

Introduced by Senator Strickland

February 19, 2010

An act to amend Section 1203.066 of the Penal Code, relating to probation.

LEGISLATIVE COUNSEL'S DIGEST

SB 1253, as amended, Strickland. Probation: sex offenders.

Existing law provides that probation shall not be granted to specified defendants who are convicted of lewd or lascivious acts upon or with the body of a child, or defendants convicted of continuous sexual abuse of a child, except as specified. Existing law provides that if the defendant is not ineligible for probation, the defendant may be granted probation only if certain terms and conditions are met.

This bill would include within those terms and conditions that ~~the court prohibit the defendant from being placed or residing, for the duration of the probation term, within $\frac{1}{2}$ mile of the child victim's residence, if the defendant is not a member of the victim's household,~~ *the court would be required to prohibit the defendant from being placed or residing within $\frac{1}{2}$ mile of the child victim's residence for the duration of the probation term unless the court, on the record, states its reasons for finding that this residency restriction would not serve the best interest of the victim.*

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

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

1 SECTION 1. Section 1203.066 of the Penal Code is amended
2 to read:

3 1203.066. (a) Notwithstanding Section 1203 or any other law,
4 probation shall not be granted to, nor shall the execution or
5 imposition of sentence be suspended for, nor shall a finding
6 bringing the defendant within the provisions of this section be
7 stricken pursuant to Section 1385 for, any of the following persons:

8 (1) A person who is convicted of violating Section 288 or 288.5
9 when the act is committed by the use of force, violence, duress,
10 menace, or fear of immediate and unlawful bodily injury on the
11 victim or another person.

12 (2) A person who caused bodily injury on the child victim in
13 committing a violation of Section 288 or 288.5.

14 (3) A person who is convicted of a violation of Section 288 or
15 288.5 and who was a stranger to the child victim or befriended the
16 child victim for the purpose of committing an act in violation of
17 Section 288 or 288.5, unless the defendant honestly and reasonably
18 believed the victim was 14 years of age or older.

19 (4) A person who used a weapon during the commission of a
20 violation of Section 288 or 288.5.

21 (5) A person who is convicted of committing a violation of
22 Section 288 or 288.5 and who has been previously convicted of a
23 violation of Section 261, 262, 264.1, 266, 266c, 267, 285, 286,
24 288, 288.5, 288a, or 289, or of assaulting another person with
25 intent to commit a crime specified in this paragraph in violation
26 of Section 220, or who has been previously convicted in another
27 state of an offense which, if committed or attempted in this state,
28 would constitute an offense enumerated in this paragraph.

29 (6) A person who violated Section 288 or 288.5 while
30 kidnapping the child victim in violation of Section 207, 209, or
31 209.5.

32 (7) A person who is convicted of committing a violation of
33 Section 288 or 288.5 against more than one victim.

34 (8) A person who, in violating Section 288 or 288.5, has
35 substantial sexual conduct with a victim who is under 14 years of
36 age.

1 (9) A person who, in violating Section 288 or 288.5, used
2 obscene matter, as defined in Section 311, or matter, as defined in
3 Section 311, depicting sexual conduct, as defined in Section 311.3.

4 (b) “Substantial sexual conduct” means penetration of the vagina
5 or rectum of either the victim or the offender by the penis of the
6 other or by any foreign object, oral copulation, or masturbation of
7 either the victim or the offender.

8 (c) (1) Except for a violation of subdivision (b) of Section 288,
9 this section shall only apply if the existence of any fact required
10 in subdivision (a) is alleged in the accusatory pleading and is either
11 admitted by the defendant in open court, or found to be true by the
12 trier of fact.

13 (2) For the existence of any fact under paragraph (7) of
14 subdivision (a), the allegation must be made pursuant to this
15 section.

16 (d) (1) If a person is convicted of a violation of Section 288 or
17 288.5, and the factors listed in subdivision (a) are not pled or
18 proven, probation may be granted only if the following terms and
19 conditions are met:

20 (A) If the defendant is a member of the victim’s household, the
21 court finds that probation is in the best interest of the child victim.

22 (B) The court finds that rehabilitation of the defendant is feasible
23 and that the defendant is amenable to undergoing treatment, and
24 the defendant is placed in a recognized treatment program designed
25 to deal with child molestation immediately after the grant of
26 probation or the suspension of execution or imposition of sentence.

27 (C) If the defendant is a member of the victim’s household,
28 probation shall not be granted unless the defendant is removed
29 from the household of the victim *until the court determines that*
30 *the best interests of the victim would be served by his or her return.*

31 While removed from the household, the court shall prohibit contact
32 by the defendant with the victim, with the exception that the court
33 may permit supervised contact, upon the request of the director of
34 the court-ordered supervised treatment program, and with the
35 agreement of the victim and the victim’s parent or legal guardian,
36 other than the defendant.

37 ~~(D) The court prohibits the defendant from being placed or~~
38 ~~residing, for the duration of the probation term, within one-half~~
39 ~~mile of the child victim’s residence.~~

1 (D) *If the defendant is not a member of the victim's household,*
2 *the court shall prohibit the defendant from being placed or residing*
3 *within one-half mile of the child victim's residence for the duration*
4 *of the probation term unless the court, on the record, states its*
5 *reasons for finding that this residency restriction would not serve*
6 *the best interest of the victim.*

7 (E) The court finds that there is no threat of physical harm to
8 the victim if probation is granted.

9 (2) The court shall state its reasons on the record for whatever
10 sentence it imposes on the defendant.

11 (3) The court shall order the psychiatrist or psychologist who
12 is appointed pursuant to Section 288.1 to include a consideration
13 of the factors specified in subparagraphs (A), (B), and (C) of
14 paragraph (1) in making his or her report to the court.

15 (4) The court shall order the defendant to comply with all
16 probation requirements, including the requirements to attend
17 counseling, keep all program appointments, and pay program fees
18 based upon ability to pay.

19 (5) No victim shall be compelled to participate in a program or
20 counseling, and no program may condition a defendant's
21 enrollment on participation by the victim.

22 (e) As used in subdivision (d), the following definitions apply:

23 (1) "Contact with the victim" includes all physical contact, being
24 in the presence of the victim, communicating by any means,
25 including by a third party acting on behalf of the defendant, or
26 sending any gifts.

27 (2) "Recognized treatment program" means a program that
28 consists of the following components:

29 (A) Substantial expertise in the treatment of child sexual abuse.

30 (B) A treatment regimen designed to specifically address the
31 offense.

32 (C) The ability to serve indigent clients.

33 (D) Adequate reporting requirements to ensure that all persons
34 who, after being ordered to attend and complete a program, may
35 be identified for either failure to enroll in, or failure to successfully
36 complete, the program, or for the successful completion of the
37 program as ordered. The program shall notify the court and the
38 probation department, in writing, within the period of time and in
39 the manner specified by the court of any person who fails to
40 complete the program. Notification shall be given if the program

- 1 determines that the defendant is performing unsatisfactorily or if
- 2 the defendant is not benefiting from the education, treatment, or
- 3 counseling.

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