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# SENATE COMMITTEE ON PUBLIC SAFETY

Senator Aisha Wahab, Chair

2023 - 2024 Regular

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**Bill No:** AB 806                      **Hearing Date:** June 6, 2023  
**Author:** Maienschein  
**Version:** February 13, 2023  
**Urgency:** No                                      **Fiscal:** No  
**Consultant:** SC

**Subject:** *Criminal procedure: crimes in multiple jurisdictions*

## HISTORY

**Source:** San Diego District Attorney

**Prior Legislation:** AB 1746 (Cervantes), Ch. 962, Stats. 2018  
AB 362 (Muratsuchi), Ch. 379, Stats. 2017  
SB 939 (Block), Ch. 246, Stats. 2014  
AB 2252 (Cohn), Ch. 194, Stats. 2002  
AB 2734 (Pacheco), Ch. 302, Stats. 1998

**Support:** Alliance for Hope; California District Attorneys Association; California Sexual Assault Forensic Examiner Association; Center for Community Solutions; Crime Victims United; Korean Prosecutor’s Association; Los Angeles County District Attorney’s Office; National Asian Pacific Islander Prosecutors Association; Riverside County District Attorney’s Office; Women’s Resource Center of Oceanside

**Opposition:** California Attorneys for Criminal Justice

**Assembly Floor Vote:** 68 - 0

## PURPOSE

*The purpose of this bill is to expand the types of domestic violence offenses that may be consolidated into a single trial in any county where at least one of the offenses occurred and where the victim and the defendant are the same for all of the offenses.*

*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, or the acts constituting or requisite to committing the offense occur in more than one territorial jurisdiction, the jurisdiction of the offense is in any competent court within either jurisdiction. (Pen. Code, § 781)

*Existing law* defines “domestic violence” for purposes of law enforcement \_\_\_ as abuse committed against an adult or a minor who is a spouse, former spouse, cohabitant, former

cohabitant, or person with whom the suspect has had a child or is having or has had a dating or engagement relationship. (Pen. Code, §13700, subd. (b).)

*Existing law* specifies that “cohabitant” means “two unrelated adult persons living together for a substantial period of time, resulting in some permanency of relationship. Factors that may determine whether persons are cohabiting include, but are not limited to: sexual relations between the parties while sharing the same living quarters; sharing of income or expenses; joint use or ownership of property; whether the parties hold themselves out as spouses; the continuity of the relationship; and the length of the relationship. (Pen. Code, § 13700, subd. (b).)

*Existing law* states that if one or more violation 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 a hearing pursuant to Penal Code section 954, within the jurisdiction of the proposed trial. At the Section 954 hearing, the prosecution shall present written evidence that all district attorneys in counties with jurisdiction of the offenses agree to the venue. Charged offenses from jurisdictions where there is not a written agreement from the district attorney shall be returned to that jurisdiction. (Pen. Code, § 784.7, subd. (a).)

*Existing law* states that if one or more violation of human trafficking or pimping and pandering 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 a hearing pursuant to Penal Code Section 954, within the jurisdiction of the proposed trial. At the Section 954 hearing, the prosecution shall present written evidence that all district attorneys in counties with jurisdiction of the offenses agree to the venue. Charged offenses from jurisdictions where there is not a written agreement from the district attorney shall be returned to that jurisdiction. In determining whether all counts in the complaint should be joined in one county for prosecution, the court shall consider the location and complexity of the likely evidence, where the majority of the offenses occurred, the rights of the defendant and the people, and the convenience of, or hardship to, the victim or victims and witnesses. (Pen. Code, § 784.7, subd. (c).)

*Existing law* permits consolidation of different offenses which do not relate to same transaction or event but are connected together in their commission, or are the same class of crimes or offenses. (Pen. Code, § 954.)

*Existing law* states a trial court may, in its discretion, order that multiple criminal charges be severed and tried individually, provided good cause is shown and fairness so necessitates. (Pen. Code, § 954.)

*Existing law* states that if more than one violation of sexual battery, statutory rape, child endangerment, domestic violence involving injury, or stalking occurs in more than one jurisdictional territory, and the defendant and the victim are the same for all of the offenses, 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. (Pen. Code, § 784.7, subd. (b).)

*This bill* expands the type of domestic violence offenses that may be consolidated into one jurisdiction where the victim and the defendant are the same offenses by referencing domestic violence crimes as defined in Penal Code section 13700.

*This bill* requires the consolidation to be subject to a hearing pursuant to Penal Code section 954 and requires written evidence that all district attorneys in the counties with jurisdiction of the offenses agree to the venue.

