

## **5 California Criminal Law (4th), Criminal Trial**

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  - (b) [§401] Motion for Continuance.

**VI. PUBLIC TRIAL**

**A. [§402] In General.**

**B. Right of Defendant.**

- 1. [§403] No Exclusion of Public.
- 2. [§404] Right in Pretrial Proceedings.
- 3. [§405] Right at Voir Dire Examination.

4. [§406] Temporary Closure of Courtroom.
5. [§407] Waiver of Right.

**C. [§408] Right of Press and Public.**

**D. Restrictions on Right.**

1. In General.
  - (a) [§409] Necessary or Convenient for Orderly Trial.
  - (b) [§410] Illustrations.
2. [§411] Defendant's Right to Fair Trial.
3. [§412] Statutory Limitations.

**E. Control of Publicity.**

1. [§413] In General.
2. [§414] Improper Publicity as Denial of Due Process.
3. Protective Orders.
  - (a) [§415] Power of Trial Judge.
  - (b) [§416] Presumption Against Prior Restraint.
4. Determining Prejudicial Effect of Publicity.
  - (a) [§417] In General.
  - (b) [§418] Voir Dire of Jurors on Prejudice.
5. Electronic Media Coverage of Trial.
  - (a) [§419] Coverage Is Constitutionally Permissible.
  - (b) [§420] California Rule.

**VII. JOINT AND SEPARATE TRIALS**

**A. Joinder of Defendants.**

1. [§421] Normal Requirement of Joint Trial.
2. Discretionary Severance of Codefendants.
  - (a) [§422] In General.
  - (b) Discretion To Deny Severance.
    - (1) [§423] In General.
    - (2) [§424] Codefendants Charged With Additional Crimes.
    - (3) [§425] Testimony of Severed Codefendant Would Exonerate Others.
    - (4) [§426] Antagonistic Defenses of Codefendants.
3. Effect of Codefendant's Implicating Confession (Aranda-Bruton Rule).
  - (a) [§427] Aranda Case.
  - (b) [§428] Bruton Case.
  - (c) Application of Rule.
    - (1) [§429] In General.
    - (2) [§430] Nature of Trial or Hearing.
    - (3) [§431] Where Codefendant Testifies.
    - (4) [§432] Incriminating Statement Less Than Confession.
    - (5) [§433] Offer of Statement by Codefendant.
    - (6) [§434] Offer of Statement for Nonhearsay Purpose.
    - (7) [§435] Common or Interlocking Confessions.
    - (8) [§436] Conspiracy Prosecution.
  - (d) Editing as Alternative to Severance.
    - (1) [§437] In General.

- (2) [§438] Sufficiency of Editing.
- (3) [§439] Effect of Deleting Matters Favoring Codefendant.
- (e) [§440] Dual Juries as Alternative to Severance.
- (f) [§441] Waiver or Cure of Error.
- (g) Review of Error.
  - (1) [§442] Test for Harmless or Reversible Error.
  - (2) [§443] Reversible Error.
  - (3) [§444] Harmless Error: Prosecution Case Strong.
  - (4) [§445] Harmless Error: Defendant Not Substantially Incriminated by Statement.

**B. Joinder or Consolidation of Offenses.**

- 1. Same Test for Joinder and Consolidation.
  - (a) [§446] In General.
  - (b) [§447] Proper Consolidation.
  - (c) [§448] Improper Consolidation.
  - (d) [§449] Proper Refusal To Consolidate.
- 2. Discretionary Severance of Charges.
  - (a) [§450] In General.
  - (b) [§451] Pertinent Factors.
  - (c) [§452] Refusal To Sever Affirmed.
  - (d) [§453] Refusal To Sever Reversed.
  - (e) [§454] Reversal Where Ruling Denying Severance Was Correct.
- 3. Multiple Defendants.
  - (a) [§455] In General.
  - (b) Improper Joinder or Consolidation.
    - (1) [§456] In General.
    - (2) [§457] Defendants Not Jointly Charged.
  - (c) Proper Joinder or Consolidation.
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- 1. [§460] Grounds.
- 2. [§461] Outrageous Conduct by Prosecution.

**B. Discharge of Codefendant To Become Witness.**

- 1. Witness for Prosecution.
  - (a) [§462] In General.
  - (b) [§463] Distinction: Testimony Without Discharge.
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**C. Dismissal in Furtherance of Justice.**

- 1. Power and Discretion of Judge.
  - (a) [§465] In General.
  - (b) [§466] Proper Grounds.
  - (c) [§467] Improper Grounds.
  - (d) [§468] Striking Special Circumstance.

- (e) [§469] Striking Enhancement.
- (f) [§470] Imposing Plea Bargain.
- 2. Procedure.
  - (a) [§471] Who May Invoke Statute.
  - (b) [§472] Time of Application.
  - (c) [§473] Order and Statement of Reasons.
  - (d) [§474] Review of Order.

