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AMENDED IN ASSEMBLY MARCH 20, 2013

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AMENDED IN ASSEMBLY FEBRUARY 20, 2013

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CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

**ASSEMBLY BILL**

**No. 65**

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**Introduced by Assembly Members Achadjian and Lowenthal  
(Principal coauthors: Assembly Members Bradford, Garcia, Gomez,  
Mitchell, and Williams)**

(Principal coauthor: Senator Hill)

**(Coauthors: Assembly Members Alejo, Ammiano, Atkins, Bigelow,  
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Mullin, Nazarian, Nestande, Olsen, Patterson, Perea, John A.  
Pérez, Quirk-Silva, Rendon, Skinner, Stone, Ting, Wagner,  
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(Coauthors: Senators Anderson, Berryhill, Block, Cannella, Emmerson,  
Fuller, Gaines, Huff, Jackson, Knight, Lieu, Padilla, Rubio, Walters,  
and Wyland)

January 7, 2013

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An act to amend Sections 261, 286, 288a, and 289 of the Penal Code, relating to crimes, and declaring the urgency thereof, to take effect immediately.

## LEGISLATIVE COUNSEL'S DIGEST

AB 65, as amended, Achadjian. Crimes: sex crimes.

Existing law provides various circumstances that constitute rape, including an act of sexual intercourse accomplished with a person who is not the spouse of the perpetrator where the person submits under the belief that the person committing the act is the victim's spouse, and this belief is induced by artifice, pretense, or concealment practiced by the accused, with the intent to induce the belief. Existing law provides various circumstances that constitute sodomy against an individual's will, oral copulation against an individual's will, and sexual penetration against an individual's will, including an act accomplished with an individual who is not the spouse of the perpetrator where the individual submits under the belief that the individual committing the act is the victim's spouse, and this belief is induced by artifice, pretense, or concealment practiced by the accused, with the intent to induce the belief.

This bill would instead provide that these types of rape, sodomy, oral copulation, and sexual penetration occur where the person submits under the belief that the person committing the act is someone *known to the victim* other than the accused.

By expanding the definition of a crime, this bill would impose a state-mandated local program.

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.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote:  $\frac{2}{3}$ . Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

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

- 1 SECTION 1. Section 261 of the Penal Code is amended to
- 2 read:
- 3 261. (a) Rape is an act of sexual intercourse accomplished
- 4 with a person not the spouse of the perpetrator, under any of the
- 5 following circumstances:

1 (1) Where a person is incapable, because of a mental disorder  
2 or developmental or physical disability, of giving legal consent,  
3 and this is known or reasonably should be known to the person  
4 committing the act. Notwithstanding the existence of a  
5 conservatorship pursuant to the provisions of the  
6 Lanterman-Petris-Short Act (Part 1 (commencing with Section  
7 5000) of Division 5 of the Welfare and Institutions Code), the  
8 prosecuting attorney shall prove, as an element of the crime, that  
9 a mental disorder or developmental or physical disability rendered  
10 the alleged victim incapable of giving consent.

11 (2) Where it is accomplished against a person's will by means  
12 of force, violence, duress, menace, or fear of immediate and  
13 unlawful bodily injury on the person or another.

14 (3) Where a person is prevented from resisting by any  
15 intoxicating or anesthetic substance, or any controlled substance,  
16 and this condition was known, or reasonably should have been  
17 known by the accused.

18 (4) Where a person is at the time unconscious of the nature of  
19 the act, and this is known to the accused. As used in this paragraph,  
20 "unconscious of the nature of the act" means incapable of resisting  
21 because the victim meets any one of the following conditions:

22 (A) Was unconscious or asleep.

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

25 (C) 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 (D) 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 (5) Where a person submits under the belief that the person  
33 committing the act is someone *known to the victim* other than the  
34 accused, and this belief is induced by any artifice, pretense, or  
35 concealment practiced by the accused, with intent to induce the  
36 belief.

37 (6) Where the act is accomplished against the victim's will by  
38 threatening to retaliate in the future against the victim or any other  
39 person, and there is a reasonable possibility that the perpetrator  
40 will execute the threat. As used in this paragraph, "threatening to

1 retaliate” means a threat to kidnap or falsely imprison, or to inflict  
2 extreme pain, serious bodily injury, or death.

3 (7) Where the act is accomplished against the victim’s will by  
4 threatening to use the authority of a public official to incarcerate,  
5 arrest, or deport the victim or another, and the victim has a  
6 reasonable belief that the perpetrator is a public official. As used  
7 in this paragraph, “public official” means a person employed by  
8 a governmental agency who has the authority, as part of that  
9 position, to incarcerate, arrest, or deport another. The perpetrator  
10 does not actually have to be a public official.

