excluding masturbation that is not mutual, and there is independent evidence that clearly and convincingly corroborates the victim's allegation. No evidence may be used to corroborate the victim's allegation that otherwise would be inadmissible during trial. Independent evidence does not include the opinions of mental health professionals.

(3) (A) Effective July 1, 1997, this subdivision applies to a cause of action arising before, on, or after January 1, 1994, the effective date of this subdivision, and if the complaint is filed within the time period specified in this subdivision, it shall revive any cause of action barred by Section 800 or 801.

(b) Effective January 1, 1997, through June 30, 1997, this subdivision applies to a cause of action arising before, on, or after January 1, 1994, the effective date of this subdivision, and it shall revive any cause of action barred by Section 800 or 801 if either of the following occurs:

(i) The complaint is filed within the time period specified in this subdivision.

(ii) The victim made the report required by this subdivision to a law enforcement agency between January 1, 1994, and January 1, 1997, and a complaint was not filed within the time period specified in this subdivision or was filed within the time period but was dismissed, but a complaint is filed or refiled on or before June 30, 1997. (Stats. 1996, ch. 130, § 1)

6. Second 1997 version more explicitly applies retroactively

(f) (1) Notwithstanding any other limitation of time described in this chapter, a criminal complaint may be filed within one year of the date of a report to a responsible adult or agency by a child under 18 years of age that the child is a victim of a crime described in Section 261, 286, 288, 288a, 288.5, 289, or 289.5.

(2) For purposes of this subdivision, a "responsible adult" or "agency" means a person or agency required to report pursuant to Section 11166. This subdivision applies only if both of the following occur:

(A) The limitation period specified in Section 800 or 801 has expired.

(B) The defendant has committed at least one violation of Section 261, 286, 288, 288a, 288.5, 289, or 289.5 against the same victim within the limitation period specified for that crime in either Section 800 or 801.

(3)(A) This subdivision applies to a cause of action arising before, on, or after January 1, 1990, the effective date of this subdivision, and it shall revive any cause of action barred by Section 800 or 801 if any of the following occurred or occurs:

(i) The complaint or indictment was filed on or before January 1, 1997, and it was filed within the time period specified in this subdivision.

(ii) The complaint or indictment is or was filed subsequent to January 1, 1997, and it is or was filed within the time period specified within this subdivision.

(iii) The victim made the report required by this subdivision to a responsible adult or agency after January 1, 1990, and a complaint or indictment was not filed within the time period specified in this subdivision, but a complaint or indictment is filed no later than 180 days after the date on which either a published opinion of the California Supreme Court, deciding whether retroactive application of this section is constitutional, becomes final or the United States Supreme Court files an opinion deciding the question of whether retroactive application of this subdivision is constitutional, whichever occurs first.

(iv) The victim made the report required by this subdivision to a responsible adult or agency after January 1, 1990, and a complaint or indictment was filed within the time period specified in this subdivision, but the indictment, complaint, or subsequently filed information was dismissed, but a new complaint or indictment is or was filed no later than 180 days after the date on which either a published opinion of the California Supreme Court, deciding whether retroactive application of this section is constitutional, becomes final or the United States Supreme Court files an opinion deciding the question of whether retroactive application of this subdivision is constitutional, whichever occurs first.

(B) (i) If the victim made the report required by this subdivision to a responsible adult or agency after January 1, 1990, and a complaint or indictment was filed within the time period specified in this subdivision, but the indictment, complaint, or subsequently filed information was dismissed, a new complaint or indictment may be filed notwithstanding any other provision of law, including, but not limited to, subdivision (c) of Section 871.5 and subdivision (b) of Section 1238.

(ii) An order dismissing an action filed under this subdivision, which is entered or becomes effective at any time prior to 180 days after the date on which either a published opinion of the California Supreme Court, deciding the question of whether retroactive application of this section is constitutional, becomes final or the United States Supreme Court files an opinion deciding the question of whether retroactive application of this subdivision is constitutional, whichever occurs first, shall not be considered an order terminating an action within the meaning of Section 1387.

(iii) Any ruling regarding the retroactivity of this subdivision or its constitutionality made in the course of the previous proceeding, including any review proceeding, shall not be binding upon refiling.

