

AMENDED IN SENATE MAY 6, 1999  
AMENDED IN SENATE APRIL 7, 1999

**SENATE BILL**

**No. 786**

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**Introduced by Senator Schiff**

February 25, 1999

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An act to amend Section ~~1484~~ 668 of, and to add Section ~~1473.5~~ to, the Penal Code, relating to habeas corpus; Section 668.5 to, the Penal Code and to amend Section 6600 of the Welfare and Institutions Code, relating to punishment, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 786, as amended, Schiff. ~~Habeas corpus~~ Punishment.

*Existing law provides that every person convicted in any other state, government, country, or jurisdiction of an offense that is punishable in this state by imprisonment in state prison is punishable as if the prior conviction had occurred in this state when convicted of a subsequent crime in this state. Existing law specifies that the application of this provision includes, but is not limited to, all statutes that provide for enhancements for prior convictions and prior prison terms.*

*This bill additionally would include in this application a term of imprisonment based upon a prior conviction or prior prison term and further require that an offense specified as a prior felony conviction by reference to a specific code section include any prior felony conviction under any predecessor statute of that specified offense that includes all of the elements of that specified offense. This bill also would specify*

that application of the latter provision includes, but is not limited to, all statutes that provide for an enhancement or a term of imprisonment based upon a prior conviction or a prior prison term.

This bill would make a conforming change.

The bill also would provide that it is intended to be declaratory of existing law as established by the holding set forth in *People v. Butler* (1998) 68 Cal. App. 4th 421.

This bill would declare that it is to take effect immediately as an urgency statute.

~~Existing law provides that every person unlawfully imprisoned or restrained of his or her liberty, under any pretense whatever, may prosecute a writ of habeas corpus, to inquire into the cause of the imprisonment or restraint. Application for the writ is made by petition verified by the oath or affirmation of the petitioner.~~

~~This bill would, among other things, provide that contentions raised and rejected on direct appeal shall not be cognizable on petition for a writ of habeas corpus, specify that a writ shall not issue upon any ground not raised upon direct appeal, with specified exceptions, specify that a writ shall not issue upon any ground omitted from a prior petition, with specified exceptions, specify the time to file a petition for a writ, and provide that a court may waive these limitations if it finds by a preponderance of the evidence that a miscarriage of justice would otherwise result. A court would be authorized, but not required, to order discovery for habeas purposes upon a showing of good cause after the petition is filed and an order to show cause is issued, but not prior to the filing of the petition nor after the termination of the habeas proceeding.~~

Vote: ~~majority~~ <sup>2/3</sup>. Appropriation: no. Fiscal committee: yes  
no. State-mandated local program: no.

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

- 1 ~~SECTION 1. Section 1473.5 is added to the Penal~~
- 2 *SECTION 1. Section 668 of the Penal Code is*
- 3 *amended to read:*



1 668. Every person who has been convicted in any  
2 other state, government, country, or jurisdiction of an  
3 offense for which, if committed within this state, that  
4 person could have been punished under the laws of this  
5 state by imprisonment in ~~a~~ *the* state prison, is punishable  
6 for any subsequent crime committed within this state in  
7 the manner prescribed by law and to the same extent as  
8 if that prior conviction had taken place in a court of this  
9 state. The application of this section includes, but is not  
10 limited to, all statutes ~~which~~ *that* provide for  
11 ~~enhancements for prior convictions and prior prison~~  
12 ~~terms~~ *an enhancement or a term of imprisonment based*  
13 *on a prior conviction or a prior prison term.*

14 SEC. 2. Section 668.5 is added to the Penal Code, to  
15 read:

16 668.5. An offense specified as a prior felony conviction  
17 by reference to a specific code section shall include any  
18 prior felony conviction under any predecessor statute of  
19 that specified offense that includes all of the elements of  
20 that specified offense. The application of this section  
21 includes, but is not limited to, all statutes that provide for  
22 an enhancement or a term of imprisonment based on a  
23 prior conviction or a prior prison term.

