

AMENDED IN ASSEMBLY JANUARY 8, 2014
AMENDED IN ASSEMBLY JANUARY 6, 2014
AMENDED IN ASSEMBLY SEPTEMBER 10, 2013
AMENDED IN ASSEMBLY MARCH 21, 2013
CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 1335

Introduced by Assembly Member Maienschein

February 22, 2013

An act to amend Sections ~~264, 264.1, 286, 288a, 288.5, 289, 667.61, and 2933.1~~ *667.61 and 667.9* of the Penal Code, relating to sex offenses.

LEGISLATIVE COUNSEL'S DIGEST

AB 1335, as amended, Maienschein. Sex offenses: disabled victims.

~~(1) Existing law requires that a person who commits rape, or an act of sodomy, oral copulation, or sexual penetration, against a person incapable, because of a mental disorder or developmental or physical disability, of giving legal consent, be punished by imprisonment in the state prison for 3, 6, or 8 years. Existing law also requires that a person who commits sodomy, oral copulation, or sexual penetration, if, at the time of the offense, both the defendant and the victim are confined in a state hospital for the care and treatment of the mentally disordered or in any other public or private facility for the care and treatment of the mentally disordered, be punished by imprisonment in the state prison for 16 months, or 2 or 3 years, or by imprisonment in a county jail for a period of not more than one year.~~

This bill would instead make these crimes punishable by imprisonment in the state prison for 9, 11, or 13 years. By increasing the punishment for these crimes, this bill would impose a state-mandated local program.

~~(2) Under existing law, a defendant who, voluntarily acting in concert with another person, by force or by violence and against the will of the victim, commits an act of rape, spousal rape, or sexual penetration, either personally or by aiding and abetting the other person, is guilty of a crime punishable by imprisonment in the state prison for 5, 7, or 9 years.~~

This bill would make it a crime punishable by imprisonment in the state prison for 10, 12, or 14 years to commit an act of rape, spousal rape, or sexual penetration in concert with another person, either personally or by aiding and abetting the other person, against a person who is incapable, because of a mental disorder or developmental or physical disability, of giving legal consent. By creating a new crime, this bill would impose a state-mandated local program.

~~(3) Under existing law, any person who resides in the same home with a minor child or has recurring access to the child, who over a period of time, not less than 3 months in duration, engages in 3 or more acts of substantial sexual conduct with a child under 14 years of age, is guilty of the offense of continuous sexual abuse of a child, punishable by imprisonment in the state prison for a term of 6, 12, or 16 years.~~

This bill would make any person who resides in the same home with a disabled person or has recurring access to the disabled person, who over a period of time, not less than 3 months in duration, engages in 3 or more acts of substantial sexual conduct with the disabled person, guilty of the crime of continuous sexual abuse of a disabled person, and would make the crime punishable by imprisonment in the state prison for a term of 6, 12, or 16 years. By creating a new crime, this bill would impose a state-mandated local program.

~~(4)~~

(1) Existing law, as amended by Proposition 83, the Sexual Predator Punishment and Control Act (Jessica's Law), approved by the voters at the November 7, 2006, statewide general election, provides that a defendant shall be punished by imprisonment in the state prison for 25 years to life if convicted of *certain crimes, including* rape, sexual penetration, sodomy, oral copulation, continuous sexual abuse of a child, or rape, spousal rape, or sexual penetration in concert, ~~and if, if~~ *certain circumstances were present, including*, among other things, in the commission of that offense, any person kidnapped the victim,

tortured the victim, or committed the offense during the commission of a burglary, as specified. Existing law further provides that a defendant shall be punished by imprisonment in the state prison for 15 years to life if convicted of *certain crimes, including* rape, sexual penetration, sodomy, oral copulation, continuous sexual abuse of a child, or rape, spousal rape, or sexual penetration in concert, ~~and if, if certain circumstances were present, including,~~ among other things, in the commission of that offense any person, except as specified in the provisions above, kidnapped the victim, committed the offense during the commission of a burglary, or used a dangerous or deadly weapon in the commission of the offense, ~~or under other specified circumstances.~~ *offense*. Proposition 83 provides that the Legislature may amend the provisions of the act to expand the scope of their application or increase the punishment or penalties by a statute passed by a majority vote of each house.

This bill would add the crimes of rape, sexual penetration, sodomy, and oral copulation, perpetrated against a person who is incapable, because of a mental disorder or developmental or physical disability, of giving legal consent, to the above provisions. ~~The bill would also add continuous sexual abuse of a disabled person to the above provisions. The bill would apply the above provisions to rape, spousal rape, or sexual penetration in concert, perpetrated against a person who is incapable, because of a mental disorder or developmental or physical disability, of giving legal consent.~~ By applying the above enhancements to these crimes, this bill would impose a state-mandated local program.

