
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair
2019 - 2020 Regular

Bill No: SB 304 **Hearing Date:** April 23, 2019
Author: Hill
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Urgency: No **Fiscal:** No
Consultant: SC

Subject: *Criminal Procedure: Prosecutorial Jurisdiction in Multi-Jurisdictional Elder Abuse Cases*

HISTORY

Source: San Mateo County District Attorney's Office (Co-sponsor)
California District Attorneys Association (Co-sponsor)

Prior Legislation: AB 1746 (Cervantes), Ch. 962, Stats. 2018
AB 368 (Muratsuchi), Ch. 379, Stats. 2017
SB 939 (Block), Ch. 246, Stats. 2014
AB 1278 (Lieber), Ch. 258, Stats. 2008
AB 2252 (Cohn), Ch. 194, Stats. 2002
AB 2734 (Pacheco), Ch. 302, Stats. 1998

Support: AARP; California Elder Justice Coalition; California Long Term Care Ombudsman Association; California State Sheriffs' Association; City and County of San Francisco District Attorney's Office; Crime Victims United of California; Housing and Economic Rights Advocates; Institute on Aging; Monterey County Department of Social Services

Opposition: California Public Defenders Association

PURPOSE

The purpose of this bill is to allow elder and dependent adult abuse cases that occur in different jurisdictions to be consolidated in 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 allows property crimes occurring in one jurisdictional territory where property is taken to another jurisdictional territory and an arrest is made there, to be prosecuted in either jurisdiction. (Pen. Code, § 786.)

Existing law permits consolidation of different offenses which do not relate to same transaction or event where there is common element of substantial importance in their commission, such as the same class of crimes. (Pen. Code, § 954.)

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.

Existing law states that if more than one violation of child abuse, domestic violence, or stalking, as specified, 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).)

Existing law provides that if more than one violation of human trafficking, pimping, or 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 Section 954, within the jurisdiction of the proposed trial, if all district attorneys in counties with jurisdiction of the offenses agree to the venue. 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).)

This bill creates similar authority for consolidation of cases involving elder or dependent adult abuse.

COMMENTS

1. Need for this Bill

According to the author of this bill:

SB 304 adds elder abuse to the list of existing crimes that are currently permitted to have district attorneys prosecute multiple offenses spanning multiple jurisdictions in one county. Cases of sexual assault (against adults or children), child abuse, domestic violence, stalking, human trafficking and pimping or pandering all already have this ability. The prosecution currently and will continue to have to present written evidence that all district attorneys in counties

with jurisdiction agree to the venue. The Legislature has recognized that victims of these crimes are vulnerable and need special attention and care. Elderly victims should be treated similarly.

By virtue of U.S. demographics, elder abuse is the fastest growing area of crime in the United States. As the Baby Boomer generation ages, the “Gray Tsunami” of crimes against the elderly increases. Throughout California, elder abuse is becoming more prevalent. At times, perpetrators commit crimes against elder adults in one jurisdiction, and then move to other nearby jurisdictions to evade detection and prosecution. SB 304 amends Penal Code Section 784.7 to include elder and dependent adult abuse among the classes of crimes where offenses in multiple jurisdictions may be consolidated and prosecuted in a single jurisdiction.

All of the crimes encompassed in section 784.7 of the PSC share a commonality: the Legislature has recognized victims of those crimes as vulnerable and in need of special attention and care. They are glaringly omitted, however, from the protections afforded to other vulnerable victims by section 784.7. Penal Code Section 368(a) states that crimes against “elders, adults whose physical or mental disabilities or other limitations restrict their ability to carry out normal activities or to protect their rights, and adults admitted as inpatients to a 24-hour health facility deserve special consideration and protection.”

2. Consolidation of Cases 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.)

The benefits of consolidation include judicial economy and convenience to victims and witnesses who may have to testify in multiple trials, however there are drawbacks. This includes the potential prejudicial impact on the defendant because jurors may feel compelled to convict based on the number of victims rather than the strength of the prosecution’s case. Convenience to some victims and witnesses may also come at the cost of inconvenience to others who live outside of the jurisdiction where the trial is held, which could include law enforcement officers from different counties that investigated each crime. So while consolidation may avoid multiple short trials, the single consolidated trial would likely be much longer. Additionally, not all of those individual cases may have gone to trial due to weakness in evidence or lack prosecutorial resources, but when all of the cases are consolidated into one trial, there is a chance that a charge with weak evidence can still result in a conviction because it is strengthened by the aggregate evidence in the other charges leading to a different outcome than would have occurred if the charge was tried separately.

In recent years, additional exceptions to the rule that requires offenses to be prosecuted in the jurisdiction where the crime occurred were enacted. AB 1746 (Cervantes), Chapter 962, Statutes of 2018, added sexual battery and unlawful sexual intercourse to the list of offenses that may be consolidated in a single trial in any county where at least one of the offenses occurred, if the defendant and the victim are the same for all of the offenses. AB 368 (Muratsuchi), Chapter 379, Statutes of 2017, added felony sexual intercourse, sodomy, oral copulation or sexual penetration with a child 10 years of age or younger occurring in two or more jurisdictions to the list of applicable offenses that may be consolidated in a single trial. SB 939 (Block), Chapter 246, Statutes of 2014 and AB 1278 (Lieber), Chapter 258, Statutes of 2008, authorized felony human trafficking-related charges occurring in two or more jurisdictions to be consolidated in a single trial.

