

**OFFICE OF THE DISTRICT ATTORNEY  
COUNTY OF VENTURA**

**MCLE AGENDA  
BASICS OF CRIMINAL PROCEDURE**

September 13, 2016

Room 308

Instructor: Michael D. Schwartz, Special Assistant District Attorney

MCLE Credit: 3.hours

- 1:30 – 1:45 Criminal pleadings and proceedings flow charts
- 1:45 – 2:00 Felony, misdemeanor and infraction punishments
- 2:00 – 2:30 Right to counsel  
Arrest warrants and subpoenas  
Bail  
Arraignment  
Pleadings, joinder and severance  
Preliminary hearings  
Grand jury
- 2:30 – 2:45 Break
- 2:45 – 3:45 Discovery  
Public records  
Motion to set aside information or indictment (995 motion)  
Search and seizure motions  
Motion to disclose informant's identity  
Selected pretrial motions  
Speedy trial  
Continuances  
Disqualification of judge  
Line-ups  
Confessions and admissions
- 3:45 – 4:00 Break
- 4:00 – 5:00 Prior convictions, uncharged misconduct  
Discharge, dismissal, mistrial  
Pleas and case settlement  
Deferred entry of judgment, diversion, preplea probation reports  
Trial by court or jury  
Jury selection  
Trial preparation  
Selected trial motions  
Jury instructions  
Prejudgment motions  
Writs and appeals  
Mental competence

**OFFICE OF THE DISTRICT ATTORNEY  
COUNTY OF VENTURA**

---

**BASICS OF CRIMINAL PROCEDURE**

**A non-comprehensive summary derived primarily from  
C.E.B., CALIFORNIA CRIMINAL LAW PROCEDURE AND PRACTICE  
(2016 edition)  
Revised 9/6/16**

**Chapter 3 - Right to counsel**

DA generally does not have standing on issue of whether defendant will be represented, or by whom, unless it results in unreasonable request for continuance.

*Marsden* Motion (irreconcilable conflict in relationship with appointed counsel so that ineffective representation is likely to result). (*People v. Marsden* (1970) 2 Cal.3d 118.) Closed hearing, DA is excluded.

Defendant has federal constitutional right to represent himself without counsel. (*Faretta v. California* (1975) 422 U.S. 806, 836.)

Untimely *Faretta* motion, not made a reasonable time prior to the commencement of trial, is within discretion of the trial court. (*People v. White* (1992) 9 Cal.App.4th 1062, 1071.)

Defendant not permitted to misuse *Faretta* to unjustifiably delay a scheduled trial or to obstruct the orderly administration of justice. But motion even on the day of trial is not untimely per se...depends on availability of witnesses, prior opportunities to make the motion, etc. (*People v. White, supra.*)

If *Faretta* motion is granted, the defendant is entitled to a reasonable continuance to enable him to prepare for trial. (*People v. Hill* (1983) 148 Cal.App.3d 744, 756 (describing the “*Faretta* game.”))

Continuance beyond 60 day period of PC 1382 at request of counsel to prepare for trial proper over defendant’s objection, presuming effective counsel acting for best interest of the client. (*People v. Noriega* (1997) 59 Cal.App.4th 311, 321.)

Unavailability of defense counsel not good cause to continue beyond 60 days if based on failure of state to provide sufficient resources for criminal defense. (*People v. Johnson* (1980) 26 Cal.3d 557.)

#### **Chapter 4– Arrest warrants and subpoenas**

Ways we get defendants into court: (1) in custody, (2) released by law enforcement agency on citation, bail or own recognizance, (3) arrest warrants, or (4) appearance letters, with declaration in support of arrest warrant on file.

Subpoenas: Mail service valid if call in with DOB and CDL. (PC 1328d.) Minors served through parent/guardian (plus serve minor if 12 or older). (PC 1328(b).)

Peace officers served through their supervisor. (PC 1328(c)-(f).)

If residence of witness 150 miles or more from courthouse, judge must sign subpoena. (Penal Code § 1330.)

If witness is out of state, must use Uniform Act to Secure the Attendance of Witnesses From Without the State in Criminal Cases (Penal Code §§ 1334 et seq.)

Subpoena duces tecum (SDT): Law unclear if need affidavit (or declaration) showing good cause and materiality. (Compare Code Civ. Proc. §§ 1985(b), 1987.5; *People v. Clinesmith* (1959) 175 Cal.App.2d Supp. 911, 913-914; *People v. Superior Court (Barrett)* (2000) 80 Cal.App.4th 1305, 1318 [affidavit or declaration required]; with *Michael B. v. Superior Court* (2002) 103 Cal.App.4th 1384, 1395-1396 [no affidavit required for grand jury SDT because CCP does not apply to criminal cases].) Records go to court, not to party. (*People v. Hammon* (1997) 15 Cal.4th 1117.) Opposing side has right to notice of nature of records subpoenaed and court may allow opposing side to be heard; court should review records before releasing them to party that requested them. (*Kling v. Superior Court* (2010) 50 Cal.4th 1068.)