(5)

(2) Existing law provides that a defendant shall be punished by imprisonment in the state prison for 25 years to life if convicted of *certain crimes, including* rape, spousal rape or sexual penetration in concert, sexual penetration, sodomy, or oral copulation ~~if, if certain circumstances were present, including,~~ among other things, in the commission of that offense any ~~person;~~ *person* kidnapped the victim, committed the offense during the commission of a burglary, or used a dangerous or deadly weapon in the commission of the offense, or under other specified circumstances, and the crime was committed against a minor 14 years of age or older.

This bill would add the crimes of rape, sexual penetration, sodomy, and oral copulation, perpetrated against a person who is incapable, because of a mental disorder or developmental or physical disability, of giving legal consent, to the above provisions. ~~Under the bill, the~~

above provisions would also apply to rape, spousal rape, or sexual penetration in concert, perpetrated against a person who is incapable, because of a mental disorder or developmental or physical disability, of giving legal consent. By applying the above enhancements to these crimes, this bill would impose a state-mandated local program.

~~(6) Existing law prohibits a person who is convicted of a violent felony offense from accruing more than 15% of worktime credit, as defined, against his or her prison sentence.~~

~~This bill would add the crimes of rape, sexual penetration, sodomy, and oral copulation perpetrated against a person who is incapable, because of a mental disorder or developmental or physical disability, of giving legal consent to the above provisions.~~

(3) Existing law requires that a person who commits certain enumerated crimes, including rape, sodomy, oral copulation, and sexual penetration, against a person who is 65 years of age or older, or against a person who is blind, deaf, developmentally disabled, a paraplegic, or a quadriplegic, or against a person who is under 14 years of age, receive a one-year sentence enhancement and requires that any person having a prior conviction for any of the enumerated offenses receive a 2-year sentence enhancement.

This bill would add to the enumerated list of crimes rape, sodomy, oral copulation, and sexual penetration, perpetrated against a person who is incapable, because of a mental disorder or developmental or physical disability, of giving legal consent. By applying the above enhancements to these crimes, this bill would impose a state-mandated local program.

~~(7)~~

(4) 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.

Vote: majority. 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 264 of the Penal Code is amended to~~
2 read:

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

4 ~~(b) In addition to any punishment imposed under this section~~
5 ~~the judge may assess a fine not to exceed seventy dollars (\$70)~~
6 ~~against any person who violates Section 261 or 262 with the~~
7 ~~proceeds of this fine to be used in accordance with Section 1463.23.~~
8 ~~The court shall, however, take into consideration the defendant's~~
9 ~~ability to pay, and no defendant shall be denied probation because~~
10 ~~of his or her inability to pay the fine permitted under this~~
11 ~~subdivision.~~

12 ~~(c) (1) Any person who commits rape in violation of paragraph~~
13 ~~(2) of subdivision (a) of Section 261 upon a child who is under 14~~
14 ~~years of age shall be punished by imprisonment in the state prison~~
15 ~~for 9, 11, or 13 years.~~

16 ~~(2) Any person who commits rape in violation of paragraph (2)~~
17 ~~of subdivision (a) of Section 261 upon a minor who is 14 years of~~
18 ~~age or older shall be punished by imprisonment in the state prison~~
19 ~~for 7, 9, or 11 years.~~

20 ~~(3) Any person who commits rape in violation of paragraph (1)~~
21 ~~of subdivision (a) of Section 261 shall be punished by~~
22 ~~imprisonment in the state prison for 9, 11, or 13 years.~~

23 ~~(4) This subdivision does not preclude prosecution under Section~~
24 ~~269, Section 288.7, or any other provision of law.~~

25 ~~SEC. 2. Section 264.1 of the Penal Code is amended to read:~~

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

36 ~~(b) (1) If the victim of an offense described in subdivision (a)~~
37 ~~is a child who is under 14 years of age, the defendant shall be~~
38 ~~punished by imprisonment in the state prison for 10, 12, or 14~~
39 ~~years.~~

1 ~~(2) If the victim of an offense described in subdivision (a) is a~~
2 ~~minor who is 14 years of age or older, the defendant shall be~~
3 ~~punished by imprisonment in the state prison for 7, 9, or 11 years.~~

