
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair

2017 - 2018 Regular

Bill No: AB 368 **Hearing Date:** June 13, 2017
Author: Muratsuchi
Version: February 8, 2017
Urgency: No **Fiscal:** No
Consultant: SC

Subject: *Criminal Procedure: Jurisdiction of Public Offenses*

HISTORY

Source: Los Angeles District Attorney's Office

Prior Legislation: SB 939 (Block), Ch. 246, Stats. 2014
AB 2252 (Cohn), Ch. 194, Stats. 2002
AB 2734 (Pacheco), Ch. 302, Stats. 1998

Support: Alameda County District Attorney's Office; California District Attorneys Association; California State Sheriffs' Association; Los Angeles County Sheriff's Office

Opposition: California Attorneys for Criminal Justice; California Public Defenders Association

Assembly Floor Vote: 77 - 0

PURPOSE

The purpose of this bill is to permit the consolidation of specified sex offenses with a child 10 years of age or younger occurring in different counties into a single trial if all district attorneys in the counties with jurisdiction agree.

Existing law states that, except as otherwise provided by law, the jurisdiction of every public offense is in any competent court within the jurisdictional territory of which it is committed. (Pen. Code, § 777.)

Existing law states that when a public offense is committed in part in one jurisdictional territory and in part in another, the jurisdiction of such offense is in any competent court within either jurisdiction. (Pen. Code, § 781.)

Existing law provides that if one or more violations of specified sex offenses occurs in more than one jurisdictional territory, the jurisdiction of any of those offenses, and for any offenses properly joinable with that offense, is in any jurisdiction where at least one of the offenses occurred, subject to the following conditions (Pen. Code, § 784.7, subd. (a)):

- Consolidation of the cases is subject to a joinder hearing, within the jurisdiction of the proposed trial court;

- The prosecution presents written evidence that all district attorneys in counties with jurisdiction of the offenses agree to the venue; and,
- Charged offenses from jurisdictions in which there is no written agreement from the district attorney must be returned to that county.

This bill adds the offenses of sexual intercourse, sodomy, oral copulation, or sexual penetration with a child 10 years or younger to the list of specified sex offenses except from the rule that the territorial jurisdiction of the case is where the offense occurred.

COMMENTS

1. Need for This Bill

According to the author:

In general, the California Constitution approves the joining of criminal cases because it promotes efficiency, protects victims, and ensures speedy trial rights. (Cal. Const. art. 1, §30(a).) Assembly Bill 2734 (Ch. 302/Statutes of 1998) which created Penal Code section 784.7 recognized the fact that victims of sexual abuse were particularly vulnerable, providing that “[AB] 2734 seeks to provide for the ability to combine trials when the victim and the defendant are the same for all the offenses. In crimes of ... [child] molestation there is a high degree of mobility. The first offense may happen in one county, and then the victim moves to another county. The defendant follows them and commits the same crime again. Because of the repeat offenses, the victim is faced with the possibility of multiple trials.”

Sex offenses belong to the same class of crimes and Section 784.7(a) specifically allows for offenses occurring in different counties to be consolidated to protect repeat victims of sexual molestation, from crimes often inflicted by the same offender, from the need to make multiple court appearances to testify against the same offender, (*Price v. Superior Court* (2001) 25 Cal.4th 1046.) while allowing for the offense to be tried in any county where jurisdiction is appropriate. (*People v. Betts* (2005) 34 Cal.4th 1039.)

When an offender commits specified crimes involving sexual assault in more than one jurisdictional territory, offenses which are properly joinable may be heard in any jurisdiction where at least one of the offenses occurs, subject to a Section 954 hearing. (CA. Pen. Code, §784.7(a).

Currently, existing law does not include Section 288.7(a): Sexual Intercourse or Sodomy with a Child 10 years of age or younger; or Section 288.7(b): Oral Copulation or Sexual Penetration of a Child 10 years of age or younger, as enumerated offenses listed in Section 784.7.

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Penal Code section 288.7 was enacted 8 years after the enactment of Penal Code section 784.7 and that is the reason for its omission.

2. Consolidation of Charges from Different Jurisdictions

The general rule in California is that the district attorney prosecutes an offense in the jurisdiction where the crime occurred. If part of the commission of the crime occurs in one county but the crime is completed in another county, the proper jurisdiction is in either of the counties.

The Legislature has created several exceptions to the rule that the territorial jurisdiction of the case is where the offense occurred. These exceptions include sex crimes, domestic violence, child abuse, and human trafficking cases. For sex offense cases, the court has ruled that the cases that can be joined do not have to be violations of the same offense. (*People v. Nguyen* (2010) 184 Cal.App.4th 1096.) Rather, the sex offenses currently listed in Penal Code section 784.7 are of the same class of crimes and therefore any combination of the listed sex crimes may be properly joined. (*Id.* at 1113.)

Sex offenses “belong to the same class of crimes.” (*People v. Lindsay* (1964) 227 Cal.App.2d 482, 492 [38 Cal. Rptr. 755] [“rape, sex perversion and sodomy clearly belong to the same class of crimes ...” because the “intent to satisfy sexual desires runs through” them]; see also *People v. Ross* (1960) 178 Cal.App.2d 801, 805 [3 Cal. Rptr. 170] [common attribute bringing offenses into same class of crimes was that each act was a sex crime committed against a child].) Thus, section 954 permits joinder of sex crimes, thereby supporting the People’s interpretation of section 784.7(a) as allowing the joinder of nonidentical sex crimes committed in different counties.

(*People v. Nguyen, supra*, 184 Cal.App.4th at p. 1113.)

