

# POINTS AND AUTHORITIES

The District Attorney of Alameda County Weekly Criminal Law Case Review and Video  
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Week Of	Topic	Guest	
Feb. 1, 2021	Retroactivity of New Probation Terms; the <i>Williamson</i> Rule on general v. specific statutes		30 min. General

## I. Are The New Terms of Probation Under Penal Code sections 1203.1 and 1203a Retroactive?

### A. Background

Effective January 1, 2021, Assembly Bill No. 1950 amended Penal Code section 1203.1 to limit to two years the maximum probation term a trial court may impose for most felony cases.. Assembly Bill 1950 amended Penal Code section 1203a to limit to one year the maximum probation term a court may impose for most misdemeanor cases. There are exceptions to these limits. We now have cases beginning to address the issue whether these amended statutes apply retroactively.

### B. Retroactivity: Felonies<sup>1</sup>

#### *People v. Sims* (2021) \_\_ Cal.App. 5th \_\_ 2021 WL 99696

In *People v. Sims*, a published decision issued on January 12, 2021, the Court of Appeal concluded that the two-year limitation for felony probation terms, resulting from the enactment of Assembly Bill No. 1950, applies retroactively.

By default, criminal statutes are presumed to apply prospectively only. "However, this is presumption is a canon of statutory interpretation rather than a constitutional mandate," so "the Legislature can ordinarily enact laws that apply retroactively, either explicitly or by implication." (*Sims* at p.\*7, quoting *People v. Frahs* (2020) 9 Cal.5th 618, 627.) In *In re Estrada* (1965) 63 Cal.2d 740, the Supreme Court set forth an important qualification to the default presumption against retroactivity. The Supreme Court in *Estrada* said that when the Legislature enacts a new law that *ameliorates* a criminal penalty, the Legislature has recognized "that its former penalty was too severe and that a lighter punishment is proper as punishment for the commission of the prohibited act." (*Estrada*, at p. 745, emphasis added.)

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<sup>1</sup> The P&A author incorrectly stated in the video that there are three published cases holding that the two-year period of probation in Penal Code section 1203.1 applies retroactively. As of the date of this P&A, February 1, there are two published cases applying to felony probation. Both are discussed in this P&A.

The Supreme Court in *Estrada* determined that in the absence of an express savings clause [which would preserve status quo] or some other indication that the law was prospective only, courts must infer the Legislature intended its ameliorative law to apply to “ ‘every case to which it constitutionally could apply,’ including cases in which the criminal acts were committed before the law was passed, provided the defendant’s judgment is not final.” (*Sims* at p.\*7.)

The People argued in *Sims* that the *Estrada* presumption of retroactivity applies only to criminal laws that reduce punishment, and the People asserted that probation is not punishment. The Court of Appeal acknowledged that probation is qualitatively different from traditional forms of punishment and is primarily rehabilitative. Probation is considered an act of clemency in lieu of traditional forms of punishment. But the *Sims* court stated: “However, we do not believe the label affixed to probation—i.e., whether it is labeled punishment, rehabilitation, or some combination—is necessarily determinative of whether the *Estrada* presumption of retroactivity applies. When a court places a defendant on probation, it may, of course, fine the defendant or order the defendant confined in jail, or both. (§ 1203.1, subd. (a).) But it has discretion to impose a variety of other probation conditions as well. It may, for example, require that the probationer submit to searches of electronic devices and social media accounts (citation), submit to periodic drug testing (citation), refrain from associating with persons or groups of persons (citation), and obtain permission from a probation officer before changing addresses or leaving the state or county (citations.) A probationer may even be required to wear a continuous electronic monitoring device that alerts a probation officer to the probationer's whereabouts at all times (§ 1210.7 et seq.).”

