

AMENDED IN ASSEMBLY APRIL 13, 2010

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1844**

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**Introduced by Assembly Member ~~Gilmore~~ Fletcher**  
**(Coauthor: Assembly Member Gilmore)**

February 12, 2010

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~~An act to add Section 2819 to the Penal Code, relating to inmates.~~  
*An act to amend Sections 264, 264.1, 286, 288, 288a, 289, 667.61, 3000, and 3000.1 of, and to add Section 647.9 to, the Penal Code, relating to sex crimes.*

LEGISLATIVE COUNSEL'S DIGEST

AB 1844, as amended, ~~Gilmore~~ Fletcher. ~~Inmate labor: maintenance of prison grounds. Sex offenders: punishment: parole.~~

*Under existing law, rape, sodomy accomplished against the victim's will, oral copulation accomplished against the victim's will, and sexual penetration accomplished against the victim's will is punishable by imprisonment in state prison for 3, 6, or 8 years. Rape, sodomy, and oral copulation committed in concert with another is punishable by imprisonment in the state prison for 5, 7, or 9 years.*

*This bill would provide that the punishment for these specified crimes upon a child who is under 14 years of age is punishable by imprisonment in state prison for six, 12, or 16 years, and if committed upon a minor who is 14 years of age or older is punishable by imprisonment in state prison for 6, 9, or 11 years. This bill would provide that if these crimes are committed in concert with another person upon a child who is under 14 years of age they are punishable in state prison for 7, 13, or 17 years and if committed in concert upon a minor who is 14 years of age or older by imprisonment for 7, 10, or 12 years. By increasing the*

*punishment for crimes, this bill would impose a state-mandated local program.*

*Under existing law, a person who commits an act of rape, rape or sexual penetration in concert, sodomy, oral copulation, or sexual penetration, when the act is committed upon a child who is under 14 years of age and 7 or more years younger than the person, is guilty of aggravated sexual assault of a child. Aggravated sexual assault of a child under these circumstances is punishable by imprisonment in state prison for 15 years to life.*

*This bill would provide that it does not preclude prosecution under this existing law.*

*Under existing law, a person who commits any lewd or lascivious act upon a child who is under 14 years of age by use of force or fear is guilty of a felony punishable by imprisonment in state prison for 3, 6, or 8 years.*

*This bill would increase the punishment for this crime to imprisonment in the state prison for 6, 12, or 16 years. By increasing the punishment for a crime, this bill would impose a state-mandated local program.*

*Under existing law, a person who commits any lewd or lascivious act upon a dependent person, as defined, by use of force or fear is guilty of a felony punishable by imprisonment in state prison for 3, 6, or 8 years.*

*This bill would increase the punishment for this crime to imprisonment in the state prison for 6, 9, or 11 years. By increasing the punishment for a crime, this bill would impose a state-mandated local program.*

*Existing law, as amended by Proposition 83 of the November 7, 2006, statewide general election, requires a person convicted of certain felonies under specified circumstances to be committed to prison for a term of years to life.*

*This bill would provide that these felonies committed under the above-specified circumstances upon a victim who is a child under 14 years of age shall be punished by imprisonment in state prison for life without the possibility of parole. This bill would add as a circumstance the infliction of physical injury resulting in a traumatic condition on a victim who is a child under 14 years of age to the list of specified circumstances that would result in imprisonment for life without parole.*

*This bill would provide that when rape, spousal rape, rape in concert, or sexual penetration, sodomy, or oral copulation committed against the victim's will are committed under specified circumstances, the punishment shall be imprisonment in state prison for 25 years to life,*

*or if committed upon a person who is a child 14 years of age or older, for life without possibility of parole.*

*Under existing law, a person convicted of certain felony sex offenses shall be committed to prison for a term of 15 years to life if during the commission of the felony the defendant inflicted great bodily injury on the victim.*

*This bill would change the required sentence to 25 years to life for this type of offense.*

*Existing law makes it unlawful for a person who is required to register as a sex offender to reside within 2,000 feet of a public or private school, or park where children regularly gather. Existing law also provides that any person required to register as a sex offender who comes into any school building or upon any school ground without lawful business and written permission is guilty of a misdemeanor.*

*This bill would make it a misdemeanor for a person who is required to register as a sex offender to enter any park where children regularly gather without written permission from either the person's parole agent, if the person is on parole, or the chief administrative officer of the park, if the person is not on parole.*

*Under existing law a prisoner is generally released on parole for a period not exceeding 3 years, except that inmates sentenced for certain enumerated violent felonies are released on parole for a period not exceeding 5 years.*

*This bill would change this period of parole for certain of these violent felons from a maximum of 5 years to a maximum of 10 years. This bill would impose lifetime parole on habitual sex offenders whose victims were under 14 years of age and on inmates sentenced for lewd or lascivious acts committed upon the body of a minor, continuous sexual abuse of a child, specified sexual conduct with a child 10 years of age or younger, other specified sexual offenses against a victim under 14 years of age, and aggravated sexual assault of a child.*

*Under existing law, the period of parole for an inmate who has received a life sentence for certain specified sex offenses is for a period not exceeding 10 years.*

*This bill would include in this category of parolees, inmates who have received a life sentence for kidnapping with intent to commit certain specified crimes.*

*The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state.*

*Statutory provisions establish procedures for making that reimbursement.*

*This bill would provide that no reimbursement is required by this act for a specified reason.*

~~Existing law authorizes the Department of Corrections and Rehabilitation to cause prisoners in the state prisons to be employed in rendering services as may be needed. Existing law establishes the Prison Industry Authority and authorizes it to develop and operate industrial, agricultural, and services enterprises employing prisoners. Under existing law, the Secretary of the Department of Corrections and Rehabilitation is authorized to order any public works project involving the construction, renovation, or repair of prison facilities to be performed by inmate labor. Existing law provides for compensation for inmate services to be set by the secretary, or by the general manager of the Prison Industry Authority, as the case may be.~~

~~This bill would provide that, notwithstanding any other law, when unrestricted by contracts or contract cancellation penalties, the Department of Corrections and Rehabilitation may order the use of prisoners for the painting of prison facilities, for the maintenance of prison grounds, for gardening and agricultural activities to produce food for consumption within the prison system, and for similar activities. This bill would provide that inmates be compensated for this work at a rate ordinarily paid to inmates unless the labor is intended as a punishment.~~

~~This bill would state that it is the intent of the Legislature that the Department of Corrections and Rehabilitation develop a plan, by July 1, 2011, to significantly increase the proportion of inmates engaged in work activities.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: ~~no~~ yes.

*The people of the State of California do enact as follows:*

1     *SECTION 1. Section 264 of the Penal Code is amended to*  
2     *read:*

3     264. (a) ~~Rape~~ Except as provided in subdivision (c), rape, as  
4     defined in Section 261 or 262, is punishable by imprisonment in  
5     the state prison for three, six, or eight years.

6     (b) In addition to any punishment imposed under this section  
7     the judge may assess a fine not to exceed seventy dollars (\$70)

1 against any person who violates Section 261 or 262 with the  
2 proceeds of this fine to be used in accordance with Section 1463.23.  
3 The court shall, however, take into consideration the defendant's  
4 ability to pay, and no defendant shall be denied probation because  
5 of his or her inability to pay the fine permitted under this  
6 subdivision.