**D. Striking Prior Conviction.**

- 1. [§475] In General.
- 2. Challenge of Priors on Constitutional Grounds.
  - (a) [§476] In General.
  - (b) [§477] Capital Case.
  - (c) [§478] Noncapital Case.
  - (d) [§479] Striking Out-of-State Prior for Failure To Obtain Waiver of Constitutional Rights.
  - (e) [§480] Vehicle Code Convictions.

**E. Effect of Dismissal.**

- 1. In General.
  - (a) [§481] When Dismissal Bars Future Prosecution.
  - (b) [§482] Interplay Between Rules for Misdemeanors and Felonies.
  - (c) [§483] Meaning of "Same Offense."
  - (d) [§484] Consent.
  - (e) [§485] Procedure on Filing New Accusatory Pleading.
  - (f) [§486] Refiled Case Is Not Continuation of Dismissed Case.
- 2. [§487] Misdemeanor.
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  - (a) [§488] Third Prosecution Is Barred.
  - (b) Exceptions.
    - (1) [§489] In General.
    - (2) [§490] Violent Felony.

**IX. PRESENCE AT TRIAL**

**A. [§491] Constitutional and Statutory Right.**

**B. Mental Presence.**

- 1. [§492] Nature of Requirement.
- 2. [§493] Malingering and Voluntary Acts.

**C. [§494] Auditory Presence.**

**D. [§495] Temporary Absence.**

**E. Particular Proceedings.**

- 1. [§496] In General.
- 2. [§497] Conferences or Argument During Trial.
- 3. [§498] View of Scene.
- 4. [§499] Selection of Jury.
- 5. [§500] Proceedings In Chambers.
- 5A. [§500A] (New) Jury Deliberations.
- 6. [§501] Reading of Verdict.
- 7. [§502] Exercise of Sentencing Discretion on Remand.

## **F. Waiver of Right.**

1. [§503] In General.
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  - (a) [§504] No Constitutional Bar on Waiver.
  - (b) [§505] Statutory Restrictions on Waiver.
3. Noncapital Felony Case.
  - (a) [§506] Presence of Defendant at Commencement of Trial.
  - (b) [§507] Voluntariness of Absence.
4. [§508] Misdemeanor Cases.

## **X. RIGHT TO AND SELECTION OF JURY**

### **A. Right to Jury Trial.**

1. In General.
  - (a) [§509] Nature of Right.
  - (b) [§510] United States Constitution.
  - (c) [§511] California Law.
  - (d) Proceedings Where Right Is Recognized.
    - (1) [§512] In General.
    - (2) [§513] Criminal Contempt.
  - (e) [§514] Size of Jury.
  - (f) [§515] Unanimous Verdict Requirement.
2. Right to Jury Determination of Facts Used To Increase Punishment.
  - (a) [§516] Overview.
  - (b) [§517] United States Supreme Court Cases.
  - (c) [§518] Scope of Apprendi-Blakely Rule.
  - (d) [§519] Recidivism Exception to Apprendi-Blakely Rule.
  - (e) Application of Apprendi-Blakely Rule.
    - (1) [§520] Upper Term Sentence Under Determinate Sentencing Law.
    - (2) [§521] Consecutive Sentencing.
    - (3) [§522] Aggravating Circumstances in Capital Cases.
    - (4) [§523] Determination Whether Crime Is Serious Felony.
    - (5) [§524] Multiple Punishment.
    - (6) [§525] Determination of Fact Increasing Mandatory Minimum Sentence.
    - (7) [§526] Sex Offenders.
    - (8) [§527] Conduct Credits.
    - (9) [§528] Juvenile Delinquency Determinations.
    - (10) [§529] Eligibility for Probation.
    - (11) [§530] Burdens of Proof.
    - (11a) [§530A] (New) Criminal Fines.
    - (12) [§531] Other Applications.
  - (f) [§532] Black II Case.
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  - (h) [§534] Effect of Plea of Guilty or No Contest.
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  - (a) [§535] In General.

- (b) [§536] Relevant Community.
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- (d) [§538] Social or Economic Discrimination.
- (e) [§539] Gender Discrimination.
- (f) Proof of Improper Exclusion.
  - (1) [§540] Standing To Challenge Exclusion.
  - (2) [§541] Prima Facie Case.
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  - (4) [§543] Systematic Exclusion.
- 4. [§544] Requirement That Jury Be Drawn From Vicinage.
- 5. Waiver of Right.
  - (a) [§545] In General.
  - (b) [§546] Necessity of Express Waiver.
  - (c) [§547] Consent of Prosecutor and Defense Counsel.
  - (d) [§548] Concurrence by Court Is Not Required.
  - (e) [§549] Partial Waiver.
  - (f) [§550] Renewal of Waiver After Amendment of Pleadings.
  - (g) [§551] Withdrawal of Waiver.
  - (h) [§552] Effect of Waiver on Retrial.

