SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair
2017 - 2018 Regular

Bill No:	AB 1746	**Hearing Date:**	May 15, 2018
Author:	Cervantes		
Version:	March 19, 2018		
Urgency:	No	**Fiscal:**	No
Consultant:	SC		

Subject: ***Criminal Procedure: Jurisdiction of Public Offenses***

HISTORY

Source: Author

Prior Legislation: AB 368 (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: California District Attorneys Association; California State Sheriffs' Association; Crime Victims United; Riverside Sheriffs' Association; San Diego County District Attorney's Office

Opposition: California Public Defenders Association

Assembly Floor Vote: 69 - 0

PURPOSE

The purpose of this bill is to add sexual battery and statutory rape 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.

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 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 states that sexual battery is the unlawful touching of an intimate body part of another person as specified and punishes the offense as an alternate felony-misdemeanor. (Pen. Code, § 243.4.)

Existing law defines unlawful sexual intercourse, also commonly referred to as statutory rape, as an act of sexual intercourse with a person under the age of 18 years and provides specified penalties ranging from a misdemeanor to an alternate felony-misdemeanor. (Pen. Code, § 261.5.)

This bill adds 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 victim are the same.

COMMENTS

1. Need for This Bill

According to the author of this bill:

> Under current law, criminal prosecution for certain crimes can be consolidated into a single trial when multiple offenses are committed by the same perpetrator in more than one jurisdiction. These crimes include human trafficking, domestic violence, and child abuse.
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> Much like perpetrators of those crimes, perpetrators of sexual battery or statutory rape are often serial offenders, and can commit multiple offenses across an entire region. However, under current law, prosecution of serial sexual battery or statutory rape cannot be consolidated into a single trial. This loophole could require a survivor of sexual battery or statutory rape to testify at multiple trials, and repeatedly have to relive the ordeal he or she endured. That experience could be especially traumatic for vulnerable survivors, especially children and minors. This may also involve several costly and time-consuming trials in multiple jurisdictions, which would delay the prosecution of these perpetrators.

2. Consolidation of Charges from Different Jurisdictions

The general rule in California is that an offense shall be prosecuted 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. [“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.” (*Price v. Superior Court* (2001) 25 Cal.4th 1046, 1075).]

These exceptions include specified domestic violence, child abuse, and stalking cases if the defendant and victim are the same for all of the offenses. This bill adds cases of sexual battery and unlawful sexual intercourse (statutory rape) to the list of exceptions.

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*, *supra*, 25 Cal. 4th at p. 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.
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> . . . [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.
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> 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.)

As discussed in *Price,* the multicounty venue statute (Pen. Code, § 784.7) should be liberally construed to achieve the legislative purpose of expanding criminal jurisdiction, limited by the requirement of a reasonable nexus between the crime and the county of trial – repeated abuse of the same person in more than one county satisfies that nexus. This bill allows consolidation of sexual battery and statutory rape offenses that occurred in multiple counties if the defendant and the victim are the same for all of the offenses.

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