24 SEC. 3. Section 6600 of the Welfare and Institutions  
25 Code is amended to read:

26 6600. As used in this article, the following terms have  
27 the following meanings:

28 (a) “Sexually violent predator” means a person who  
29 has been convicted of a sexually violent offense against  
30 two or more victims for which he or she received a  
31 determinate sentence and who has a diagnosed mental  
32 disorder that makes the person a danger to the health and  
33 safety of others in that it is likely that he or she will engage  
34 in sexually violent criminal behavior.

35 For purposes of this subdivision, a prior finding of not  
36 guilty by reason of insanity for an offense described in  
37 subdivision (b), *a conviction for an offense under a*  
38 *predecessor statute that includes all of the elements of an*  
39 *offense described in subdivision (b)*, a conviction prior to  
40 July 1, 1977, for an offense described in subdivision (b), a



1 conviction resulting in a finding that the person was a  
2 mentally disordered sex offender, or a conviction in  
3 another *state jurisdiction* for an offense that includes all  
4 the elements of an offense described in subdivision (b),  
5 shall also be deemed to be a sexually violent offense even  
6 if the offender did not receive a determinate sentence for  
7 that prior offense.

8 Conviction of one or more of the crimes enumerated in  
9 this section shall constitute evidence that may support a  
10 court or jury determination that a person is a sexually  
11 violent predator, but shall not be the sole basis for the  
12 determination. The existence of any prior convictions  
13 may be shown with documentary evidence. The details  
14 underlying the commission of an offense that led to a  
15 prior conviction, including a predatory relationship with  
16 the victim, may be shown by documentary evidence,  
17 including, but not limited to, preliminary hearing  
18 transcripts, trial transcripts, probation and sentencing  
19 reports, and evaluations by the State Department of  
20 Mental Health. Jurors shall be admonished that they may  
21 not find a person a sexually violent predator based on  
22 prior offenses absent relevant evidence of a currently  
23 diagnosed mental disorder that makes the person a  
24 danger to the health and safety of others in that it is likely  
25 that he or she will engage in sexually violent criminal  
26 behavior.

27 (b) “Sexually violent offense” means the following  
28 acts when committed by force, violence, duress, menace,  
29 or fear of immediate and unlawful bodily injury on the  
30 victim or another person, and that are committed on,  
31 before, or after the effective date of this article and result  
32 in a conviction or a finding of not guilty by reason of  
33 insanity, as provided in subdivision (a): a felony violation  
34 of paragraph (2) of subdivision (a) of Section 261,  
35 paragraph (1) of subdivision (a) of Section 262, Section  
36 264.1, subdivision (a) or (b) of Section 288, or subdivision  
37 (a) of Section 289 of the Penal Code, or sodomy or oral  
38 copulation in violation of Section 286 or 288a of the Penal  
39 Code.



1 (c) “Diagnosed mental disorder” includes a  
2 congenital or acquired condition affecting the emotional  
3 or volitional capacity that predisposes the person to the  
4 commission of criminal sexual acts in a degree  
5 constituting the person a menace to the health and safety  
6 of others.

7 (d) “Danger to the health and safety of others” does  
8 not require proof of a recent overt act while the offender  
9 is in custody.

10 (e) “Predatory” means an act is directed toward a  
11 stranger, a person of casual acquaintance with whom no  
12 substantial relationship exists, or an individual with whom  
13 a relationship has been established or promoted for the  
14 primary purpose of victimization.

15 (f) “Recent overt act” means any criminal act that  
16 manifests a likelihood that the actor may engage in  
17 sexually violent predatory criminal behavior.

18 SEC. 4. This act is intended to be declaratory of  
19 existing law as contained in *People v. Butler* (1998) 68  
20 Cal.App.4th 421, at pages 435-441.

21 SEC. 5. This act is an urgency statute necessary for the  
22 immediate preservation of the public peace, health, or  
23 safety within the meaning of Article IV of the  
24 Constitution and shall go into immediate effect. The facts  
25 constituting the necessity are:

26 In order to clarify the qualification of prior convictions  
27 under predecessor statutes at the earliest possible time so  
28 as to avoid confusion regarding their use, it is necessary  
29 for this act to take effect immediately.

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**All matter omitted in this version of the  
bill appears in the bill as amended in the  
Senate, April 7, 1999 (JR 11)**