11 (b) As used in this section, “duress” means a direct or implied  
12 threat of force, violence, danger, or retribution sufficient to coerce  
13 a reasonable person of ordinary susceptibilities to perform an act  
14 which otherwise would not have been performed, or acquiesce in  
15 an act to which one otherwise would not have submitted. The total  
16 circumstances, including the age of the victim, and his or her  
17 relationship to the defendant, are factors to consider in appraising  
18 the existence of duress.

19 (c) As used in this section, “menace” means any threat,  
20 declaration, or act which shows an intention to inflict an injury  
21 upon another.

22 SEC. 2. Section 286 of the Penal Code is amended to read:

23 286. (a) Sodomy is sexual conduct consisting of contact  
24 between the penis of one person and the anus of another person.  
25 Any sexual penetration, however slight, is sufficient to complete  
26 the crime of sodomy.

27 (b) (1) Except as provided in Section 288, any person who  
28 participates in an act of sodomy with another person who is under  
29 18 years of age shall be punished by imprisonment in the state  
30 prison, or in a county jail for not more than one year.

31 (2) Except as provided in Section 288, any person over ~~the age~~  
32 ~~of~~ 21 years *of age* who participates in an act of sodomy with  
33 another person who is under 16 years of age shall be guilty of a  
34 felony.

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

39 (2) (A) Any person who commits an act of sodomy when the  
40 act is accomplished against the victim’s will by means of force,

1 violence, duress, menace, or fear of immediate and unlawful bodily  
2 injury on the victim or another person shall be punished by  
3 imprisonment in the state prison for three, six, or eight years.

4 (B) Any person who commits an act of sodomy with another  
5 person who is under 14 years of age when the act is accomplished  
6 against the victim's will by means of force, violence, duress,  
7 menace, or fear of immediate and unlawful bodily injury on the  
8 victim or another person shall be punished by imprisonment in the  
9 state prison for 9, 11, or 13 years.

10 (C) Any person who commits an act of sodomy with another  
11 person who is a minor 14 years of age or older when the act is  
12 accomplished against the victim's will by means of force, violence,  
13 duress, menace, or fear of immediate and unlawful bodily injury  
14 on the victim or another person shall be punished by imprisonment  
15 in the state prison for 7, 9, or 11 years.

16 (D) This paragraph does not preclude prosecution under Section  
17 269, Section 288.7, or any other provision of law.

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

24 (d) (1) Any person who, while voluntarily acting in concert  
25 with another person, either personally or aiding and abetting that  
26 other person, commits an act of sodomy when the act is  
27 accomplished against the victim's will by means of force or fear  
28 of immediate and unlawful bodily injury on the victim or another  
29 person or where the act is accomplished against the victim's will  
30 by threatening to retaliate in the future against the victim or any  
31 other person, and there is a reasonable possibility that the  
32 perpetrator will execute the threat, shall be punished by  
33 imprisonment in the state prison for five, seven, or nine years.

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

1 (3) Any person who, while voluntarily acting in concert with  
2 another person, either personally or aiding and abetting that other  
3 person, commits an act of sodomy upon a victim who is a minor  
4 14 years of age or older, when the act is accomplished against the  
5 victim's will by means of force or fear of immediate and unlawful  
6 bodily injury on the victim or another person, shall be punished  
7 by imprisonment in the state prison for 7, 9, or 11 years.

8 (4) This subdivision does not preclude prosecution under Section  
9 269, Section 288.7, or any other provision of law.

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

15 (f) Any person who commits an act of sodomy, and the victim  
16 is at the time unconscious of the nature of the act and this is known  
17 to the person committing the act, shall be punished by  
18 imprisonment in the state prison for three, six, or eight years. As  
19 used in this subdivision, "unconscious of the nature of the act"  
20 means incapable of resisting because the victim meets one of the  
21 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 (g) Except as provided in subdivision (h), a person who commits  
33 an act of sodomy, and the victim is at the time incapable, because  
34 of a mental disorder or developmental or physical disability, of  
35 giving legal consent, and this is known or reasonably should be  
36 known to the person committing the act, shall be punished by  
37 imprisonment in the state prison for three, six, or eight years.  
38 Notwithstanding the existence of a conservatorship pursuant to  
39 the Lanterman-Petris-Short Act (Part 1 (commencing with Section  
40 5000) of Division 5 of the Welfare and Institutions Code), the

1 prosecuting attorney shall prove, as an element of the crime, that  
2 a mental disorder or developmental or physical disability rendered  
3 the alleged victim incapable of giving consent.