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- 1. [§553] In General.
- 2. Challenges to Panel.
  - (a) [§554] Nature and Grounds.
  - (b) [§555] Procedure.
- 3. Challenges to Individual Jurors.
  - (a) [§556] Nature and Grounds.
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    - (1) [§557] In General.
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      - (aa) [§558] In General.
      - (bb) [§559] Constitutional Test: Witherspoon Case.
      - (cc) [§560] Subsequent United States Supreme Court Cases.
      - (dd) [§561] California Standard.
      - (ee) [§562] Use of Questionnaires in Jury Voir.
      - (ff) [§563] Reversible or Harmless Error.
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  - (f) [§571] One Voir Dire in Divided or Interrupted Trial.

- (g) [§572] Use of Jury Book or List.
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    - (3) [§575] Racial Prejudice.
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    - (5) [§577] Matters of Law.
    - (6) [§578] Effect of Pretrial Publicity.
    - (7) [§579] Weight of Defendant's Testimony.
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- (a) [§580] In General.
  - (b) Challenges for Cause.
    - (1) [§581] Order of Challenges.
    - (2) [§582] Statement, Notice, and Trial of Challenge.
    - (3) [§583] Discretion of Trial Judge.
    - (4) [§584] Error Reversible.
    - (5) [§585] Error Must Be Prejudicial.
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    - (1) [§586] Time and Method.
    - (2) [§587] Number.
    - (3) [§588] Effect of Improper Denial.
    - (4) No Systematic Exclusion of Cognizable Group (Wheeler-Batson Requirements).
      - (aa) [§589] Under California Constitution: Wheeler Case.
      - (bb) [§590] Under United States Constitution: Batson Case.
      - (cc) [§591] Under United States Constitution: Miller-El Cases.
      - (dd) [§592] Statutory Prohibition.
      - (ee) [§593] Requirement Applies to Both Parties.
      - (ff) [§594] Time and Form of Motion.
      - (gg) [§595] What Constitutes Cognizable Group.
      - (hh) [§596] Prima Facie Showing of Discriminatory Purpose.
      - (ii) [§597] Standard To Determine Prima Facie Showing.
      - (jj) [§598] Justification of Challenges.
      - (kk) [§599] Ex Parte Hearing on Justification Is Disfavored.
      - (ll) [§600] Trial Court's Evaluation.
      - (mm) [§601] Remedy at Trial.
      - (nn) [§602] Nature of Review.
      - (oo) [§603] Use of Comparative Analysis.
      - (pp) [§604] Remand.
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- (a) [§606] In General.

- (b) Grounds for Substitution.
  - (1) [§607] In General.
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    - (bb) [§609] Delayed Discovery of Ground of Disqualification.
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- (c) Procedure.
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## **XI. ORDER AND COMMENCEMENT OF TRIAL**

### **A. Order of Trial.**

- 1. [§617] In General.
- 2. [§618] Bifurcation To Determine Validity of Prior Convictions.

### **B. [§619] Reading Pleading and Stating Plea.**

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- 1. [§620] In General.
- 2. [§621] Prosecutor's Overstatement Alone Is Not Ground for Reversal.
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### **C. Burden on Defendant.**

- 1. [§626] In General.
- 2. [§627] Mitigation, Justification, or Excuse of Homicide.

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- 1. [§628] General Principles.
- 2. [§629] Distinctions.
- 3. [§630] Prohibition Against Conclusively Presuming Element of Crime.
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  - (a) [§636] Constitutional and Statutory Provisions.
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    - (1) [§637] In General.
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- (c) Right to Face-to-Face Confrontation.
  - (1) [§639] In General.
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  - (3) [§641] Proceedings in Chambers.
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  - (a) [§642] In General.
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  - (a) [§645] In General.
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- 1. [§647] In General.
- 2. Over Witnesses.
  - (a) [§648] In General.
  - (b) [§649] Examination by Judge of Witness or Defendant Who Testifies.
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- 3. Admission and Exclusion of Evidence.
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**F. [§655] View of Scene.**

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- 1. [§657] In General.
- 2. [§658] Scope of Rule.
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**I. [§661] Rights of Victim at Trial.**

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  - (a) [§664] General Principles.
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**XIV. MOTIONS FOR JUDGMENT OF ACQUITTAL AND TO DISCHARGE JURY**

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**B. Requested Instructions.**

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    - (1) [§708] When Instruction Must Be Given.
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  - (a) [§715] In General.
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      - (aa) [§716] In General.
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2. [§758] Misconduct: Principles and Policy.
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  - (a) [§759] In General.
  - (b) [§760] Defendant's Failure To Testify.
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**XVII. SANITY AND COMPETENCY PROCEEDINGS**

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