The *Sims* court said that the above examples of probation conditions make clear that while probation may be preferable to imprisonment, it still can be invasive, time-consuming and restrictive for the probationer. “A probationer ‘is in constructive custody – he is under restraint.’” (*Sims*, quoting *People v. Cruz-Lopez* (2018) 27 Cal.App.5th 212, 221.) *Sims* noted: “There is no dispute that the longer a probationer remains on probation, the more likely it is he or she will be found to be in violation of probation.” The *Sims* Court said that by limiting the duration of felony probation terms, “Assembly Bill 1950 ensures that at least some probationers who otherwise would have been imprisoned for probation violations will remain violation-free and avoid incarceration.” (p.\*9.) The *Sims* court concluded that Assembly Bill 1950 ameliorates possible punishment for a class of persons – felony probationers. The *Sims* court presumed the Legislature intended this ameliorative change would be extended as far as possible, distinguishing only those sentences that are final and no longer pending on appeal.

The *Sims* court concludes by stating: “For all these reasons, we conclude the two-year limitation on felony probation set forth in Assembly Bill No. 1950 is an ameliorative change to the criminal law that is subject to the *Estrada* presumption of retroactivity. The Legislature did not include a savings clause or other clear indication that the two-year limitation applies on a prospective-only basis. Therefore, we conclude the two-year limitation applies retroactively to all cases not reduced to final judgment as of the new law’s effective date. Here, the defendant’s case was pending on direct appeal and thus was not final as of Assembly Bill No. 1950’s effective date. Accordingly, the

defendant is entitled to seek a reduced probation term on remand under Assembly Bill No. 1950.”

***People v. Quinn* \_\_ Cal. App.5th \_\_ 2021 WL 82246**

The defendant was convicted of for attempting to transport marijuana across state lines. At the time the defendant was sentenced, Penal Code section 1203.1 authorized felony probation for “a period of time not exceeding the maximum possible term of the sentence.” If the maximum term of the sentence was five years or less, a period of probation could be up to five years. Assembly Bill No. 1950 reduced felony probation terms to two years, with certain exceptions, by modifying Penal Code section 1203.1.

As did the defendant in *People v. Sims* (discussed above), the defendant here contended the amendment to section 1203.1 should be applied retroactively to reduce her probation period from three years to two.

The Attorney General argued that Assembly Bill No. 1950 is not subject to the *Estrada* presumption of retroactivity because probation is not a form of punishment. The Court of Appeal here in *Quinn* relied heavily for its analysis on *People v. Burton* (2020) \_\_ Cal.App.5th Supp. \_\_ which dealt with the misdemeanor probation. *The analysis in Burton is discussed below.*

The Court of Appeal in *Quinn* said since the Legislature has determined that the rehabilitative function of probation does not extend beyond two years, any therefore an additional period of probation can only be regarded as punitive. The Court of Appeal stated further: “Assembly Bill No. 1950 is silent on retroactivity; it does not create a mechanism by which probationers may petition for early termination. Penal Code section 1203.3 already existed.<sup>2</sup> While that procedure may prove beneficial to a probationer whose case is already final, it does not support an inference of legislative intent with respect to a probationer whose sentence is not yet final. Moreover . . . the amendment of Assembly Bill No. 1950 reflects a categorical determination that a shorter term of probation is sufficient for the purpose of rehabilitation. The court is not required to make a determination regarding dangerousness, the value of further probationary supervision, or any other consideration. Rather, the Legislature has made that determination. There is no indication in the legislative history that the Legislature was concerned with disruptions to probationary proceedings already in progress. To the contrary, the studies cited in the legislative history indicate there is little if any rehabilitative impact of services continued beyond two years.”

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<sup>2</sup> Penal Code section 1203.3, subdivision (a) authorizes a court to “at any time when the ends of justice will be subserved thereby, and when the good conduct and reform of the person so held on probation shall warrant it, terminate the period of probation, and discharge the person held.”

### C. Retroactivity: Misdemeanors

#### ***People v. Burton* (2020) 58 Cal.App.5th Supp. 1**

Assembly Bill 1950 also resulted in amendments to the misdemeanor probation statute. The defendant was convicted of misdemeanor violations of the City of Los Angeles Municipal Code. He was placed on three years probation.

The Appellate Division of the Los Angeles Superior Court held that amendments to Penal Code section 1203a, which *generally* limit the length of probationary terms of misdemeanor offenses to one year, should apply retroactively to a case which will not become final on appeal as of January 1, 2021, the effective date of the amendment to section 1203a. The Appellate Division stated: “The amendments ameliorated the burdens on persons’ lives and potential carceral consequences of being found in violation of probation, and applying the changes immediately would best serve the Legislature’s intent to ‘allow[ ] for the reinvestment of funding into supportive services for people on misdemeanor ... probation rather than keeping this population on supervision for extended periods.’” (quoting Analysis of Assembly Bill No. 1950.).