4 (h) Any person who commits an act of sodomy, and the victim  
5 is at the time incapable, because of a mental disorder or  
6 developmental or physical disability, of giving legal consent, and  
7 this is known or reasonably should be known to the person  
8 committing the act, and both the defendant and the victim are at  
9 the time confined in a state hospital for the care and treatment of  
10 the mentally disordered or in any other public or private facility  
11 for the care and treatment of the mentally disordered approved by  
12 a county mental health director, shall be punished by imprisonment  
13 in the state prison, or in a county jail for not more than one year.  
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 legal consent.

20 (i) Any person who commits an act of sodomy, where the victim  
21 is prevented from resisting by an intoxicating or anesthetic  
22 substance, or any controlled substance, and this condition was  
23 known, or reasonably should have been known by the accused,  
24 shall be punished by imprisonment in the state prison for three,  
25 six, or eight years.

26 (j) Any person who commits an act of sodomy, where the victim  
27 submits under the belief that the person committing the act is  
28 someone *known to the victim* other than the accused, and this belief  
29 is induced by any artifice, pretense, or concealment practiced by  
30 the accused, with intent to induce the belief, shall be punished by  
31 imprisonment in the state prison for three, six, or eight years.

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

38 As used in this subdivision, "public official" means a person  
39 employed by a governmental agency who has the authority, as part

1 of that position, to incarcerate, arrest, or deport another. The  
2 perpetrator does not actually have to be a public official.

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

6 (m) In addition to any punishment imposed under this section,  
7 the judge may assess a fine not to exceed seventy dollars (\$70)  
8 against any person who violates this section, with the proceeds of  
9 this fine to be used in accordance with Section 1463.23. The court,  
10 however, shall take into consideration the defendant’s ability to  
11 pay, and no defendant shall be denied probation because of his or  
12 her inability to pay the fine permitted under this subdivision.

13 SEC. 3. Section 288a of the Penal Code is amended to read:

14 288a. (a) Oral copulation is the act of copulating the mouth  
15 of one person with the sexual organ or anus of another person.

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

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

25 (c) (1) Any person who participates in an act of oral copulation  
26 with another person who is under 14 years of age and more than  
27 10 years younger than he or she shall be punished by imprisonment  
28 in the state prison for three, six, or eight years.

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

34 (B) Any person who commits an act of oral copulation upon a  
35 person who is under 14 years of age, when the act is accomplished  
36 against the victim’s will by means of force, violence, duress,  
37 menace, or fear of immediate and unlawful bodily injury on the  
38 victim or another person, shall be punished by imprisonment in  
39 the state prison for 8, 10, or 12 years.

1 (C) Any person who commits an act of oral copulation upon a  
2 minor who is 14 years of age or older, when the act is accomplished  
3 against the victim's will by means of force, violence, duress,  
4 menace, or fear of immediate and unlawful bodily injury on the  
5 victim or another person, shall be punished by imprisonment in  
6 the state prison for 6, 8, or 10 years.

7 (D) This paragraph does not preclude prosecution under Section  
8 269, Section 288.7, or any other provision of law.

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

15 (d) (1) Any person who, while voluntarily acting in concert  
16 with another person, either personally or by aiding and abetting  
17 that other person, commits an act of oral copulation~~(1)~~ (A) when  
18 the act is accomplished against the victim's will by means of force  
19 or fear of immediate and unlawful bodily injury on the victim or  
20 another person, or~~(2)~~ (B) where the act is accomplished against  
21 the victim's will by threatening to retaliate in the future against  
22 the victim or any other person, and there is a reasonable possibility  
23 that the perpetrator will execute the threat, or~~(3)~~ (C) where the  
24 victim is at the time incapable, because of a mental disorder or  
25 developmental or physical disability, of giving legal consent, and  
26 this is known or reasonably should be known to the person  
27 committing the act, shall be punished by imprisonment in the state  
28 prison for five, seven, or nine years. Notwithstanding the  
29 appointment of a conservator with respect to the victim pursuant  
30 to the provisions of the Lanterman-Petris-Short Act (Part 1  
31 commencing with Section 5000) of Division 5 of the Welfare and  
32 Institutions Code), the prosecuting attorney shall prove, as an  
33 element of the crime described under paragraph (3), that a mental  
34 disorder or developmental or physical disability rendered the  
35 alleged victim incapable of giving legal consent.

36 (2) Any person who, while voluntarily acting in concert with  
37 another person, either personally or aiding and abetting that other  
38 person, commits an act of oral copulation upon a victim who is  
39 under 14 years of age, when the act is accomplished against the  
40 victim's will by means of force or fear of immediate and unlawful

1 bodily injury on the victim or another person, shall be punished  
2 by imprisonment in the state prison for 10, 12, or 14 years.