(g) (1) Notwithstanding any other limitation of time described in this chapter, a criminal complaint may be filed within one year of the date of a report to a California law enforcement agency by a person of any age alleging that he or she, while under the age of 18 years, was the victim of a crime described in Section 261, 286, 288, 288a, 288.5, 289, or 289.5.

(2) This subdivision applies only if both of the following occur:

(A) The limitation period specified in Section 800 or 801 has expired.

(B) The crime involved substantial sexual conduct, as described in subdivision (b) of Section 1203.066, excluding masturbation that is not mutual, and there is independent evidence that clearly and convincingly corroborates the victim's allegation. No evidence may be used to corroborate the victim's allegation that otherwise would be inadmissible during trial. Independent evidence does not

include the opinions of mental health professionals.

(3)(A) This subdivision applies to a cause of action arising before, on, or after January 1, 1994, the effective date of this subdivision, and it shall revive any cause of action barred by Section 800 or 801 if any of the following occurred or occurs:

(i) The complaint or indictment was filed on or before January 1, 1997, and it was filed within the time period specified in this subdivision.

(ii) The complaint or indictment is or was filed subsequent to January 1, 1997, and it is or was filed within the time period specified within this subdivision.

(iii) The victim made the report required by this subdivision to a law enforcement agency after January 1, 1994, and a complaint or indictment was not filed within the time period specified in this subdivision, but a complaint or indictment is filed no later than 180 days after the date on which either a published opinion of the California Supreme Court, deciding the question of whether retroactive application of this subdivision is constitutional, becomes final or the United States Supreme Court files an opinion deciding the question of whether retroactive application of this subdivision is constitutional, whichever occurs first.

(iv) The victim made the report required by this subdivision to a law enforcement agency after January 1, 1994, and a complaint or indictment was filed within the time period specified in this subdivision, but the indictment, complaint, or subsequently filed information was dismissed, but a new complaint or indictment is filed no later than 180 days after the date on which either a published opinion of the California Supreme Court, deciding the question of whether retroactive application of this subdivision is constitutional, becomes final or the United States Supreme Court files an opinion deciding the question of whether retroactive application of this subdivision is constitutional, whichever occurs first.

(B) (i) If the victim made the report required by this subdivision to a law enforcement agency after January 1, 1994, and a complaint or indictment was filed within the time period specified in this subdivision, but the indictment, complaint, or subsequently filed information was dismissed, a new complaint or indictment may be filed notwithstanding any other provision of law, including, but not limited to, subdivision (c) of Section 871.5 and subdivision (b) of Section 1238.

(ii) An order dismissing an action filed under this subdivision, which is entered or becomes effective at any time prior to 180 days after the date on which either a published opinion of the California Supreme Court, deciding the question of whether retroactive application of this section is constitutional, becomes final or the United States Supreme Court files an opinion deciding the question of whether retroactive application of this subdivision is constitutional, whichever occurs first, shall not be considered an order terminating an action within the meaning of Section 1387.

(iii) Any ruling regarding the retroactivity of this subdivision or its constitutionality made in the course of the previous proceeding, by any trial court or any intermediate appellate court, shall not be binding upon refiling. (Stats. 1997, ch. 29, § 1, effective June 30, 1997)

7. 1999 and 2000 adds elder abuse and other frauds

[Added subdivision (c)(11) concerning theft from an elder or dependent adult to state: “A violation of subdivision (c) of Section 368.” (Stats. 1998, ch. 944, § 2) This was changed to subdivision (d) or (e) later that year. (Stats. 1999, ch. 706, § 10, effective October 10, 1999).

The 1998 bill also added to the list of crimes in subdivision (e): “or offenses under Chapter 5 (commencing with Section 2000) of Division 2 of, or Chapter 9 (commencing with Section 4000) of Division 2 of, or Chapter 10 (commencing with Section 7301) of Division 3 of, or Chapter 19.5 (commencing with Section 22440) of Division 8 of, the Business and Professions Code.” (Stats. 1998, ch. 879, § 32, ch. 944, § 2) Added in 2000 were more crimes: “or offenses under Chapter 5 (commencing with Section 2000) of Division 2 of, Chapter 9 (commencing with Section 4000) of Division 2 of, Chapter 10 (commencing with Section 7301) of Division 3 of, or Chapter 19.5 (commencing with Section 22440) of Division 8 of, the Business and Professions Code.” (Stats. 1999, ch. 983)].

