

Introduced by Senator Beall
(Principal coauthor: Senator Anderson)
(Coauthors: Senators Bates, Galgiani, Hall, and Vidak)
(Coauthors: Assembly Members Chávez, Dodd, and Rodriguez)

February 4, 2015

An act to amend Section 667.61 of the Penal Code, relating to crimes.

LEGISLATIVE COUNSEL'S DIGEST

SB 164, as introduced, Beall. Serial sexual predators.

Existing law, as amended by Proposition 83, the Sexual Predator Punishment and Control Act (Jessica's Law), approved by the voters at the November 7, 2006, statewide general election, provides that a defendant shall be punished by imprisonment in the state prison for 25 years to life if convicted of certain crimes, including rape, sexual penetration, sodomy, oral copulation, continuous sexual abuse of a child, or rape, spousal rape, or sexual penetration in concert, if certain circumstances were present, including, among other things, if the defendant has been previously convicted of a specified offense. Proposition 83 provides that the Legislature may amend the provisions of the act to expand the scope of their application or increase the punishment or penalties by a statute passed by a majority vote of each house.

This bill would specify that the 25-year to life prison term applies if the defendant has been convicted of a separate violation of a specified offense irrespective of the order in which the offenses were committed or the convictions obtained.

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 667.61 of the Penal Code is amended to
2 read:

3 667.61. (a) Except as provided in subdivision (j), (l), or (m),
4 any person who is convicted of an offense specified in subdivision
5 (c) under one or more of the circumstances specified in subdivision
6 (d) or under two or more of the circumstances specified in
7 subdivision (e) shall be punished by imprisonment in the state
8 prison for 25 years to life.

9 (b) Except as provided in subdivision (a), (j), (l), or (m), any
10 person who is convicted of an offense specified in subdivision (c)
11 under one of the circumstances specified in subdivision (e) shall
12 be punished by imprisonment in the state prison for 15 years to
13 life.

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

15 (1) Rape, in violation of paragraph (2) or (6) of subdivision (a)
16 of Section 261.

17 (2) Spousal rape, in violation of paragraph (1) or (4) of
18 subdivision (a) of Section 262.

19 (3) Rape, spousal rape, or sexual penetration, in concert, in
20 violation of Section 264.1.

21 (4) Lewd or lascivious act, in violation of subdivision (b) of
22 Section 288.

23 (5) Sexual penetration, in violation of subdivision (a) of Section
24 289.

25 (6) Sodomy, in violation of paragraph (2) or (3) of subdivision
26 (c), or subdivision (d), of Section 286.

27 (7) Oral copulation, in violation of paragraph (2) or (3) of
28 subdivision (c), or subdivision (d), of Section 288a.

29 (8) Lewd or lascivious act, in violation of subdivision (a) of
30 Section 288.

31 (9) Continuous sexual abuse of a child, in violation of Section
32 288.5.

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

35 (1) The defendant has been ~~previously~~ convicted of a separate
36 violation of an offense specified in subdivision (c), including an
37 offense committed in another jurisdiction that includes all of the
38 elements of an offense specified in subdivision (c). *This paragraph*

1 *shall apply irrespective of the order in which the offenses were*
2 *committed or the convictions obtained.*

3 (2) The defendant kidnapped the victim of the present offense
4 and the movement of the victim substantially increased the risk of
5 harm to the victim over and above that level of risk necessarily
6 inherent in the underlying offense in subdivision (c).

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

10 (4) The defendant committed the present offense during the
11 commission of a burglary of the first degree, as defined in
12 subdivision (a) of Section 460, with intent to commit an offense
13 specified in subdivision (c).

14 (5) The defendant committed the present offense in violation
15 of Section 264.1, subdivision (d) of Section 286, or subdivision
16 (d) of Section 288a, and, in the commission of that offense, any
17 person committed any act described in paragraph (2), (3), or (4)
18 of this subdivision.

19 (6) The defendant personally inflicted great bodily injury on
20 the victim or another person in the commission of the present
21 offense in violation of Section 12022.53, 12022.7, or 12022.8.

22 (7) The defendant personally inflicted bodily harm on the victim
23 who was under 14 years of age.

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

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

29 (2) Except as provided in paragraph (4) of subdivision (d), the
30 defendant committed the present offense during the commission
31 of a burglary in violation of Section 459.

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

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

38 (5) The defendant engaged in the tying or binding of the victim
39 or another person in the commission of the present offense.

1 (6) The defendant administered a controlled substance to the
2 victim in the commission of the present offense in violation of
3 Section 12022.75.