4 ~~(3) This subdivision does not preclude prosecution under Section~~
5 ~~269, Section 288.7, or any other provision of law.~~

6 ~~(e) In any case in which the defendant, voluntarily acting in~~
7 ~~conceit with another person, committed an act described in Section~~
8 ~~261, 262, or 289, either personally or by aiding and abetting the~~
9 ~~other person, that fact shall be charged in the indictment or~~
10 ~~information and if found to be true by the jury, upon a jury trial,~~
11 ~~or if found to be true by the court, upon a court trial, or if admitted~~
12 ~~by the defendant, the defendant shall suffer confinement in the~~
13 ~~state prison for 10, 12, or 14 years if the victim of the offense is~~
14 ~~at the time incapable, because of a mental disorder or~~
15 ~~developmental or physical disability, of giving legal consent, and~~
16 ~~this was known or reasonably should have been known to the~~
17 ~~person committing the act.~~

18 ~~SEC. 3. Section 286 of the Penal Code is amended to read:~~

19 ~~286. (a) Sodomy is sexual conduct consisting of contact~~
20 ~~between the penis of one person and the anus of another person.~~
21 ~~Any sexual penetration, however slight, is sufficient to complete~~
22 ~~the crime of sodomy.~~

23 ~~(b) (1) Except as provided in Section 288, any person who~~
24 ~~participates in an act of sodomy with another person who is under~~
25 ~~18 years of age shall be punished by imprisonment in the state~~
26 ~~prison, or in a county jail for not more than one year.~~

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

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

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

39 ~~(B) Any person who commits an act of sodomy with another~~
40 ~~person who is under 14 years of age when the act is accomplished~~

1 against the victim's will by means of force, violence, duress,
2 menace, or fear of immediate and unlawful bodily injury on the
3 victim or another person shall be punished by imprisonment in the
4 state prison for 9, 11, or 13 years.

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

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

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

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

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

36 (3) 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 sodomy upon a victim who is a minor
39 14 years of age or older, 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 7, 9, or 11 years.~~

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

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

10 ~~(f) Any person who commits an act of sodomy, and the victim~~
11 ~~is at the time unconscious of the nature of the act and this is known~~
12 ~~to the person committing the act, shall be punished by~~
13 ~~imprisonment in the state prison for three, six, or eight years. As~~
14 ~~used in this subdivision, “unconscious of the nature of the act”~~
15 ~~means incapable of resisting because the victim meets one of the~~
16 ~~following conditions:~~

17 ~~(1) Was unconscious or asleep.~~

18 ~~(2) Was not aware, knowing, perceiving, or cognizant that the~~
19 ~~act occurred.~~

20 ~~(3) Was not aware, knowing, perceiving, or cognizant of the~~
21 ~~essential characteristics of the act due to the perpetrator’s fraud in~~
22 ~~fact.~~

23 ~~(4) Was not aware, knowing, perceiving, or cognizant of the~~
24 ~~essential characteristics of the act due to the perpetrator’s fraudulent~~
25 ~~representation that the sexual penetration served a professional~~
26 ~~purpose when it served no professional purpose.~~

27 ~~(g) Except as provided in subdivision (h), a person who commits~~
28 ~~an act of sodomy, and the victim is at the time incapable, because~~
29 ~~of a mental disorder or developmental or physical disability, of~~
30 ~~giving legal consent, and this is known or reasonably should be~~
31 ~~known to the person committing the act, shall be punished by~~
32 ~~imprisonment in the state prison for 9, 11, or 13 years.~~
33 ~~Notwithstanding the existence of a conservatorship pursuant to~~
34 ~~the Lanterman-Petris-Short Act (Part 1 (commencing with Section~~
35 ~~5000) of Division 5 of the Welfare and Institutions Code), the~~
36 ~~prosecuting attorney shall prove, as an element of the crime, that~~
37 ~~a mental disorder or developmental or physical disability rendered~~
38 ~~the alleged victim incapable of giving consent.~~

39 ~~(h) Any person who commits an act of sodomy, and the victim~~
40 ~~is at the time incapable, because of a mental disorder or~~

1 developmental or physical disability, of giving legal consent, and
2 this is known or reasonably should be known to the person
3 committing the act, and both the defendant and the victim are at
4 the time confined in a state hospital for the care and treatment of
5 the mentally disordered or in any other public or private facility
6 for the care and treatment of the mentally disordered approved by
7 a county mental health director, shall be punished by imprisonment
8 in the state prison for 9, 11, or 13 years. Notwithstanding the
9 existence of a conservatorship pursuant to the
10 Lanterman-Petris-Short Act (Part 1 (commencing with Section
11 5000) of Division 5 of the Welfare and Institutions Code), the
12 prosecuting attorney shall prove, as an element of the crime, that
13 a mental disorder or developmental or physical disability rendered
14 the alleged victim incapable of giving legal consent.

