

AMENDED IN SENATE AUGUST 19, 2002

AMENDED IN SENATE AUGUST 5, 2002

AMENDED IN ASSEMBLY MAY 15, 2002

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

ASSEMBLY BILL

No. 2463

**Introduced by Assembly Members Pescetti and La Suer
(Coauthors: Assembly Members Bates, Hollingsworth, Maddox,
and Runner)**

February 21, 2002

An act to amend ~~Sections 209 and 667.61~~ *Section 209* of the Penal Code, relating to sex offenses.

LEGISLATIVE COUNSEL'S DIGEST

AB 2463, as amended, Pescetti. Sex offenses.

Existing law provides that any person who kidnaps or carries away any individual for the purpose of committing robbery or certain sex offenses shall be punished by imprisonment in the state prison for life with the possibility of parole.

This bill would add to those sex offenses subject to the punishment, specified lewd or lascivious acts.

By expanding the scope of an existing crime, this bill would impose a state-mandated local program.

~~Existing law provides that a person convicted of certain offenses, including a lewd or lascivious act upon a child under the age of 14 years, as specified, and under certain circumstances shall be punished by imprisonment in the state prison for life and shall not be eligible for~~

~~parole for 15 years, unless that person qualifies for probation, as specified.~~

~~This bill would delete the provision that makes the punishment for that offense inapplicable to a person who qualifies for probation.~~

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 209 of the Penal Code is amended to
2 read:

3 209. (a) Any person who seizes, confines, inveigles, entices,
4 decoys, abducts, conceals, kidnaps or carries away another person
5 by any means whatsoever with intent to hold or detain, or who
6 holds or detains, that person for ransom, reward or to commit
7 extortion or to exact from another person any money or valuable
8 thing, or any person who aids or abets any ~~such act of those acts~~,
9 is guilty of a felony, and upon conviction thereof, shall be punished
10 by imprisonment in the state prison for life without possibility of
11 parole in cases in which any person subjected to any ~~such act of~~
12 *those acts* suffers death or bodily harm, or is intentionally confined
13 in a manner which exposes that person to a substantial likelihood
14 of death, or shall be punished by imprisonment in the state prison
15 for life with the possibility of parole in cases where ~~no such person~~
16 ~~suffers that person does not suffer~~ death or bodily harm.

17 (b) (1) Any person who kidnaps or carries away any individual
18 to commit robbery, rape, spousal rape, oral copulation, sodomy, a
19 lewd or lascivious act in violation of *subdivision (a) or of*
20 *paragraph (1) of subdivision (b)* of Section 288, or sexual
21 penetration in violation of Section 289, shall be punished by
22 imprisonment in the state prison for life with possibility of parole.

23 (2) This subdivision shall only apply if the movement of the
24 victim is beyond that merely incidental to the commission of, and



1 increases the risk of harm to the victim over and above that
2 necessarily present in, the intended underlying offense.

3 (c) In all cases in which probation is granted, the court shall,
4 except in unusual cases where the interests of justice would best
5 be served by a lesser penalty, require as a condition of the
6 probation that the person be confined in the county jail for 12
7 months. If the court grants probation without requiring the
8 defendant to be confined in the county jail for 12 months, it shall
9 specify its reason or reasons for imposing a lesser penalty.

10 (d) Subdivision (b) shall not be construed to supersede or affect
11 Section 667.61. A person may be charged with a violation of
12 subdivision (b) and Section 667.61. However, a person may not be
13 punished under subdivision (b) and Section 667.61 for the same
14 act that constitutes a violation of both subdivision (b) and Section
15 667.61.

16 ~~SEC. 2.—Section 667.61 of the Penal Code is amended to read:~~

17 ~~667.61. (a) A person who is convicted of an offense specified~~
18 ~~in subdivision (c) under one or more of the circumstances specified~~
19 ~~in subdivision (d) or under two or more of the circumstances~~
20 ~~specified in subdivision (c) shall be punished by imprisonment in~~
21 ~~the state prison for life and shall not be eligible for release on~~
22 ~~parole for 25 years except as provided in subdivision (j):~~

23 ~~(b) Except as provided in subdivision (a), a person who is~~
24 ~~convicted of an offense specified in subdivision (c) under one of~~
25 ~~the circumstances specified in subdivision (c) shall be punished by~~
26 ~~imprisonment in the state prison for life and shall not be eligible~~
27 ~~for release on parole for 15 years except as provided in subdivision~~
28 ~~(j):~~

29 ~~(c) This section shall apply to any of the following offenses:~~

30 ~~(1) A violation of paragraph (2) of subdivision (a) of Section~~
31 ~~261.~~

32 ~~(2) A violation of paragraph (1) of subdivision (a) of Section~~
33 ~~262.~~

34 ~~(3) A violation of Section 264.1.~~

35 ~~(4) A violation of subdivision (b) of Section 288.~~

36 ~~(5) A violation of subdivision (a) of Section 289.~~

37 ~~(6) Sodomy or oral copulation in violation of Section 286 or~~
38 ~~288a by force, violence, duress, menace, or fear of immediate and~~
39 ~~unlawful bodily injury on the victim or another person.~~

40 ~~(7) A violation of subdivision (a) of Section 288.~~



1 ~~(d) The following circumstances shall apply to the offenses~~
2 ~~specified in subdivision (c):~~

3 ~~(1) The defendant has been previously convicted of an offense~~
4 ~~specified in subdivision (c), including an offense committed in~~
5 ~~another jurisdiction that includes all of the elements of an offense~~
6 ~~specified in subdivision (c):~~