The Appellate Division in *Burton* relied on *Estrada*’s language: “When the Legislature amends a statute so as to lessen the punishment it has obviously expressly determined that its former punishment was too severe.” The Appellate Division made the following analysis: “It is unquestionable the reduction of the maximum amount of time a person may be placed on probation from three years (or more), to one year, inures greatly to the benefit of many persons subject to supervision. At any time a person is on probation, the court has the authority to revoke probation and sentence the person to jail, and a probation violation may even be based on violating court rules that do not amount to new crimes. The longer a person is on probation, the potential for the person to be incarcerated due to a violation increases accordingly. The possibility of incarceration due to being on probation for periods longer than a year based on minor probation violations was relied on by the Legislature in enacting the provision lowering the maximum probationary period.”

The Appellate Division stated: “The Legislature amended the law out of a concern that there were an enormous number of people on probation in the state, that probationers often wind up being incarcerated based on violating their probation for transgressing court orders not amounting to new crimes, and that public safety may best be maintained by supervising individuals for shorter periods and allocating the resources saved on incarceration in intensifying efforts to rehabilitate offenders.” The Appellate Division concluded: “No reason showing an intent to bar application of the law to persons whose convictions were not final at the time the law became effective is evident from the history of the enactment.”

## II. The *Williamson* Rule: What is the difference between a general statute and the more specific statute? How to determine under which statute the conduct should be charged?

### A. The General and the More Specific Statute: Basic Principles

1. A special statute, dealing specifically with the particular criminal act involved, will prevail over the general statute. This doctrine is referred to as the *Williamson* rule, after the case of *In re Williamson* (1954) 43 Cal.2d 651, 654.)

**Note:** Some cases use the phrase “special statute”; others use the phrase “specific statute.” The meaning is the same: the statute that more particularly or narrowly applies to the criminal act involved than does the general statute.

2. “Under the *Williamson* rule, if a general statute includes the same conduct as a special statute, the court infers that the Legislature intended that conduct to be prosecuted exclusively under the special statute. In effect, the special statute is interpreted as creating an exception to the general statute for conduct that otherwise could be prosecuted under *either* statute.” (*People v. Murphy* (2011) 52 Cal.4th 81, 86, italics added.) In these circumstances, the general statute is often a felony and will impose a more severe penalty, whereas the special/specific statute is frequently a misdemeanor.

3. The fact that the Legislature has enacted a specific statute covering much the same ground as is covered in the more general law “is a powerful indication that the Legislature intended the specific provision alone to apply.” (*People v. Jenkins* (1980) 28 Cal.3d 494, 505-506.) Our Supreme Court has said that, in most situations, an overlap of provisions between the two statutes is determinative of legislative intent that the special rather than the general statute apply. (*Ibid.*)

4. The rule is not based on constitutional or statutory mandate. Rather, “it serves as an aid to judicial interpretation when two statutes conflict.” (*People v. Walker* (2002) 29 Cal.4th 577, 586.)

5. The *Williamson* court stated: “It is the general rule that where the general statute standing alone would include the same matter as the special act, *and thus conflict with it*, the special act will be considered as an exception to the general statute. . . . (*Williamson, supra*, 43 Cal.2d at p. 654.)

6. “[T]he *Williamson* preemption rule is applicable (1) when each element of the general statute corresponds to an element on the face of the special statute, or (2) when it appears from the statutory context that a violation of the special statute will necessarily or commonly result in a violation of the general statute.” (*People v. Watson* (1981) 30 Cal.3d 290, 295–296.)

7. “In its clearest application, the [*Williamson*] rule is triggered when a violation of a provision of the special statute would inevitably constitute a violation of the general statute.” (*People v. Murphy, supra*, 52 Cal.4th at p. 86.)