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

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

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

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

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

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

8 SEC. 4. Section 288a of the Penal Code is amended to read:

9 288a. (a) Oral copulation is the act of copulating the mouth
10 of one person with the sexual organ or anus of another person.

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

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

19 (c) (1) Any person who participates in an act of oral copulation
20 with another person who is under 14 years of age and more than
21 10 years younger than he or she shall be punished by imprisonment
22 in the state prison for three, six, or eight years.

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

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

34 (C) Any person who commits an act of oral copulation upon a
35 minor who is 14 years of age or older, 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 6, 8, or 10 years.

1 ~~(D) This paragraph does not preclude prosecution under Section~~
2 ~~269, Section 288.7, or any other provision of law.~~

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

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

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

37 ~~(3) Any person who, while voluntarily acting in concert with~~
38 ~~another person, either personally or aiding and abetting that other~~
39 ~~person, commits an act of oral copulation upon a victim who is a~~
40 ~~minor 14 years of age or older, when the act is accomplished~~

1 against the victim's will by means of force or fear of immediate
2 and unlawful bodily injury on the victim or another person, shall
3 be punished by imprisonment in the state prison for 8, 10, or 12
4 years.

5 ~~(4) This paragraph does not preclude prosecution under Section~~
6 ~~269, Section 288.7, or any other provision of law.~~

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

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

19 ~~(1) Was unconscious or asleep.~~

20 ~~(2) Was not aware, knowing, perceiving, or cognizant that the~~
21 ~~act occurred.~~

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

25 ~~(4) Was not aware, knowing, perceiving, or cognizant of the~~
26 ~~essential characteristics of the act due to the perpetrator's fraudulent~~
27 ~~representation that the oral copulation served a professional purpose~~
28 ~~when it served no professional purpose.~~

29 ~~(g) Except as provided in subdivision (h), any person who~~
30 ~~commits an act of oral copulation, and the victim is at the time~~
31 ~~incapable, because of a mental disorder or developmental or~~
32 ~~physical disability, of giving legal consent, and this is known or~~
33 ~~reasonably should be known to the person committing the act,~~
34 ~~shall be punished by imprisonment in the state prison for 9, 11, or~~
35 ~~13 years. Notwithstanding the existence of a conservatorship~~
36 ~~pursuant to the provisions of the Lanterman-Petris-Short Act (Part~~
37 ~~1 (commencing with Section 5000) of Division 5 of the Welfare~~
38 ~~and Institutions Code), the prosecuting attorney shall prove, as an~~
39 ~~element of the crime, that a mental disorder or developmental or~~

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

3 ~~(h) Any person who commits an act of oral copulation, and the~~
4 ~~victim is at the time incapable, because of a mental disorder or~~
5 ~~developmental or physical disability, of giving legal consent, and~~
6 ~~this is known or reasonably should be known to the person~~
7 ~~committing the act, and both the defendant and the victim are at~~
8 ~~the time confined in a state hospital for the care and treatment of~~
9 ~~the mentally disordered or in any other public or private facility~~
10 ~~for the care and treatment of the mentally disordered approved by~~
11 ~~a county mental health director, shall be punished by imprisonment~~
12 ~~in the state prison for 9, 11, or 13 years. Notwithstanding the~~
13 ~~existence of a conservatorship pursuant to the provisions of the~~
14 ~~Lanterman-Petris-Short Act (Part 1 (commencing with Section~~
15 ~~5000) of Division 5 of the Welfare and Institutions Code), the~~
16 ~~prosecuting attorney shall prove, as an element of the crime, that~~
17 ~~a mental disorder or developmental or physical disability rendered~~
18 ~~the alleged victim incapable of giving legal consent.~~

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

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

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

39 ~~As used in this subdivision, "public official" means a person~~
40 ~~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 to 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 shall, however, 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. 5. Section 288.5 of the Penal Code is amended to read:

14 288.5. (a) Any person who either resides in the same home
15 with the minor child or has recurring access to the child, who over
16 a period of time, not less than three months in duration, engages
17 in three or more acts of substantial sexual conduct with a child
18 under 14 years of age at the time of the commission of the offense,
19 as defined in subdivision (b) of Section 1203.066, or three or more
20 acts of lewd or lascivious conduct, as defined in Section 288, with
21 a child under 14 years of age at the time of the commission of the
22 offense is guilty of the offense of continuous sexual abuse of a
23 child and shall be punished by imprisonment in the state prison
24 for a term of 6, 12, or 16 years.