8. 2001 creates ten year limit for sex crimes

[Added subdivision (h):]

(h)(1) Notwithstanding the limitation of time described in Section 800, the limitations period for commencing prosecution for a felony offense described in subparagraph (a) of paragraph (2) of subdivision (a) of Section 290, where the limitations period set forth in Section 800 has not expired as of January 1, 2001, or the offense is committed on or after January 1, 2001, shall be 10 years from the commission of the offense, or one year from the date on which the identity of the suspect is conclusively established by DNA testing, whichever is later, provided, however, that the one-year period from the establishment of the identity of the suspect shall only apply when either of the following conditions is met:

(A) For an offense committed prior to January 1, 2001, biological evidence collected in connection with the offense is analyzed for DNA type no later than January 1, 2004.

(B) For an offense committed on or after January 1, 2001, biological evidence collected in connection with the offense is analyzed for DNA type no later than two years from the date of the offense.

(2) In the event the conditions set forth in subparagraph (a) or (b) of paragraph (1) are not met, the limitations period for commencing prosecution for a felony offense described in subparagraph (a) of paragraph (2) of subdivision (a) of Section 290, where the limitations period set forth in section 800 has not expired as of January 1, 2001, or the offense is committed on or after January 1, 2001, shall be 10 years from the commission of the offense.

(3) For purposes of this section, "DNA" means deoxyribonucleic acid. (Stats. 2000, ch. 235, § 2)

9. 2002 adds new provision for molestations

[Inserted subdivision (h) and moved former subdivision (h) to be subdivision (i):]

(h)(1) Notwithstanding any other limitation of time described in this chapter, a criminal complaint may be filed within one year of the date of a report to a California law enforcement agency by a person under 21 years of age, alleging that he or she, while under 18 years of age, was the victim of a crime described in Section 261, 286, 288, 288a, 288.5, 289, or 289.5

(2) This subdivision applies only if both of the following occur:

(a) The limitation period specified in Section 800 or 801 has expired.

(b) The crime involved substantial sexual conduct, as described in subdivision (b) of Section

1203.066, excluding masturbation that is not mutual, and there is independent evidence that corroborates the victim's allegation. No evidence may be used to corroborate the victim's allegation that otherwise would be inadmissible during trial. Independent evidence does not include the opinions of mental health professionals.

(3) This subdivision applies to a cause of action arising before, on, or after January 1, 2002, the effective date of this subdivision, and it shall revive any cause of action barred by Section 800 or 801 if the complaint or indictment was filed within the time period specified by this subdivision.

(i)(1) Notwithstanding the limitation of time described in Section 800, the limitations period for commencing prosecution for a felony offense described in subparagraph (A) of paragraph (2) of subdivision (a) of Section 290, where the limitations period set forth in Section 800 has not expired as of January 1, 2001, or the offense is committed on or after January 1, 2001, shall be 10 years from the commission of the offense, or one year from the date on which the identity of the suspect is conclusively established by DNA testing, whichever is later, provided, however, that the one-year period from the establishment of the identity of the suspect shall only apply when either of the following conditions is met:

(A) For an offense committed prior to January 1, 2001, biological evidence collected in connection with the offense is analyzed for DNA type no later than January 1, 2004.

(B) For an offense committed on or after January 1, 2001, biological evidence collected in connection with the offense is analyzed for DNA type no later than two years from the date of the offense.

(2) In the event the conditions set forth in subparagraph (A) or (B) of paragraph (1) are not met, the limitations period for commencing prosecution for a felony offense described in subparagraph (A) of paragraph (2) of subdivision (a) of Section 290, where the limitations period set forth in Section 800 has not expired as of January 1, 2001, or the offense is committed on or after January 1, 2001, shall be 10 years from the commission of the offense.

