



# El Segundo Police Department

## Training Section

348 Main Street, El Segundo, CA 90245

Phone (310) 524-2253

## TRAINING BULLETIN

September 9, 2025

---

### Stale Misdemeanors:

### How Long Is Too Long to Make a Warrantless Arrest?

#### The Law on Stale Misdemeanors:

Generally, the rules on stale misdemeanors dictate that for an officer to make an arrest for the violation of any misdemeanor offense, absent an arrest warrant, the arrest must have occurred at the time of, or shortly after, the commission of the offense. (People v. Hampton (1985) 164 Cal.App.3rd 27, 30-31.)

#### The Stale Misdemeanor as it Relates to Pen. Code § 836(a):

In Hampton, California's First District Court of Appeals (Div. 6) interpreted subdivision (a)(1) of Penal Code § 836(a) to allow for misdemeanor arrests only when "in obedience to a warrant" or when there is "probable cause to believe that the person to be arrested has committed a public offense in the officer's presence." From this, per the court, it is implied that "(s)uch an arrest must be made at the time of the offense or within a reasonable time thereafter...In other words, if the arrest is not made 'reasonably contemporaneously' with the commission of the offense, 'the statutory basis for the arrest (i.e., Pen. Code § 836(a)(1)) has evaporated.'" (Id., at pg. 30; quoting People v. Williams (1971) 17 Cal.App.3rd 554, 662.)

**Note:** as clarified in the Williams decision, the same does not apply to a felony offense.

The Hampton court relied on the Third District Court of Appeals decision in Jackson v. Superior Court (1950) 98 Cal.App.2nd 183, for this reasoning. A careful reading of the Jackson decision does indeed describe the stale misdemeanor rule itself, and why it exists.

In Jackson, a Merced County deputy sheriff observed Harvey Jackson, a minor, and some of his buddies, shooting with their BB guns at light bulbs affixed to a public building. The deputy knew Harvey, was well aware of his approximate age, and knew where he lived. For whatever reason, however, the deputy allowed Harvey and his mischievous cohorts to leave after admonishing them not to be shooting at light bulbs.

Apparently having a change of heart, however, the deputy went to Harvey's house the following afternoon – 28 hours later – intending to take him into custody, without a warrant.

Evelyn and John Jackson, Harvey's parents, refused to allow the deputy to take him away. As a result, the Jacksons were charged in state court with a violation of Pen. Code § 148(a)(1), resisting or obstructing an officer in the performance of his or her duties. In response, the Jacksons filed for a writ of prohibition with the appellate court, asking the court to restrain the superior court from proceeding further.

The issue before the court of appeals was whether the Jacksons had violated Pen. Code § 148 by preventing the deputy from taking their son into custody without a warrant for a misdemeanor vandalism offense that had occurred some 28 hours earlier. In issuing the preemptory writ (thus ordering the dismissal of the case against the Jacksons), the court describes for us what the law on stale misdemeanors is all about.

The basic rule is this: Peace officers and private citizens alike may make an arrest without a warrant for a misdemeanor offense when that misdemeanor is committed or attempted in the presence of the person making the arrest. However, that "arrest must (also) be made at the time the offense, or any part of the offense, is being committed, or within a reasonable time thereafter, upon the fresh and immediate pursuit of the offender."

The Jackson court cites us to the California Supreme Court decision of *People v. Craig* (1907) 152 Cal. 42, at pg. 47, where the high court ruled that, "It seems to be generally held that an arrest for a misdemeanor without a warrant cannot be justified if made after the occasion has passed, though committed in the presence of the arresting officer."

### **"A Reasonable Time Thereafter," Defined:**

So what did the Jackson court mean when it told us that a misdemeanor arrest must be made within "a reasonable time thereafter?" The Utah Supreme Court in *Oleson v. Pincock* (1926) 68 Utah 507, 515-516 [251 P. 23, 26], probably best explained this concept, giving us at least some general guidance:

"No hard and fast rule can, however, be laid down which will fit every case respecting what constitutes a reasonable time. What may be so in one case under particular circumstances may not be so in another case under different circumstances. All that can be affirmed with safety is that the officer must act promptly in making the arrest, and as soon as possible under the circumstances, and before he transacts other business...(W)e hold that in order to justify an arrest without warrant, the arrestor must proceed as soon as may be to make the arrest. And if instead of doing that, he goes about other matters unconnected with the arrest, the right to make the arrest without a warrant ceases, and in order to make a valid arrest he must then obtain a warrant therefor."

### **The Rule as it Relates to Private Citizens:**

The stale misdemeanor rule also applies to private citizens making a citizen's arrest under authority of Pen. Code § 837(a)(1). For instance, in *Green v. Department of Motor Vehicles* (1977) 68 Cal.App.3rd 536, California's Second District Court of Appeals (Div. 2) describes a situation where a private citizen observed the defendant driving erratically. The citizen followed the defendant to a driveway, where she parked her car and apparently passed out. The citizen left the scene to locate a police officer, the two of them eventually returning to the defendant's driveway, where they found her still sitting in her car, asleep. Waking the

defendant and finding her to be under the influence of alcohol, the officer attempted to administer a field sobriety test. After the defendant refused to submit to the field sobriety test, the officer allowed the private citizen to make a citizen's arrest for the driving-under-the-influence misdemeanor offense, which by this time had occurred about 35 to 40 minutes earlier. The defendant appealed the Department of Motor Vehicles' six-month suspension of her driver's license stemming from her refusal to submit to the field sobriety test. (See Veh. Code § 13353.)

