

SPECIAL DIRECTIVE 03-03
STOGNER V. CALIFORNIA
U.S. Supreme Court No. 01-1757
& Penal Code Section 803, subds.(f), (f) and (h)
June 30, 2003

- Review of P.C. Section 803(g) Cases Memorandum -

Penal Code section 803, subdivision (g), which became effective January 1, 1994, purports to extend or revive the statute of limitations for certain sex crimes against children. The enumerated crimes all have either a six year statute of limitations pursuant to Penal Code section 800 or a three year limitation pursuant to section 801. For cases where the three or six year limitation of section 800 or 801 has expired, however, section 803, subd.(g), provides that a criminal complaint may still be filed within one year after a person of any age files a report alleging that he or she was a victim of one of the enumerated crimes while under the age of 18 years, provided that the crime involved substantial sexual contact and there is strong, independent corroboration of the victim. Section 803, subdivision (g), was intended not only to extend the statute of limitations in cases where the three or six year limitation expired after the effective date of January 1, 1994, but also to revive cases where the previous statute of limitations had expired prior to that date. This "revival" feature, which purported to allow the present prosecution of crimes which occurred long before 1994, has now been declared unconstitutional by the United States Supreme Court.

We conclude that a law enacted after expiration of a previously applicable limitations period violates the Ex Post Facto Clause when it is applied to revive a previously time-barred prosecution.

(Stogner v. California (June 26, 2003, No. 01-1757) ___ U.S. ___ [2003 WL 146073 at p. 12; 2003 Daily Journal D.A.R. 6989 at 6995].) The Supreme Court also said, however: "[T]o hold that such a law is ex post facto does not prevent the State from extending time limits for the prosecution of future offenses, or for prosecutions not yet time barred." (Id.)

This means that we can still use Penal Code section 803, subdivision (g), where applicable, to prosecute crimes whose limitations period had not yet expired as of January 1, 1994, the effective date of subdivision (g). For crimes with a three year statute of limitations, this would usually mean that we can prosecute crimes occurring on or after January 1, 1991. For crimes with a six year limitation, we can prosecute offenses occurring on or after January 1, 1988. Some crimes occurring on earlier dates may also be prosecutable where the statute of limitations was tolled for a period of time because the defendant was out of the state. (See section 803, subd.(d) [three year tolling period if defendant is out of state.])

Penal Code section 803, subdivision (h), which became effective January 1, 2002, also purports

to revive previously time-barred prosecutions. Subdivision (h) requires a crime report by a victim under the age of 21 alleging that he or she was a crime victim while under the age of 18. Pursuant to Stogner, crimes with a three year statute of limitations may only be prosecuted pursuant to subdivision (h) where the offense occurred on or after January 1, 1999, unless there was a previous tolling of the statute. Crimes with a six year limitation period may only be prosecuted under subdivision (h) where the offense occurred on or after January 1, 1996.

Any ongoing prosecutions for previously time-barred offenses, will have to be dismissed, pursuant to the Stogner decision. Defendants already convicted pursuant to section 803, subdivisions (f)1, (g) or (h), for previously time-barred offenses, will have their convictions overturned on appeal or via habeas corpus petitions. All habeas corpus petitions concerning the Stogner decision must be referred to the HABLIT unit.

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1 Current prosecutions pursuant to section 803, subdivision (f), should not be affected by the Stogner decision because it became effective in 1990 and it requires a report by a child under the age of 18. It is possible, however, that some defendants in the past were convicted under subdivision (f) for offenses that were time-barred prior to 1990.