SDT for business records: can return records by mail with declaration of custodian. (Evid. Code § 1560.) But declaration may be insufficient to establish elements of business records exception (Evid. Code § 1561.) (*Taggart v. Super Seer Corp.* (1995) 33 Cal.App.4th 1697, 1706.)

#### **Chapter 5 – Bail**

Own recognizance: Penal Code § 1270

Bail: Penal Code § 1275 and Marsy's Law (Cal. Const., art. I, § 28 (e)): protection of public, safety of the victim, seriousness of offense, criminal record, probability of appearance. Public safety and safety of victim are the primary considerations.

Cal. Const., art. I, § 12 (Proposition 4): right to bail except (a) "capital crimes when the facts are evident or the presumption great," or (b) felony involving acts of violence on another person, or felony sexual assault on another person, substantial likelihood release would result in great bodily harm to others, or (c) felony, threats of GBH, substantial likelihood would carry out threat if released.

Reluctance of local Court of Appeal to allow bail much in excess of bail schedule.

### **Chapter 6– Arraignment**

Advice of rights, appoint counsel (or determine if pro per or have appointed counsel), entry of plea. If plead guilty, sentence or set for sentencing. If plead not guilty, set for trial (misdemeanor) or for preliminary examination/early disposition conference (felony). Release on bail/OR or remand to custody. Provide discovery in misdemeanor case.

48 hour rule: must be arraigned within 48 hours after arrest with or without warrant, not counting weekends and holidays. (Penal Code § 825.) No rearrests.

### **Chapter 7 - Pleadings, joinder and severance**

Misdemeanor: Accusatory pleading is the complaint. Citation may serve as complaint if on Judicial Council form (Penal Code § 853.9, Veh. Code § 40513.)

Felony: (a) Indictment (grand jury), or  
(b) felony complaint→preliminary examination→held to answer→information

Language rather than code section controls, even if wrong code section cited. (*People v. Thomas* (1987) 43 Cal.3d 818, 831.)

Must plead in conjunctive ("and"), may prove in disjunctive ("or"). (*In re Bushman* (1970) 1 Cal.3d 767.)

All offenses in same course of conduct must be joined. (*Kellett v. Superior Court* (1966) 63 Cal.2d 822.)

Joinder of charges: 1 defendant: PC 954: offenses connected in their commission or of the same class

Joinder of defendants: PC 1098.

*People v. Aranda* (1965) 63 Cal.2d 518: extrajudicial statement of one defendant which incriminates another defendant cannot be admitted in joint trial. Must sever, exclude statement, or sanitize to delete references to co-defendant

Amendment of complaint or information without leave of court before plea or sustaining of demurrer; motion required after that. (PC 1009.)

“Wobblers” (alternative felony/misdemeanors): PC 17(b)  
Misdemeanor/infraction wobblers: PC 17(d), 19.8

### **Chapter 8 – Preliminary hearings (preliminary examination)**

Probable cause standard

May demand offer of proof that defense witnesses will establish affirmative defense, negate an element, or impeach a prosecution witness. (PC 866(a))

PX may not be used for purposes of discovery (PC 866(b))

Hearsay admissible through qualified officer (PC 872(b))

### **Chapter 9 – Grand jury**

Functions of grand jury: indictment, civil watchdog, “accusation” against public official

Ventura County uses second grand jury for criminal investigations (PC 904.6)

### **Chapter 11 – Discovery**

Criminal discovery statute: Penal Code § 1054 et seq.

*Pitchess v. Superior Court* (1974) 11 Cal.3d 531 – motion by either side for records from peace officer’s personnel file

*Brady v. Maryland* (1963) 373 U.S. 83 – prosecution’s duty to provide defense with material evidence favorable to the accused

## **Chapter 12 - Public records**

Public Records Act (Gov. Code §§ 6250-6268) (see back of Vehicle Code).  
Legal Policies Manual: Must refer to Chief Deputy

Sealing of court records: California Rules of Court, rules 2.550, 2.552: specific procedures to file records under seal. Must file motion conditionally under seal, establish “overriding interest that overcomes the right of public access”, etc. N/A discovery motions. (Based on *NBC Subsidiary (KNBC-TV), Inc. v. Superior Court* (1999) 20 Cal.4th 1178.)

