

AMENDED IN ASSEMBLY MAY 18, 2005

AMENDED IN ASSEMBLY MAY 4, 2005

AMENDED IN ASSEMBLY APRIL 6, 2005

CALIFORNIA LEGISLATURE—2005—06 REGULAR SESSION

ASSEMBLY BILL

No. 1551

Introduced by Assembly Member Sharon Runner

February 22, 2005

An act to amend Sections 209, ~~667.61~~, and ~~667.71~~ and 667.61 of the Penal Code, relating to crimes.

LEGISLATIVE COUNSEL'S DIGEST

AB 1551, as amended, Sharon Runner. Sexual predators.

Under existing law, the punishment for kidnapping with the intent to commit any of several specified sexual acts is imprisonment in the state prison for life with the possibility of parole.

This bill would add rape committed in concert and committing lewd and lascivious acts to the above specified sexual acts.

~~Under existing law, persons who are convicted of committing certain sexual offenses who have previously been convicted of other sex offenses, including habitual sexual offenders, as defined, or who are convicted of certain sex offenses while in the commission of another offense, are eligible for credit to reduce the minimum term imposed.~~

~~This bill would eliminate that eligibility for those persons.~~

Under existing law, the punishment for a conviction of certain sex offenses is 25 years to life if the offense was committed in the course of a kidnapping or burglary, the victim was tortured, or the defendant had previously been convicted of one of those sex crimes.

This bill would add continuous sexual abuse of a child to those sex offenses.

~~Under existing law, a court has the authority to order an action dismissed or to strike a prior conviction for purposes of sentencing a defendant.~~

~~This bill would prohibit a court from striking an allegation, admission, or finding of a prior conviction for, and would prohibit granting probation to, defendants who are convicted of certain sex offenses.~~

Because the bill would increase the scope of several crimes, the bill would impose a state-mandated local program.

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
5 person by any means whatsoever with intent to hold or detain, or
6 who holds or detains, that person for ransom, reward or to
7 commit extortion or to exact from another person any money or
8 valuable thing, or any person who aids or abets any such act, is
9 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
12 suffers death or bodily harm, or is intentionally confined in a
13 manner which exposes that person to a substantial likelihood of
14 death, or shall be punished by imprisonment in the state prison
15 for life with the possibility of parole in cases where no such
16 person suffers death or bodily harm.

17 (b) (1) Any person who kidnaps or carries away any
18 individual to commit robbery, rape, spousal rape, oral copulation,

1 sodomy, or any violation of Section 264.1, 288, or 289, shall be
2 punished by imprisonment in the state prison for life with the
3 possibility of parole.

4 (2) This subdivision shall only apply if the movement of the
5 victim is beyond that merely incidental to the commission of, and
6 increases the risk of harm to the victim over and above that
7 necessarily present in, the intended underlying offense.

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

15 (d) Subdivision (b) shall not be construed to supersede or
16 affect Section 667.61. A person may be charged with a violation
17 of subdivision (b) and Section 667.61. However, a person may
18 not be punished under subdivision (b) and Section 667.61 for the
19 same act that constitutes a violation of both subdivision (b) and
20 Section 667.61.

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

22 ~~667.61. (a) A person who is convicted of an offense specified~~
23 ~~in subdivision (e) under one or more of the circumstances~~
24 ~~specified in subdivision (d) or under two or more of the~~
25 ~~circumstances specified in subdivision (e) shall be punished by~~
26 ~~imprisonment in the state prison for life and shall not be eligible~~
27 ~~for release on parole for 25 years except as provided in~~
28 ~~subdivision (j).~~

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

30 ~~(1) Rape, in violation of paragraph (2) of subdivision (a) of~~
31 ~~Section 261.~~

32 ~~(2) Spousal rape, in violation of paragraph (1) of subdivision~~
33 ~~(a) of Section 262.~~

34 ~~(3) Rape, in concert, in violation of Section 264.1.~~

35 ~~(4) Lewd or lascivious acts, in violation of subdivision (b) of~~
36 ~~Section 288.~~

37 ~~(5) Sexual penetration, in violation of subdivision (a) of~~
38 ~~Section 289.~~

39 ~~(6) Sodomy, in violation of paragraph (2) of subdivision (c) of~~
40 ~~Section 286.~~

