

# Table of Contents

## CHAPTER 1. MANAGEMENT OF SEX CASES

- § 1:1 Set an early status conference
- § 1:2 Set realistic dates
- § 1:3 Appoint experts early in the process
- § 1:4 Set regular status conferences to monitor discovery
- § 1:5 Set standard protocols for the handling of sensitive evidence and for facilitating the exchange of scientific evidence between experts
- § 1:6 Handle sex crimes vertically and in specialized departments
- § 1:7 Prepare for self-represented defendants

APPENDIX 1A. SAMPLE FARETTA WAIVER

## CHAPTER 2. WARRANTS

- § 2:1 Protect the identity of the victim
- § 2:2 Seal the declaration
- § 2:3 Statutes of limitations and “John Doe” warrants for sex crimes involving DNA evidence
- § 2:4 Search Warrants for Defendant’s Computers

## CHAPTER 3. ARRAIGNMENT

- § 3:1 Setting bail after *In re Humphrey*
- § 3:2 Key Elements of *Humphrey*
- § 3:3 Pretrial Release of a Defendant, Including Setting of Bail
- § 3:4 Preventive Detention: Provisions of the California Constitution
- § 3:5 Prehearing Release of Probationers
- § 3:6 Whether preventive detention is authorized by the California and United States Constitutions
- § 3:7 Setting bail
- § 3:8 Setting conditions on release
- § 3:9 Appointing counsel
- § 3:10 Jurisdiction for cases involving the commission of more than one sex crime in different jurisdictions (Pen. Code, § 784.7)

APPENDIX 3A. Checklist for *Humphrey* Bail Orders

APPENDIX 3B. Checklist for Prehearing Release on Probation Violations

## **CHAPTER 4. MEDIA RELATIONS**

- § 4:1 Electronic coverage
- § 4:2 Practical suggestions for working with media
- § 4:3 “Gag” orders

APPENDIX 4A. ORDER PROHIBITING MEDIA  
COVERAGE

APPENDIX 4B. ORDER GRANTING MEDIA  
COVERAGE

APPENDIX 4C. CHECKLIST FOR JUDGES  
PRESIDING OVER HIGHLY  
PUBLICIZED CASES

APPENDIX 4D. ORDER PROHIBITING PUBLIC  
COMMENT

## **CHAPTER 5. DISCOVERY**

- § 5:1 Discovery procedures
- § 5:2 Other provisions limiting discovery
- § 5:3 Protective order

APPENDIX 5A. DISCOVERY PROTECTIVE ORDER IN  
SEX CASES

## **CHAPTER 6. STATUTES OF LIMITATION**

- § 6:1 General provisions
- § 6:2 Commencement of the prosecution
- § 6:3 Tolling of the statute of limitations for sex crimes  
against minors
- § 6:4 Extension of the statute of limitations for crimes in  
which the identity of the suspect is established by  
dna evidence

APPENDIX 6A. STATUTE OF LIMITATIONS FOR  
FELONY SEX OFFENSES

## **CHAPTER 7. PROTECTION OF THE VICTIM**

- § 7:1 Introduction
- § 7:2 General provisions
- § 7:3 Court proceedings

APPENDIX 7A. ORDER PROHIBITING CONTACT  
WITH VICTIM

## **CHAPTER 8. THE CHILD WITNESS**

- § 8:1 Protection of the child witness
- § 8:2 The child victim witness

## TABLE OF CONTENTS

§ 8:3 Evidentiary issues related to children

## **CHAPTER 9. *[Reserved]***

## **CHAPTER 10. THE PRELIMINARY HEARING**

- § 10:1 Scheduling the preliminary hearing (Pen. Code, § 859B)
- § 10:2 Closing the courtroom (Pen. Code, § 868)
- § 10:3 Closing the courtroom at request of prosecution to protect a minor (Pen. Code, § 868.7 and 859.1)
- § 10:4 Videotaping preliminary hearing testimony for use at trial when the victim is a minor or a person who is developmentally disabled (Pen. Code, § 1346)
- § 10:5 Videotaping spousal rape victim's preliminary hearing testimony for use at trial (Pen. Code, § 1346.1)
- § 10:6 Exception to "single session" rule for preliminary hearings (Pen. Code, § 861.5)
- § 10:7 Calling the victim to testify
- § 10:8 Application of Evidence Code § 782 to preliminary hearings

## **CHAPTER 11. THE SCIENCE AND LAW OF DNA TESTING**

- § 11:1 Introduction
- § 11:2 History of forensic DNA testing
- § 11:3 The nuclear DNA molecule
- § 11:4 Collecting DNA for analysis
- § 11:5 Processing DNA in the laboratory
- § 11:6 Forensic Genetic Genealogy
- § 11:7 The Sexual Assault Victims' DNA Bill of Rights
- § 11:8 DNA statistics
- § 11:9 DNA Data Bank Program
- § 11:10 Statutes of limitations and "John Doe" warrants for sex crimes involving DNA evidence
- § 11:11 Discovery in DNA cases
- § 11:12 Defense testing; consumption of sample
- § 11:13 Admission of DNA test results and the Confrontation Clause [section written by Couzens and Bigelow]
- § 11:14 Postconviction DNA testing
- § 11:15 Resources