8. The *Williamson* rule does not apply when the statutes do not conflict, i.e. when each proscribes different conduct. [See, for example, *People v. Lofchie* (2014) 229 Cal.App.4th 240, 255: “Public Contract Code section 10516 precludes a university employee from contracting on his own. . . with any university department to provide goods or services.’ (Pub. Contract Code, § 10516, italics added.) Government Code section 1090, by contrast, applies only to contracts made by state employees ‘in their official capacity.’ The two statutes do not conflict because they govern different types of conduct, so the *Williamson* rule does not apply.”]

Also, in *People v. Rader* (2014) 228 Cal.App.4th 184, the defendant paid for his meal at a restaurant with counterfeit bills. He was charged with petty theft under Penal Code section 484, but argued on appeal he should have been prosecuted under Penal Code section 537 for defrauding an innkeeper. (*Id.* at p. 192.) Both statutes permit conviction for defrauding a person for food and both have the same potential misdemeanor punishment. (*Id.* at p. 193.) “There is no conflict in the elements, punishment or statutes of limitations. Hence, as there is no conflict between the petty theft statute and section 537, subdivision (a), the *Williamson* rule is inapplicable. [Citations.]” (*Radar*, at pp. 199-200.)

9. Application of the general statute: “*On the other hand*, if the more general statute contains an element that is not contained in the special statute and that element would not commonly occur in the context of a violation of the special statute, we do not assume that the Legislature intended to preclude prosecution under the general statute. In such situations, because the general statute contemplates more culpable conduct, it is reasonable to infer that the Legislature intended to punish such conduct more severely.” (*People v. Murphy, supra*, 52 Cal.4th at p. 87.)

10. Thus, in the case of the general statute, where there is an additional element in the general statute not included in the special statute, the general statute usually control. [But see an exception listed below in Section IV.]

## **B. When the Specific Statute Controls: Illustrative Examples**

### ***People v. Murphy* (2011) 52 Cal.4th 81**

1. A police officer found the defendant’s car crashed into a hillside. Based on the license plate, the officer obtained the owner’s name and address and went to her home. The defendant told the police officer that the car had been stolen, and the officer completed a stolen vehicle report on California Highway Patrol form No. 180. The defendant signed the completed form under penalty of perjury.

Two days after the accident, the defendant filed a claim with her insurance company, stating under penalty of perjury that her vehicle had been stolen. (*Id.* at p. 85.)

2. At issue in this appeal before the Supreme Court was the signing of the CHP Form No. 180, for which the defendant was charged and convicted of a violation of Penal Code section 115. On appeal, the defendant argued that her prosecution was precluded by the more specific statute applicable to her conduct, Vehicle Code section 10501.

3. Vehicle Code section 10501 makes it “unlawful for any person to make or file a false or fraudulent report of theft of a vehicle required to be registered under this code with any law enforcement agency with intent to deceive.” (Veh.Code, § 10501, subd. (a).) This offense is a misdemeanor unless the person previously has been convicted of the same offense, in which case it is punishable as either a misdemeanor or a felony. As the Supreme Court said here in *Murphy*, “Defendant’s conduct plainly comes within the terms of Vehicle Code section 10501.” (*Murphy*, at p. 88.)

4. On the other hand, Penal Code section 115, under which the defendant was convicted, provides: “Every person who knowingly procures or offers any false or forged instrument to be filed, registered, or recorded in any public office within this state, which instrument, if genuine, might be filed, registered, or recorded under any law of this state or of the United States, is guilty of a felony.” (Pen.Code, § 115, subd. (a).) The Supreme Court concluded that Penal Code section 115 is more general than Vehicle Code section 10501.

5. However, each element of section 10501 has a counterpart in section 115. A vehicle theft report that has been filed was necessarily ‘offered’ for filing. A report that has been filed with a law enforcement agency necessarily has been filed with a ‘public office.’ If the report has been filed, it is necessarily a document that ‘if genuine, might be filed, registered, or recorded.’ And if it has been filed with intent to deceive, it has been filed ‘knowingly.’” (*Murphy*, at pp. 88-89.) Moreover, the form used for the written report in the present case, CHP form No. 180, calls for a signature under penalty of perjury.” (*Murphy*, at p. 94.)

