

# HEARSAY EXCEPTION QUIK-CHART

HEARSAY EXCEPTION	NATURE OF STATEMENT	ELEMENTS
<p><b>STATEMENTS OF MENTAL OR PHYSICAL STATE</b> [EC §1250; EC §1251; EC §1252; FRE 803(3); FRE 803(4)]</p> <p>1. <b>Statement of Then-Existing State of Mind or Physical Sensation</b> [EC §§1250, 1252; FRE 803(3)]</p>	Declarant's then-existing mental or physical state to prove such state or as evidence explaining acts or conduct – not memory or belief	<p>a) Declarant's state of mind, emotion or physical sensation at the time the statement was made must be at <i>issue</i>;</p> <p>b) Statement must be a direct manifestation of declarant's <i>state of mind</i>, emotion or physical sensation; and</p> <p>c) Indicia of <i>trustworthiness</i>.</p>
<p>2. <b>Statement of Previously Existing State of Mind or Physical Sensation</b> [EC §§1251, 1252, 240; FRE 803(4)]</p>	Declarant's mental or physical state at a prior time to statement to prove <i>only</i> such state	<p>a) Declarant <i>unavailability</i>;</p> <p>b) Declarant's state of mind, emotion or physical sensation must be at <i>issue</i>; and</p> <p>c) Indicia of <i>trustworthiness</i>.</p>
<p><b>ADMISSIONS</b> [EC §§1220-1227; FRE 801]</p> <p>1. <b>Party Admissions and Confessions</b> [EC §1220; FRE 801(d)(2)(A)]</p>	Opinion, hearsay or anything else from an opposing party in the case	<p>a) Declarant is a party;</p> <p>b) The party made the statement; and</p> <p>c) Statement offered by a party opponent against declarant.</p> <p><i>Federal Rules:</i> Party admissions are admissible nonhearsay (FRE 801(d)(2)(A)).</p>
<p>2. <b>Adoptive Admissions</b> [EC §1221; FRE 801(d)(2)(B)]</p>	Adoption of something said by another in his or her presence – words, conduct or silence	<p>The party must: a) have <i>knowledge</i> (i.e., heard and understood) of the content of the other person's hearsay statement and b) by <i>words or conduct</i> adopt or express a belief in the truth of the statement.</p> <p><i>Federal Rules:</i> Adoptive admissions are admissible nonhearsay (FRE 801(d)(2)(B)).</p>
<p>3. <b>Authorized Admissions</b> [EC §1222; FRE 801(d)(2)(C)(D)]</p>	Statement made by someone authorized to speak for an opposing party in the case concerning the subject matter spoken about	<p>Declarant must be authorized by the party to either: a) <i>make</i> the hearsay statement (express or implied) or b) make the statement for the party regarding the <i>subject matter</i> of the statement.</p> <p><i>Federal Rules:</i> Authorized admissions are admissible nonhearsay (FRE 801(d)(2)(C)(D)).</p>
<p>4. <b>Admission of Co-Conspirator</b> [EC §1223; FRE 801(d)(2)(E)]</p>	Statement made by someone participating in a conspiracy to commit a crime or civil wrong	<p>a) Existence of a <i>conspiracy</i>;</p> <p>b) Declarant <i>participated</i> in the conspiracy when the statement was made;</p> <p>c) Statement made <i>in furtherance of</i> conspiracy; and</p> <p>d) At the time statement made the <i>co-conspirator party</i> was participating in the conspiracy or would do so at a later time.</p> <p><i>Federal Rules:</i> Admissions by co-conspirators are admissible nonhearsay (FRE 801(d)(2)(E)).</p>

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<p><b>NON-PARTY DECLARATION AGAINST INTEREST</b> [EC §§1230, 240; FRE 804(b)(3), 804(a)]</p>	<p>Statement about something discernibly against the declarant's penal, pecuniary or social interest</p>	<p>a) Declarant <i>unavailability</i>; b) Declarant has sufficient <i>knowledge</i> of the subject matter; and c) Statement sufficiently against declarant's <i>pecuniary, proprietary or social interest</i> (reasonable person standard).</p> <p><i>Federal Rules:</i> Do not recognize declarations against <i>social</i> interest and require corroboration as to trustworthiness if statement is offered in a criminal case (FRE 804(b)(3)(A)(B)).</p>