7 *(c) (1) Any person who commits rape in violation of paragraph*  
8 *(2) of subdivision (a) of Section 261 upon a child who is under 14*  
9 *years of age shall be punished by imprisonment in the state prison*  
10 *for six, 12, or 16 years.*

11 *(2) Any person who commits rape in violation of paragraph (2)*  
12 *of subdivision (a) of Section 261 upon a minor who is 14 years of*  
13 *age or older shall be punished by imprisonment in the state prison*  
14 *for six, nine, or 11 years.*

15 *(3) This subdivision does not preclude prosecution under Section*  
16 *269.*

17 *SEC. 2. Section 264.1 of the Penal Code is amended to read:*

18 264.1. (a) The provisions of Section 264 notwithstanding, in  
19 any case in which the defendant, voluntarily acting in concert with  
20 another person, by force or violence and against the will of the  
21 victim, committed an act described in Section 261, 262, or 289,  
22 either personally or by aiding and abetting the other person, that  
23 fact shall be charged in the indictment or information and if found  
24 to be true by the jury, upon a jury trial, or if found to be true by  
25 the court, upon a court trial, or if admitted by the defendant, the  
26 defendant shall suffer confinement in the state prison for five,  
27 seven, or nine years.

28 *(b) (1) If the victim of an offense described in subdivision (a)*  
29 *is a child who is under 14 years of age, the defendant shall be*  
30 *punished by imprisonment in the state prison for seven, 13, or 17*  
31 *years.*

32 *(2) If the victim of an offense described in subdivision (a) is a*  
33 *minor who is 14 years of age or older, the defendant shall be*  
34 *punished by imprisonment in the state prison for seven, 10, or 12*  
35 *years.*

36 *(3) This subdivision does not preclude prosecution under Section*  
37 *269.*

38 *SEC. 3. Section 286 of the Penal Code is amended to read:*

39 286. (a) Sodomy is sexual conduct consisting of contact  
40 between the penis of one person and the anus of another person.

1 Any sexual penetration, however slight, is sufficient to complete  
2 the crime of sodomy.

3 (b) (1) Except as provided in Section 288, any person who  
4 participates in an act of sodomy with another person who is under  
5 18 years of age shall be punished by imprisonment in the state  
6 prison, or in a county jail for not more than one year.

7 (2) Except as provided in Section 288, any person over the age  
8 of 21 years who participates in an act of sodomy with another  
9 person who is under 16 years of age shall be guilty of a felony.

10 (c) (1) Any person who participates in an act of sodomy with  
11 another person who is under 14 years of age and more than 10  
12 years younger than he or she shall be punished by imprisonment  
13 in the state prison for three, six, or eight years.

14 (2) (A) Any person who commits an act of sodomy when the  
15 act is accomplished against the victim's will by means of force,  
16 violence, duress, menace, or fear of immediate and unlawful bodily  
17 injury on the victim or another person shall be punished by  
18 imprisonment in the state prison for three, six, or eight years.

19 (B) *Any person who commits an act of sodomy with another*  
20 *person who is under 14 years of age when the act is accomplished*  
21 *against the victim's will by means of force, violence, duress,*  
22 *menace, or fear of immediate and unlawful bodily injury on the*  
23 *victim or another person shall be punished by imprisonment in the*  
24 *state prison for six, 12, or 16 years.*

25 (C) *Any person who commits an act of sodomy with another*  
26 *person who is a minor 14 years of age or older when the act is*  
27 *accomplished against the victim's will by means of force, violence,*  
28 *duress, menace, or fear of immediate and unlawful bodily injury*  
29 *on the victim or another person shall be punished by imprisonment*  
30 *in the state prison for six, nine, or 11 years.*

31 (D) *This paragraph does not preclude prosecution under Section*  
32 *269.*

33 (3) Any person who commits an act of sodomy where the act  
34 is accomplished against the victim's will by threatening to retaliate  
35 in the future against the victim or any other person, and there is a  
36 reasonable possibility that the perpetrator will execute the threat,  
37 shall be punished by imprisonment in the state prison for three,  
38 six, or eight years.

39 (d) (1) Any person who, while voluntarily acting in concert  
40 with another person, either personally or aiding and abetting that

1 other person, commits an act of sodomy when the act is  
2 accomplished against the victim's will by means of force or fear  
3 of immediate and unlawful bodily injury on the victim or another  
4 person or where the act is accomplished against the victim's will  
5 by threatening to retaliate in the future against the victim or any  
6 other person, and there is a reasonable possibility that the  
7 perpetrator will execute the threat, shall be punished by  
8 imprisonment in the state prison for five, seven, or nine years.

9 *(2) Any person who, while voluntarily acting in concert with*  
10 *another person, either personally or aiding and abetting that other*  
11 *person, commits an act of sodomy upon a victim who is under 14*  
12 *years of age, when the act is accomplished against the victim's*  
13 *will by means of force or fear of immediate and unlawful bodily*  
14 *injury on the victim or another person, shall be punished by*  
15 *imprisonment in the state prison for seven, 13, or 17 years.*

16 *(3) Any person who, while voluntarily acting in concert with*  
17 *another person, either personally or aiding and abetting that other*  
18 *person, commits an act of sodomy upon a victim who is a minor*  
19 *14 years of age or older, when the act is accomplished against the*  
20 *victim's will by means of force or fear of immediate and unlawful*  
21 *bodily injury on the victim or another person, shall be punished*  
22 *by imprisonment in the state prison for seven, 10, or 12 years.*

23 *(4) This subdivision does not preclude prosecution under Section*  
24 *269.*

25 (e) Any person who participates in an act of sodomy with any  
26 person of any age while confined in any state prison, as defined  
27 in Section 4504, or in any local detention facility, as defined in  
28 Section 6031.4, shall be punished by imprisonment in the state  
29 prison, or in a county jail for not more than one year.

30 (f) Any person who commits an act of sodomy, and the victim  
31 is at the time unconscious of the nature of the act and this is known  
32 to the person committing the act, shall be punished by  
33 imprisonment in the state prison for three, six, or eight years. As  
34 used in this subdivision, "unconscious of the nature of the act"  
35 means incapable of resisting because the victim meets one of the  
36 following conditions:

37 (1) Was unconscious or asleep.

38 (2) Was not aware, knowing, perceiving, or cognizant that the  
39 act occurred.

1 (3) Was not aware, knowing, perceiving, or cognizant of the  
2 essential characteristics of the act due to the perpetrator's fraud in  
3 fact.

4 (4) Was not aware, knowing, perceiving, or cognizant of the  
5 essential characteristics of the act due to the perpetrator's fraudulent  
6 representation that the sexual penetration served a professional  
7 purpose when it served no professional purpose.

8 (g) Except as provided in subdivision (h), a person who commits  
9 an act of sodomy, and the victim is at the time incapable, because  
10 of a mental disorder or developmental or physical disability, of  
11 giving legal consent, and this is known or reasonably should be  
12 known to the person committing the act, shall be punished by  
13 imprisonment in the state prison for three, six, or eight years.  
14 Notwithstanding the existence of a conservatorship pursuant to  
15 the Lanterman-Petris-Short Act (Part 1 (commencing with Section  
16 5000) of Division 5 of the Welfare and Institutions Code), the  
17 prosecuting attorney shall prove, as an element of the crime, that  
18 a mental disorder or developmental or physical disability rendered  
19 the alleged victim incapable of giving consent.