This bill creates another exception allowing for consolidation of crimes against elder or dependent adults into a single trial. Existing law provides for enhanced penalties for specified crimes such as theft, embezzlement, forgery, fraud, and identity theft committed against elderly or dependent persons. (Pen. Code § 368, subd. (d).) The law also punishes willfully causing or permitting an elder or dependent adult to suffer or inflicting unjustifiable physical pain or mental suffering; or as a caretaker willfully causes or permits injury or the health to be endangered. (Pen. Code § 368, subs. (b)-(c).) If the crime is committed under circumstances or conditions likely to cause great bodily injury or death, the punishment is a felony. If the crime is committed under circumstances or conditions not likely to cause produce great bodily harm or death, the punishment is a misdemeanor. (*Id.*) If great bodily injury is incurred, the defendant must be sentenced to an additional 3 years if the victim is under 70 years of age, or 5 years if the victim is 70 or older. If the offense causes death of the victim, the defendant must be sentenced to an additional 5 years if the victim was under 70 years old and 7 years if the victim was 70 or older. (*Id.*) Existing law also provides that false imprisonment of an elder or dependent adult is punishable as a felony. (Pen. Code § 368, subd. (f).)

This bill would allow any of the offenses listed in Penal Code section 368 to be consolidated into a single trial in a jurisdiction where one of the offenses took place if all of the district attorneys in the other jurisdictions agree. In making this determination, the court would have to 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. The burden is placed on the defendant to prove that there is a substantial danger of prejudice requiring that the charges be separately tried. (*Frank v. Superior Court* (1989) 48 Cal. 3d 632, 640.) As discussed above, the crimes that are currently allowed to be consolidated are specified sex crimes, domestic violence, child abuse, and human trafficking cases. The crimes of domestic violence and child abuse require all of the cases to involve the same defendant and same victim.

While some crimes listed in Penal Code section 368 involve harm or mental suffering of an elder or dependent adult, it also includes financial crimes. This is a departure from the types of crimes that are currently allowed to be consolidated under Penal code section 784.7.

3. Evidentiary Considerations

This bill amends existing Penal Code section 784.7. When that section was first enacted, it created a multicounty venue for trial of offenses involving sexual or child abuse by the same defendant against the same victim. (AB 2734 (Pacheco), Ch. 302, Stats. 1998.) A few years later, the Legislature removed the "same victim or victims" requirement for sex cases. The purpose was to limit the number of court appearances for victims in serial sexual assault cases involving

multiple counties. (AB 2252 (Cohn), Ch. 194, Stats. 2002.) The rationale was that if a defendant was charged with multiple sex crimes involving different victims in a number of different counties, the ability to introduce propensity evidence under Evidence Code Section 1108 makes it very likely that multiple victims will testify in any county that chooses to prosecute the defendant.

Similar to sex crimes, existing law allows the introduction of propensity evidence in elder or dependent adult abuse cases. (Evid. Code, § 1109, subd. (a)(2).) Additionally, the testimony of unrelated victims might be relevant under Evidence Code section 1101, subdivision (b), which allows evidence of uncharged crimes to prove motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake or accident. Evidence code section 1101, subdivision (b) is not limited to specific crimes.

Arguably, allowing the consolidation of these offenses would be beneficial to victims and witnesses who may otherwise be called to testify in multiple trials in different counties. However, section 784.7 includes a much narrower list of offenses than Evidence Code sections 1108 and 1109. Also, with respect to child abuse and domestic abuse, section 784.7 only allows consolidation where the victim and defendant are the same for all of the cases.

4. 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

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

My office is currently prosecuting a case involving a defendant who, with unknown co-conspirators, traveled through multiple counties perpetrating a fraud scheme where the defendants pretended to be immigrants in need of help and swindled elderly victims out of tens of thousands of dollars in cash and jewelry. They appealed to the victims’ vulnerability, diminishing capacity, and they at times invoked religion to ingratiate themselves with the victims. Our case involves three separate victims. Only one senior was victimized in San Mateo County. The other offenses occurred in Contra Costa and Alameda Counties.

However, the fraud scheme perpetrated by the defendants was so unique and particularized that it was clearly all part of an ongoing conspiracy. The defendant was held to answer for all charges at the preliminary hearing and the case is awaiting trial.

SB 304, by amending section 784.7 to add elder abuse, will be a much more direct and certain way to prosecute these important cases and would be our only option of the defendant acted alone and we could not charge conspiracy. Your bill will be extremely beneficial to law enforcement, especially because the perpetrators of elder financial abuse frequently travel to various jurisdictions, hit one city or county for a few days, and then move on to the next county. Furthermore, the evidence in the cases would be cross-admissible, so it makes sense from the perspective of judicial economy to prosecute them in the same jurisdiction. It would also make the judicial process less daunting for elderly victims, enabling them to only have to testify in one case and in one jurisdiction.

6. Argument in Opposition

According to the California Public Defenders Association:

The jurisdictional statute involved, Penal Code section 784.7 has been expanded too rapidly to assess whether the benefits of doing so outweighs the problems to both the prosecution and the defense, as well as victims, of bringing multiple prosecutions from different counties in only one of them. In 2014, effective January 1, 2015, SB 939 added three crimes to the list. In 2017, effective January 1, 2018, AB 368 added another crime to the list. And in 2018, effective January 1, 2019, A.B. 1746 added yet two more crimes.

Before even more crimes are added, we all should pause and find out if the recent additions are helping or harming judicial economy, increasing or decreasing overall prosecution and defense expenses, how this is affecting convenience or hardship to victims and witnesses, and, most important, whether this is helping or harming public safety.

Moreover, elder and dependent adult abuse crimes are often of a different nature than the sex offenses that make up most of the crimes already included in Penal Code section 784.7. For example, the former often involve financial, property, or health care issues, which sex offenses usually do not. That alone is enough reason to stop and assess first.

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