25 (b) To convict under this section the trier of fact, if a jury, need
26 unanimously agree only that the requisite number of acts occurred
27 not on which acts constitute the requisite number.

28 (c) No other act of substantial sexual conduct, as defined in
29 subdivision (b) of Section 1203.066, with a child under 14 years
30 of age at the time of the commission of the offenses, or lewd and
31 lascivious acts, as defined in Section 288, involving the same
32 victim may be charged in the same proceeding with a charge under
33 this section unless the other charged offense occurred outside the
34 time period charged under this section or the other offense is
35 charged in the alternative. A defendant may be charged with only
36 one count under this section unless more than one victim is
37 involved in which case a separate count may be charged for each
38 victim.

39 (d) (1) Any person who either resides in the same home with
40 a disabled person or has recurring access to a disabled person,

1 who, over a period of time, not less than three months in duration,
2 engages in three or more acts of substantial sexual conduct with
3 the disabled person, as defined in subdivision (b) of Section
4 1203.066, is guilty of the offense of continuous sexual abuse of a
5 disabled person and shall be punished by imprisonment in the state
6 prison for a term of 6, 12, or 16 years.

7 (2) As used in this subdivision, “disabled person” means a
8 person who, at the time of the offense, is incapable, because of a
9 mental disorder or developmental or physical disability, of giving
10 legal consent, and this was known or reasonably should have been
11 known to the person committing the act.

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

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

19 (B) Any person who commits an act of sexual penetration upon
20 a child 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
24 the state prison for 8, 10, or 12 years.

25 (C) Any person who commits an act of sexual penetration upon
26 a minor who is 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 6, 8, or 10 years.

31 (D) This paragraph does not preclude prosecution under Section
32 269, Section 288.7, or any other provision of law.

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

39 (b) Except as provided in subdivision (c), any person who
40 commits an act of sexual penetration, and the victim is at the time

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

13 (e) Any person who commits an act of sexual penetration, and
 14 the victim is at the time incapable, because of a mental disorder
 15 or developmental or physical disability, of giving legal consent,
 16 and this is known or reasonably should be known to the person
 17 committing the act or causing the act to be committed and both
 18 the defendant and the victim are at the time confined in a state
 19 hospital for the care and treatment of the mentally disordered or
 20 in any other public or private facility for the care and treatment of
 21 the mentally disordered approved by a county mental health
 22 director, shall be punished by imprisonment in the state prison for
 23 9, 11, or 13 years. Notwithstanding the existence of a
 24 conservatorship pursuant to the provisions of the
 25 Lanterman-Petris-Short Act (Part 1 (commencing with Section
 26 5000) of Division 5 of the Welfare and Institutions Code), the
 27 prosecuting attorney shall prove, as an element of the crime, that
 28 a mental disorder or developmental or physical disability rendered
 29 the alleged victim incapable of giving legal consent.

30 (d) Any person who commits an act of sexual penetration, and
 31 the victim is at the time unconscious of the nature of the act and
 32 this is known to the person committing the act or causing the act
 33 to be committed, shall be punished by imprisonment in the state
 34 prison for three, six, or eight years. As used in this subdivision,
 35 "unconscious of the nature of the act" means incapable of resisting
 36 because the victim meets one of the 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 ~~(e) Any person who commits an act of sexual penetration when~~
9 ~~the victim is prevented from resisting by any intoxicating or~~
10 ~~anesthetic substance, or any controlled substance, and this condition~~
11 ~~was known, or reasonably should have been known by the accused,~~
12 ~~shall be punished by imprisonment in the state prison for a period~~
13 ~~of three, six, or eight years.~~

14 ~~(f) Any person who commits an act of sexual penetration when~~
15 ~~the victim submits under the belief that the person committing the~~
16 ~~act or causing the act to be committed is someone known to the~~
17 ~~victim other than the accused, and this belief is induced by any~~
18 ~~artifice, pretense, or concealment practiced by the accused, with~~
19 ~~intent to induce the belief, shall be punished by imprisonment in~~
20 ~~the state prison for a period of three, six, or eight years.~~