<p><b>PRIOR INCONSISTENT STATEMENT</b> [EC §§1235; 770; FRE 801(d)(1)(A)]</p>	<p>Statement about something inconsistent with a person's trial testimony by a witness at the trial</p>	<p>a) Statement used to <i>contradict the testimony</i> of a witness with his or her <i>out of court</i> statement (impeachment or substantive evidence); and b) <i>Compliance with EC §770:</i> 1) <i>extrinsic evidence</i> of prior statement introduced, 2) witness is given a chance to <i>explain or deny</i> the statement and 3) witness has <i>not been excused</i> from further testimony in the matter.</p> <p><i>Federal Rules:</i> A statement that is inconsistent with declarant's testimony is admissible non-hearsay (FRE 801(d)(1)(A)).</p>
<p><b>PRIOR CONSISTENT STATEMENT</b> [EC §§1236, 791; FRE 801(d)(1)(B)]</p>	<p>Statement about something: a) consistent with a person's trial testimony or b) offered to refute a charge of improper motive or fabrication</p>	<p>a) Previous statement by a witness is consistent with testimony at the hearing (used as impeachment or substantive evidence); and b) <i>Compliance with EC §791:</i> 1) current testimony attacked as <i>recently fabricated</i> (express or implied) and prior consistent statement is made before the "improper motive" to fabricate arose or 2) a prior inconsistent statement was used to <i>attack the credibility</i> of a witness.</p> <p><i>Federal Rules:</i> A statement that is consistent with declarant's testimony and offered to rebut a charge of recent fabrication is admissible nonhearsay (FRE 801(d)(1)(B)).</p>
<p><b>PAST RECOLLECTION RECORDED</b> [EC §1237; FRE 803(5)]</p>	<p>Subject matter a witness cannot recall during his or her trial testimony</p>	<p>a) Statement <i>would have been admissible</i> if the witness testified; b) Witness has <i>insufficient present recollection</i> of the subject matter; c) Statement <i>contained in a writing</i> made when events occurred and fresh in the witness's memory; d) Writing <i>made</i> by the witness or by someone under his or her supervision; e) Witness testifies as to statement's <i>truthfulness</i>; and f) Writing is sufficiently <i>authenticated</i>.</p>
<p><b>FORMER TESTIMONY IN LEGAL PROCEEDINGS</b> [EC §§1290, 1291-3, 240; CCP §2025.620; FRE 804(b)(1), 804(a)]</p>	<p>Statement made by a witness under oath concerning anything in a prior trial, hearing or proceeding</p>	<p>a) Witness <i>unavailability</i>; b) Statement offered in a criminal or civil proceeding (i.e., judicial, legislative or administrative);</p>

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		<ul style="list-style-type: none"> <li>c) Statement offered against a party who previously <i>presented</i> testimony in the <i>prior proceeding</i> on his or her behalf; and</li> <li>d) The party had the <i>motivation, right and opportunity</i> to cross-examine the declarant (e.g., similarity of interest).</li> </ul>
<p><b>JUDGMENTS</b> [EC §§1300-1302; FRE 803(22)]</p>	<p>Statement concerning any fact essential to the judgment and offered for proof in a civil action</p>	<ul style="list-style-type: none"> <li>a) <i>Final</i> judgment of conviction;</li> <li>b) Conviction involves crime <i>punishable as a felony</i>; and</li> <li>c) Judgment presented in a <i>civil case</i>.</li> </ul>
<p><b>SPONTANEOUS DECLARATION</b> [EC §1240; FRE 803(2) (Excited Utterance)]</p>	<p>Statement by anyone that describes or explains an act, condition or event observed or perceived by the declarant</p>	<ul style="list-style-type: none"> <li>a) Statement must: 1) <i>explain</i> an event perceived by declarant and 2) be made <i>spontaneously</i> while declarant was <i>under</i> the stress of the excitement of the perception;</li> <li>b) A <i>startling occurrence</i> sufficient to render the statement spontaneous and <i>unreflecting</i>;</li> <li>c) Statement made <i>before</i> there has been an opportunity to <i>fabricate</i> and while reflective powers remain in <i>abeyance</i>;</li> <li>d) Statement <i>relates</i> to the facts and circumstances of the act, condition or event preceding it; and</li> <li>e) Indicia of <i>trustworthiness</i> (issue goes to weight and not admissibility).</li> </ul> <p><i>Federal Rules:</i> Statement need only <i>relate</i> to the startling event or condition (FRE 803(2)).</p>