20 (h) Any person who commits an act of sodomy, and the victim  
21 is at the time incapable, because of a mental disorder or  
22 developmental or physical disability, of giving legal consent, and  
23 this is known or reasonably should be known to the person  
24 committing the act, and both the defendant and the victim are at  
25 the time confined in a state hospital for the care and treatment of  
26 the mentally disordered or in any other public or private facility  
27 for the care and treatment of the mentally disordered approved by  
28 a county mental health director, shall be punished by imprisonment  
29 in the state prison, or in a county jail for not more than one year.  
30 Notwithstanding the existence of a conservatorship pursuant to  
31 the Lanterman-Petris-Short Act (Part 1 (commencing with Section  
32 5000) of Division 5 of the Welfare and Institutions Code), the  
33 prosecuting attorney shall prove, as an element of the crime, that  
34 a mental disorder or developmental or physical disability rendered  
35 the alleged victim incapable of giving legal consent.

36 (i) Any person who commits an act of sodomy, where the victim  
37 is prevented from resisting by an intoxicating or anesthetic  
38 substance, or any controlled substance, and this condition was  
39 known, or reasonably should have been known by the accused,



1 shall be punished by imprisonment in the state prison for three,  
2 six, or eight years.

3 (j) Any person who commits an act of sodomy, where the victim  
4 submits under the belief that the person committing the act is the  
5 victim's spouse, and this belief is induced by any artifice, pretense,  
6 or concealment practiced by the accused, with intent to induce the  
7 belief, shall be punished by imprisonment in the state prison for  
8 three, six, or eight years.

9 (k) Any person who commits an act of sodomy, where the act  
10 is accomplished against the victim's will by threatening to use the  
11 authority of a public official to incarcerate, arrest, or deport the  
12 victim or another, and the victim has a reasonable belief that the  
13 perpetrator is a public official, shall be punished by imprisonment  
14 in the state prison for three, six, or eight years.

15 As used in this subdivision, "public official" means a person  
16 employed by a governmental agency who has the authority, as part  
17 of that position, to incarcerate, arrest, or deport another. The  
18 perpetrator does not actually have to be a public official.

19 (l) As used in subdivisions (c) and (d), "threatening to retaliate"  
20 means a threat to kidnap or falsely imprison, or inflict extreme  
21 pain, serious bodily injury, or death.

22 (m) In addition to any punishment imposed under this section,  
23 the judge may assess a fine not to exceed seventy dollars (\$70)  
24 against any person who violates this section, with the proceeds of  
25 this fine to be used in accordance with Section 1463.23. The court,  
26 however, shall take into consideration the defendant's ability to  
27 pay, and no defendant shall be denied probation because of his or  
28 her inability to pay the fine permitted under this subdivision.

29 *SEC. 4. Section 288 of the Penal Code is amended to read:*

30 288. (a) Any person who willfully and lewdly commits any  
31 lewd or lascivious act, including any of the acts constituting other  
32 crimes provided for in Part 1, upon or with the body, or any part  
33 or member thereof, of a child who is under the age of 14 years,  
34 with the intent of arousing, appealing to, or gratifying the lust,  
35 passions, or sexual desires of that person or the child, is guilty of  
36 a felony and shall be punished by imprisonment in the state prison  
37 for three, six, or eight years.

38 (b) (1) Any person who commits an act described in subdivision  
39 (a) by use of force, violence, duress, menace, or fear of immediate  
40 and unlawful bodily injury on the victim or another person, is

1 guilty of a felony and shall be punished by imprisonment in the  
2 state prison for ~~three, six, or eight~~ *six, 12, or 16* years.

3 (2) Any person who is a caretaker and commits an act described  
4 in subdivision (a) upon a dependent person by use of force,  
5 violence, duress, menace, or fear of immediate and unlawful bodily  
6 injury on the victim or another person, with the intent described  
7 in subdivision (a), is guilty of a felony and shall be punished by  
8 imprisonment in the state prison for ~~three, six, or eight~~ *six, nine,*  
9 *or 11* years.

10 (c) (1) Any person who commits an act described in subdivision  
11 (a) with the intent described in that subdivision, and the victim is  
12 a child of 14 or 15 years, and that person is at least 10 years older  
13 than the child, is guilty of a public offense and shall be punished  
14 by imprisonment in the state prison for one, two, or three years,  
15 or by imprisonment in a county jail for not more than one year. In  
16 determining whether the person is at least 10 years older than the  
17 child, the difference in age shall be measured from the birth date  
18 of the person to the birth date of the child.

19 (2) Any person who is a caretaker and commits an act described  
20 in subdivision (a) upon a dependent person, with the intent  
21 described in subdivision (a), is guilty of a public offense and shall  
22 be punished by imprisonment in the state prison for one, two, or  
23 three years, or by imprisonment in a county jail for not more than  
24 one year.

25 (d) In any arrest or prosecution under this section or Section  
26 288.5, the peace officer, district attorney, and the court shall  
27 consider the needs of the child victim or dependent person and  
28 shall do whatever is necessary, within existing budgetary resources,  
29 and constitutionally permissible to prevent psychological harm to  
30 the child victim or to prevent psychological harm to the dependent  
31 person victim resulting from participation in the court process.

32 (e) Upon the conviction of any person for a violation of  
33 subdivision (a) or (b), the court may, in addition to any other  
34 penalty or fine imposed, order the defendant to pay an additional  
35 fine not to exceed ten thousand dollars (\$10,000). In setting the  
36 amount of the fine, the court shall consider any relevant factors,  
37 including, but not limited to, the seriousness and gravity of the  
38 offense, the circumstances of its commission, whether the  
39 defendant derived any economic gain as a result of the crime, and  
40 the extent to which the victim suffered economic losses as a result

1 of the crime. Every fine imposed and collected under this section  
2 shall be deposited in the Victim-Witness Assistance Fund to be  
3 available for appropriation to fund child sexual exploitation and  
4 child sexual abuse victim counseling centers and prevention  
5 programs pursuant to Section 13837.

6 If the court orders a fine imposed pursuant to this subdivision,  
7 the actual administrative cost of collecting that fine, not to exceed  
8 2 percent of the total amount paid, may be paid into the general  
9 fund of the county treasury for the use and benefit of the county.

10 (f) For purposes of paragraph (2) of subdivision (b) and  
11 paragraph (2) of subdivision (c), the following definitions apply:

12 (1) "Caretaker" means an owner, operator, administrator,  
13 employee, independent contractor, agent, or volunteer of any of  
14 the following public or private facilities when the facilities provide  
15 care for elder or dependent persons:

16 (A) Twenty-four hour health facilities, as defined in Sections  
17 1250, 1250.2, and 1250.3 of the Health and Safety Code.

18 (B) Clinics.

19 (C) Home health agencies.

20 (D) Adult day health care centers.

21 (E) Secondary schools that serve dependent persons and  
22 postsecondary educational institutions that serve dependent persons  
23 or elders.

24 (F) Sheltered workshops.

25 (G) Camps.

26 (H) Community care facilities, as defined by Section 1402 of  
27 the Health and Safety Code, and residential care facilities for the  
28 elderly, as defined in Section 1569.2 of the Health and Safety  
29 Code.

30 (I) Respite care facilities.

31 (J) Foster homes.