(3) For purposes of this section, "DNA" means deoxyribonucleic acid. (Stats. 2001, ch. 235, § 1)

10. Second 2002 version concerns evidence seized but not available

[Added subdivisions (j) and (k):]

(j) For any crime, the proof of which depends substantially upon evidence that was seized under a warrant, but which is unavailable to the prosecuting authority under the procedures described in *People v. Superior Court (Laff)* (2001) 25 Cal.4th 703, *People v. Superior Court (Bauman & Rose)* (1995) 37 Cal.App.4th 1757, or subdivision (c) of Section 1524, relating to claims of evidentiary privilege or attorney work product, the limitation of time prescribed in this chapter shall be tolled from the time of the seizure until final disclosure of the evidence to the prosecuting authority. Nothing in this section otherwise affects the definition or applicability of any evidentiary privilege or attorney work product.

(k) As used in subdivisions (f), (g), and (h), Section 289.5 refers to the statute enacted by Chapter 293 of the Statutes of 1991 relating to penetration by an unknown object.

(Stats. 2002, ch. 1059, § 2, effective September 29, 2002)

11. 2003 tolls molestation cases during grand jury proceedings

[Inserted subdivision (k) and moved former subdivision (k) to be subdivision (l):]

(k)(1) In a criminal investigation involving child sexual abuse as described in subdivision (g) or (h), when the limitations period set forth therein has not expired, that period shall be tolled from the time a party initiates litigation challenging a grand jury subpoena until the end of that litigation, including any associated writ or appellate proceeding, or until the final disclosure of evidence to the investigating or prosecuting agency, if that disclosure is ordered pursuant to the subpoena after the litigation.

(2) Nothing in this subdivision affects the definition or applicability of any evidentiary privilege.

(3) This subdivision shall not apply where a court finds that the grand jury subpoena was issued or caused to be issued in bad faith.

(l) As used in subdivisions (f), (g), and (h), section 289.5 refers to the statute enacted by chapter 293 of the statutes of 1991 relating to penetration by an unknown object.

(Stats. 2003, ch. 2, § 1, effective April 3, 2003, Stats. 2003, ch. 152, § 1, effective January 1, 2004)

12. 2005 reacts to *Stogner*

[Section 801.1 was added (q.v.) and section 803 was rewritten to eliminate references to reviving the statute of limitations; it also deleted subdivision (k) relating to tolling during grand jury proceedings:]

(f) (1) Notwithstanding any other limitation of time described in this chapter, a criminal complaint may be filed within one year of the date of a report to a responsible adult or agency by a child under 18 years of age that the child is a victim of a crime described in Section 261, 286, 288, 288a, 288.5, 289, or 289.5.

(2) For purposes of this subdivision, a "responsible adult" or "agency" means a person or agency required to report pursuant to Section 11166. This subdivision applies only if both of the following occur:

(A) The limitation period specified in Section 800, 801, or 801.1, whichever is later, has expired.

(B) The defendant has committed at least one violation of Section 261, 286, 288, 288a, 288.5, 289, or 289.5 against the same victim within the limitation period specified for that crime in Section 800, 801, or 801.1.

(g) (1) Notwithstanding any other limitation of time described in this chapter, a criminal complaint may be filed within one year of the date of a report to a California law enforcement agency by a person of any age alleging that he or she, while under the age of 18 years, was the victim of a crime described in Section 261, 286, 288, 288a, 288.5, 289, or 289.5.

(2) This subdivision applies only if all of the following occur:

(A) The limitation period specified in Section 800, 801, or 801.1, whichever is later, has expired.

(B) The crime involved substantial sexual conduct, as described in subdivision (b) of Section 1203.066, excluding masturbation that is not mutual

(C) There is independent evidence that corroborates the victim's allegation. If the victim was 21 years of age or older at the time of the report, the independent evidence shall clearly and

convincingly corroborate the victim's allegation.

(3) No evidence may be used to corroborate the victim's allegation that otherwise would be inadmissible during trial. Independent evidence does not include the opinions of mental health professionals.

(h) (1) Notwithstanding any other limitation of time described in this chapter, a criminal complaint may be filed within one year of the date on which the identity of the suspect is conclusively established by DNA testing, if both of the following conditions are met:

(A) the crime is one that is described in subparagraph (a) of paragraph (2) of subdivision (a) of Section 290.