## **Chapter 13 – Motion to set aside information or indictment (PC 995)**

Information is not supported by probable cause shown at preliminary examination

Other procedural errors

Based on record of the preliminary hearing

Judge can remand for correction of “minor errors” (PC § 995a)

Motion to reinstate complaint after “not HTA” at PX (PC 871.5)--a “reverse 995 motion.” An option to refiling.

## **Chapter 16 – Search and seizure motions**

If stipulate that no warrants, it shifts burden to the prosecution

Argue all applicable exceptions to warrant requirement – can’t raise new theories on appeal

Harvey-Madden rule: if officer relied on statement of another witness, need that witness or person who spoke to that witness

Importance of developing factual record. E.g., what facts supported conclusion that officer safety required a pat down? How long was the detention? When did officer learn that defendant was on probation (and you should provide court documents showing he was in fact on probation).

## **Chapter 17 - Motion to disclose informant’s identity**

Identity of informant must be material to guilt or innocence, not just to probable cause. (Evid. Code 1042 (c).)

Defendant must make showing that informant would provide material exculpatory evidence. (*Franks v. Delaware* (1978) 438 U.S. 154.)

Only then is defendant entitled to in camera hearing. Officer (not informant) appears at in camera hearing.

### **Chapter 18 - Selected pretrial motions**

#### A. Criminal law motion time limits

Time limits for motions: serve and file motion w/ points and authorities at least 10 calendar days before hearing, opposition 5 calendar days, reply 2 court days. (Cal. Rules of Court, rule 4.111.)

Later discovered authority: file supplemental brief or provide court and counsel with cites ASAP (Ventura County Superior Court rule 11.03.)

#### B. Discriminatory prosecution

(*Murgia v. Municipal Court* (1975) 15 Cal.3d 286)

Laxity in enforcement of laws not a defense, but discrimination against racial groups, union members, first amendment, etc., can be a defense. E.g. *People v. Serna* (1977) 71 Cal.App.3d 229 (prosecution of only those who exercised First Amendment right of complaining about school system.)

Defendant must show that he would not have been prosecuted but for his membership in a constitutionally protected, or suspect, class, or his exercise of a statutory or constitutional right. (*People v. Owens* (1997) 59 Cal.App.4th 798 (no discrimination where felony prosecution of peace officer for endless chain scheme, misdemeanor prosecution of civilians).) Must show plausible justification for discovery.

#### C. Recusal of prosecutor (PC § 1424)

- 10 days written notice to DA and AG

- conflict of interest renders it unlikely defendant would receive a fair trial

- PC 1424 was enacted in 1980 to change the standard of *People v. Superior Court (Greer)* (1977) 19 Cal.3d 255. Under section 1424, an actual conflict must be shown; the mere *potential* for bias or the *appearance* of a conflict does not justify recusal.

- conflicting “personal” interest, or “personal or emotional involvement,” or “emotional stake” in the case (*People v. Superior Court (Martin)* (1979) 98 Cal.App.3d 515)

- institutional financial conflicts (*People v. Eubanks* (1996) 14 Cal.4th 580 (victim paid investigative costs))

- zealous advocacy OK; don’t need same kind of disinterest of judge or jury. (*People v. Parmar* (2001) 86 Cal.App.4th 781, 797)

- disqualification of particular prosecutor usually enough; whole office must be recused if conflict of top management (*Younger v. Superior Court* (1978) 77 Cal.App.3d 892 (Johnnie Cochran); *Deukmejian v. Superior Court* (1980) 110 Cal.App.3d 427, 434; *People v. Merritt* (1993) 19 Cal.App.4th 1573, 1581)

D. Retaliatory/vindictive prosecution

“raise the ante” after trial (seek increased punishment after exercise of right to trial or right to appeal).

**Chapter 19 – Speedy trial**

Statute of limitations:

PC 799-805.5

Generally 1 year for misdemeanors (PC 802)

3 years for most felonies and wobblers (PC 801, 805(a))

Statutory trial deadlines:

Preliminary hearing within 10 court days of arraignment (PC 859b)

Information filed within 15 days of holding order (PC 1382(a)(1))

Felony trial within 60 days of arraignment (PC 1382(a)(2))

Misdemeanor trial within 45 days of arraignment (30 days if in custody) (PC 1382(a)(3))

If last day falls on Saturday, Sunday or court holiday, deadline extended until next court day

Continuance *beyond the statutory period* by request or consent: trial must begin on new day or within 10 days thereafter

Preaccusation delays, post accusation delays: there is a body of case law based upon due process (14th amendment), speedy trial (6th amendment), and California Constitution, all with different standards

### **Chapter 20 – Continuances**

Good cause must be shown, 2 days notice required unless good cause for non-compliance (PC 1050; see PC 1050.1, 1050.5, 1051.)