<p><b>CONTEMPORANEOUS DECLARATION</b> [EC §1241; FRE 803(1) (Present Sense Impression)]</p>	<p>Statement by anyone that explains, qualifies or makes understandable the conduct of the declarant</p>	<ul style="list-style-type: none"> <li>a) Statement <i>explains, qualifies or makes understandable</i> a person's conduct (e.g., accompanies vague or uncertain conduct); and</li> <li>b) Statement made while declarant was <i>engaged</i> in the conduct (although immediacy is not imperative).</li> </ul> <p><i>Federal Rules:</i> Statement can be made while declarant was perceiving the event or immediately thereafter. The event may be unambiguous and can describe the conduct of another person. (FRE 803(1)).</p>
<p><b>DYING DECLARATION</b> [EC §1242; FRE 804(b)(2), 804(a)(5)]</p>	<p>Statement by declarant concerning the cause and circumstances of his or her death</p>	<ul style="list-style-type: none"> <li>a) Statement based on declarant's <i>personal knowledge</i> (in contrast to mere opinion) made about the <i>cause and circumstances</i> of his or her death;</li> <li>b) Statement made under a sense of <i>impending death</i>; and</li> <li>c) Declarant <i>unavailable</i> as a result of his or her death.</li> </ul> <p><i>Federal Rules:</i> 1) declarant must only be <i>unavailable</i> (need not actually die) and 2) exception applicable only in <i>civil</i> cases and <i>criminal homicide</i> cases.</p>

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<p><b>BUSINESS RECORDS</b> [EC §§1270 – 1272; FRE 803(6)(7)]</p>	<p>Something recorded in a business record concerning an act, condition or event or absence of such an entry in a business record</p>	<p>a) Document prepared in <i>regular course of business</i>;</p> <p>b) Document made <i>at or near the time</i> of the act, condition or event (timeliness);</p> <p>c) Specific <i>identity</i> of the document and <i>mode of preparation</i> is established by testimony of custodian of the writing or other qualified witness; and</p> <p>d) <i>Sources</i> of information and method and time of preparation indicate <i>trustworthiness</i>.</p> <p><i>Absence of Business Records.</i> Absence of a business record to prove the <i>non-occurrence</i> of an act, condition or event requires: a) the record of such act, condition or event were made in the <i>regular course</i> of the business and b) absence of record is a <i>trustworthy</i> indication the act or event did not occur or condition did not exist.</p>
<p><b>OFFICIAL RECORDS</b> [EC §§1280 – 1284; FRE 803(8)-(10)]</p>	<p>Something recorded in an official record concerning an act, condition or event or absence of such an entry in an official record</p>	<p>a) Writing made as a record of and to prove the occurrence of an <i>act, condition or event</i>;</p> <p>b) Writing made within the <i>scope</i> of the duty of a public employee;</p> <p>c) Writing made <i>at or near the time</i> of the act, condition or event (timeliness); and</p> <p>d) <i>Sources</i> for the entries, mode and time of preparation of the writing indicate <i>trustworthiness</i> (source of the information must be the public employee).</p> <p><i>Absence of Public Record.</i> Evidence of the absence of a public record (or to show the nonoccurrence or nonexistence of matter typically contained in the record) can be admissible if: a) it is a type <i>regularly made</i> and preserved by a public office and b) a public employee (who is the official custodian of records) <i>prepares a writing</i> (an attestation or certification) representing that a diligent search and failure to find such a record in that office took place.</p>