- 1 ~~(7) Oral copulation, in violation of paragraph (2) of~~
 2 ~~subdivision (e) of Section 288a.~~
- 3 ~~(8) Lewd or lascivious acts, in violation of subdivision (a) of~~
 4 ~~Section 288, unless the defendant qualifies for probation under~~
 5 ~~subdivision (e) of Section 1203.066.~~
- 6 ~~(9) Continuous sexual abuse of a child, in violation of Section~~
 7 ~~288.5.~~
- 8 ~~(d) The following circumstances shall apply to the offenses~~
 9 ~~specified in subdivision (c):~~
- 10 ~~(1) The defendant has been previously convicted of an offense~~
 11 ~~specified in subdivision (e), including an offense committed in~~
 12 ~~another jurisdiction that includes all of the elements of an offense~~
 13 ~~specified in subdivision (e).~~
- 14 ~~(2) The defendant kidnapped the victim of the present offense~~
 15 ~~and the movement of the victim substantially increased the risk~~
 16 ~~of harm to the victim over and above that level of risk necessarily~~
 17 ~~inherent in the underlying offense in subdivision (e).~~
- 18 ~~(3) The defendant inflicted aggravated mayhem or torture on~~
 19 ~~the victim or another person in the commission of the present~~
 20 ~~offense in violation of Section 205 or 206.~~
- 21 ~~(4) The defendant committed the present offense during the~~
 22 ~~commission of a burglary of the first degree, as defined in~~
 23 ~~subdivision (a) of Section 460, with intent to commit an offense~~
 24 ~~specified in subdivision (e).~~
- 25 ~~(e) The following circumstances shall apply to the offenses~~
 26 ~~specified in subdivision (c):~~
- 27 ~~(1) Except as provided in paragraph (2) of subdivision (d), the~~
 28 ~~defendant kidnapped the victim of the present offense in~~
 29 ~~violation of Section 207, 209, or 209.5.~~
- 30 ~~(2) Except as provided in paragraph (4) of subdivision (d), the~~
 31 ~~defendant committed the present offense during the commission~~
 32 ~~of a burglary, as defined in subdivision (a) of Section 460, or~~
 33 ~~during the commission of a burglary of a building, including any~~
 34 ~~commercial establishment, which was then closed to the public,~~
 35 ~~in violation of Section 459.~~
- 36 ~~(3) The defendant personally inflicted great bodily injury on~~
 37 ~~the victim or another person in the commission of the present~~
 38 ~~offense in violation of Section 12022.53, 12022.7, or 12022.8.~~

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

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

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

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

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

28 ~~(g) The term specified in subdivision (a) or (b) shall be~~
29 ~~imposed on the defendant once for any offense or offenses~~
30 ~~committed against a single victim during a single occasion. If~~
31 ~~there are multiple victims during a single occasion, the term~~
32 ~~specified in subdivision (a) or (b) shall be imposed on the~~
33 ~~defendant once for each separate victim. Terms for other offenses~~
34 ~~committed during a single occasion shall be imposed as~~
35 ~~authorized under any other law, including Section 667.6, if~~
36 ~~applicable.~~

37 ~~(h) Notwithstanding any other provision of law, probation~~
38 ~~shall not be granted to, nor shall the execution or imposition of~~
39 ~~sentence be suspended for, any person who is subject to~~
40 ~~punishment under this section.~~

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

5 ~~(j) Article 2.5 (commencing with Section 2930) of Chapter 7~~
6 ~~of Title 1 of Part 3 shall apply to reduce the minimum term of 25~~
7 ~~years in the state prison imposed pursuant to subdivision (a) or~~
8 ~~15 years in the state prison imposed pursuant to subdivision (b).~~
9 ~~However, in no case shall the minimum term of 25 or 15 years be~~
10 ~~reduced by more than 15 percent for credits granted pursuant to~~
11 ~~Section 2933, 4019, or any other law providing for conduct credit~~
12 ~~reduction. In no case shall any person who is punished under this~~
13 ~~section be released on parole prior to serving at least 85 percent~~
14 ~~of the minimum term of 25 or 15 years in the state prison.~~

15 ~~SEC. 3. Section 667.71 of the Penal Code is amended to read:~~

16 ~~667.71. (a) For the purpose of this section, a habitual sexual~~
17 ~~offender is a person who has been previously convicted of one or~~
18 ~~more of the offenses specified in subdivision (c) and who is~~
19 ~~convicted in the present proceeding of one of those offenses.~~