Good cause not required for prosecution to obtain continuance within time. (*People v. Rubaum* (1980) 110 Cal.App.3d 930.)

### **Chapter 21 – Disqualification of judge**

Need approval of supervisor per Legal Policies Manual to disqualify (“paper”) a judge

CCP 170.6 (peremptory challenge): 1 per side. Must be before contested issue of fact decided. Deadlines.

CCP 170.1, 170.5 (challenge for cause): Judge has personal knowledge, judge served as a lawyer for one of the parties, financial interest, judge or family member is a party, or “a person aware of the facts might reasonably entertain a doubt that the judge would be able to be impartial,” including bias or prejudice against a lawyer in the proceeding.

### **Chapter 22 – Line-ups**

Defense counsel is an observer

Best to comply with reasonable, practical suggests of defense even if not required.

Jury is likely to think you should have, will give you credit if you do, hold it against you if you don't.

### **Chapter 23 – Confessions and admissions**

This is a huge area of law that warrants a separate lecture.

If Miranda violation, can use for impeachment.  
If statement involuntary, cannot be used for any purpose.

Listen to tape to make sure summary in report is accurate.

Mechanics of Miranda hearing: go through the card, statement by statement.

Officer not make any promises or threats.

Officer give opinion that waiver was free and voluntary.

*Griffin* error: *Griffin v. Calif.* (1965) 380 US 609: cannot comment on defendant's failure to take the stand.

*Doyle v. Ohio* (1976) 426 US 610: cannot comment on defendant's failure to make statement to police.

Corpus delicti rule: Statements of defendant insufficient by themselves to prove guilt; need some other evidence to establish every element of the crime. Identity of defendant is not an element of the crime.

## **Chapter 24 – Prior convictions, uncharged misconduct**

Alleged priors for sentence enhancement

Generally are bifurcated from main trial  
Judge hears challenge to constitutional validity  
Jury determines identity, whether suffered conviction

Uncharged priors for credibility of testifying defendant or any witness

Felony convictions (Evid. Code § 788)

Moral turpitude misdemeanors: conduct, not conviction is admissible.  
(*People v. Wheeler* (1992) 4 Cal.4th 284.)

Court may “sanitize” priors of defendant if too similar to current offense

Court's discretion under Evidence Code § 352

Priors to prove conduct

Evid. Code § 1101(a): priors inadmissible to prove disposition to commit crime

Evid. Code § 1101(b): admissible to prove motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake or accident

Evid. Code § 1108: prior sexual offense admissible

Evid. Code § 1109: prior domestic violence

Proceed with caution regarding priors on issues of credibility or to prove conduct. Get a ruling from the court first.

### **Chapter 25- Discharge, dismissal, mistrial**

PC 1385: dismissal on motion of DA or on court's own motion.

Grounds: cannot be proven beyond a reasonable doubt, or furtherance of justice.

Includes right to strike priors, except serious felonies (PC 667)

"Discharge," not "dismissal" if no charges have been filed.

One dismissal for misdemeanors. (PC 1387)

Two dismissals for felonies. (PC 1387)

Three dismissals for violent felonies if excusable neglect. (PC 1387.1)

### **Chapter 26 – Pleas and case settlement**

PC 1016: Guilty, not guilty, nolo contendere (no contest), former conviction or acquittal, once in jeopardy, not guilty by reason of insanity.

Waiver of rights for guilty or no contest plea: nature of charges, direct consequences (including minimum and maximum punishment), right to jury trial, confront and cross-examine witnesses, privilege against self-incrimination. (*In re Tahl* (1969) 1 Cal.3d 122; *Boykin v. Alabama* (1969) 395 US 238.) Factual basis for felony.

No contest plea same as guilty plea for a felony. (PC 1016(3).)

Conviction of Vehicle Code offense not collateral estoppel or res judicata in a civil case. (Veh. Code § 40834)

Ventura County no plea bargaining policy

## **Chapter 27 – Deferred entry of judgment, diversion, preplea probation reports**

Various diversion statutory schemes

Ventura County judges never order preplea probation reports

## **Chapter 28 – Trial by court or jury**

**Court trial requires waiver of jury by the People, by the defendant personally, and by defense counsel.** (Cal. Const., art. I, § 16.)

Per Legal Policies Manual, need supervisor approval to waive jury for (1) special interest case, or (2) felony.

If have good case and good judge with practical ability to evaluate evidence, normally should be willing to waive. Ask other DDAs about judge.