(B) The offense was committed prior to January 1, 2001, and biological evidence collected in connection with the offense is analyzed for DNA type no later than January 1, 2004 or the offense was committed on or after January 1, 2001, and biological evidence collected in connection with the offense is analyzed for DNA type no later than two years from the date of the offense.

(2) For purposes of this section, "DNA" means deoxyribonucleic acid.

(i) For any crime, the proof of which depends substantially upon evidence that was seized under a warrant, but which is unavailable to the prosecuting authority under the procedures described in *People v. Superior Court (Laff)* (2001) 25 Cal.4th 703, *People v. Superior Court (Bauman & Rose)* (1995) 37 Cal.App.4th 1757, or subdivision (c) of Section 1524, relating to claims of evidentiary privilege or attorney work product, the limitation of time prescribed in this chapter shall be tolled from the time of the seizure until final disclosure of the evidence to the prosecuting authority. Nothing in this section otherwise affects the definition or applicability of any evidentiary privilege or attorney work product.

(j)(1) In a criminal investigation involving child sexual abuse as described in subdivision (f) or (g), when the limitations period set forth therein has not expired, that period shall be tolled from the time a party initiates litigation challenging a grand jury subpoena until the end of that litigation, including any associated writ or appellate proceeding, or until the final disclosure of evidence to the investigating or prosecuting agency, if that disclosure is ordered pursuant to the subpoena after the litigation.

(2) Nothing in this subdivision affects the definition or applicability of any evidentiary privilege.

(3) This subdivision shall not apply where a court finds that the grand jury subpoena was issued or caused to be issued in bad faith.

(k) As used in subdivisions (f) and (g), Section 289.5 refers to the statute enacted by Chapter 293 of the Statutes of 1991 relating to penetration by an unknown object.

(Stats. 2004, ch. 368, § 2; Stats. 2005, ch. 2, § 3, effective February 28, 2005.)

13. 2006 deletes subdivision (f)

[Deleted subdivision (f) and incorporated into former subdivision (g) the language that had been in subdivision (k), added back in the provision for tolling during a grand jury investigation. Changed former subdivision (g) to be subdivision (f), former subdivision (h) to be subdivision (g), and former subdivision (i) to be subdivision (h):]

(f)(1) Notwithstanding any other limitation of time described in this chapter, a criminal complaint may be filed within one year of the date of a report to a California law enforcement agency by a

person of any age alleging that he or she, while under the age of 18 years, was the victim of a crime described in Section 261, 286, 288, 288a, 288.5, or 289, or Section 289.5, as enacted by Chapter 293 of the Statutes of 1991 relating to penetration by an unknown object.

(2) This subdivision applies only if all of the following occur:

(A) The limitation period specified in Section 800, 801, or 801.1, whichever is later, has expired.

(B) The crime involved substantial sexual conduct, as described in subdivision (b) of Section 1203.066, excluding masturbation that is not mutual.

(C) There is independent evidence that corroborates the victim's allegation. If the victim was 21 years of age or older at the time of the report, the independent evidence shall clearly and convincingly corroborate the victim's allegation.

(3) No evidence may be used to corroborate the victim's allegation that otherwise would be inadmissible during trial. Independent evidence does not include the opinions of mental health professionals.

(4)(A) In a criminal investigation involving any of the crimes listed in paragraph (1) committed against a child, when the applicable limitations period has not expired, that period shall be tolled from the time a party initiates litigation challenging a grand jury subpoena until the end of the litigation, including any associated writ or appellate proceeding, or until the final disclosure of evidence to the investigating or prosecuting agency, if that disclosure is ordered pursuant to the subpoena after the litigation.

(B) Nothing in this subdivision affects the definition or applicability of any evidentiary privilege.

(C) This subdivision shall not apply where a court finds that the grand jury subpoena was issued or caused to be issued in bad faith.

(g) (1) Notwithstanding any other limitation of time described in this chapter, a criminal complaint may be filed within one year of the date on which the identity of the suspect is conclusively established by DNA testing, if both of the following conditions are met:

(A) The crime is one that is described in subparagraph (A) of paragraph (2) of subdivision (a) of Section 290. [In 2007, this became "subdivision (c) of Section 290" (Stats. 2007, ch. 579, § 41, effective October 13, 2007).]

