

AMENDED IN SENATE APRIL 7, 2015

SENATE BILL

No. 164

Introduced by Senator Beall

(Principal coauthor: Senator Anderson)

(Coauthors: Senators Bates, Galgiani, Hall, Stone, and Vidak)

(Coauthors: Assembly Members *Baker, Bonilla, Chávez, Cooley, Dodd,*
and *Gipson, Lackey, Maienschein, Rodriguez, and Waldron*)

February 4, 2015

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

LEGISLATIVE COUNSEL'S DIGEST

SB 164, as amended, 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 of *25 years to life* applies if the defendant has been convicted of ~~a separate violation of a more than one~~ specified offense *on charges brought and tried*

separately, 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 a~~
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.

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

3 (1) The defendant has been convicted of ~~a separate violation of~~
4 ~~an~~ *more than one* offense specified in subdivision (c) *on charges*
5 *brought and tried separately*, including an offense committed in
6 another jurisdiction that includes all of the elements of an offense
7 specified in subdivision (c). This paragraph shall apply irrespective
8 of the order in which the offenses were committed or the
9 convictions obtained.

10 (2) The defendant kidnapped the victim of the present offense
11 and the movement of the victim substantially increased the risk of
12 harm to the victim over and above that level of risk necessarily
13 inherent in the underlying offense in subdivision (c).

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

17 (4) The defendant committed the present offense during the
18 commission of a burglary of the first degree, as defined in
19 subdivision (a) of Section 460, with intent to commit an offense
20 specified in subdivision (c).

21 (5) The defendant committed the present offense in violation
22 of Section 264.1, subdivision (d) of Section 286, or subdivision
23 (d) of Section 288a, and, in the commission of that offense, any
24 person committed ~~any~~ *an* act described in paragraph (2), (3), or
25 (4) of this subdivision.

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

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

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

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

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

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

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

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

9 (6) The defendant administered a controlled substance to the
10 victim in the commission of the present offense in violation of
11 Section 12022.75.

12 (7) The defendant committed the present offense in violation
13 of Section 264.1, subdivision (d) of Section 286, or subdivision
14 (d) of Section 288a, and, in the commission of that offense, any
15 person committed ~~any~~ *an* act described in paragraph (1), (2), (3),
16 (5), or (6) of this subdivision or paragraph (6) of subdivision (d).

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

34 (g) Notwithstanding Section 1385 or any other ~~provision~~ of law,
35 the court shall not strike ~~any~~ *an* allegation, admission, or finding
36 of any of the circumstances specified in subdivision (d) or (e) for
37 ~~any~~ *a* person who is subject to punishment under this section.

38 (h) Notwithstanding any other ~~provision~~ of law, probation shall
39 not be granted to, nor shall the execution or imposition of sentence

1 be suspended for, ~~any~~ a person who is subject to punishment under
2 this section.

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

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

19 (2) ~~Any~~ A person who is convicted of an offense specified in
20 subdivision (c) under one of the circumstances specified in
21 subdivision (e), upon a victim who is a child under 14 years of
22 age, shall be punished by imprisonment in the state prison for 25
23 years to life.

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

28 (l) ~~Any~~ A person who is convicted of an offense specified in
29 subdivision (n) under one or more of the circumstances specified
30 in subdivision (d) or under two or more of the circumstances
31 specified in subdivision (e), upon a victim who is a minor 14 years
32 of age or older shall be punished by imprisonment in the state
33 prison for life without the possibility of parole. If the person who
34 was convicted was under 18 years of age at the time of the offense,
35 he or she shall be punished by imprisonment in the state prison
36 for 25 years to life.

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

- 1 (n) Subdivisions (l) and (m) shall apply to any of the following
2 offenses:
- 3 (1) Rape, in violation of paragraph (2) of subdivision (a) of
4 Section 261.
- 5 (2) Spousal rape, in violation of paragraph (1) of subdivision
6 (a) of Section 262.
- 7 (3) Rape, spousal rape, or sexual penetration, in concert, in
8 violation of Section 264.1.
- 9 (4) Sexual penetration, in violation of paragraph (1) of
10 subdivision (a) of Section 289.
- 11 (5) Sodomy, in violation of paragraph (2) of subdivision (c) of
12 Section 286, or in violation of subdivision (d) of Section 286.
- 13 (6) Oral copulation, in violation of paragraph (2) of subdivision
14 (c) of Section 288a, or in violation of subdivision (d) of Section
15 288a.
- 16 (o) The penalties provided in this section shall apply only if the
17 existence of any circumstance specified in subdivision (d) or (e)
18 is alleged in the accusatory pleading pursuant to this section, and
19 is either admitted by the defendant in open court or found to be
20 true by the trier of fact.