6. “Consequently, the filing of a false vehicle theft report in violation of Vehicle Code section 10501 would commonly result in a violation of Penal Code section 115. Accordingly, under the *Williamson* rule, we infer that the Legislature, in specifying that such conduct constitutes a misdemeanor, intended to create an exception to the felony punishment specified in the more general statute. It follows that defendant should not have been charged with violating section 115 and her conviction on that charge must be reversed.” (*Murphy*, at pp. 94-95.) It was reversible error to prosecute the defendant under the more general statute rather than the more specific.

**Hudson v. Superior Court (2017) 7 Cal.App.5th 999**

1. The defendant, as secretary of the board of directors for the Palo Verde Healthcare District, voted to approve contracts entered into by the Healthcare District. As a board member, she was required to file each year a statement of economic interest Form 700, disclosing her investments, her interests in real property and her income during the period since the previous statement, as "required by Government Code sections 87203 and 87200." (*Hudson*, at pp. 1004-1005.)

2. In 2008, the defendant disclosed a residence, referred to in the opinion as "the First Street property," but her Form 700 filings for the next five years failed to disclose any interest in this property. (*Hudson*, at p. 1006.)

3. The defendant was arraigned on an indictment that included, among other offenses, five counts of offering a false instrument (Penal Code section 115) because she failed to list the First Street property on the form 700's filed for the five years at issue. Pursuant to a Penal Code section 995 motion, the trial court set aside one of the five counts as time-barred, but otherwise denied the 995 motion. (*Hudson*, at p. 1006.)

4. The defendant filed for a writ of prohibition in the Court of Appeal. ["A writ of prohibition is an appropriate way of challenging the validity of an indictment after the denial of a motion to set aside the information."] (*Hudson*, at p. 1006.)

5. In the Court of Appeal, the defendant argued that the People could not prosecute her for a felony under a general statute (Pen. Code, § 115) because a special statute (Gov. Code, § 87203) makes it only a misdemeanor to fail to file a Form 700. (*Hudson*, at p. 1007.)

6. The People argued that different elements are involved in the two statutes. The People contended that Penal Code section 115 requires actual falsification of an instrument, while Government Code section 87203 only allows prosecution if a defendant fails to file a Form 700. But the Court of Appeal disagreed with the People's "base assumption." (*Hudson*, at p. 1009.)

7. The Court of Appeal said while it is true that because Government Code section 87203 affirmatively requires the filing of a form 700, the failure to file the form violates the statute. But the Court of Appeal said this is not all the statute requires. (*Hudson*, at p. 1009.) The Court of Appeal noted that Government Code section 87203 also demands that the party disclose on Form 700, among other things, any investments and interest in real property held at any time during the period covered by the statement, whether or not they are still held at the time of filing. "Consequently, a person may violate Government Code section 87203 not only by failing to file a Form 700, but also by filing a Form

700 that fails to make the necessary disclosures.” (*Ibid.*)

8. The Court of Appeal found the *Williamson* rule prevented the People from prosecuting the defendant for a felony under Penal Code section 115 because a violation of the special statute, Government Code section 87203, “ ‘will necessarily or commonly result in a violation of the general statute.’ ” (*Hudson*, at pp. 1009-1010.)

9. The Court of Appeal explained how a violation of Government Code section 87203 results in the violation of the general statute. Penal Code section 115 applies to any “person who knowingly procures or offers any false or forged instrument to be filed, registered, or recorded in any public office within this state, which instrument, if genuine, might be filed, registered, or recorded under any law of this state or of the United States.” The Court concluded that the filing of a Form 700 purporting to disclose all of the filing party's assets and investments, but not actually doing so because of omissions, is the equivalent to the offering of a “false or forged instrument.” A Form 700 is an “instrument” that must “be filed, registered, or recorded under any law of this state or of the United States.” In fact the Form 700 must be both “filed” in any public and kept “open for public inspection and reproduction during regular business hours.” (Gov. Code, §§ 87203; 81008). Finally, the Court of Appeal observed that a misdemeanor prosecution for violation of Government Code section 87203 and a felony prosecution for violation of Penal Code section 115 both require the same basic mental state, namely, that the defendant “knowingly” committed the crime charged. (*Hudson*, at pp. 1009-1010.)