21 ~~(g) Any person who commits an act of sexual penetration when~~
22 ~~the act is accomplished against the victim's will by threatening to~~
23 ~~use the authority of a public official to incarcerate, arrest, or deport~~
24 ~~the victim or another, and the victim has a reasonable belief that~~
25 ~~the perpetrator is a public official, shall be punished by~~
26 ~~imprisonment in the state prison for a period of three, six, or eight~~
27 ~~years.~~

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

32 ~~(h) Except as provided in Section 288, any person who~~
33 ~~participates in an act of sexual penetration with another person~~
34 ~~who is under 18 years of age 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.~~

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

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

5 ~~(k) As used in this section:~~

6 ~~(1) “Sexual penetration” is the act of causing the penetration,~~
7 ~~however slight, of the genital or anal opening of any person or~~
8 ~~causing another person to so penetrate the defendant’s or another~~
9 ~~person’s genital or anal opening for the purpose of sexual arousal,~~
10 ~~gratification, or abuse by any foreign object, substance, instrument,~~
11 ~~or device, or by any unknown object.~~

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

14 ~~(3) “Unknown object” shall include any foreign object,~~
15 ~~substance, instrument, or device, or any part of the body, including~~
16 ~~a penis, when it is not known whether penetration was by a penis~~
17 ~~or by a foreign object, substance, instrument, or device, or by any~~
18 ~~other part of the body.~~

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

22 ~~(m) As used in this section, “victim” includes any person who~~
23 ~~the defendant causes to penetrate the genital or anal opening of~~
24 ~~the defendant or another person or whose genital or anal opening~~
25 ~~is caused to be penetrated by the defendant or another person and~~
26 ~~who otherwise qualifies as a victim under the requirements of this~~
27 ~~section.~~

28 ~~SEC. 7.~~

29 ~~SECTION 1.~~ Section 667.61 of the Penal Code is amended to
30 read:

31 667.61. (a) Except as provided in subdivision (j), (l), or (m),
32 any person who is convicted of an offense specified in subdivision
33 (c) under one or more of the circumstances specified in subdivision
34 (d) or under two or more of the circumstances specified in
35 subdivision (e) shall be punished by imprisonment in the state
36 prison for 25 years to life.

37 (b) Except as provided in subdivision (a), (j), (l), or (m), any
38 person who is convicted of an offense specified in subdivision (c)
39 under one of the circumstances specified in subdivision (e) shall

1 be punished by imprisonment in the state prison for 15 years to
2 life.

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

4 (1) Rape, in violation of paragraph (1), (2), or (6) of subdivision
5 (a) of Section 261.

6 (2) Spousal rape, in violation of paragraph (1) or (4) of
7 subdivision (a) of Section 262.

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

10 (4) Lewd or lascivious act, in violation of subdivision (b) of
11 Section 288.

12 (5) Sexual penetration, in violation of subdivision ~~(a), (b), or~~
13 ~~(c)~~ (a) or (b) of Section 289.

14 (6) Sodomy, in violation of paragraph (2) or (3) of subdivision
15 (c), or subdivision ~~(d), (g), or (h)~~ (d) or (g) of Section 286.

16 (7) Oral copulation, in violation of paragraph (2) or (3) of
17 subdivision (c), or subdivision ~~(d), (g), or (h)~~ (d) or (g) of Section
18 288a.

19 (8) Lewd or lascivious act, in violation of subdivision (a) of
20 Section 288.

21 (9) Continuous sexual abuse of a child ~~or continuous sexual~~
22 ~~abuse of a disabled person~~, in violation of Section 288.5.

23 (d) The following circumstances shall apply to the offenses
24 specified in subdivision (c):

25 (1) The defendant has been previously convicted of an offense
26 specified in subdivision (c), including an offense committed in
27 another jurisdiction that includes all of the elements of an offense
28 specified in subdivision (c).

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

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

36 (4) The defendant committed the present offense during the
37 commission of a burglary of the first degree, as defined in
38 subdivision (a) of Section 460, with intent to commit an offense
39 specified in subdivision (c).

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

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

9 (7) The defendant personally inflicted bodily harm on the victim
10 who was under 14 years of age.

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

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

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

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

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

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

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

30 (7) The defendant committed the present offense in violation
31 of Section 264.1, subdivision (d) of Section 286, or subdivision
32 (d) of Section 288a, and, in the commission of that offense, any
33 person committed any act described in paragraph (1), (2), (3), (5),
34 or (6) of this subdivision or paragraph (6) of subdivision (d).