4 (7) The defendant committed the present offense in violation
5 of Section 264.1, subdivision (d) of Section 286, or subdivision
6 (d) of Section 288a, and, in the commission of that offense, any
7 person committed any act described in paragraph (1), (2), (3), (5),
8 or (6) of this subdivision or paragraph (6) of subdivision (d).

9 (f) If only the minimum number of circumstances specified in
10 subdivision (d) or (e) that are required for the punishment provided
11 in subdivision (a), (b), (j), (l), or (m) to apply have been pled and
12 proved, that circumstance or those circumstances shall be used as
13 the basis for imposing the term provided in subdivision (a), (b),
14 (j), (l), or (m) whichever is greater, rather than being used to impose
15 the punishment authorized under any other provision of law, unless
16 another provision of law provides for a greater penalty or the
17 punishment under another provision of law can be imposed in
18 addition to the punishment provided by this section. However, if
19 any additional circumstance or circumstances specified in
20 subdivision (d) or (e) have been pled and proved, the minimum
21 number of circumstances shall be used as the basis for imposing
22 the term provided in subdivision (a), (j), or (l) and any other
23 additional circumstance or circumstances shall be used to impose
24 any punishment or enhancement authorized under any other
25 provision of law.

26 (g) Notwithstanding Section 1385 or any other provision of law,
27 the court shall not strike any allegation, admission, or finding of
28 any of the circumstances specified in subdivision (d) or (e) for any
29 person who is subject to punishment under this section.

30 (h) Notwithstanding any other provision of law, probation shall
31 not be granted to, nor shall the execution or imposition of sentence
32 be suspended for, any person who is subject to punishment under
33 this section.

34 (i) For any offense specified in paragraphs (1) to (7), inclusive,
35 of subdivision (c), or in paragraphs (1) to (6), inclusive, of
36 subdivision (n), the court shall impose a consecutive sentence for
37 each offense that results in a conviction under this section if the
38 crimes involve separate victims or involve the same victim on
39 separate occasions as defined in subdivision (d) of Section 667.6.

1 (j) (1) Any person who is convicted of an offense specified in
2 subdivision (c), with the exception of a violation of subdivision
3 (a) of Section 288, upon a victim who is a child under 14 years of
4 age under one or more of the circumstances specified in subdivision
5 (d) or under two or more of the circumstances specified in
6 subdivision (e), shall be punished by imprisonment in the state
7 prison for life without the possibility of parole. Where the person
8 was under 18 years of age at the time of the offense, the person
9 shall be punished by imprisonment in the state prison for 25 years
10 to life.

11 (2) Any person who is convicted of an offense specified in
12 subdivision (c) under one of the circumstances specified in
13 subdivision (e), upon a victim who is a child under 14 years of
14 age, shall be punished by imprisonment in the state prison for 25
15 years to life.

16 (k) As used in this section, “bodily harm” means any substantial
17 physical injury resulting from the use of force that is more than
18 the force necessary to commit an offense specified in subdivision
19 (c).

20 (l) Any person who is convicted of an offense specified in
21 subdivision (n) under one or more of the circumstances specified
22 in subdivision (d) or under two or more of the circumstances
23 specified in subdivision (e), upon a victim who is a minor 14 years
24 of age or older shall be punished by imprisonment in the state
25 prison for life without the possibility of parole. If the person who
26 was convicted was under 18 years of age at the time of the offense,
27 he or she shall be punished by imprisonment in the state prison
28 for 25 years to life.

29 (m) Any person who is convicted of an offense specified in
30 subdivision (n) under one of the circumstances specified in
31 subdivision (e) against a minor 14 years of age or older shall be
32 punished by imprisonment in the state prison for 25 years to life.

33 (n) Subdivisions (l) and (m) shall apply to any of the following
34 offenses:

35 (1) Rape, in violation of paragraph (2) of subdivision (a) of
36 Section 261.

37 (2) Spousal rape, in violation of paragraph (1) of subdivision
38 (a) of Section 262.

39 (3) Rape, spousal rape, or sexual penetration, in concert, in
40 violation of Section 264.1.

1 (4) Sexual penetration, in violation of paragraph (1) of
2 subdivision (a) of Section 289.

3 (5) Sodomy, in violation of paragraph (2) of subdivision (c) of
4 Section 286, or in violation of subdivision (d) of Section 286.

5 (6) Oral copulation, in violation of paragraph (2) of subdivision
6 (c) of Section 288a, or in violation of subdivision (d) of Section
7 288a.

8 (o) The penalties provided in this section shall apply only if the
9 existence of any circumstance specified in subdivision (d) or (e)
10 is alleged in the accusatory pleading pursuant to this section, and
11 is either admitted by the defendant in open court or found to be
12 true by the trier of fact.

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