After referencing what the court labeled as "the so-called fresh pursuit rule," i.e., "that a warrantless arrest must be effected in fresh pursuit of the offender or within a reasonable time after the offense is committed," the court held the following:

"This is not a case where the citizen observing the offense went about his other business and then later decided to effectuate an arrest...Rather, (the private citizen) thought he had done all he needed do after he related the circumstances of the affair to Officer Tintle. When he was shortly thereafter recalled to the scene because technicalities prevented the officers from making the arrest, he came at once and effected the arrest personally with the aid of the police. His conduct was wholly lawful. Common sense and the case law both agree that the private citizen effecting an arrest may summon the police to his aid...There is no requirement that the citizen keep the offender within view throughout the time intervening between observation of the offense and arrest."

In other words, the stale misdemeanor doctrine did not apply to this situation for the simple reason that the time spent between citizen's observation of the defendant's misdemeanor driving-under-the-influence offense and her eventual arrest was not wasted on events unrelated to the offense itself.

The same result was found in Third District Court of Appeals decision of *Ogulin v. Jeffries* (1953) 121 Cal.App.2nd 211. Here, a citizen's arrest was made 20 minutes after the offense. After citing all the applicable rules related to stale misdemeanors, the court ruled that "it cannot be held as a matter of law that (the private citizen) did not act promptly and as soon as possible under the circumstances in making the arrest, or that she went about other matters unconnected with the arrest. The finding of the trial court that plaintiff was arrested by (the private citizen)...necessarily included a finding that there had been no unjustifiable delay between the commission of the offense and the arrest."

### **Additional Authority: American Jurisprudence**

The stale misdemeanor rule is perhaps more succinctly described in a legal encyclopedia that summarizes broad principles of United States law (state and federal, civil and criminal, substantive and procedural): *American Jurisprudence, Second Edition* (Am. Jur. 2d), Volume 4, at section 67, page 46:

"In making an arrest without a warrant for breach of the peace or a misdemeanor, an officer must act promptly at the time of the offense. If he does not act immediately after the offense has been committed, he can thereafter make arrests only by procuring a warrant and proceeding in accordance with its terms. The same rule applies to an arrest made by a private individual in cases in which, if he acts immediately, an arrest without a warrant is permitted. In order to justify a delay, there should be a continued attempt on the part of the officer or person

apprehending the offender to make the arrest; he cannot delay for any purpose which is foreign to the accomplishment of the arrest. If an officer sees an affray and calls other officers to his assistance, the fact that the actual arrest is made after the affray is over does not make the arrest without a warrant illegal.”

### **The Consequences of a Violation:**

The issue, therefore, is more about the existence of intervening circumstances between the crime and the ultimate arrest than the actual length of time between the two. Whenever an officer is engaged in a continuing investigation between the crime and the arrest, the amount of time between the two, while not totally irrelevant, is less important. A private person wishing to make a citizen’s arrest must similarly act with dispatch if he or she hopes to engage in that arrest without violating the stale misdemeanor rule. When, however, the officer or private citizen engages in unrelated activities after the misdemeanor crime, the right to make the arrest without a warrant first being obtained is, at some point, forfeited. Every case, therefore, is dependent upon that case’s unique circumstances.

The problem with all of the above is that even if the stale misdemeanor rule is violated, none of these cases provide the basis for the suppression of any evidence or other judicial sanctions. We don’t suppress defendants. And we only suppress evidence when it is the product of either a constitutional violation or a statute that dictates by its terms the suppression of the resulting evidence. Perhaps for these reasons, officials of the California Peace Officers Training (POST) have reportedly deleted stale misdemeanor training from the Basic Academy curriculum.

As pointed out above, however, there are reasons for the stale misdemeanor rule’s existence, as cited by a number of appellate court decisions and as described above. Significantly, no court has yet determined that the rule need not be followed or that it no longer exists. Also, Penal Code § 836(a) has not been rewritten to allow for a lawful misdemeanor arrest despite the offense being stale. One might also contend that law enforcement should not need the threat of the suppression of evidence to follow a well-established rule of law.

Also, there are a number of practical reasons why the stale misdemeanor rule should be respected. For instance, when you are testifying in court, a savvy defense attorney can score some points with a jury by having you admit in your testimony that you purposely ignored a rule of law that still exists, as debatable as it might be. Also, as illustrated in *Jackson v. Superior Court*, above, ignoring the stale misdemeanor rule negates at least one of the elements of a Penal Code § 148 resisting charge, by you failing to act in the performance of your duties. Lastly, it cannot be debated that the stale misdemeanor rule continues to exist with absolutely no judicial authority to the effect that it has outlived its purpose or that it is okay to ignore it.

In the end, the choice is yours. However, I might cite the age-old legal maxim that “bad facts make for bad case law.” Under this theory, you purposely ignoring a long-standing rule of law that has never been overruled by the courts or a legislative enactment might someday come back to bite you. So just keep that in mind.