32 (K) Regional centers for persons with developmental disabilities.

33 (L) A home health agency licensed in accordance with Chapter  
34 8 (commencing with Section 1725) of Division 2 of the Health  
35 and Safety Code.

36 (M) An agency that supplies in-home supportive services.

37 (N) Board and care facilities.

38 (O) Any other protective or public assistance agency that  
39 provides health services or social services to elder or dependent  
40 persons, including, but not limited to, in-home supportive services,

1 as defined in Section 14005.14 of the Welfare and Institutions  
2 Code.

3 (P) Private residences.

4 (2) “Board and care facilities” means licensed or unlicensed  
5 facilities that provide assistance with one or more of the following  
6 activities:

7 (A) Bathing.

8 (B) Dressing.

9 (C) Grooming.

10 (D) Medication storage.

11 (E) Medical dispensation.

12 (F) Money management.

13 (3) “Dependent person” means any person who has a physical  
14 or mental impairment that substantially restricts his or her ability  
15 to carry out normal activities or to protect his or her rights,  
16 including, but not limited to, persons who have physical or  
17 developmental disabilities or whose physical or mental abilities  
18 have significantly diminished because of age. “Dependent person”  
19 includes any person who is admitted as an inpatient to a 24-hour  
20 health facility, as defined in Sections 1250, 1250.2, and 1250.3 of  
21 the Health and Safety Code.

22 (g) Paragraph (2) of subdivision (b) and paragraph (2) of  
23 subdivision (c) apply to the owners, operators, administrators,  
24 employees, independent contractors, agents, or volunteers working  
25 at these public or private facilities and only to the extent that the  
26 individuals personally commit, conspire, aid, abet, or facilitate any  
27 act prohibited by paragraph (2) of subdivision (b) and paragraph  
28 (2) of subdivision (c).

29 (h) Paragraph (2) of subdivision (b) and paragraph (2) of  
30 subdivision (c) do not apply to a caretaker who is a spouse of, or  
31 who is in an equivalent domestic relationship with, the dependent  
32 person under care.

33 *SEC. 5. Section 288a of the Penal Code is amended to read:*

34 288a. (a) Oral copulation is the act of copulating the mouth  
35 of one person with the sexual organ or anus of another person.

36 (b) (1) Except as provided in Section 288, any person who  
37 participates in an act of oral copulation with another person who  
38 is under 18 years of age shall be punished by imprisonment in the  
39 state prison, or in a county jail for a period of not more than one  
40 year.

1 (2) Except as provided in Section 288, any person over the age  
2 of 21 years who participates in an act of oral copulation with  
3 another person who is under 16 years of age is guilty of a felony.

4 (c) (1) Any person who participates in an act of oral copulation  
5 with another person who is under 14 years of age and more than  
6 10 years younger than he or she shall be punished by imprisonment  
7 in the state prison for three, six, or eight years.

8 (2) (A) Any person who commits an act of oral copulation when  
9 the act is accomplished against the victim's will by means of force,  
10 violence, duress, menace, or fear of immediate and unlawful bodily  
11 injury on the victim or another person shall be punished by  
12 imprisonment in the state prison for three, six, or eight years.

13 (B) *Any person who commits an act of oral copulation upon a*  
14 *person who is under 14 years of age, when the act is accomplished*  
15 *against the victim's will by means of force, violence, duress,*  
16 *menace, or fear of immediate and unlawful bodily injury on the*  
17 *victim or another person, shall be punished by imprisonment in*  
18 *the state prison for six, 12, or 16 years.*

19 (C) *Any person who commits an act of oral copulation upon a*  
20 *minor who is 14 years of age or older, when the act is*  
21 *accomplished against the victim's will by means of force, violence,*  
22 *duress, menace, or fear of immediate and unlawful bodily injury*  
23 *on the victim or another person, shall be punished by imprisonment*  
24 *in the state prison for six, nine, or 11 years.*

25 (D) *This paragraph does not preclude prosecution under Section*  
26 *269.*

27 (3) Any person who commits an act of oral copulation where  
28 the act is accomplished against the victim's will by threatening to  
29 retaliate in the future against the victim or any other person, and  
30 there is a reasonable possibility that the perpetrator will execute  
31 the threat, shall be punished by imprisonment in the state prison  
32 for three, six, or eight years.

33 (d) (1) Any person who, while voluntarily acting in concert  
34 with another person, either personally or by aiding and abetting  
35 that other person, commits an act of oral copulation (1) when the  
36 act is accomplished against the victim's will by means of force or  
37 fear of immediate and unlawful bodily injury on the victim or  
38 another person, or (2) where the act is accomplished against the  
39 victim's will by threatening to retaliate in the future against the  
40 victim or any other person, and there is a reasonable possibility

1 that the perpetrator will execute the threat, or (3) where the victim  
2 is at the time incapable, because of a mental disorder or  
3 developmental or physical disability, of giving legal consent, and  
4 this is known or reasonably should be known to the person  
5 committing the act, shall be punished by imprisonment in the state  
6 prison for five, seven, or nine years. Notwithstanding the  
7 appointment of a conservator with respect to the victim pursuant  
8 to the provisions of the Lanterman-Petris-Short Act (Part 1  
9 (commencing with Section 5000) of Division 5 of the Welfare and  
10 Institutions Code), the prosecuting attorney shall prove, as an  
11 element of the crime described under paragraph (3), that a mental  
12 disorder or developmental or physical disability rendered the  
13 alleged victim incapable of giving legal consent.

14 *(2) Any person who, while voluntarily acting in concert with*  
15 *another person, either personally or aiding and abetting that other*  
16 *person, commits an act of oral copulation upon a victim who is*  
17 *under 14 years of age, when the act is accomplished against the*  
18 *victim's will by means of force or fear of immediate and unlawful*  
19 *bodily injury on the victim or another person, shall be punished*  
20 *by imprisonment in the state prison for seven, 13, or 17 years.*

21 *(3) Any person who, while voluntarily acting in concert with*  
22 *another person, either personally or aiding and abetting that other*  
23 *person, commits an act of oral copulation upon a victim who is a*  
24 *minor 14 years of age or older, when the act is accomplished*  
25 *against the victim's will by means of force or fear of immediate*  
26 *and unlawful bodily injury on the victim or another person, shall*  
27 *be punished by imprisonment in the state prison for seven, 10, or*  
28 *12 years.*

29 *(4) This paragraph does not preclude prosecution under Section*  
30 *269.*

31 (e) Any person who participates in an act of oral copulation  
32 while confined in any state prison, as defined in Section 4504 or  
33 in any local detention facility as defined in Section 6031.4, shall  
34 be punished by imprisonment in the state prison, or in a county  
35 jail for a period of not more than one year.

36 (f) Any person who commits an act of oral copulation, and the  
37 victim is at the time unconscious of the nature of the act and this  
38 is known to the person committing the act, shall be punished by  
39 imprisonment in the state prison for a period of three, six, or eight  
40 years. As used in this subdivision, "unconscious of the nature of

1 the act” means incapable of resisting because the victim meets one  
2 of the following conditions:

3 (1) Was unconscious or asleep.

4 (2) Was not aware, knowing, perceiving, or cognizant that the  
5 act occurred.

6 (3) Was not aware, knowing, perceiving, or cognizant of the  
7 essential characteristics of the act due to the perpetrator’s fraud in  
8 fact.