10. Thus, the Court of Appeal concluded the People could not prosecute the defendant under the general statute (Pen. Code section 115) when the basis of their allegation is that the defendant failed to list all assets and investments on several Form 700's. The specific statute, Government Code section 87203, controlled. The Court of Appeal ordered the trial court on remand to dismiss the remaining counts under Penal Code section 115. (*Id.* at p. 1010.)

**People v. Henry (2018) 28 Cal.App.5th 786**

1. The defendant was convicted by a jury of false impersonation (Pen. Code section 529, subd. (a)(3), after he gave a friend's name to a police officer at a traffic stop and signed a citation with that name. On appeal, the defendant argued that his conviction violated the *Williamson* rule, which prohibits prosecution under a general statute when the conduct at issue is covered under a more specific statute.

2. The specific statute here was Vehicle Code section 40504, subd. (b), which makes a misdemeanor the signing of a false or fictitious name on a promise to appear for a traffic citation. The Court of Appeal concluded, “Absent any indication of a legislative intent to the contrary, we find the *Williamson* rule applies and infer that by specifying such conduct to be a misdemeanor, the Legislature intended to

create an exception to the felony punishment under the more general statute, Pena Code section 529.” (*Id.* at p. 797.)

**People v. Gilbert (1969) 1 Cal.3d 475**

1. Prosecution for theft barred by special statute prohibiting use of a false statement to obtain welfare.

2. “Inasmuch as the clause as to false statements applies only to statements made in obtaining unauthorized assistance, it follows that any conduct which violated that clause would *also* constitute a violation of the theft provision of the Penal Code. This overlap of provisions carrying conflicting penalties typifies the kind of conflict which we envisioned in *Williamson*; it requires us to give effect to the special provision alone in the face of the dual applicability of the general provision of the Penal Code and the special provision of the Welfare and Institutions Code.” (*Id.* at p. 481, italics added.)

**C. When the General Statute Controls: Illustrative Examples**

**People v. Watson (1981) 30 Cal.3d 290**

1. The defendant was charged with second degree implied malice murder based on a fatal automobile collision that occurred when the defendant was intoxicated and had been driving at excessive speeds. Relying on the *Williamson* rule, the defendant argued that he could be convicted only of vehicular manslaughter under Penal Code section 192 because the statute specifically addressed killing while driving a vehicle, whereas the murder statute was a more general statute that addressed a broad range of unlawful killings. (*Id.* at p. 295.)

2. The Supreme Court said the defendant’s argument was flawed. The Court pointed out that the *Williamson* rule applies when (1) each element of the general statute corresponds to an element on the face of the special statute, or (2) when it appears from the statutory context that a violation of the special statute will necessarily or commonly result in a violation of the general statute. The Supreme Court said neither of these two categories applied here. A prosecution for murder under section 187 requires a finding of malice, while section 192 specifically defines manslaughter as a killing without malice. Moreover, in light of the malice requirement, a violation of the vehicular manslaughter statute would not necessarily or commonly result in a violation of the general murder statute. Thus, the *Williamson* rule is inapplicable. (*Watson*, at p. 296.)

3. Additionally, the Supreme Court in *Watson* noted that the prosecution is required to show a higher degree of culpability in support of the second degree murder charge than it is to establish vehicular manslaughter. “Accordingly, because section 187 and section 192 contemplate different kinds of culpability or criminal activity, the *Williamson* rule would not preclude a second degree

murder charge.” (*Watson*, at p. 297.)

**People v. Villagran (2016) 5 Cal.App.5th 880**

1. Using a text messaging application, the defendant communicated with a number of girls under 14 years of age, sending them sexually explicit photographs of himself and asking them to send him nude photographs of themselves in return.