Advantages of court trial: faster, easier (more stipulations, shorter cross, etc.), certain verdict (no hung jury), easier on witnesses, substantially less chance of reversal. Disadvantages of court trial: case may have more appeal to a jury.

“Slow plea” (submission of case on transcript or police report): tantamount to a guilty plea, must waive constitutional rights. (*Bunnell v. Superior Court* (1975) 13 Cal.3d 592, 605.) We have a form for this. (S/WPC/Brief Bank/Waiver of Constitutional Rights for Submission on Transcript)

## **Chapter 29 – Jury selection**

A. Challenges for cause (actual bias, implied bias): CCP 228, 229.

B. Peremptory challenges

Punishable by death or life: 20 per side

Other felonies: 10 peremptory challenges per side, plus 5 on each side for each additional defendant. (Code Civ. Proc. § 231.)

Misdemeanors punishable by more than 90 days in jail, until 1/1/17:  
10 peremptory challenges per side, plus 5 on each side for each additional defendant. (Code Civ. Proc. § 231.)

Misdemeanors punishable by 90 days jail or less, until 1/1/7: 6 per side, plus 4 for each additional defendant

EFFECTIVE 1/1/17, all misdemeanors: 6 per side, plus 2 for each additional defendant

Alternate jurors: 1 per defendant/side (Code Civ. Proc. § 234.)

C. Voir dire

Indicate to jurors that they can give information confidentially, out of presence of other jurors, public, news media

Jury trial reports on computer

*Wheeler* considerations

**Chapter 30 – Trial preparation**

Review reports

Interview and prepare witnesses

Visit scene, have officer visit scene

Anticipate evidentiary issues

Prepare argument, instructions

Motion in limine?

Trial brief?

**Chapter 31 – Selected trial motions**

Judgment of acquittal

1118 PC - court trial - People not prove beyond a reasonable doubt

1118.1 PC - jury trial - not sufficient to uphold on appeal - substantial evidence of each element

Granting of 1118, 1118.1 motion not appealable (double jeopardy; PC 1118.2)

## **Chapter 32 - Jury instructions**

Cal. Rules of Court, rule 2.1050 (e): Use of CALCRIM is “strongly encouraged” and “recommended” unless “a different instruction would more accurately state the law and be understood by jurors.” “Whenever the latest edition of the Judicial Council jury instructions does not contain an instruction on a subject on which the trial judge determines that the jury should be instructed, or when a Judicial Council instruction cannot be modified to submit the issue properly, the instruction given on that subject should be accurate, brief, understandable, impartial, and free from argument.”

Example of innocuous special instruction

## **Chapter 34 - Prejudgment motions**

Motion for new trial (PC 1179-1182)

Before judgment or probation order entered

Judge as “13th juror” (determine if there is sufficient credible evidence to sustain the verdict) (*People v. Robarge* (1953) 41 Cal.2d 628, 634.)

Appellate court will uphold grant of new trial if any conflict in the evidence (*People v. Espinola* (1940) 38 Cal.App.2d 482, 485.)

Jury misconduct

## **Chapters 42-45- Writs and appeals**

Appellate Dept. of Superior Court is now Appellate Division (misdemeanors)

California Court of Appeal, Second Appellate District, Division 6 (Justices Gilbert, Yegan, Perren, Tangeman)

Published opinions of California Supreme Court and all districts of the Court of Appeal are binding on superior court. (*Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, 455)

State courts are not bound by decisions of lower federal courts, even on constitutional issues. (*People v. Tremayne* (1971) 20 Cal.App.3d 1006, 1014.)

People’s appeals: grounds

Felony: PC 1238 (60 days)

Misdemeanor: PC 1477 (30 days)  
Dismissal before jeopardy, sentencing error, errors after judgment

#### Defense appeals

Felony: AG handles  
Misdemeanor: DA handles

#### People's writ of mandate/prohibition

Setting aside portion of information/indictment (PC 1118)  
Discovery orders  
Evidentiary rulings are not generally reviewable by either side

Grant of motion to suppress evidence (PC 1538.5 (i) & (o)).

#### Preserving the record for appeal/writ:

Object on the record. Document chambers discussions.  
Raise relevant grounds on the record.  
Get relevant facts and evidence on the record.

Filing of writ does not automatically stay trial court proceedings.