35 (f) If only the minimum number of circumstances specified in
36 subdivision (d) or (e) that are required for the punishment provided
37 in subdivision (a), (b), (j), (l), or (m) to apply have been pled and
38 proved, that circumstance or those circumstances shall be used as
39 the basis for imposing the term provided in subdivision (a), (b),
40 (j), (l), or (m) whichever is greater, rather than being used to impose

1 the punishment authorized under any other provision of law, unless
2 another provision of law provides for a greater penalty or the
3 punishment under another provision of law can be imposed in
4 addition to the punishment provided by this section. However, if
5 any additional circumstance or circumstances specified in
6 subdivision (d) or (e) have been pled and proved, the minimum
7 number of circumstances shall be used as the basis for imposing
8 the term provided in subdivision (a), (j), or (l) and any other
9 additional circumstance or circumstances shall be used to impose
10 any punishment or enhancement authorized under any other
11 provision of law.

12 (g) Notwithstanding Section 1385 or any other provision of law,
13 the court shall not strike any allegation, admission, or finding of
14 any of the circumstances specified in subdivision (d) or (e) for any
15 person who is subject to punishment under this section.

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

20 (i) For any offense specified in paragraphs (1) to (7), inclusive,
21 of subdivision (c), or in paragraphs (1) to (6), inclusive, of
22 subdivision (n), the court shall impose a consecutive sentence for
23 each offense that results in a conviction under this section if the
24 crimes involve separate victims or involve the same victim on
25 separate occasions as defined in subdivision (d) of Section 667.6.

26 (j) (1) Any person who is convicted of an offense specified in
27 subdivision (c), with the exception of a violation of subdivision
28 (a) of Section 288, upon a victim who is a child under 14 years of
29 age under one or more of the circumstances specified in subdivision
30 (d) or under two or more of the circumstances specified in
31 subdivision (e), shall be punished by imprisonment in the state
32 prison for life without the possibility of parole. Where the person
33 was under 18 years of age at the time of the offense, the person
34 shall be punished by imprisonment in the state prison for 25 years
35 to life.

36 (2) Any person who is convicted of an offense specified in
37 subdivision (c) under one of the circumstances specified in
38 subdivision (e), upon a victim who is a child under 14 years of
39 age, shall be punished by imprisonment in the state prison for 25
40 years to life.

1 (k) As used in this section, “bodily harm” means any substantial
 2 physical injury resulting from the use of force that is more than
 3 the force necessary to commit an offense specified in subdivision
 4 (c).

5 (l) Any person who is convicted of an offense specified in
 6 subdivision (n) 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), upon a victim who is a minor 14 years
 9 of age or older shall be punished by imprisonment in the state
 10 prison for life without the possibility of parole. If the person who
 11 was convicted was under 18 years of age at the time of the offense,
 12 he or she shall be punished by imprisonment in the state prison
 13 for 25 years to life.

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

18 (n) Subdivisions (l) and (m) shall apply to any of the following
 19 offenses:

20 (1) Rape, in violation of paragraph (1) or (2) of subdivision (a)
 21 of Section 261.

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

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

26 (4) Sexual penetration, in violation of paragraph (1) of
 27 subdivision (a) or subdivision (b) ~~or (e)~~ of Section 289.

28 (5) Sodomy, in violation of paragraph (2) of subdivision (c) of
 29 Section 286, or in violation of subdivision ~~(d), (g), or (h)~~ (d) or
 30 (g) of Section 286.

31 (6) Oral copulation, in violation of paragraph (2) of subdivision
 32 (c) of Section 288a, or in violation of subdivision ~~(d), (g), or (h)~~
 33 (d) or (g) of Section 288a.

34 (o) The penalties provided in this section shall apply only if the
 35 existence of any circumstance specified in subdivision (d) or (e)
 36 is alleged in the accusatory pleading pursuant to this section, and
 37 is either admitted by the defendant in open court or found to be
 38 true by the trier of fact.

39 ~~SEC. 8. Section 2933.1 of the Penal Code is amended to read:~~

1 ~~2933.1. (a) Notwithstanding any other law, any person who~~
 2 ~~is convicted of a felony offense listed in subdivision (c) of Section~~
 3 ~~667.5 or subdivision (c) of this section shall accrue no more than~~
 4 ~~15 percent of worktime credit, as defined in Section 2933.~~

5 ~~(b) The 15-percent limitation provided in subdivision (a) shall~~
 6 ~~apply whether the defendant is sentenced under Chapter 4.5~~
 7 ~~(commencing with Section 1170) of Title 7 of Part 2 or sentenced~~
 8 ~~under some other law. However, nothing in subdivision (a) shall~~
 9 ~~affect the requirement of any statute that the defendant serve a~~
 10 ~~specified period of time prior to minimum parole eligibility, nor~~
 11 ~~shall any offender otherwise statutorily ineligible for credit be~~
 12 ~~eligible for credit pursuant to this section.~~