2. On appeal, the defendant challenged his three convictions for attempted violations of Penal Code section 288(a). The Court of Appeal affirmed the convictions, concluding that the required touching under the statute can be constructive. The Court of Appeal stated: “If the girls had complied with [defendant’s] request and touched themselves to take nude photos, those acts of touching would have been ‘imputable to appellant as if the touching had been actually done by his own hands.’” (*Id.* at p. 892.) “Thus we hold that a defendant may commit the crime of attempt to commit a lewd act on a minor under 14 through the medium of text messaging.” (*Ibid.*)

3. Relying on the *Williamson* rule, the defendant argued that his convictions for attempted violations of section 288(a) violate the prohibition against prosecution under the general statute when the conduct at issue is prohibited under a special statute. The defendant argued that the specific conduct that occurred was governed by Penal Code section 288.3, which prohibits “contact or communication with a minor or an attempt to do so with the specific intent to commit an enumerated sex offense.” (*Id.* at p. 896.)

4. In applying the *Williamson* rule, the court of appeal here looked at whether the violation of the special statute, section 288.3, will necessarily result in a violation of the more general one, section 288(a). The court said no. The general statute, section 288(a), contains an element—an actual or constructive touching—that is not contained on the face of the more recently enacted special statute, section 288.3. (*Id.* at p. 896.)

5. “This distinction makes it apparent that ‘the statutes cover different conduct,’ and so the *Williamson* rule does not apply. Indeed, ‘because the general statute contemplates more culpable conduct, it is reasonable to infer that the Legislature intended to punish such conduct more severely.’ We therefore hold that [the defendant’s] convictions for attempted lewd and lascivious acts do not violate the *Williamson* rule.” (*Id.* at p. 896.)

**People v. McCall (2013) 214 Cal.App.4th 1006**

1. An unlicensed student midwife was subject to felony prosecution under the general statute, Business and Professions Code section 2052(a) rather than misdemeanor prosecution under the special

statute, violation of Midwifery Act, Business and Professions Code section 2514.

2. The elements of the two statutes do not correspond and the defendant's conduct amounted to the practice of medicine, not merely to unsupervised practice of midwife services. (*Id.* at p. 1015.)

#### **D. A Caveat: Sometimes the Context Changes the Application of the Williamson Rule**

1. As stated above, the addition of an element in the general statute that is not included in the special statute usually signals that the general statute prevails. However, the California Supreme Court in *People v. Murphy, supra*, 52 Cal.4th 81, cautioned: “[T]hat the general statute contains an element not within the special statute does not necessarily mean that the *Williamson* rule does not apply. ‘It is not correct to assume that the [*Williamson*] rule is inapplicable whenever the general statute contains an element not found within the four corners of the “special” law. Rather, the courts must consider the context in which the statutes are placed. If it appears from the entire context that a violation of the “special” statute will necessarily or commonly result in a violation of the “general” statute, the *Williamson* rule may apply even though the elements of the general statute are not mirrored on the face of the special statute.’” (*Murphy*, at p. 82, quoting *People v. Jenkins* (1980) 28 Cal.3d 494, 502.)

2. The Supreme Court in *Murphy* gave as an example *People v. Ruster* (1976) 16 Cal.3d 690, where the Supreme Court compared the general statute prohibiting forgery with the special statute prohibiting unemployment insurance fraud. Because the defendant filed claims for benefits using a false name and Social Security number, he was prosecuted under the general forgery statute, Penal Code section 470. The defendant argued that he should have been prosecuted under section 2101 of the Unemployment Code, which makes it a misdemeanor to make a false statement to obtain a benefit for unemployment insurance. The People argued that one element of forgery – the signing of the name of another – is not an element of the Unemployment Insurance Code statute, so the special statute cannot prevail over Penal Code section 470 when the unemployment fraud involves forgery.

3. But the Supreme Court in *Ruster* stated that the Legislature “unquestionably contemplated” that the special statute might be violated by means of forgery. After all, applying for aid under a false identity necessarily means signing eligibility questionnaires and pay certification forms with a false name, and this is one of the most common forms of unemployment insurance fraud. Therefore, the fraud cannot be prosecuted under the general forgery statute.

Suggestions for future shows, ideas on how to improve P&A, and other comments or criticisms should be directed to P&A author Mary Pat Dooley at (510) 272-6249, [marypat.dooley@acgov.org](mailto:marypat.dooley@acgov.org). Technical questions should be addressed to Gilbert Leung at (510) 272-6327. Participatory students: MCLE Evaluation sheets are available on location and certificates of attendance are constructively maintained in your possession in the Ala. Co. Dist.Atty computer banks.