(B) The offense was committed prior to January 1, 2001, and biological evidence collected in connection with the offense is analyzed for DNA type no later than January 1, 2004, or the offense was committed on or after January 1, 2001, and biological evidence collected in connection with the offense is analyzed for DNA type no later than two years from the date of the offense.

(2) For purposes of this section, "DNA" means deoxyribonucleic acid.

(h) For any crime, the proof of which depends substantially upon evidence that was seized under a warrant, but which is unavailable to the prosecuting authority under the procedures described in *People v. Superior Court (Laff)*(2001) 25 Cal.4th 703, *People v. Superior Court (Bauman & Rose)*(1995) 37 Cal.App.4th 1757, or subdivision (c) of Section 1524, relating to claims of evidentiary privilege or attorney work product, the limitation of time prescribed in this chapter shall be tolled from the time of the seizure until final disclosure of the evidence to the prosecuting authority. Nothing in this section otherwise affects the definition or applicability of any evidentiary privilege or attorney work product. (Stats. 2005, ch. 479, § 3)

14. 2014 extends time for hit and run causing serious injury

[2011 amendments concerned realignment. Effective 2014, section 10690 was changed to 103800 in subdivision (c)(9), and subdivision (j) was added:]

(j) Notwithstanding any other limitation of time described in this chapter, if a person flees the scene of an accident that caused death or permanent, serious injury, as defined in subdivision (d) of Section 20001 of the Vehicle Code, a criminal complaint brought pursuant to paragraph (2) of subdivision (b) of Section 20001 of the Vehicle Code may be filed within the applicable time period described in Section 801 or 802 or one year after the person is initially identified by law enforcement as a suspect in the commission of the offense, whichever is later, but in no case later than six years after the commission of the offense. (Stats. 2013, ch. 765, § 1)

D. Penal Code Section 801.1. Ten-year limitation for specified sex offenses

1. 2013 version

(a) Notwithstanding any other limitation of time described in this chapter, prosecution for a felony offense described in Section 261, 286, 288, 288.5, 288a, or 289, or Section 289.5, as enacted by Chapter 293 of the Statutes of 1991 relating to penetration by an unknown object, that is alleged to have been committed when the victim was under the age of 18 years, may be commenced any time prior to the victim's 28th birthday.

(b) Notwithstanding any other limitation of time described in this chapter, if subdivision (a) does not apply, prosecution for a felony offense described in subdivision (c) of Section 290 shall be commenced within 10 years after commission of the offense.

Added Stats. 2004, ch. 368, § 1. Amended Stats. 2005, ch. 479, § 2, effective January 1, 2006; Stats. 2007, ch. 579, § 40, effective October 13, 2007.

2. 2005 was originally only what is today subdivision (b)

Notwithstanding any other limitation of time described in this chapter, prosecution for a felony offense described in subparagraph (a) of paragraph (2) of subdivision (a) of section 290 shall be commenced within 10 years after commission of the offense. (Stats. 2004, ch. 368, § 1.)

3. 2006 adds subdivision (a)

(a) Notwithstanding any other limitation of time described in this chapter, prosecution for a felony offense described in Section 261, 286, 288, 288.5, 288a, or 289, or section 289.5, as enacted by chapter 293 of the statutes of 1991 relating to penetration by an unknown object, that is alleged to have been committed when the victim was under the age of 18 years, may be commenced any time prior to the victim's 28th birthday.

(b) Notwithstanding any other limitation of time described in this chapter, if subdivision (a) does not apply, prosecution for a felony offense described in subparagraph (a) of paragraph (2) of

subdivision (a) of Section 290 shall be commenced within 10 years after commission of the offense.
(Stats. 2005, ch. 479, § 2)

[In 2007, subdivision (b) was amended to refer to subdivision (c) of Section 290. (Stats. 2007, ch. 579, § 40, effective October 13, 2007).]

E. Other Important Statutes

1. Penal Code section 803.6 . Multiple applicable provisions.

(a) If more than one time period described in this chapter applies, the time for commencing an action shall be governed by that period that expires the latest in time.