9 (4) Was not aware, knowing, perceiving, or cognizant of the  
10 essential characteristics of the act due to the perpetrator’s fraudulent  
11 representation that the oral copulation served a professional purpose  
12 when it served no professional purpose.

13 (g) Except as provided in subdivision (h), any person who  
14 commits an act of oral copulation, and the victim is at the time  
15 incapable, because of a mental disorder or developmental or  
16 physical disability, of giving legal consent, and this is known or  
17 reasonably should be known to the person committing the act,  
18 shall be punished by imprisonment in the state prison, for three,  
19 six, or eight years. Notwithstanding the existence of a  
20 conservatorship pursuant to the provisions of the  
21 Lanterman-Petris-Short Act (Part 1 (commencing with Section  
22 5000) of Division 5 of the Welfare and Institutions Code), the  
23 prosecuting attorney shall prove, as an element of the crime, that  
24 a mental disorder or developmental or physical disability rendered  
25 the alleged victim incapable of giving consent.

26 (h) Any person who commits an act of oral copulation, and the  
27 victim is at the time incapable, because of a mental disorder or  
28 developmental or physical disability, of giving legal consent, and  
29 this is known or reasonably should be known to the person  
30 committing the act, and both the defendant and the victim are at  
31 the time confined in a state hospital for the care and treatment of  
32 the mentally disordered or in any other public or private facility  
33 for the care and treatment of the mentally disordered approved by  
34 a county mental health director, shall be punished by imprisonment  
35 in the state prison, or in a county jail for a period of not more than  
36 one year. Notwithstanding the existence of a conservatorship  
37 pursuant to the provisions of the Lanterman-Petris-Short Act (Part  
38 1 (commencing with Section 5000) of Division 5 of the Welfare  
39 and Institutions Code), the prosecuting attorney shall prove, as an  
40 element of the crime, that a mental disorder or developmental or

1 physical disability rendered the alleged victim incapable of giving  
2 legal consent.

3 (i) Any person who commits an act of oral copulation, where  
4 the victim is prevented from resisting by any intoxicating or  
5 anesthetic substance, or any controlled substance, and this condition  
6 was known, or reasonably should have been known by the accused,  
7 shall be punished by imprisonment in the state prison for a period  
8 of three, six, or eight years.

9 (j) Any person who commits an act of oral copulation, where  
10 the victim submits under the belief that the person committing the  
11 act is the victim's spouse, and this belief is induced by any artifice,  
12 pretense, or concealment practiced by the accused, with intent to  
13 induce the belief, shall be punished by imprisonment in the state  
14 prison for a period of three, six, or eight years.

15 (k) Any person who commits an act of oral copulation, where  
16 the act is accomplished against the victim's will by threatening to  
17 use the authority of a public official to incarcerate, arrest, or deport  
18 the victim or another, and the victim has a reasonable belief that  
19 the perpetrator is a public official, shall be punished by  
20 imprisonment in the state prison for a period of three, six, or eight  
21 years.

22 As used in this subdivision, "public official" means a person  
23 employed by a governmental agency who has the authority, as part  
24 of that position, to incarcerate, arrest, or deport another. The  
25 perpetrator does not actually have to be a public official.

26 (l) As used in subdivisions (c) and (d), "threatening to retaliate"  
27 means a threat to kidnap or falsely imprison, or to inflict extreme  
28 pain, serious bodily injury, or death.

29 (m) In addition to any punishment imposed under this section,  
30 the judge may assess a fine not to exceed seventy dollars (\$70)  
31 against any person who violates this section, with the proceeds of  
32 this fine to be used in accordance with Section 1463.23. The court  
33 shall, however, take into consideration the defendant's ability to  
34 pay, and no defendant shall be denied probation because of his or  
35 her inability to pay the fine permitted under this subdivision.

36 *SEC. 6. Section 289 of the Penal Code is amended to read:*

37 289. (a) (1) (A) Any person who commits an act of sexual  
38 penetration when the act is accomplished against the victim's will  
39 by means of force, violence, duress, menace, or fear of immediate  
40 and unlawful bodily injury on the victim or another person shall



1 be punished by imprisonment in the state prison for three, six, or  
2 eight years.

3 *(B) Any person who commits an act of sexual penetration upon*  
4 *a child who is under 14 years of age, when the act is accomplished*  
5 *against the victim's will by means of force, violence, duress,*  
6 *menace, or fear of immediate and unlawful bodily injury on the*  
7 *victim or another person, shall be punished by imprisonment in*  
8 *the state prison for six, 12, or 16 years.*

9 *(C) Any person who commits an act of sexual penetration upon*  
10 *a minor who is 14 years of age or older, when the act is*  
11 *accomplished against the victim's will by means of force, violence,*  
12 *duress, menace, or fear of immediate and unlawful bodily injury*  
13 *on the victim or another person, shall be punished by imprisonment*  
14 *in the state prison for six, nine, or 11 years.*

15 *(D) This paragraph does not preclude prosecution under Section*  
16 *269.*

17 (2) Any person who commits an act of sexual penetration when  
18 the act is accomplished against the victim's will by threatening to  
19 retaliate in the future against the victim or any other person, and  
20 there is a reasonable possibility that the perpetrator will execute  
21 the threat, shall be punished by imprisonment in the state prison  
22 for three, six, or eight years.

23 (b) Except as provided in subdivision (c), any person who  
24 commits an act of sexual penetration, and the victim is at the time  
25 incapable, because of a mental disorder or developmental or  
26 physical disability, of giving legal consent, and this is known or  
27 reasonably should be known to the person committing the act or  
28 causing the act to be committed, shall be punished by imprisonment  
29 in the state prison for three, six, or eight years. Notwithstanding  
30 the appointment of a conservator with respect to the victim pursuant  
31 to the provisions of the Lanterman-Petris-Short Act (Part 1  
32 (commencing with Section 5000) of Division 5 of the Welfare and  
33 Institutions Code), the prosecuting attorney shall prove, as an  
34 element of the crime, that a mental disorder or developmental or  
35 physical disability rendered the alleged victim incapable of giving  
36 legal consent.

37 (c) Any person who commits an act of sexual penetration, and  
38 the victim is at the time incapable, because of a mental disorder  
39 or developmental or physical disability, of giving legal consent,  
40 and this is known or reasonably should be known to the person

1 committing the act or causing the act to be committed and both  
2 the defendant and the victim are at the time confined in a state  
3 hospital for the care and treatment of the mentally disordered or  
4 in any other public or private facility for the care and treatment of  
5 the mentally disordered approved by a county mental health  
6 director, shall be punished by imprisonment in the state prison, or  
7 in a county jail for a period of not more than one year.  
8 Notwithstanding the existence of a conservatorship pursuant to  
9 the provisions of the Lanterman-Petris-Short Act (Part 1  
10 (commencing with Section 5000) of Division 5 of the Welfare and  
11 Institutions Code), the prosecuting attorney shall prove, as an  
12 element of the crime, that a mental disorder or developmental or  
13 physical disability rendered the alleged victim incapable of giving  
14 legal consent.

15 (d) Any person who commits an act of sexual penetration, and  
16 the victim is at the time unconscious of the nature of the act and  
17 this is known to the person committing the act or causing the act  
18 to be committed, shall be punished by imprisonment in the state  
19 prison for three, six, or eight years. As used in this subdivision,  
20 “unconscious of the nature of the act” means incapable of resisting  
21 because the victim meets one of the following conditions:

22 (1) Was unconscious or asleep.