7 ~~(2) The defendant kidnapped the victim of the present offense~~
8 ~~and the movement of the victim substantially increased the risk of~~
9 ~~harm to the victim over and above that level of risk necessarily~~
10 ~~inherent in the underlying offense in subdivision (c):~~

11 ~~(3) The defendant inflicted aggravated mayhem or torture on~~
12 ~~the victim or another person in the commission of the present~~
13 ~~offense in violation of Section 205 or 206.~~

14 ~~(4) The defendant committed the present offense during the~~
15 ~~commission of a burglary, as defined in subdivision (a) of Section~~
16 ~~460, with intent to commit an offense specified in subdivision (c):~~

17 ~~(e) The following circumstances shall apply to the offenses~~
18 ~~specified in subdivision (c):~~

19 ~~(1) Except as provided in paragraph (2) of subdivision (d), the~~
20 ~~defendant kidnapped the victim of the present offense in violation~~
21 ~~of Section 207, 209, or 209.5.~~

22 ~~(2) Except as provided in paragraph (4) of subdivision (d), the~~
23 ~~defendant committed the present offense during the commission~~
24 ~~of a burglary, as defined in subdivision (a) of Section 460, or~~
25 ~~during the commission of a burglary of a building, including any~~
26 ~~commercial establishment, which was then closed to the public, in~~
27 ~~violation of Section 459.~~

28 ~~(3) The defendant personally inflicted great bodily injury on~~
29 ~~the victim or another person in the commission of the present~~
30 ~~offense in violation of Section 12022.53, 12022.7, or 12022.8.~~

31 ~~(4) The defendant personally used a dangerous or deadly~~
32 ~~weapon or firearm in the commission of the present offense in~~
33 ~~violation of Section 12022, 12022.3, 12022.5, or 12022.53.~~

34 ~~(5) The defendant has been convicted in the present case or~~
35 ~~cases of committing an offense specified in subdivision (c) against~~
36 ~~more than one victim.~~

37 ~~(6) The defendant engaged in the tying or binding of the victim~~
38 ~~or another person in the commission of the present offense.~~



1 ~~(7) The defendant administered a controlled substance to the~~
2 ~~victim by force, violence, or fear in the commission of the present~~
3 ~~offense in violation of Section 12022.75.~~

4 ~~(f) If only the minimum number of circumstances specified in~~
5 ~~subdivision (d) or (e) which are required for the punishment~~
6 ~~provided in subdivision (a) or (b) to apply have been pled and~~
7 ~~proved, that circumstance or those circumstances shall be used as~~
8 ~~the basis for imposing the term provided in subdivision (a) or (b)~~
9 ~~rather than being used to impose the punishment authorized under~~
10 ~~any other law, unless another law provides for a greater penalty.~~
11 ~~However, if any additional circumstance or circumstances~~
12 ~~specified in subdivision (d) or (e) have been pled and proved, the~~
13 ~~minimum number of circumstances shall be used as the basis for~~
14 ~~imposing the term provided in subdivision (a), and any other~~
15 ~~additional circumstance or circumstances shall be used to impose~~
16 ~~any punishment or enhancement authorized under any other law.~~
17 ~~Notwithstanding any other law, the court shall not strike any of the~~
18 ~~circumstances specified in subdivision (d) or (e).~~

19 ~~(g) The term specified in subdivision (a) or (b) shall be imposed~~
20 ~~on the defendant once for any offense or offenses committed~~
21 ~~against a single victim during a single occasion. If there are~~
22 ~~multiple victims during a single occasion, the term specified in~~
23 ~~subdivision (a) or (b) shall be imposed on the defendant once for~~
24 ~~each separate victim. Terms for other offenses committed during~~
25 ~~a single occasion shall be imposed as authorized under any other~~
26 ~~law, including Section 667.6, if applicable.~~

27 ~~(h) Probation shall not be granted to, nor shall the execution or~~
28 ~~imposition of sentence be suspended for, any person who is subject~~
29 ~~to punishment under this section for any offense specified in~~
30 ~~paragraphs (1) to (6), inclusive, of subdivision (c).~~

31 ~~(i) For the penalties provided in this section to apply, the~~
32 ~~existence of any fact required under subdivision (d) or (e) shall be~~
33 ~~alleged in the accusatory pleading and either admitted by the~~
34 ~~defendant in open court or found to be true by the trier of fact.~~

35 ~~(j) Article 2.5 (commencing with Section 2930) of Chapter 7~~
36 ~~of Title 1 of Part 3 shall apply to reduce the minimum term of 25~~
37 ~~years in the state prison imposed pursuant to subdivision (a) or 15~~
38 ~~years in the state prison imposed pursuant to subdivision (b).~~
39 ~~However, in no case shall the minimum term of 25 or 15 years be~~
40 ~~reduced by more than 15 percent for credits granted pursuant to~~



1 ~~Section 2933, 4019, or any other law providing for conduct credit~~
2 ~~reduction. In no case shall any person who is punished under this~~
3 ~~section be released on parole prior to serving at least 85 percent of~~
4 ~~the minimum term of 25 or 15 years in the state prison.~~

5 ~~SEC. 3.~~

6 *SEC. 2.* No reimbursement is required by this act pursuant to
7 Section 6 of Article XIII B of the California Constitution because
8 the only costs that may be incurred by a local agency or school
9 district will be incurred because this act creates a new crime or
10 infraction, eliminates a crime or infraction, or changes the penalty
11 for a crime or infraction, within the meaning of Section 17556 of
12 the Government Code, or changes the definition of a crime within
13 the meaning of Section 6 of Article XIII B of the California
14 Constitution.

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16 CORRECTIONS

17 Text — Page 2.

18 _____

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