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”.


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 recognizes that the SOL may be tolled during defendant’s absence from the state, 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.

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2 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).

3 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).