

TOLLING THE CRIMINAL STATUTE OF LIMITATION FOR OUT-OF-STATE DEFENDANTS

The period during which prosecutors can file criminal charges against an alleged offender is known as a criminal statute of limitation (SOL). Criminal SOLs vary by jurisdiction and depending on the crime involved but they are usually regarded as creating a bar to the right of prosecution. An SOL expires, or runs out, for a given crime if the alleged perpetrator has not been arrested and formally charged by the SOL deadline. Most states, however, have adopted a provision for tolling the SOL –effectively stopping the clock from running –during the period a defendant is “absent from” or “out-of-state”.

At least 25 states have a criminal tolling provision related to “out-of-state” defendants.ⁱ These states are Arizona, Arkansas, California, Colorado, Connecticut, Florida, Georgia, Hawaii, Illinois, Indiana, Iowa, Kansas, Maine, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, New Hampshire, New York, Pennsylvania, Tennessee, Texas, Washington, and Wisconsin. The period during which the accused was absent from the state may be deducted from the statute of limitations of states that provide for this kind of tolling. The statutory language varies slightly among jurisdictions, but generally the SOL may be tolled for the period during which the accused was:

- **Continuously absent from the state;**
- **not “usually and publicly” a resident of the state; or**
- **concealing himself or his identity.**

Provisions in several states, however, provide a restriction on the number of years the tolling exception may apply:



Some provisions require prosecution to exercise *reasonable diligence* to locate defendant or to show that defendant’s absence hinder the prosecution in order for the SOL to be tolled.

MISSOURI LAW

Missouri law recognizes that the SOL may be tolled during defendant’s absence from the state,ⁱⁱ during any time when the accused is concealing himself from justice either within or without the state, or during any time when a prosecution against the accused is pending in the state.ⁱⁱⁱ

ⁱ Ariz. Rev. Stat. Ann. § 13-107(D) (noting the period of limitation does not run during any time “when the accused is absent from the state or has no reasonably ascertainable place of abode within the state”); Ark. Code Ann. § 5-1-109(g)(1) (stating the period does not run “during any time when the accused is continually absent from the state or has no reasonably ascertainable place of abode or work within the state”); Cal. Penal Code § 803(11)(d) (indicating “no time... during which the defendant is not within the state shall be a part of those limitations”); Colo. Rev. Stat. Ann. § 16-5-401(2); Conn. Gen. Stat. Ann. § 54-193(c); Fla. Stat. Ann. § 775.15(6); Ga. Code Ann. § 17-3-2(1); Haw. Rev. Stat. § 701-108(6)(a); 720 Ill. Comp. Stat. Ann. 5/3-7(a); Ind. Code Ann. § 35-41-4-2(i)(1); Iowa Code Ann. § 802.6; Kan. Crim. Code Ann. § 21-3106(9)(a); Me. Rev. Stat. Ann. tit. 17-A, § 8(3)(A); Mass. Ann. Laws ch. 277, § 63; Mich. Comp. Laws Ann. § 767.24(5); Minn. Stat. Ann. § 628.26(k) (noting the period excludes any time during which the defendant “was not an inhabitant of or usually resident within this state”); Miss. Code Ann. § 99-1-5; Mo. Ann. Stat. § 556.036(6)(2); N.H. Rev. Stat. Ann. § 625:8(VI)(a); N.Y. Crim. Proc. Law § 30.10(4)(a)(i-ii) (noting the period does not include any time during which “(i) the defendant was continuously outside this state or (ii) the whereabouts of the defendant were continuously unknown and continuously unascertainable by the exercise of reasonable diligence”); 42 Pa. Cons. Stat. § 5554(1); Tenn. Code Ann. § 40-2-103; Tex. Crim. Proc. Code Ann. § 12.05(a); Wash. Rev. Code Ann. § 9A.04.080(2); Wis. Stat. Ann. § 939.74(3).

ⁱⁱ See V.A.M.S. § 556.036.6(1); *State v. Leisure*, 796 S.W.2d 875, 879 (Mo. 1990); see also *State v. Douglas*, 835 S.W.2d 383 (Mo. Ct. App. E.D. 1992) (statute tolled even though defendant's whereabouts—in another state's prison—were known to authorities, until he returned or took steps to return to Missouri).

ⁱⁱⁱ A defendant who absconds and assumes a false identity, or who gives police a false name at the time of arrest, may be considered to be concealing himself from justice, unless the defendant can show that the State was aware of the alias. Given that a felony prosecution is now commenced merely by filing a complaint, it would seem that the issue of use of aliases has become immaterial. See V.A.M.S. §§ 556.036.5, 556.036.6(3); compare *State v. Douglas*, 835 S.W.2d 383 (Mo. Ct. App. E.D. 1992) (disapproved of on other grounds by, *State v. Becker*, 1996 WL 174806 (Mo. Ct. App. E.D. 1996)) with *State v. Dover*, 664 S.W.2d 560 (Mo. Ct. App. W.D. 1983).