20 ~~(b) A habitual sexual offender is punishable by imprisonment~~
21 ~~in the state prison for 25 years to life. Article 2.5 (commencing~~
22 ~~with Section 2930) of Chapter 7 of Title 1 of Part 3 shall apply to~~
23 ~~reduce any minimum term of 25 years in the state prison imposed~~
24 ~~pursuant to this section. However, in no case shall the minimum~~
25 ~~term of 25 years be reduced by more than 15 percent for credits~~
26 ~~granted pursuant to Section 2933, 4019, or any other law~~
27 ~~providing for conduct credit reduction. In no case shall any~~
28 ~~person who is punished under this section be released on parole~~
29 ~~prior to serving at least 85 percent of the minimum term of 25~~
30 ~~years in the state prison.~~

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

32 ~~(1) Rape, in violation of paragraph (2) of subdivision (a) of~~
33 ~~Section 261.~~

34 ~~(2) Spousal rape, in violation of paragraph (1) of subdivision~~
35 ~~(a) of Section 262.~~

36 ~~(3) Spousal rape, or in violation of Section 264.1.~~

37 ~~(4) Lewd or lascivious acts, in violation of subdivision (a) or~~
38 ~~(b) of Section 288.~~

39 ~~(5) Sexual penetration, in violation of subdivision (a) of~~
40 ~~Section 289.~~

- 1 ~~(6) Continuous sexual abuse, in violation of Section 288.5.~~
- 2 ~~(7) Sodomy, in violation of subdivision (c) of Section 286,~~
- 3 ~~when the act is accomplished as a result of force, violence,~~
- 4 ~~duress, menace, or fear of immediate bodily injury on the victim~~
- 5 ~~or another person.~~
- 6 ~~(8) Sodomy, in violation of subdivision (d) of Section 286.~~
- 7 ~~(9) Oral copulation, in violation of subdivision (e) or (d) of~~
- 8 ~~Section 288a, when the act is accomplished as a result of force,~~
- 9 ~~violence, duress, menace, or fear of immediate bodily injury on~~
- 10 ~~the victim or another person.~~
- 11 ~~(10) Kidnapping, in violation of subdivision (b) of Section~~
- 12 ~~207.~~
- 13 ~~(11) Kidnapping, in violation of former subdivision (d) of~~
- 14 ~~Section 208 (kidnapping to commit specified sex offenses).~~
- 15 ~~(12) Kidnapping, in violation of Section 209 with the intent to~~
- 16 ~~commit rape, spousal rape, oral copulation, sodomy, or sexual~~
- 17 ~~penetration in violation of Section 289.~~
- 18 ~~(13) Aggravated sexual assault of a child, in violation of~~
- 19 ~~Section 269.~~
- 20 ~~(14) An offense committed in another jurisdiction that~~
- 21 ~~includes all of the elements of an offense specified in paragraphs~~
- 22 ~~(1) to (14), inclusive, of this subdivision.~~
- 23 ~~(d) This section shall apply only if the defendant's status as a~~
- 24 ~~habitual sexual offender is alleged in the accusatory pleading,~~
- 25 ~~and either admitted by the defendant in open court, or found to be~~
- 26 ~~true by the trier of fact.~~
- 27 ~~SEC. 2. Section 667.61 of the Penal Code is amended to~~
- 28 ~~read:~~
- 29 ~~667.61. (a) A person who is convicted of an offense specified~~
- 30 ~~in subdivision (c) under one or more of the circumstances~~
- 31 ~~specified in subdivision (d) or under two or more of the~~
- 32 ~~circumstances specified in subdivision (e) shall be punished by~~
- 33 ~~imprisonment in the state prison for life and shall not be eligible~~
- 34 ~~for release on parole for 25 years except as provided in~~
- 35 ~~subdivision (j).~~
- 36 ~~(b) Except as provided in subdivision (a), a person who is~~
- 37 ~~convicted of an offense specified in subdivision (c) under one of~~
- 38 ~~the circumstances specified in subdivision (e) shall be punished~~
- 39 ~~by imprisonment in the state prison for life and shall not be~~

1 eligible for release on parole for 15 years except as provided in
2 subdivision (j).

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

4 (1) A violation of paragraph (2) of subdivision (a) of Section
5 261.

6 (2) A violation of paragraph (1) of subdivision (a) of Section
7 262.

8 (3) A violation of Section 264.1.

9 (4) A violation of subdivision (b) of Section 288.

10 (5) A violation of subdivision (a) of Section 289.

11 (6) Sodomy or oral copulation in violation of Section 286 or
12 288a by force, violence, duress, menace, or fear of immediate
13 and unlawful bodily injury on the victim or another person.

14 (7) A violation of subdivision (a) of Section 288, unless the
15 defendant qualifies for probation under subdivision (c) of Section
16 1203.066.