### **Chapter 48 – Mental competence**

PC 1368—suspend criminal proceedings, institute civil proceedings to determine if competent to stand trial

### **Chapter 49 – Immunity**

Felonies: court can order **use immunity** or **transactional immunity**, even over objection of witness (PC 1324)

Misdemeanors: transactional immunity, only if witness agrees (PC 1324.1)

Per Legal Policies Manual, requires memo and supervisor approval

If have immunized, voir dire on this

Draft letter making it clear no immunity for perjury

If expect witness to take the 5th and plan to give immunity, get necessary approval, have forms ready

## STRAIGHT FELONIES – PRISON

Penal Code sections 211/213(a)(2): second degree robbery

“punishable by imprisonment in the state prison for two, three, or five years”

straight felony, state prison

## STRAIGHT FELONY – COUNTY JAIL

(non/non/non/non)

Health and Safety Code section 11352: sale of controlled substances

“shall be punished by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code for three, four, or five years”

1170(h)(2): straight felony, county jail, unless is serious or violent (it’s not), or has prior serious or violent conviction, or is required to register as sex offender, or is fraud/embezzlement over \$100,000

Penal Code section 134: preparing false documentary evidence

“is guilty of a felony”

Penal Code 18: generic felony: 16 months, 2 years or 3 years, in state prison, unless punishable under 1170(h)

1170(h): county jail

Unless court finds inappropriate in the interest of justice, court shall suspend a portion of the jail term; to be served on mandatory supervision. (Penal Code 1170(h)(5).)

“WOBBLERS”  
(ALTERNATIVE FELONY/MISDEMEANOR)

Penal Code section 273.5(a) spousal battery

“shall be punished by imprisonment in the state prison for two, three, or four years, or in a county jail for not more than one year”

Penal Code section 17(b): misdemeanor/felony “wobbler”

Up to one year in county jail as a misdemeanor, or  
2, 3 or 4 years in state prison as a felony

Penal Code 136.1(a): dissuading a witness

“shall be punished by imprisonment in a county jail for not more than one year or in the state prison”

Penal Code section 17(b): misdemeanor/felony “wobbler”

Up to one year in county jail as a misdemeanor, or  
16 months, 2 years or 3 years in state prison (Penal Code section 18(a))

Vehicle Code section 10851(a): vehicle taking

“shall be punished by imprisonment in a county jail for not more than one year or pursuant to subdivision (h) of Section 1170 of the Penal Code”

Penal Code section 17(b): misdemeanor/felony “wobbler”

Up to one year in county jail as a misdemeanor, or  
16 months, 2 years or 3 years in county jail as a felony

STRAIGHT MISDEMEANORS

Penal Code section 466.3: possession of device to break into vending machine

“is punishable by imprisonment in the county jail for not more than one year”

This is a misdemeanor – see Penal Code section 17(a)

Penal Code 242/243(a): battery

“imprisonment in a county jail not exceeding 6 months”

Penal Code section 148.9: false identity to peace officer

“is guilty of a misdemeanor”

Penal Code section 19: generic misdemeanor: up to 6 months county jail

Health and Safety Code section 11350: possession of controlled substances

“shall be punished by imprisonment in a county jail for not more than one year, except that such person shall instead be punished pursuant to subdivision (h) of Section 1170 of the Penal Code if that person has one or more prior convictions for an offense specified in clause (iv) of subparagraph (C) of paragraph (2) of subdivision (e) of Section 667 of the Penal Code or for an offense requiring registration pursuant to subdivision (c) of Section 290 of the Penal Code.”

straight misdemeanor unless priors, then 1170(h)(1) (generic felony: 16 months, 2 years or 3 years in county jail)

Vehicle Code section 12500(a): driving without a valid license

VC 40000.11(b): 12500(a) is a misdemeanor

VC 42002: generic misdemeanor: up to 6 months jail

#### WOBLERETTES

Penal Code sections 17(d), 19.8: alternative misdemeanor/infraction

#### STRAIGHT INFRACTIONS

Health and Safety Code section 11357(b): possession of ounce or less of marijuana

“is guilty of an infraction punishable by a fine of not more than one hundred dollars (\$100).”

See Vehicle Code sections 40000.1, 42001 – infraction punishment for Vehicle Code violations where no other penalty prescribed

### EXAMPLES

Vehicle Code section 2800.2: (a) If a person flees or attempts to elude a pursuing peace officer in violation of Section 2800.1 and the pursued vehicle is driven in a willful or wanton disregard for the safety of persons or property, the person driving the vehicle, upon conviction, shall be punished by imprisonment in the state prison, or by confinement in the county jail for not less than six months nor more than one year. The court may also impose a fine of not less than one thousand dollars (\$1,000) nor more than ten thousand dollars (\$10,000), or may impose both that imprisonment or confinement and fine.