23 (2) Was not aware, knowing, perceiving, or cognizant that the  
24 act occurred.

25 (3) Was not aware, knowing, perceiving, or cognizant of the  
26 essential characteristics of the act due to the perpetrator’s fraud in  
27 fact.

28 (4) Was not aware, knowing, perceiving, or cognizant of the  
29 essential characteristics of the act due to the perpetrator’s fraudulent  
30 representation that the sexual penetration served a professional  
31 purpose when it served no professional purpose.

32 (e) Any person who commits an act of sexual penetration when  
33 the victim is prevented from resisting by any intoxicating or  
34 anesthetic substance, or any controlled substance, and this condition  
35 was known, or reasonably should have been known by the accused,  
36 shall be punished by imprisonment in the state prison for a period  
37 of three, six, or eight years.

38 (f) Any person who commits an act of sexual penetration when  
39 the victim submits under the belief that the person committing the  
40 act or causing the act to be committed is the victim’s spouse, and

1 this belief is induced by any artifice, pretense, or concealment  
2 practiced by the accused, with intent to induce the belief, shall be  
3 punished by imprisonment in the state prison for a period of three,  
4 six, or eight years.

5 (g) Any person who commits an act of sexual penetration when  
6 the act is accomplished against the victim's will by threatening to  
7 use the authority of a public official to incarcerate, arrest, or deport  
8 the victim or another, and the victim has a reasonable belief that  
9 the perpetrator is a public official, shall be punished by  
10 imprisonment in the state prison for a period of three, six, or eight  
11 years.

12 As used in this subdivision, "public official" means a person  
13 employed by a governmental agency who has the authority, as part  
14 of that position, to incarcerate, arrest, or deport another. The  
15 perpetrator does not actually have to be a public official.

16 (h) Except as provided in Section 288, any person who  
17 participates in an act of sexual penetration with another person  
18 who is under 18 years of age shall be punished by imprisonment  
19 in the state prison or in the county jail for a period of not more  
20 than one year.

21 (i) Except as provided in Section 288, any person over the age  
22 of 21 years who participates in an act of sexual penetration with  
23 another person who is under 16 years of age shall be guilty of a  
24 felony.

25 (j) Any person who participates in an act of sexual penetration  
26 with another person who is under 14 years of age and who is more  
27 than 10 years younger than he or she shall be punished by  
28 imprisonment in the state prison for three, six, or eight years.

29 (k) As used in this section:

30 (1) "Sexual penetration" is the act of causing the penetration,  
31 however slight, of the genital or anal opening of any person or  
32 causing another person to so penetrate the defendant's or another  
33 person's genital or anal opening for the purpose of sexual arousal,  
34 gratification, or abuse by any foreign object, substance, instrument,  
35 or device, or by any unknown object.

36 (2) "Foreign object, substance, instrument, or device" shall  
37 include any part of the body, except a sexual organ.

38 (3) "Unknown object" shall include any foreign object,  
39 substance, instrument, or device, or any part of the body, including  
40 a penis, when it is not known whether penetration was by a penis

1 or by a foreign object, substance, instrument, or device, or by any  
2 other part of the body.

3 (l) As used in subdivision (a), “threatening to retaliate” means  
4 a threat to kidnap or falsely imprison, or inflict extreme pain,  
5 serious bodily injury or death.

6 (m) As used in this section, “victim” includes any person who  
7 the defendant causes to penetrate the genital or anal opening of  
8 the defendant or another person or whose genital or anal opening  
9 is caused to be penetrated by the defendant or another person and  
10 who otherwise qualifies as a victim under the requirements of this  
11 section.

12 *SEC. 7. Section 647.9 is added to the Penal Code, to read:*

13 *647.9. (a) Any person who is required to register pursuant to*  
14 *the Sex Offender Registration Act for a felony offense, who enters*  
15 *any park where children regularly gather without written*  
16 *permission, is guilty of a misdemeanor.*

17 *(1) If the person is on parole, written permission shall be*  
18 *obtained from the person’s parole officer.*

19 *(2) If the person is not on parole, written permission shall be*  
20 *obtained from the chief administrative official of the park.*

21 *(b) Punishment for a violation of this section shall be as follows:*

22 *(1) Upon a first conviction, by imprisonment in a county jail*  
23 *not exceeding six months, or by a fine not exceeding five hundred*  
24 *dollars (\$500), or by both imprisonment and a fine.*

25 *(2) Upon a second conviction pursuant to this section, by*  
26 *imprisonment in a county jail for a period of not less than 10 days*  
27 *and not more than six months. In addition to imprisonment, a*  
28 *violation of this section punishable pursuant to this paragraph*  
29 *may also be punished by a fine not exceeding five hundred dollars*  
30 *(\$500). A defendant sentenced pursuant to this paragraph shall*  
31 *not be released on probation, parole, or any other basis, until he*  
32 *or she has served at least 10 days imprisonment in a county jail.*

33 *(3) Upon a third or subsequent conviction pursuant to this*  
34 *section, by imprisonment in a county jail for a period of not less*  
35 *than 90 days and not more than six months and a fine not exceeding*  
36 *five hundred dollars (\$500). A defendant sentenced pursuant to*  
37 *this paragraph shall not be released on probation, parole, or any*  
38 *other basis, until he or she has served at least 90 days*  
39 *imprisonment in a county jail.*

1     (c) *This section does not preclude or prohibit prosecution under*  
2 *any other provision of law.*

3     SEC. 8. *Section 667.61 of the Penal Code is amended to read:*

4     667.61. (a) ~~Any~~ *Except as provided in subdivision (j), (l), or*  
5 *(m), any person who is convicted of an offense specified in*  
6 *subdivision (c) under one or more of the circumstances specified*  
7 *in subdivision (d) or under two or more of the circumstances*  
8 *specified in subdivision (e) shall be punished by imprisonment in*  
9 *the state prison for 25 years to life.*

10    (b) *Except as provided in subdivision (a), (j), (l), or (m), any*  
11 *person who is convicted of an offense specified in subdivision (c)*  
12 *under one of the circumstances specified in subdivision (e) shall*  
13 *be punished by imprisonment in the state prison for 15 years to*  
14 *life.*

15    (c) *This section shall apply to any of the following offenses:*

16    (1) *Rape, in violation of paragraph (2) or (6) of subdivision (a)*  
17 *of Section 261.*

18    (2) *Spousal rape, in violation of paragraph (1) or (4) of*  
19 *subdivision (a) of Section 262.*

20    (3) *Rape, spousal rape, or sexual penetration, in concert, in*  
21 *violation of Section 264.1.*

22    (4) *Lewd or lascivious act, in violation of subdivision (b) of*  
23 *Section 288.*

24    (5) *Sexual penetration, in violation of subdivision (a) of Section*  
25 *289.*

26    (6) *Sodomy, in violation of paragraph (2) or (3) of subdivision*  
27 *(c), or subdivision (d), of Section 286.*

28    (7) *Oral copulation, in violation of paragraph (2) or (3) of*  
29 *subdivision (c), or subdivision (d), of Section 288a.*

30    (8) *Lewd or lascivious act, in violation of subdivision (a) of*  
31 *Section 288.*

32    (9) *Continuous sexual abuse of a child, in violation of Section*  
33 *288.5.*

34    (d) *The following circumstances shall apply to the offenses*  
35 *specified in subdivision (c):*

36    (1) *The defendant has been previously convicted of an offense*  
37 *specified in subdivision (c), including an offense committed in*  
38 *another jurisdiction that includes all of the elements of an offense*  
39 *specified in subdivision (c).*

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

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

8 (4) The defendant committed the present offense during the  
9 commission of a burglary of the first degree, as defined in  
10 subdivision (a) of Section 460, with intent to commit an offense  
11 specified in subdivision (c).