(b) Any change in the time period for the commencement of prosecution described in this chapter applies to any crime if prosecution for the crime was not barred on the effective date of the change by the statute of limitations in effect immediately prior to the effective date of the change.

(c) This section is declaratory of existing law.

Added Stats. 2004, ch. 368, § 3.

2. Penal Code section 801.2. Child pornography.

Notwithstanding any other limitation of time prescribed in this chapter, prosecution for a violation of subdivision (b) of Section 311.4 shall commence within 10 years of the date of production of the pornographic material.

Added Stats. 2006, ch. 337, § 35, effective September 20, 2006.

3. Penal Code section 801.5. False or fraudulent insurance claims

Notwithstanding Section 801 or any other provision of law, prosecution for any offense described in subdivision (c) of Section 803 shall be commenced within four years after discovery of the commission of the offense, or within four years after the completion of the offense, whichever is later.

Added Stats. 1986, ch. 1324, § 2. Amended Stats. 1990, ch. 587, § 1; Stats. 1994, ch. 841, § 5, ch. 1031, § 3; Stats. 1995, ch. 704, § 1.

4. Penal Code section 801.6. Nonfinancial elder abuse or neglect.

Notwithstanding any other limitation of time described in this chapter, prosecution for any offense proscribed by Section 368, except for a violation of any provision of law proscribing theft or embezzlement, may be filed at any time within five years from the date of occurrence of such offense.

Added Stats. 1998, ch. 944, § 1.

5. Penal Code section 802. Misdemeanors.

a. 2014 version

(a) Except as provided in subdivision (b), (c), (d), or (e), prosecution for an offense not punishable by death or imprisonment in the state prison or pursuant to subdivision (h) of Section 1170 shall be commenced within one year after commission of the offense.

(b) Prosecution for a misdemeanor violation of Section 647.6 or former Section 647a committed with or upon a minor under the age of 14 years shall be commenced within three years after commission of the offense.

(c) Prosecution of a misdemeanor violation of Section 729 of the Business and Professions Code shall be commenced within two years after commission of the offense.

(d) Prosecution of a misdemeanor violation of Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code shall be commenced as follows:

(1) With respect to Sections 7028.17, 7068.5, and 7068.7 of the Business and Professions Code, within one year of the commission of the offense.

(2) With respect to Sections 7027.1, 7028.1, 7028.15, 7118.4, 7118.5, 7118.6, 7126, 7153, 7156, 7157, 7158, 7159.5 (licensee only), 7159.14 (licensee only), 7161, and 7189 of the Business and Professions Code, within two years of the commission of the offense.

(3) With respect to Sections 7027.3 and 7028.16 of the Business and Professions Code, within three years of the commission of the offense.

(4) With respect to Sections 7028, 7159.5 (nonlicensee only), and 7159.14 (nonlicensee only) of the Business and Professions Code, within four years of the commission of the offense.

(e) Prosecution for a misdemeanor violation of Section 6126, 10085.6, 10139, or 10147.6 of the Business and Professions Code or Section 2944.6 or 2944.7 of the Civil Code shall be commenced within three years after discovery of the commission of the offense, or within three years after completion of the offense, whichever is later.

Added Stats. 2004, ch. 586, § 4, operative July 1, 2005. Amended Stats. 2012, ch. 43, § 24, effective June 27, 2012, ch. 569, § 4, effective January 1, 2013.

b. Prior versions

(a) Except as provided in subdivision (b), prosecution for an offense not punishable by death or imprisonment in the state prison shall be commenced within one year after commission of the offense.

(b) Prosecution for a misdemeanor violation of Section 647.6 or former Section 647a, committed with or upon a minor under the age of 11, shall be commenced within two years after commission

of the offense. (Stats. 1987, ch. 1418, § 5.)
[In 1992 subdivision (b) was changed to “the age of 14” in 1992 (Stats. 1991, ch. 129, § 1).
In 1994, subdivision (c) was added. (Stats. 1993, ch. 1072, § 3)
In 2002, subdivision (b) was amended to permit prosecutions within three years. (Stats. 2002,
ch. 828, § 2)
In July 2005, subdivision (d) was added. (Stats. 1994, ch. 586, § 4)
In 2013, subdivision (e) was added. (Stats. 2012, ch. 569, § 4)]