13 ~~(c) Notwithstanding Section 4019 or any other provision of law,~~
 14 ~~the maximum credit that may be earned against a period of~~
 15 ~~confinement in, or commitment to, a county jail, industrial farm,~~
 16 ~~or road camp, or a city jail, industrial farm, or road camp, following~~
 17 ~~arrest and prior to placement in the custody of the Director of~~
 18 ~~Corrections, shall not exceed 15 percent of the actual period of~~
 19 ~~confinement for any person specified in subdivision (a).~~

20 ~~(d) This section shall only apply to offenses listed in subdivision~~
 21 ~~(a) that are committed on or after the date on which this section~~
 22 ~~becomes operative.~~

23 ~~(e) This section applies to the following offenses:~~

24 ~~(1) Rape in violation of paragraph (1) of subdivision (a) of~~
 25 ~~Section 261.~~

26 ~~(2) Sodomy in violation of subdivision (g) or (h) of Section 286.~~

27 ~~(3) Oral copulation in violation of subdivision (g) or (h) of~~
 28 ~~Section 288a.~~

29 ~~(4) Sexual penetration in violation of subdivision (b) or (c) of~~
 30 ~~Section 289.~~

31 ~~SEC. 2. Section 667.9 of the Penal Code is amended to read:~~

32 ~~667.9. (a) Any person who commits one or more of the crimes~~
 33 ~~specified in subdivision (c) against a person who is 65 years of~~
 34 ~~age or older, or against a person who is blind, deaf,~~
 35 ~~developmentally disabled, a paraplegic, or a quadriplegic, or~~
 36 ~~against a person who is under the age of 14 years, and that~~
 37 ~~disability or condition is known or reasonably should be known~~
 38 ~~to the person committing the crime, shall receive a one-year~~
 39 ~~enhancement for each violation.~~

- 1 (b) Any person who commits a violation of subdivision (a) and
2 who has a prior conviction for any of the offenses specified in
3 subdivision (c), shall receive a two-year enhancement for each
4 violation in addition to the sentence provided under Section 667.
- 5 (c) Subdivisions (a) and (b) apply to the following crimes:
- 6 (1) Mayhem, in violation of Section 203 or 205.
7 (2) Kidnapping, in violation of Section 207, 209, or 209.5.
8 (3) Robbery, in violation of Section 211.
9 (4) Carjacking, in violation of Section 215.
10 (5) Rape, in violation of paragraph ~~(2)~~ (1), (2), or (6) of
11 subdivision (a) of Section 261.
12 (6) Spousal rape, in violation of paragraph (1) or (4) of
13 subdivision (a) of Section 262.
14 (7) Rape, spousal rape, or sexual penetration in concert, in
15 violation of Section 264.1.
16 (8) Sodomy, in violation of paragraph (2) or (3) of subdivision
17 (c), or subdivision ~~(d)~~, (d) or (g), of Section 286.
18 (9) Oral copulation, in violation of paragraph (2) or (3) of
19 subdivision (c), or subdivision ~~(d)~~, (d) or (g), of Section 288a.
20 (10) Sexual penetration, in violation of subdivision (a) or (b)
21 of Section 289.
22 (11) Burglary of the first degree, as defined in Section 460, in
23 violation of Section 459.
- 24 (d) As used in this section, “developmentally disabled” means
25 a severe, chronic disability of a person, which is all of the
26 following:
- 27 (1) Attributable to a mental or physical impairment or a
28 combination of mental and physical impairments.
29 (2) Likely to continue indefinitely.
30 (3) Results in substantial functional limitation in three or more
31 of the following areas of life activity:
32 (A) Self-care.
33 (B) Receptive and expressive language.
34 (C) Learning.
35 (D) Mobility.
36 (E) Self-direction.
37 (F) Capacity for independent living.
38 (G) Economic self-sufficiency.

1 ~~SEC. 9.~~

2 *SEC. 3.* No reimbursement is required by this act pursuant to
3 Section 6 of Article XIII B of the California Constitution because
4 the only costs that may be incurred by a local agency or school
5 district will be incurred because this act creates a new crime or
6 infraction, eliminates a crime or infraction, or changes the penalty
7 for a crime or infraction, within the meaning of Section 17556 of
8 the Government Code, or changes the definition of a crime within
9 the meaning of Section 6 of Article XIII B of the California
10 Constitution.

O