<p><b>FEDERAL TRUSTWORTHINESS RULE</b> [FRE 807]</p>		<p>A hearsay statement not specifically covered by FRE 803 or 804 is not excluded by the hearsay rule provided:</p> <p>a) Statement has equivalent <i>circumstantial guarantees of trustworthiness</i>;</p> <p>b) Statement is offered as evidence of a material fact;</p> <p>c) Statement is <i>more probative</i> on the point for which it is offered than alternative evidence;</p> <p>d) The <i>interests of justice</i> will be best served by its admission; and</p> <p>e) Sufficient <i>notice</i> of proponent's intent to use the statement is given to the opposing party in advance of trial.</p>

# SPECIAL EXCEPTIONS IN CRIMINAL CASES

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<p><b>STATEMENT OF IDENTIFICATION</b> [EC §1238]</p>	<p>Statement of a prior identification of a person involved in a crime or event</p>	<ul style="list-style-type: none"> <li>a) Statement admissible had the witness testified;</li> <li>b) Identifies a person as a <i>participant</i> in the crime;</li> <li>c) Statement made at the time the crime was <i>fresh</i> in witness's mind; and</li> <li>d) Evidence of the statement offered <i>after</i> witness admits the prior identification and attests to its <i>accuracy</i>.</li> </ul>
<p><b>IMPEACHING FORMER TESTIMONY IN SAME CRIMINAL MATTER</b> [EC §1294]</p>	<p>Prior inconsistent statement concerning former testimony in same criminal matter</p>	<ul style="list-style-type: none"> <li>a) Witness <i>unavailability</i>;</li> <li>b) <i>Former testimony</i> admitted under EC §1291;</li> <li>c) Statement offered <i>against</i> party that introduced the former testimony (may examine or cross-examine the witness); and</li> <li>d) Used only for <i>impeachment</i> – not for truth.</li> </ul>
<p><b>GANG RELATED CRIMES: SWORN STATEMENT OF DECEASED DECLARANT</b> [EC §1231-1234]</p> <p><b>CAUTIONARY NOTE:</b> This hearsay exception is of questionable constitutionality unless the defendant had an opportunity to cross-examine the declarant. See <i>People v. Cage</i> (2007) 40 Cal.4th 965, 978-979; <i>People v. Pirwani</i> (6th Dist.2004) 119 Cal.App.4th 770, 786.</p>	<p>Statement made under oath by a deceased declarant in a gang prosecution (PC §186.20, et seq.)</p>	<ul style="list-style-type: none"> <li>a) Statement <i>relates</i> to events being prosecuted;</li> <li>b) Declarant had <i>personal knowledge</i>;</li> <li>c) Statement made under <i>oath or affirmation</i> or in court proceeding;</li> <li>d) Declarant <i>deceased</i> from <i>other</i> than natural causes;</li> <li>e) Indicia of <i>trustworthiness</i> (no bias or motive of declarant, not made in contemplation of legal action or independent corroboration exists);</li> <li>f) Testimony by <i>qualified</i> law enforcement officer (i.e., 5 years experience or POST certification); and</li> <li>g) Reasonable <i>notice</i> to opposing party.</li> </ul>
<p><b>STATEMENT OF COMPLAINING WITNESS IN CHILD SEX ABUSE CASE (CORPUS DELICTI)</b> [EC §1228]</p>	<p>Statement describes sexual abuse of a child for purposes of admission of a confession (admissibility of statement determined in motion in limine)</p>	<ul style="list-style-type: none"> <li>a) Prosecution of <i>child sex abuse</i> case (i.e., PC §§261, 264.1, 285, 286, 288, 288a, 289 or 647a);</li> <li>b) Declarant <i>under 12</i> years old;</li> <li>c) Statement contained in a <i>written report</i> and made <i>prior</i> to defendant's confession;</li> <li>d) Statement <i>describes</i> child as <i>victim</i> of sexual abuse;</li> <li>e) Circumstances do not render statement unreliable;</li> <li>f) Minor child <i>unavailable</i>;</li> <li>g) Confession properly memorialized by law enforcement; and</li> <li>h) 10 days <i>notice</i> to defense.</li> </ul>
<p><b>STATEMENT OF UNAVAILABLE DECLARANT IN SERIOUS FELONY CASE</b> [EC §1350]</p>	<p>Statement made by an abducted or murdered victim (e.g., unavailable) in a criminal proceeding alleging a serious felony</p>	<ul style="list-style-type: none"> <li>a) Criminal case charging a <i>serious</i> felony (i.e., PC §1192.7(c), H&amp;SC §§11351, 11352, 11378 or 11379);</li> <li>b) Declarant <i>unavailable by death or kidnapping</i> and <i>caused</i> by adverse party to prevent arrest or prosecution (by clear and convincing evidence);</li> <li>c) Statement is <i>relevant</i> and <i>memorialized</i></li> </ul>