17 (8) *Continuous sexual abuse of a child, in violation of Section*
18 *288.5.*

19 (d) The following circumstances shall apply to the offenses
20 specified in subdivision (c):

21 (1) The defendant has been previously convicted of an offense
22 specified in subdivision (c), including an offense committed in
23 another jurisdiction that includes all of the elements of an offense
24 specified in subdivision (c).

25 (2) The defendant kidnapped the victim of the present offense
26 and the movement of the victim substantially increased the risk
27 of harm to the victim over and above that level of risk necessarily
28 inherent in the underlying offense in subdivision (c).

29 (3) The defendant inflicted aggravated mayhem or torture on
30 the victim or another person in the commission of the present
31 offense in violation of Section 205 or 206.

32 (4) The defendant committed the present offense during the
33 commission of a burglary, as defined in subdivision (a) of
34 Section 460, with intent to commit an offense specified in
35 subdivision (c).

36 (e) The following circumstances shall apply to the offenses
37 specified in subdivision (c):

38 (1) Except as provided in paragraph (2) of subdivision (d), the
39 defendant kidnapped the victim of the present offense in
40 violation of Section 207, 209, or 209.5.

1 (2) Except as provided in paragraph (4) of subdivision (d), the
2 defendant committed the present offense during the commission
3 of a burglary, as defined in subdivision (a) of Section 460, or
4 during the commission of a burglary of a building, including any
5 commercial establishment, which was then closed to the public,
6 in violation of Section 459.

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

10 (4) The defendant personally used a dangerous or deadly
11 weapon or firearm in the commission of the present offense in
12 violation of Section 12022, 12022.3, 12022.5, or 12022.53.

13 (5) The defendant has been convicted in the present case or
14 cases of committing an offense specified in subdivision (c)
15 against more than one victim.

16 (6) The defendant engaged in the tying or binding of the
17 victim or another person in the commission of the present
18 offense.

19 (7) The defendant administered a controlled substance to the
20 victim by force, violence, or fear in the commission of the
21 present offense in violation of Section 12022.75.

22 (f) If only the minimum number of circumstances specified in
23 subdivision (d) or (e) which are required for the punishment
24 provided in subdivision (a) or (b) to apply have been pled and
25 proved, that circumstance or those circumstances shall be used as
26 the basis for imposing the term provided in subdivision (a) or (b)
27 rather than being used to impose the punishment authorized
28 under any other law, unless another law provides for a greater
29 penalty. However, if any additional circumstance or
30 circumstances specified in subdivision (d) or (e) have been pled
31 and proved, the minimum number of circumstances shall be used
32 as the basis for imposing the term provided in subdivision (a),
33 and any other additional circumstance or circumstances shall be
34 used to impose any punishment or enhancement authorized under
35 any other law. Notwithstanding any other law, the court shall not
36 strike any of the circumstances specified in subdivision (d) or (e).

37 (g) The term specified in subdivision (a) or (b) shall be
38 imposed on the defendant once for any offense or offenses
39 committed against a single victim during a single occasion. If
40 there are multiple victims during a single occasion, the term

1 specified in subdivision (a) or (b) shall be imposed on the
2 defendant once for each separate victim. Terms for other offenses
3 committed during a single occasion shall be imposed as
4 authorized under any other law, including Section 667.6, if
5 applicable.

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

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

14 (j) Article 2.5 (commencing with Section 2930) of Chapter 7
15 of Title 1 of Part 3 shall apply to reduce the minimum term of 25
16 years in the state prison imposed pursuant to subdivision (a) or
17 15 years in the state prison imposed pursuant to subdivision (b).
18 However, in no case shall the minimum term of 25 or 15 years be
19 reduced by more than 15 percent for credits granted pursuant to
20 Section 2933, 4019, or any other law providing for conduct credit
21 reduction. In no case shall any person who is punished under this
22 section be released on parole prior to serving at least 85 percent
23 of the minimum term of 25 or 15 years in the state prison.

24 ~~SEC. 4.—~~

25 *SEC. 3.* No reimbursement is required by this act pursuant to
26 Section 6 of Article XIII B of the California Constitution because
27 the only costs that may be incurred by a local agency or school
28 district will be incurred because this act creates a new crime or
29 infraction, eliminates a crime or infraction, or changes the
30 penalty for a crime or infraction, within the meaning of Section
31 17556 of the Government Code, or changes the definition of a
32 crime within the meaning of Section 6 of Article XIII B of the
33 California Constitution.