This bill adds the crime of sexual intercourse, sodomy, oral copulation or sexual penetration with a child 10 years of age or younger (Pen. Code, § 288.7) to the currently specified list of sex crimes excepted from the general rule regarding venue. The rationale for this is that it belongs to the same class of sex crimes currently excepted from the general rule under Penal Code section 784.7. Any request to consolidate charges pursuant to Penal Code section 784.7 is subject to a hearing to determine whether the charges should be consolidated. The court must consider the prejudicial effects of such joinder and has the discretion to sever offenses “in the interests of justice and for good cause shown. . . .” (Pen. Code, § 954.)

3. Right to Jury Trial

The U.S. Constitution guarantees criminal defendants the right to be tried “by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law” (U.S. Const., 6th Amend.) The California Supreme Court has held that “[t]he Legislature may determine the venue for trial except to the extent the vicinage or due process provisions of the state or federal Constitution circumscribe that authority.” (*Price v. Superior Court* (2001) 25 Cal. 4th 1046, 1056.)

Venue refers to the territorial jurisdiction in which a case may be brought to trial, in other words, the location where the trial is held. Vicinage is the right to trial by a jury drawn from residents of the area in which the charged offense allegedly was committed.

In *Price v. Superior Court*, *supra*, the California Supreme Court explained these concepts as applied to criminal prosecutions.

The concepts of venue and vicinage are closely related, as a jury pool ordinarily is selected from the area in which the trial is to be held. The concepts have different origins and purposes, however. Venue is historically significant from a national perspective because, as discussed below, the pre-Revolutionary practice of transporting colonists who were charged with crimes in the colonies to either England or other English colonies for trial was among the principal complaints of the colonists against England. Objections to that practice led to the inclusion of Article III, Section 2 in the United States Constitution. That provision limits the place of trial in federal criminal proceedings to the state in which the crime was committed. Most California venue statutes serve a similar purpose in reducing the potential burden on a defendant who might otherwise be required to stand trial in a distant location that is not reasonably related to the alleged criminal conduct.

. . . [T]he general rule of territorial jurisdiction over felonies is that stated in section 777: “except as otherwise provided by law the jurisdiction of every public offense is in any competent court within the jurisdictional territory of which it is committed.” Ordinarily the jurisdictional territory of a superior court is the county in which it sits. (Pen. Code, § 691, subd. (b).) Venue or territorial jurisdiction establishes the proper place for trial, but is not an aspect of the fundamental subject matter jurisdiction of the court and does not affect the power of a court to try a case.

When the Legislature creates an exception to the rule of section 777, the venue statute is remedial and for that reason is construed liberally to achieve the legislative purpose of expanding criminal jurisdiction. Section 784.7 is such an exception and the legislative purpose is clear. (*People v. Price, supra*, 25 Cal.4th at pp. 1054-1056, internal citations omitted.)

As to the right of vicinage, the Supreme Court explained:

Because a vicinage guarantee does not serve the purpose of protecting a criminal defendant from government oppression and is not necessary to ensure a fair trial, it is not a necessary feature of the right to jury trial. For that reason we conclude that the vicinage clause of the Sixth Amendment is not applicable to the states through the Fourteenth Amendment. (*Price v. Superior Court, supra*, 25 Cal. 4th p. at 1065.)

Rather, the Court explained, the right of vicinage in California is derived from the right to a jury trial guaranteed in the California Constitution and is effectively limited to a requirement that there be a reasonable nexus between the crime and the county of trial:

The right to a trial by a jury of the vicinage, as guaranteed by the California Constitution, is not violated by trial in county having a reasonable relationship to the offense or to other crimes committed by the defendant against the same

victim. We do not hold here that a crime may be tried anywhere. The Legislature's power to designate the place for trial of a criminal offense is limited by the requirement that there be a reasonable relationship or nexus between the place designated for trial and the commission of the offense. Repeated abuse of the same child or spouse in more than one county creates that nexus. The venue authorized by Penal Code section 784.7 is not arbitrary. It is reasonable for the Legislature to conclude that this pattern of conduct is akin to a continuing offense and to conclude that the victim and other witnesses should not be burdened with having to testify in multiple trials in different counties. (*Price v. Superior Court*, *supra*, 25 Cal.4th. at p. 1075.)

5. Argument in Support

The Los Angeles County District Attorney's Office, the sponsor of this bill, writes in support:

Currently, existing law does not include Penal Code Section 288.7(a): Sexual Intercourse or Sodomy with a Child 10 years of age or younger; or Section 288.7(b): Oral Copulation or Sexual Penetration of a Child 10 years of age or younger, as enumerated offenses listed in Penal Code Section 784.7.

Transitory living situations can result in a child sexual assault victim being victimized in multiple jurisdictions, often by the same offender. Failure to include section 288.7 as an enumerated offense results in subjecting a child sexual assault victim to multiple court proceedings, repetitive investigations, and testifying in multiple trials often lasting over several years.

Assembly Bill 368 remedies this deficiency in California by amending Penal Code Section 784.7(a) to include Penal Code Section 288.7 as one of the enumerated offenses.

6. Argument in Opposition

The California Attorneys for Criminal Justice, in opposition, writes:

This measure would amend Penal Code sec. 784.7 by allowing multiple jurisdiction prosecutions of alleged violations of Penal Code sec. 288.7 to be joined in a single case in a single jurisdiction.

This bill undermines a defendant's constitutional right to a fair trial by combining charges from potentially any number of jurisdictions within California into a single prosecution in one particular jurisdiction. AB 368 would add a crime which carries a life sentence if convicted to those crimes already covered in PC 784.7.

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