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<p><b>CAUTIONARY NOTE:</b> This hearsay exception is of questionable constitutionality unless the defendant causes the unavailability of the declarant for the purpose and with the intent of preventing arrest or prosecution. See <i>Giles v. California</i> (2008) 554 U.S. 353, 361.</p>		<ul style="list-style-type: none"> <li>by law enforcement in written statement signed by declarant (duly notarized in officer's presence) or in an audio recording;</li> <li>d) Indicia of <i>trustworthiness</i>;</li> <li>e) Statement <i>corroborated</i> by independent evidence; and</li> <li>f) 10 days <i>notice</i> to defense.</li> </ul>
<p><b>STATEMENT OF MINOR VICTIM IN CHILD ABUSE/NEGLECT CASES</b> [EC §1360]</p>	<p>Statement made by victim of child abuse describing act or attempted act of such abuse or neglect</p>	<ul style="list-style-type: none"> <li>a) Prosecution of <i>child abuse</i> case (i.e., PC §§273a, 273d, 288.5, 11165.1 and 11165.2);</li> <li>b) Declarant <i>under 12</i> years old;</li> <li>c) Indicia of <i>reliability</i> (determined outside the presence of the jury) considering spontaneity and declarant's mental state, terminology used or lack of motive to fabricate;</li> <li>d) Child <i>testifies</i> or is otherwise <i>unavailable</i>; and</li> <li>e) Reasonable <i>notice</i> to opposing party.</li> </ul>
<p><b>THREAT TO INFLICT OR INFLICTION OF PHYSICAL INJURY</b> [EC §1370]</p>	<p>Statement of a declarant to describe or explain the infliction or threat of physical injury</p>	<ul style="list-style-type: none"> <li>a) Declarant <i>unavailability</i>;</li> <li>b) Statement made <i>at or near</i> the time of the threat or infliction of injury (within 5 years of filing);</li> <li>c) Statement <i>written, recorded</i> or made to law enforcement or medical personnel;</li> <li>d) Indicia of <i>trustworthiness</i> (no bias or motive of declarant, not made in contemplation of legal action or independent corroboration exists); and</li> <li>e) Reasonable <i>notice</i> to opposing party.</li> </ul>
<p><b>STATEMENT BY ELDER-ABUSE VICTIM</b> [EC §1380]</p> <p><b>CAUTIONARY NOTE:</b> This hearsay exception has been declared unconstitutional by the 6th District Court of Appeal in <i>People v. Pirwani</i> (6th Dist.2004) 119 Cal.App.4th 770, 786 as contravening the constitutional requirements of <i>Crawford v. Washington</i> (2004) 541 U.S. 36.</p>	<p>Extra-judicial statement made to law enforcement authority by a victim of elder-abuse</p>	<ul style="list-style-type: none"> <li>a) Prosecution of elder-abuse case (i.e., PC §368);</li> <li>b) Declarant must be a victim of elder-abuse;</li> <li>c) Statement <i>relevant</i> and "memorialized in a videotape recording" by law enforcement;</li> <li>d) Declarant <i>unavailable</i>, at least 65 years of age when alleged crime was committed and deceased or debilitated by age at the time of the criminal proceeding;</li> <li>e) Statement of abuse independently corroborated;</li> <li>f) Indicia of <i>trustworthiness</i> (no inducement or coercion); and</li> <li>g) 10 days <i>notice</i> to defense.</li> </ul>
<p><b>STATEMENT AGAINST PARTY CAUSING VICTIM'S UNAVAILABILITY AS A WITNESS</b> [EC §1390]</p> <p><b>CAUTIONARY NOTE:</b> EC §1390 has been repealed, effective January 1, 2016.</p>	<p>Statement made by declarant whose unavailability as a witness was caused by the defendant</p>	<ul style="list-style-type: none"> <li>a) Statement offered by prosecution against defendant who engaged in wrongdoing that intentionally caused the declarant's <i>unavailability</i> as a witness;</li> <li>b) Foundation for admissibility established by prosecution (by preponderance of evidence) at a hearing outside the presence of the jury;</li> <li>c) Wrongdoing of defendant must be "supported by corroborative evidence" separate from the statement itself; and</li> <li>d) Indicia of <i>trustworthiness</i>.</li> </ul>