## COMMENTS

### 1. Need for This Bill

According to the author of this bill:

AB 806 seeks to expand the list of domestic violence related crimes that can be joined and tried in one jurisdiction when the defendant and victim are the same. Current law allows for certain domestic violence crimes to be joined and tried in one jurisdiction. However, as written, the statute overlooks several common domestic violence crimes, including strangulation without injury, criminal threats, witness dissuasion and protective order violations.

Without an amendment to the statute to allow for other crimes of domestic violence to be tried in one jurisdiction, victims may be subjected to many levels of exposure and involvement with prosecution and trial, the very issue the original statute was enacted to prevent. This proposal aims to protect repeat victims of domestic violence by including crimes not currently recognized by the statute.

### 2. Constitutional Right to a Jury Trial: Venue compared to Vicinage

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., italics added.) 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.*)

### **3. 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.)

As currently written, subdivision (b) of Penal Code section 784.7 allows consolidation of domestic violence offenses with injury (Penal Code section 273.5) that occurred in multiple jurisdictions where the defendant and the victim are the same for all offenses. According to the proponents of this bill, victims of domestic violence end up moving to different jurisdictions only to have the perpetrator of violence continue to follow them and commit domestic violence crimes that are not covered by Penal Code section 784.7, such as witness dissuasion, assault without injury, and violations of restraining orders. This bill adds domestic violence offense as defined in Penal Code section 13700 which generally includes “abuse committed against an adult or a minor who is a spouse, former spouse, cohabitant, former cohabitant, or person with whom the suspect has had a child or is having or has had a dating or engagement relationship.”

Section 784.7 also allows consolidation of specified sex offenses (subdivision (a)) and consolidation of human trafficking offenses (subdivision (c)) subject to a joinder hearing pursuant to Penal Code section 954 and requires the prosecution to present written evidence that all district attorneys in counties with jurisdiction of the offenses agree to the venue. Charged offense from the jurisdictions where there is not a written agreement from the district attorney shall be returned to that jurisdiction. The joinder hearing is also where a defendant may argue that the cases should not be consolidated because of substantial prejudice to the defendant, and the court has discretion to order certain charges to be tried separately.

Should this bill be amended to require the consolidation of domestic violence offenses to also be subject to the joinder hearing pursuant to Penal Code section 954 and to require written agreement from all district attorneys in counties with jurisdiction of offenses committed outside the jurisdiction of the proposed trial?

#### **4. Argument in Support**

According to the San Diego District Attorney, the sponsor of this bill:

AB 806’s expansion of current law protects victims of domestic violence by decreasing their exposure to the justice system by eliminating simultaneous prosecutions in multiple jurisdictions. Often when criminal charges for domestic violence are filed, a criminal protective order is issued by a judicial officer. Due to the “high degree of mobility” involved in domestic violence crimes, victims attempt to physically distance themselves from their abusers. This results in changing phone numbers, leaving the county where the abuse took place, or permanently moving from one home to another. This separation can put the victim – and their children – in increased danger by a desperate abuser who will make every effort to contact the victim either in person or through other means. Violations of protective orders often do not amount to physical injury but nonetheless causes a victim to continually fear for their life. AB 806 will allow

for the prosecution of these crimes by the original prosecuting agency handling the underlying domestic violence case.

This expansion does not create a mandate, but rather allows Offices of the District Attorney the discretion to unify prosecutions when it is in the best interest of justice and lessen the trauma for the victim. In granting the ability to vest territorial jurisdiction for all domestic violence crimes where the victim and defendant are the same, the amount of time a victim will be involved in the criminal justice process, including being subject to investigation, testifying at trials, and attending court hearings, will be reduced.

## 5. Argument in Opposition

According to California Attorneys for Criminal Justice:

[T]his bill attempts to expand . . . jurisdiction significantly: to any crime of domestic violence as broadly defined by Penal Code section 13700. Penal Code section 13700's definition, unlike current law, has no requirement that any violence occur. See Penal Code section 13700 subd. (a) [defining "[a]buse" to include "placing another person in reasonable apprehension" of injury.] In addition, Courts have held that any crime that on its face is unrelated to domestic violence can qualify as crimes involving domestic violence under section 13700, depending on the facts of the case. (See e.g., *People v. James* (2010) 191 Cal.App.4th 478 ["Although the crime of burglary is not a crime of domestic violence on its face, the trial court properly found that under the facts of the case, the burglary was a qualifying offense" under the definition set forth in Penal Code 13700].)

Charges of domestic violence, however defined, are, of course, serious. Such accusations often arise between individuals who have decided to move far away from one another. Expanding this particularly jurisdictional loophole to include any crime under the sun that might be characterized as involving broadly defined domestic violence threatens to place significant additional burdens on victims, defendants, and other witnesses, who may be forced into court in a distant county for incidents that occurred in their county of residence.

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