3 (3) Any person who, while voluntarily acting in concert with  
4 another person, either personally or aiding and abetting that other  
5 person, commits an act of oral copulation upon a victim who is a  
6 minor 14 years of age or older, when the act is accomplished  
7 against the victim's will by means of force or fear of immediate  
8 and unlawful bodily injury on the victim or another person, shall  
9 be punished by imprisonment in the state prison for 8, 10, or 12  
10 years.

11 (4) This paragraph does not preclude prosecution under Section  
12 269, Section 288.7, or any other provision of law.

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

18 (f) Any person who commits an act of oral copulation, and the  
19 victim is at the time unconscious of the nature of the act and this  
20 is known to the person committing the act, shall be punished by  
21 imprisonment in the state prison for a period of three, six, or eight  
22 years. As used in this subdivision, "unconscious of the nature of  
23 the act" means incapable of resisting because the victim meets one  
24 of the following conditions:

25 (1) Was unconscious or asleep.

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

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

31 (4) Was not aware, knowing, perceiving, or cognizant of the  
32 essential characteristics of the act due to the perpetrator's fraudulent  
33 representation that the oral copulation served a professional purpose  
34 when it served no professional purpose.

35 (g) Except as provided in subdivision (h), any person who  
36 commits an act of oral copulation, and the victim is at the time  
37 incapable, because of a mental disorder or developmental or  
38 physical disability, of giving legal consent, and this is known or  
39 reasonably should be known to the person committing the act,  
40 shall be punished by imprisonment in the state prison, for three,

1 six, or eight years. Notwithstanding the existence of a  
2 conservatorship pursuant to the provisions of the  
3 Lanterman-Petris-Short Act (Part 1 (commencing with Section  
4 5000) of Division 5 of the Welfare and Institutions Code), the  
5 prosecuting attorney shall prove, as an element of the crime, that  
6 a mental disorder or developmental or physical disability rendered  
7 the alleged victim incapable of giving consent.

8 (h) Any person who commits an act of oral copulation, and the  
9 victim is at the time incapable, because of a mental disorder or  
10 developmental or physical disability, of giving legal consent, and  
11 this is known or reasonably should be known to the person  
12 committing the act, and both the defendant and the victim are at  
13 the time confined in a state hospital for the care and treatment of  
14 the mentally disordered or in any other public or private facility  
15 for the care and treatment of the mentally disordered approved by  
16 a county mental health director, shall be punished by imprisonment  
17 in the state prison, or in a county jail for a period of not more than  
18 one year. Notwithstanding the existence of a conservatorship  
19 pursuant to the provisions of the Lanterman-Petris-Short Act (Part  
20 1 (commencing with Section 5000) of Division 5 of the Welfare  
21 and Institutions Code), the prosecuting attorney shall prove, as an  
22 element of the crime, that a mental disorder or developmental or  
23 physical disability rendered the alleged victim incapable of giving  
24 legal consent.

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

31 (j) Any person who commits an act of oral copulation, where  
32 the victim submits under the belief that the person committing the  
33 act is someone *known to the victim* other than the accused, and  
34 this belief is induced by any artifice, pretense, or concealment  
35 practiced by the accused, with intent to induce the belief, shall be  
36 punished by imprisonment in the state prison for a period of three,  
37 six, or eight years.

38 (k) Any person who commits an act of oral copulation, where  
39 the act is accomplished against the victim's will by threatening to  
40 use the authority of a public official to incarcerate, arrest, or deport

1 the victim or another, and the victim has a reasonable belief that  
2 the perpetrator is a public official, shall be punished by  
3 imprisonment in the state prison for a period of three, six, or eight  
4 years.

5 As used in this subdivision, “public official” means a person  
6 employed by a governmental agency who has the authority, as part  
7 of that position, to incarcerate, arrest, or deport another. The  
8 perpetrator does not actually have to be a public official.

9 (l) As used in subdivisions (c) and (d), “threatening to retaliate”  
10 means a threat to kidnap or falsely imprison, or to inflict extreme  
11 pain, serious bodily injury, or death.

12 (m) In addition to any punishment imposed under this section,  
13 the judge may assess a fine not to exceed seventy dollars (\$70)  
14 against any person who violates this section, with the proceeds of  
15 this fine to be used in accordance with Section 1463.23. The court  
16 shall, however, take into consideration the defendant’s ability to  
17 pay, and no defendant shall be denied probation because of his or  
18 her inability to pay the fine permitted under this subdivision.

