

1. Introduction.
2. Juvenile Clients:
 - A. Disposition Issues. Keeping minors out of DJF is critical, because sex Offender registration under Penal Code section 290 applies only to Minors coming out of DJF, not those with less intensive dispositions. (*In re Calvin S.* (2017) 5 Cal.App.5th 522 [juvenile hall can be therapeutic].)
 - B. Sealing argument. (Welf. & Inst. Code, § 786, subd. (d).)
 - C. Insufficient Evidence of Sexual Intent.
 - D. Juvenile as victim of human trafficking [thus no prosecution]. Beginning 1/1/2017, such minors can no longer receive criminal charges. (Pen. Code, § 647, subd. (b)(5).)
3. Adult Cases:
 - A. Statute of Limitations. (See Pen. Code, §§ 799-804.) Generally, the length of the punishment dictates the SOL.
 1. Commencement of prosecution. (Pen. Code, § 804)
 2. Crime punishable by 8 years in prison, 6 year SOL (Pen. Code, § 800)
 3. Crime punishable by less than 8 years, 3 year SOL (Pen. Code, § 801.)
 4. Offenses punishable by life term or LWOP – no SOL. (Pen. Code, § 799.) This includes offenses alleged under the One Strike Law. (Pen. Code, § 667.61.) Check which version of the One Strike Law applies to the offenses(s) alleged based on the date the offense was committed.
 5. For enumerated crimes (including Pen. Code section 288, subdivision (a) involving substantial sexual conduct), no SOL for crime committed after 1/1/17, or for those where the SOL has not expired after that date.
 6. For crime committed against someone under 18 years of age, certain enumerated felonies can be filed up to the point that the victim is 40 years old. (Pen. Code, § 801.1, subd. (a).) This

applies to crimes committed on or after 1/1/15, or to any enumerated crime for which the SOL has not run at that time.

7. Sometimes, the SOL for sex offenses against minors may be tolled. (Pen. Code, § 803, subd. (f).
 8. Pre-charging delay.
- B. Victim Witnesses:
1. Vague testimony from young witness regarding dates and specific acts. This type of testimony can be helpful when making a SOL argument, or that “attempt” instruction should have been given.
 2. Courts limit the defendant’s confrontation rights.
 - a. Conditional examination of material witness (Pen. Code, § 1336).
 - b. Declare witness unavailable (Evid. Code, § 240) and admit prior testimony.
 - c. Block defendant’s view of complaining witness (*People v. Arredondo* (2017) 13 Cal.App.5th 950.)
 - d. Closed-circuit television (Pen. Code, § 1347.)
 3. Fresh complaint/Hearsay exceptions. (See *People v. Brown* (1994) 8 Cal.4th 746 for limitations on evidence admissible under Fresh Complaint; Evid. Code, § 1360 [statement describing child abuse or neglect made by a child under the age of 12].)
 4. Forensic interview. Need victim present to testify in order to admit interview into evidence.
- C. Defendant’s statements:
1. Police interviews. Promises of benefit or leniency. (*People v. Carr* (1972) 8 Cal.3d 287, 296.)
 2. Pretext phone call. Same possible argument as to promises of benefit or leniency.
- D. Expert witnesses.
1. CSAAS testimony; CALCRIM 1193.

2. Profile evidence. (See *People v. Robbie* (2001) 92 Cal.App.4th 1075 [reversible error to ask witness by means of hypotheticals whether or not the defendant's behavior was consistent with, or typical of, sexual offenders].)
- E. Prosecutorial misconduct in closing arguments:
1. Defendant is a "monster," "took away innocence," "Need to protect the community and stop him from doing it again." (*People v. Mayfield* (1997) 14 Cal.4th 668, 803 [misconduct to appeal to passions and prejudices of the jury]; *People v. Mendoza* (2007) 42 Cal.4th 686, 704 [error to ask jury to view crime through victim's eyes]; *In re Brian J.* (2007) 150 Cal.App.4th 97, 121 [misconduct to urge guilt to protect society and victim].)
- F. Instructional Arguments:
1. Unanimity if multiple acts alleged and no election by DA. (CALCRIM Nos. 3500-3501.)
 2. Attempt vs. completed crimes.
- G. Sentencing. In many cases, the defendant is ineligible for probation or eligible only under unusual circumstances.
1. One Strike Law. (Pen. Code, § 667.61.) It's an alternative sentencing scheme, not an enhancement. It applies to enumerated crimes under particular circumstances that have been pled/proved.
 - a. Generally results in sentence of 15- or 25 years-to-life per count.
 - b. Effective 9/9/10, results in LWOP in certain cases. (Pen. Code, § 667.61, subs. (d),(e), & (j)(1).
 - c. Penal Code section 667.61, subdivision (e) and (j)(2), results in 25 years-to-life sentence effective 9/9/10.
 2. Penal Code section 667.6
 - a. 5 year enhancement for prior conviction of specified offenses. (Pen. Code, § 667.6, subs. (a) & (e).

- b. 10 year enhancement (Pen. Code, §§ 667.5, 667.6(b) &(e).)
- c. Full-term stacking. (Pen. Code, § 667.6, subs. (c) & (d). Need to look at whether it's the same victim on the same occasion, separate victims, or the same victim on separate occasions. "[T]he court shall consider whether, between the commission of one sex crime and another, the defendant had a reasonable opportunity to reflect upon his or her actions and nevertheless resumed sexually assaultive behavior. Neither the duration of time between crimes, nor whether or not the defendant lost or abandoned his or her opportunity to attack, shall be, in and of itself, determinative on the issue of whether the crimes in question occurred on separate occasions." (Pen. Code, § 667.6, subd. (d).)

3. Three Strikes Law can also apply.

H. Miscellaneous other issues:

1. AIDS Testing. (Pen. Code, § 1202.1.) An AIDS testing order can apply in both adult and juvenile cases. Check subdivision (e) to determine whether it can apply to each conviction/true finding. For Penal Code section 288 violations, there needs to be some evidence that a transfer of bodily fluid is possible to justify the testing requirement. (See also Health & Saf. Code, § 121055 [under certain circumstances, an alleged victim can make a written request blood testing and the DA or the alleged victim can petition the court to order such testing for HIV, hepatitis B and C].)

2. Visitation limitations/restraining orders.

- a. Protective orders for juvenile cases are limited to 3 years. (Welf. & Inst. Code, § 213.5.)
- b. Overbreadth can be problematic, particularly in juvenile cases.
- c. Judicial misconduct.
- d. Penitent-Clergy privilege.

4. Client care.

Resources:

1. Appellate projects. (See e.g., Kathy Caverly's [CAP] list of sex cases.
2. *Sex Crimes: California Law and Procedure* published by The Rutter Group.
3. CADC briefbank.
4. PJDC listserv.