Penal Code section 496(a): Every person who buys or receives any property that has been stolen or that has been obtained in any manner constituting theft or extortion, knowing the property to be so stolen or obtained, or who conceals, sells, withholds, or aids in concealing, selling, or withholding any property from the owner, knowing the property to be so stolen or obtained, shall be punished by imprisonment in a county jail for not more than one year, or imprisonment pursuant to subdivision (h) of Section 1170. However, if the district attorney or the grand jury determines that this action would be in the interests of justice, the district attorney or the grand jury, as the case may be, may, if the value of the property does not exceed nine hundred fifty dollars (\$950), specify in the accusatory pleading that the offense shall be a misdemeanor, punishable only by imprisonment in a county jail not exceeding one year.

### PROBATION

For some offenses, probation is prohibited, or can only be granted if the court finds it is an unusual case in the interest of justice. But for most offenses, the court has the option of suspending the imposition of sentence and placing the defendant on probation. Probation terms can include time in county jail. A defendant serving jail time as a condition of probation has not technically been “sentenced.”

mds 9/2/16

## **CALIFORNIA CRIMINAL PROCEEDINGS**

### **MISDEMEANOR**

Complaint filed → Arraignment → [Pretrial conference] → Jury trial → Sentencing

### **FELONY VIA COMPLAINT**

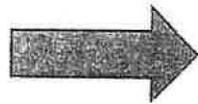
Felony complaint filed → Arraignment → [Early disposition conference] → Preliminary examination (in front of magistrate) →

Held to answer (magistrate finds probable cause) → [DA “info review” meeting] → Information filed → Arraignment → Motion to set aside information (Penal Code section 995, if defendant files one) → [Pretrial conference] → Jury trial → Sentencing