12 (5) 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 act described in paragraph (2), (3), or (4)  
16 of this subdivision.

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

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

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

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

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

31 ~~(4)~~

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

35 ~~(5)~~

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

39 ~~(6)~~

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

3 ~~(7)~~

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

7 ~~(8)~~

8 (7) The defendant committed the present offense in violation  
9 of Section 264.1, subdivision (d) of Section 286, or subdivision  
10 (d) of Section 288a, and, in the commission of that offense, any  
11 person committed any act described in paragraph (1), (2), (3), (4),  
12 (6), or (7) of this subdivision.

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

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

36 (h) Notwithstanding any other provision of law, probation shall  
37 not be granted to, nor shall the execution or imposition of sentence  
38 be suspended for, any person who is subject to punishment under  
39 this section.

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

(j) *Any person who is convicted of an offense specified in subdivision (c) under one or more of the circumstances specified in subdivision (d), (e), or (k) upon a victim who is a child under 14 years of age shall be punished by imprisonment in the state prison for life without the possibility of parole.*

(k) *Any person who is convicted of an offense specified in subdivision (c) upon a victim who is a child under 14 years of age and who, in the commission of the offense, inflicted physical injury resulting in a traumatic condition as defined in subdivision (c) of Section 273.5 shall be punished pursuant to subdivision (j).*

(l) *Any person who is convicted of an offense specified in subdivision (n) under one or more of the circumstances specified in subdivision (d) or under two or more of the circumstances specified in subdivision (e), upon a victim who is a minor 14 years of age or older shall be punished by imprisonment in the state prison for life without the possibility of parole.*

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

(n) *Subdivision (l) and (m) shall apply to any of the following offenses:*

(1) *Rape, in violation of paragraph (2) of subdivision (a) of Section 261.*

(2) *Spousal rape, in violation of paragraph (1) of subdivision (a) of Section 262.*

(3) *Rape, spousal rape, or sexual penetration, in concert, in violation of Section 264.1.*

(4) *Sexual penetration, in violation of subdivision (a) of Section 289.*

(5) *Sodomy, in violation of paragraph (2) or subdivision (c) or (d) of Section 286.*

(6) *Oral copulation, in violation of paragraph (2) of subdivision (c) or (d) of Section 288a.*



1     ~~(j)~~

2     ~~(o)~~ The penalties provided in this section shall apply only if the  
3 existence of any circumstance specified in subdivision ~~(d)~~ ~~or (e)~~,  
4 ~~(e)~~, or ~~(k)~~ is alleged in the accusatory pleading pursuant to this  
5 section, and is either admitted by the defendant in open court or  
6 found to be true by the trier of fact.

7     *SEC. 9. Section 3000 of the Penal Code is amended to read:*

8     3000. (a) (1) The Legislature finds and declares that the period  
9 immediately following incarceration is critical to successful  
10 reintegration of the offender into society and to positive citizenship.  
11 It is in the interest of public safety for the state to provide for the  
12 effective supervision of and surveillance of parolees, including  
13 the judicious use of revocation actions, and to provide educational,  
14 vocational, family and personal counseling necessary to assist  
15 parolees in the transition between imprisonment and discharge. A  
16 sentence pursuant to Section 1168 or 1170 shall include a period  
17 of parole, unless waived, or as otherwise provided in this article.

18     (2) The Legislature finds and declares that it is not the intent of  
19 this section to diminish resources allocated to the Department of  
20 Corrections and Rehabilitation for parole functions for which the  
21 department is responsible. It is also not the intent of this section  
22 to diminish the resources allocated to the Board of Parole Hearings  
23 to execute its duties with respect to parole functions for which the  
24 board is responsible.

25     (3) The Legislature finds and declares that diligent effort must  
26 be made to ensure that parolees are held accountable for their  
27 criminal behavior, including, but not limited to, the satisfaction of  
28 restitution fines and orders.

29     (4) The parole period of any person found to be a sexually  
30 violent predator shall be tolled until that person is found to no  
31 longer be a sexually violent predator, at which time the period of  
32 parole, or any remaining portion thereof, shall begin to run.

33     (b) Notwithstanding any provision to the contrary in Article 3  
34 (commencing with Section 3040) of this chapter, the following  
35 shall apply:

36     (1) At the expiration of a term of imprisonment of one year and  
37 one day, or a term of imprisonment imposed pursuant to Section  
38 1170 or at the expiration of a term reduced pursuant to Section  
39 2931 or 2933, if applicable, the inmate shall be released on parole  
40 for a period not exceeding three years, except that any inmate

1 sentenced for an offense specified in paragraph (3), (4), (5), ~~(6)~~,  
2 ~~(11), (16)~~, or (18) of subdivision (c) of Section 667.5 shall be  
3 released on parole for a period not exceeding ~~five years~~, unless in  
4 either case the parole authority for good cause waives parole and  
5 discharges the inmate from the custody of the department *10 years*,  
6 *unless a longer period of parole is specified in Section 3000.1*.

7 (2) In the case of any inmate sentenced under Section 1168, the  
8 period of parole shall not exceed five years in the case of an inmate  
9 imprisoned for any offense other than first or second degree murder  
10 for which the inmate has received a life sentence, and shall not  
11 exceed three years in the case of any other inmate, unless in either  
12 case the parole authority for good cause waives parole and  
13 discharges the inmate from custody of the department. This  
14 subdivision shall also be applicable to inmates who committed  
15 crimes prior to July 1, 1977, to the extent specified in Section  
16 1170.2.

17 (3) Notwithstanding paragraphs (1) and (2), *and except as*  
18 *provided in subdivision (a) of Section 3000.1*, in the case of any  
19 offense for which the inmate has received a life sentence pursuant  
20 to *subdivision (b) of Section 209, or Section 667.61 or 667.71*, the  
21 period of parole shall be 10 years.

22 (4) The parole authority shall consider the request of any inmate  
23 regarding the length of his or her parole and the conditions thereof.

24 (5) Upon successful completion of parole, or at the end of the  
25 maximum statutory period of parole specified for the inmate under  
26 paragraph (1), (2), or (3), as the case may be, whichever is earlier,  
27 the inmate shall be discharged from custody. The date of the  
28 maximum statutory period of parole under this subdivision and  
29 paragraphs (1), (2), and (3) shall be computed from the date of  
30 initial parole and shall be a period chronologically determined.  
31 Time during which parole is suspended because the prisoner has  
32 absconded or has been returned to custody as a parole violator  
33 shall not be credited toward any period of parole unless the prisoner  
34 is found not guilty of the parole violation. However, the period of  
35 parole is subject to the following:

36 (A) Except as provided in Section 3064, in no case may a  
37 prisoner subject to three years on parole be retained under parole  
38 supervision or in custody for a period longer than four years from  
39 the date of his or her initial parole.