## **CHAPTER 12. TRIAL**

- § 12:1 Negotiating the settlement of sex cases

## SEX CRIMES: CALIFORNIA LAW & PROCEDURE

- § 12:2 Taking felony pleas in sex cases
- § 12:3 Priority in trial setting (Pen. Code, § 1048)
- § 12:4 Venue
- § 12:5 Setting trial to avoid calendar conflicts of prosecutor (Pen. Code, § 1048.1)
- § 12:6 Trial closure
- § 12:7 Jury selection
- § 12:8 Expert witness testimony
- § 12:9 Syndrome evidence
- § 12:10 Uncharged acts and character evidence (Evid. Code, §§ 352, 1101, 1108)
- § 12:11 Exceptions to the hearsay rule applicable to sex crimes
- § 12:12 Privileges
- § 12:13 Amendment of information to add additional counts of sexual assault
- § 12:14 Protocol for examination of sexual assault victims and minimum standards for collection of evidence in sexual assault cases (Pen. Code, § 13823.5 et seq.)
- § 12:15 Evidence of morbid fear of sexual matters
- § 12:16 Disposition of photographs of minors admitted in evidence (Pen. Code, § 1417.8)
- § 12:17 Retention of biological material (Pen. Code, § 1417.9)
- § 12:18 Additional trial issues
- § 12:19 Jury instructions, generally
- § 12:20 Jury instructions, specific crimes
- § 12:21 Determination of factual innocence (§ 851.8)

APPENDIX 12A. SEX CRIME QUESTIONNAIRE

APPENDIX 12B. MYTHS ABOUT SEXUAL ASSAULT

APPENDIX 12C. INSTRUCTION TO JURY WHEN  
UNABLE TO REACH VERDICT

## CHAPTER 13. SENTENCING

- § 13:1 Potential sentencing issues
- § 13:2 Deferred entry of judgment (Pen. Code, §§ 1000.12, 1000.13)
- § 13:3 Appearance of victim, parents at sentencing (Pen. Code, §§ 1191.1, 1191.15, 1191.16)
- § 13:4 The Containment Model for management of sex offenders
- § 13:5 Restrictions on grant of probation
- § 13:6 Required evaluations
- § 13:7 Conditions of probation
- § 13:8 Victim Restitution
- § 13:9 Restitution fines and other assessments

## TABLE OF CONTENTS

§ 13:10	Introduction to 2022 Legislative Changes to Felony Sentencing
§ 13:11	Imposition of sentence under the Determinate Sentencing Law (§§ 1170 and 1170.1)
§ 13:12	Imposing an upper term of imprisonment
§ 13:13	Required imposition of the low term of imprisonment
§ 13:14	Striking of enhancements under section 1385
§ 13:15	“One Strike” law (Pen. Code, § 667.61)
§ 13:16	Habitual sex offenders (“Two Strikes” law) (Pen. Code, § 667.71)
§ 13:17	Relationship between the One, Two, and Three strikes laws
§ 13:18	Continuous sexual abuse of a child and included offenses (Pen. Code, § 288.5)
§ 13:19	Application of Penal Code, § 654
§ 13:20	Consecutive sentencing
§ 13:21	Custody Credits
§ 13:22	Sentencing after realignment
§ 13:23	Collateral consequences
§ 13:24	Certificate of rehabilitation and pardon
§ 13:25	Sentencing juveniles for sex crimes as an adult
§ 13:26	Cruel and Unusual Punishment
APPENDIX 13A.	DISCRETIONARY CONDITIONS OF PROBATION
APPENDIX 13B.	CRIMES REGISTERABLE UNDER PENAL CODE § 290
APPENDIX 13C.	AWARDING CONDUCT CREDITS UNDER P.C. §§ 4019 and 2933
APPENDIX 13D.	“ONE STRIKE” LAW WITH ADULT VICTIM
APPENDIX 13E.	“ONE STRIKE” LAW WITH MINOR VICTIM UNDER 14 YEARS OLD
APPENDIX 13F.	“ONE STRIKE” LAW WITH MINOR VICTIM 14-17 YEARS OLD

## CHAPTER 14. SEXUALLY VIOLENT PREDATORS

§ 14:1	Purpose and Nature of the SVP Statute
§ 14:2	Requirements for Commitment
§ 14:3	Procedural Requirements Under the Act
§ 14:4	Application of SB 1128 and Proposition 83
§ 14:5	Constitutional Issues
§ 14:6	Miscellaneous Issues
APPENDIX 14A.	STATIC-99R
APPENDIX 14B.	ORDER OF PROBABLE CAUSE

SEX CRIMES: CALIFORNIA LAW & PROCEDURE

APPENDIX 14C. JURY QUESTIONNAIRE FOR  
SEXUALLY VIOLENT PREDATOR  
CASES

APPENDIX 14D. ORDER OF COMMITMENT OF SVP

APPENDIX 14E. TERMS AND CONDITIONS OF  
OUTPATIENT TREATMENT (SVP)

**Table of Laws and Rules**

**Table of Cases**

**Index**