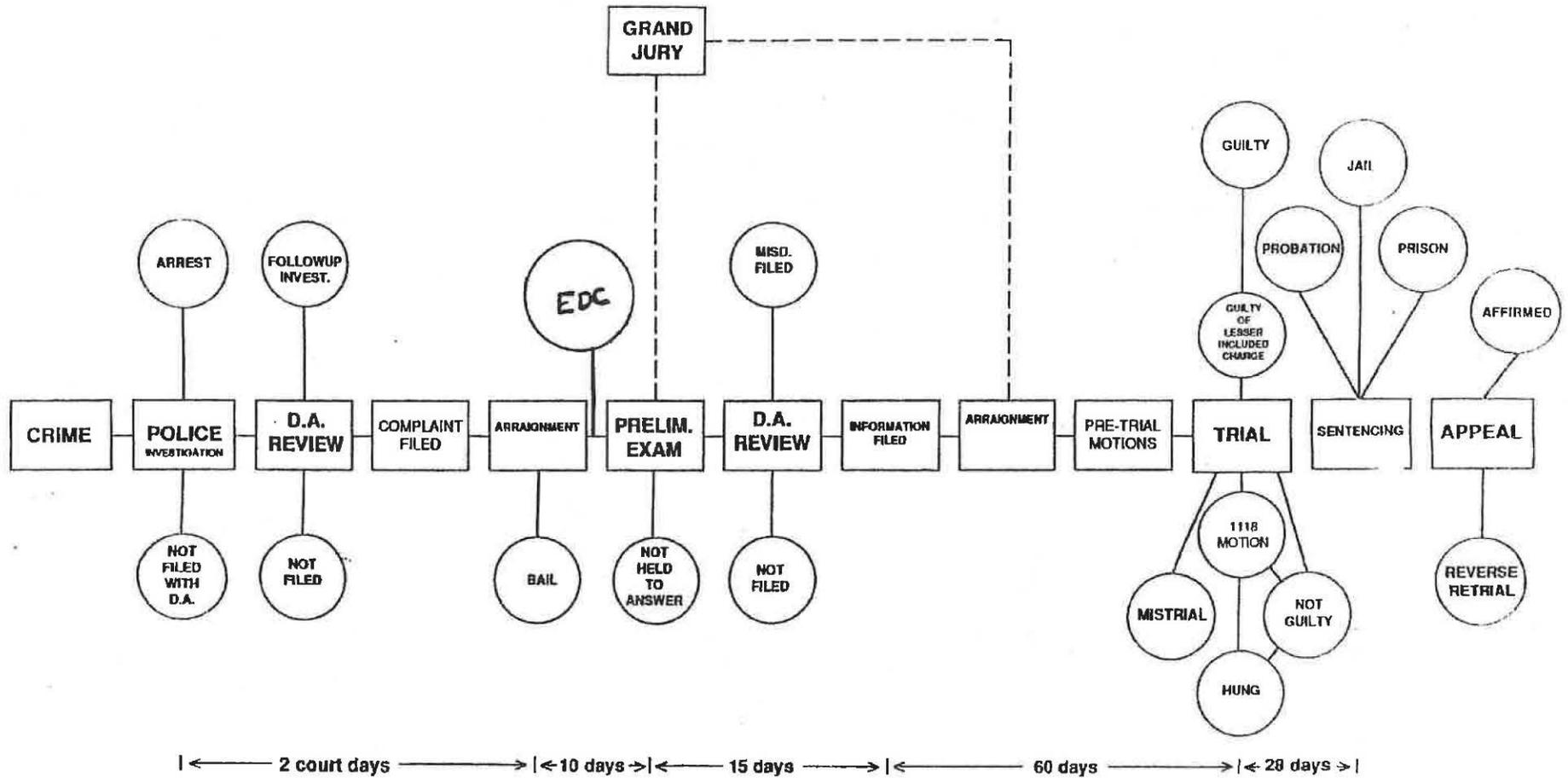
### **FELONY VIA INDICTMENT**

Indictment (by grand jury) → Arraignment → Motion to set aside indictment (Penal Code section 995, if defendant files one) → [Pretrial conference] → Jury trial → Sentencing

[Note: Pretrial conferences and early disposition conferences are not required by the Penal Code but may be scheduled as opportunities to settle cases, to determine if trials need to be continued, etc., without having to unnecessarily subpoena witnesses]



# FELONY CASE FLOW CHART



## CERTIFICATE OF ATTENDANCE FOR CALIFORNIA MCLE

***Top portion of form to be completed by the MCLE Provider***

Provider Name: Ventura County District Attorney's Office

Provider Number: 1130

Title of Activity: Criminal Procedure

Date(s) of Activity: September 13, 2016

Time of Activity: 1:30 - 5:00 pm

Location of Activity (City, State): HOJ: Room 308

Total California MCLE Credit Hours for the above activity are 3.00, including the following sub-field credits:

- Legal Ethics \_\_\_\_\_
- Elimination of Bias in the Legal Profession \_\_\_\_\_
- Prevention, Detection and Treatment of Substance Abuse/Mental Illness that Impairs Professional Competence \_\_\_\_\_

***Bottom portion of form to be completed by the Attorney after participation in the above-referenced activity***

By signing below, I certify that I participated in all, or some\*, of the activity described above and am therefore entitled to the following MCLE credit hours -

Total California MCLE Credit Hours 3.00, including the following sub-field credits

Legal Ethics \_\_\_\_\_

Elimination of Bias in the Legal Profession \_\_\_\_\_

Prevention, Detection and Treatment of Substance Abuse / Mental Illness that Impairs Professional Competence \_\_\_\_\_

(You may not claim credit for sub-fields unless the Provider is granting credit in those areas and you participated in those portions of the activity)

Print Your Name \_\_\_\_\_

Your California State Bar Number \_\_\_\_\_

Signature \_\_\_\_\_

\* partial participation hours must be pro-rated

## ACTIVITY EVALUATION FORM FOR CALIFORNIA MCLE

**Please complete and return to Provider (Please Print)**

Provider Name: Ventura County District Attorney's Office Provider Number: 1130

Title of Activity: Criminal Procedure

Date(s) of Activity: September 13, 2016

Time of Activity: 1:30 - 5:00 pm

Location of Activity: HOJ: Room 308 Ventura, CA

**Please indicate your evaluation of this course by completing the table below**

Question	Yes	No	Comments
Did this program meet your educational objectives?	<input type="checkbox"/>	<input type="checkbox"/>	
Were you provided with substantive written materials?	<input type="checkbox"/>	<input type="checkbox"/>	
Did the course update or keep you informed of your legal responsibilities?	<input type="checkbox"/>	<input type="checkbox"/>	
Did the activity contain significant professional content?	<input type="checkbox"/>	<input type="checkbox"/>	
Was the environment suitable for learning (e.g., temperature, noise, lighting, etc.)?	<input type="checkbox"/>	<input type="checkbox"/>	

**Please rate the instructor(s) of the course below**

Instructor's Name and Subject Taught	On a scale of 1 to 5, with 1 being Poor and 5 being Excellent, please rate the items below	Rate 1 – 5
Michael D. Schwartz, Spec Asst. District Attorney	Overall Teaching Effectiveness	—
	Knowledge of Subject Matter	—

Instructor's Name and Subject Taught	On a scale of 1 to 5, with 1 being Poor and 5 being Excellent, please rate the items below	Rate 1 – 5
	Overall Teaching Effectiveness	—
	Knowledge of Subject Matter	—

Instructor's Name and Subject Taught	On a scale of 1 to 5, with 1 being Poor and 5 being Excellent, please rate the items below	Rate 1 – 5
	Overall Teaching Effectiveness	—
	Knowledge of Subject Matter	—