1 (B) Except as provided in Section 3064, in no case may a  
2 prisoner subject to five years on parole be retained under parole  
3 supervision or in custody for a period longer than seven years from  
4 the date of his or her initial parole.

5 (C) Except as provided in Section 3064, in no case may a  
6 prisoner subject to 10 years on parole be retained under parole  
7 supervision or in custody for a period longer than 15 years from  
8 the date of his or her initial parole.

9 (6) The Department of Corrections and Rehabilitation shall meet  
10 with each inmate at least 30 days prior to his or her good time  
11 release date and shall provide, under guidelines specified by the  
12 parole authority, the conditions of parole and the length of parole  
13 up to the maximum period of time provided by law. The inmate  
14 has the right to reconsideration of the length of parole and  
15 conditions thereof by the parole authority. The Department of  
16 Corrections and Rehabilitation or the Board of Parole Hearings  
17 may impose as a condition of parole that a prisoner make payments  
18 on the prisoner's outstanding restitution fines or orders imposed  
19 pursuant to subdivision (a) or (c) of Section 13967 of the  
20 Government Code, as operative prior to September 28, 1994, or  
21 subdivision (b) or (f) of Section 1202.4.

22 (7) For purposes of this chapter, the Board of Parole Hearings  
23 shall be considered the parole authority.

24 (8) The sole authority to issue warrants for the return to actual  
25 custody of any state prisoner released on parole rests with the  
26 Board of Parole Hearings, except for any escaped state prisoner  
27 or any state prisoner released prior to his or her scheduled release  
28 date who should be returned to custody, and Section 3060 shall  
29 apply.

30 (9) It is the intent of the Legislature that efforts be made with  
31 respect to persons who are subject to Section 290.011 who are on  
32 parole to engage them in treatment.

33 *SEC. 10. Section 3000.1 of the Penal Code is amended to read:*

34 3000.1. (a) (1) In the case of any inmate sentenced under  
35 Section 1168 for any offense of first or second degree murder with  
36 a maximum term of life imprisonment, the period of parole, if  
37 parole is granted, shall be the remainder of the inmate's life.

38 (2) *Notwithstanding any other provision of law, in the case of*  
39 *any inmate sentenced under subdivision (a) or paragraph (1) of*  
40 *subdivision (b) of Section 288, Section 288.5, or Section 288.7,*

1 *the period of parole, if parole is granted, shall be the remainder*  
2 *of the inmate's life.*

3 (3) *Notwithstanding any other provision of law, in the case of*  
4 *any inmate sentenced under Section 667.71 in which one or more*  
5 *of the victims of the offense was a child under 14 years of age, the*  
6 *period of parole, if parole is granted, shall be the remainder of*  
7 *the inmate's life.*

8 (4) *Notwithstanding any other provision of law, in the case of*  
9 *any inmate sentenced under Section 269, subdivision (c) of Section*  
10 *667.51 with a maximum term of life imprisonment, or subdivision*  
11 *(m) of Section 667.61, the period of parole, if parole is granted,*  
12 *shall be the remainder of the inmate's life.*

13 (5) *Notwithstanding any other provision of law, in the case of*  
14 *any inmate sentenced under Section 261, 262, 264.1, 286, 288a,*  
15 *or 289 in which one or more of the victims of the offense was a*  
16 *child under 14 years of age, the period of parole, if parole is*  
17 *granted, shall be the remainder of the inmate's life.*

18 (b) *Notwithstanding any other provision of law, when any person*  
19 *referred to in paragraph (1) of subdivision (a) has been released*  
20 *on parole from the state prison, and has been on parole*  
21 *continuously for seven years in the case of any person imprisoned*  
22 *for first degree murder, and five years in the case of any person*  
23 *imprisoned for second degree murder, since release from*  
24 *confinement, the board shall, within 30 days, discharge that person*  
25 *from parole, unless the board, for good cause, determines that the*  
26 *person will be retained on parole. The board shall make a written*  
27 *record of its determination and transmit a copy of it to the parolee.*

28 (c) *In the event of a retention on parole, the parolee shall be*  
29 *entitled to a review by the board each year thereafter.*

30 (d) *There shall be a hearing as provided in Sections 3041.5 and*  
31 *3041.7 within 12 months of the date of any revocation of parole*  
32 *to consider the release of the inmate on parole, and notwithstanding*  
33 *the provisions of paragraph (2) of subdivision (b) of Section*  
34 *3041.5, there shall be annual parole consideration hearings*  
35 *thereafter, unless the person is released or otherwise ineligible for*  
36 *parole release. The panel or board shall release the person within*  
37 *one year of the date of the revocation unless it determines that the*  
38 *circumstances and gravity of the parole violation are such that*  
39 *consideration of the public safety requires a more lengthy period*

1 of incarceration or unless there is a new prison commitment  
2 following a conviction.

3 (e) The provisions of Section 3042 shall not apply to any  
4 hearing held pursuant to this section.

5 *SEC. 11. No reimbursement is required by this act pursuant*  
6 *to Section 6 of Article XIII B of the California Constitution because*  
7 *the only costs that may be incurred by a local agency or school*  
8 *district will be incurred because this act creates a new crime or*  
9 *infraction, eliminates a crime or infraction, or changes the penalty*  
10 *for a crime or infraction, within the meaning of Section 17556 of*  
11 *the Government Code, or changes the definition of a crime within*  
12 *the meaning of Section 6 of Article XIII B of the California*  
13 *Constitution.*

14 *SEC. 12. The provisions of this act are severable. If any*  
15 *provision of this act or its application is held invalid, that invalidity*  
16 *shall not affect other provisions or applications that can be given*  
17 *effect without the invalid provision or application.*

18 ~~SECTION 1. (a) It is the intent of the Legislature that all prison~~  
19 ~~inmates, with the exception of those who are too sick, old, or~~  
20 ~~infirm, those in administrative segregation, and those posing a~~  
21 ~~serious security risk, shall perform work to defray the cost of their~~  
22 ~~incarceration.~~

23 ~~(b) It is the intent of the Legislature that the Department of~~  
24 ~~Corrections and Rehabilitation, on or before July 1, 2011, develop~~  
25 ~~plans to significantly increase the proportion of prison inmates~~  
26 ~~engaged in work activities.~~

27 ~~SEC. 2. Section 2819 is added to the Penal Code, to read:~~

28 ~~2819. (a) Notwithstanding any other provision of law, and~~  
29 ~~upon the expiration of any bargaining unit agreement or agreements~~  
30 ~~to the contrary, or any contracts not subject to cancellation without~~  
31 ~~penalty, the Secretary of the Department of Corrections and~~  
32 ~~Rehabilitation may order the use of inmate labor for the painting~~  
33 ~~of prison facilities, for the maintenance of prison grounds, for~~  
34 ~~gardening and agricultural activities to produce food for~~  
35 ~~consumption within the prison system, and similar activities.~~

36 ~~(b) Inmates employed pursuant to this section shall be paid the~~  
37 ~~rate ordinarily set for inmate labor of this kind, unless the labor is~~  
38 ~~intended as a punishment for a violation of prison rules.~~

1     ~~(e) This section does not negate or impose additional conditions~~  
2     ~~on the use of inmate labor for any other purpose authorized by~~  
3     ~~law.~~

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