19 SEC. 4. Section 289 of the Penal Code is amended to read:

20 289. (a) (1) (A) Any person who commits an act of sexual  
21 penetration when the act is accomplished against the victim’s will  
22 by means of force, violence, duress, menace, or fear of immediate  
23 and unlawful bodily injury on the victim or another person shall  
24 be punished by imprisonment in the state prison for three, six, or  
25 eight years.

26 (B) Any person who commits an act of sexual penetration upon  
27 a child who is under 14 years of age, when the act is accomplished  
28 against the victim’s will by means of force, violence, duress,  
29 menace, or fear of immediate and unlawful bodily injury on the  
30 victim or another person, shall be punished by imprisonment in  
31 the state prison for 8, 10, or 12 years.

32 (C) Any person who commits an act of sexual penetration upon  
33 a minor who is 14 years of age or older, when the act is  
34 accomplished against the victim’s will by means of force, violence,  
35 duress, menace, or fear of immediate and unlawful bodily injury  
36 on the victim or another person, shall be punished by imprisonment  
37 in the state prison for 6, 8, or 10 years.

38 (D) This paragraph does not preclude prosecution under Section  
39 269, Section 288.7, or any other provision of law.

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

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

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

39 (d) Any person who commits an act of sexual penetration, and  
40 the victim is at the time unconscious of the nature of the act and

1 this is known to the person committing the act or causing the act  
2 to be committed, shall be punished by imprisonment in the state  
3 prison for three, six, or eight years. As used in this subdivision,  
4 “unconscious of the nature of the act” means incapable of resisting  
5 because the victim meets one of the following conditions:

6 (1) Was unconscious or asleep.

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

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

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

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

22 (f) Any person who commits an act of sexual penetration when  
23 the victim submits under the belief that the person committing the  
24 act or causing the act to be committed is someone *known to the*  
25 *victim* other than the accused, and this belief is induced by any  
26 artifice, pretense, or concealment practiced by the accused, with  
27 intent to induce the belief, shall be punished by imprisonment in  
28 the state prison for a period of three, six, or eight years.

29 (g) Any person who commits an act of sexual penetration when  
30 the act is accomplished against the victim’s will by threatening to  
31 use the authority of a public official to incarcerate, arrest, or deport  
32 the victim or another, and the victim has a reasonable belief that  
33 the perpetrator is a public official, shall be punished by  
34 imprisonment in the state prison for a period of three, six, or eight  
35 years.

36 As used in this subdivision, “public official” means a person  
37 employed by a governmental agency who has the authority, as part  
38 of that position, to incarcerate, arrest, or deport another. The  
39 perpetrator does not actually have to be a public official.

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

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

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

14 (k) As used in this section:

15 (1) “Sexual penetration” is the act of causing the penetration,  
16 however slight, of the genital or anal opening of any person or  
17 causing another person to so penetrate the defendant’s or another  
18 person’s genital or anal opening for the purpose of sexual arousal,  
19 gratification, or abuse by any foreign object, substance, instrument,  
20 or device, or by any unknown object.

21 (2) “Foreign object, substance, instrument, or device” shall  
22 include any part of the body, except a sexual organ.

23 (3) “Unknown object” shall include any foreign object,  
24 substance, instrument, or device, or any part of the body, including  
25 a penis, when it is not known whether penetration was by a penis  
26 or by a foreign object, substance, instrument, or device, or by any  
27 other part of the body.

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

31 (m) As used in this section, “victim” includes any person who  
32 the defendant causes to penetrate the genital or anal opening of  
33 the defendant or another person or whose genital or anal opening  
34 is caused to be penetrated by the defendant or another person and  
35 who otherwise qualifies as a victim under the requirements of this  
36 section.

37 SEC. 5. No reimbursement is required by this act pursuant to  
38 Section 6 of Article XIII B of the California Constitution because  
39 the only costs that may be incurred by a local agency or school  
40 district will be incurred because this act creates a new crime or

1 infraction, eliminates a crime or infraction, or changes the penalty  
2 for a crime or infraction, within the meaning of Section 17556 of  
3 the Government Code, or changes the definition of a crime within  
4 the meaning of Section 6 of Article XIII B of the California  
5 Constitution.

6 SEC. 6. This act is an urgency statute necessary for the  
7 immediate preservation of the public peace, health, or safety within  
8 the meaning of Article IV of the Constitution and shall go into  
9 immediate effect. The facts constituting the necessity are:

10 In order to protect the public from the danger of rape by those  
11 who impersonate others, at the earliest possible time, it is necessary  
12 that this act take effect immediately.