

AMENDED IN ASSEMBLY JUNE 12, 2013

AMENDED IN SENATE APRIL 16, 2013

AMENDED IN SENATE FEBRUARY 14, 2013

SENATE BILL

No. 59

Introduced by Senator Evans

(Principal coauthors: Senators Hill and Steinberg)

(Coauthors: Senators Beall, Block, Cannella, Corbett, De León, DeSaulnier, Fuller, *Gaines*, Galgiani, Hancock, Jackson, Lara, Leno, Liu, *Nielsen*, *Padilla*, Pavley, and Wolk)

(Coauthors: Assembly Members Brown, Garcia, Maienschein, and ~~Quirk-Silva~~ V. Manuel Pérez, *Quirk-Silva*, and Ting)

January 7, 2013

An act to amend Sections 261, 286, 288a, and 289 of, ~~and to add Section 261.1 to~~, the Penal Code, relating to crimes, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 59, as amended, Evans. Crimes: sex crimes.

Existing law provides various circumstances that constitute rape, including an act of sexual intercourse 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. 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 individual submits under the belief that the individual committing the act is ~~the victim’s sexual partner. This bill would define sexual partner to include any individual with who the victim has had consensual sexual contact, as defined~~ *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:
 6 (1) Where a person is incapable, because of a mental disorder
 7 or developmental or physical disability, of giving legal consent,
 8 and this is known or reasonably should be known to the person
 9 committing the act. Notwithstanding the existence of a
 10 conservatorship pursuant to the provisions of the
 11 Lanterman-Petris-Short Act (Part 1 (commencing with Section
 12 5000) of Division 5 of the Welfare and Institutions Code), the
 13 prosecuting attorney shall prove, as an element of the crime, that
 14 a mental disorder or developmental or physical disability rendered
 15 the alleged victim incapable of giving consent.

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

4 (3) Where a person is prevented from resisting by any
5 intoxicating or anesthetic substance, or any controlled substance,
6 and this condition was known, or reasonably should have been
7 known by the accused.

8 (4) Where a person is at the time unconscious of the nature of
9 the act, and this is known to the accused. As used in this paragraph,
10 “unconscious of the nature of the act” means incapable of resisting
11 because the victim meets one of the following conditions:

12 (A) Was unconscious or asleep.

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

15 (C) Was not aware, knowing, perceiving, or cognizant of the
16 essential characteristics of the act due to the perpetrator’s fraud in
17 fact.

18 (D) Was not aware, knowing, perceiving, or cognizant of the
19 essential characteristics of the act due to the perpetrator’s fraudulent
20 representation that the sexual penetration served a professional
21 purpose when it served no professional purpose.

22 (5) Where a person submits under the belief that the person
23 committing the act is ~~the victim’s sexual partner, as defined in~~
24 ~~Section 261.1, someone known to the victim other than the accused~~
25 and this belief is induced by any artifice, pretense, or concealment
26 practiced by the accused, with intent to induce the belief.

27 (6) Where the act is accomplished against the victim’s will by
28 threatening to retaliate in the future against the victim or any other
29 person, and there is a reasonable possibility that the perpetrator
30 will execute the threat. As used in this paragraph, “threatening to
31 retaliate” means a threat to kidnap or falsely imprison, or to inflict
32 extreme pain, serious bodily injury, or death.

33 (7) Where the act is accomplished against the victim’s will by
34 threatening to use the authority of a public official to incarcerate,
35 arrest, or deport the victim or another, and the victim has a
36 reasonable belief that the perpetrator is a public official. As used
37 in this paragraph, “public official” means a person employed by
38 a governmental agency who has the authority, as part of that
39 position, to incarcerate, arrest, or deport another. The perpetrator
40 does not actually have to be a public official.

1 (b) As used in this section, “duress” means a direct or implied
 2 threat of force, violence, danger, or retribution sufficient to coerce
 3 a reasonable person of ordinary susceptibilities to perform an act
 4 which otherwise would not have been performed, or acquiesce in
 5 an act to which one otherwise would not have submitted. The total
 6 circumstances, including the age of the victim, and his or her
 7 relationship to the defendant, are factors to consider in appraising
 8 the existence of duress.

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

12 ~~SEC. 2. Section 261.1 is added to the Penal Code, to read:~~

13 ~~261.1. “Sexual partner” means an individual with who the~~
 14 ~~victim has had consensual sexual contact, including oral copulation,~~
 15 ~~sodomy, sexual penetration, or the touching of an intimate part of~~
 16 ~~another person as defined in paragraph (1) of subdivision (g) of~~
 17 ~~Section 243.4.~~

18 ~~SEC. 3.~~

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

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

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

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

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

36 (2) (A) Any person who commits an act of sodomy when the
 37 act is accomplished against the victim’s will by means of force,
 38 violence, duress, menace, 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 three, six, or eight years.

1 (B) Any person who commits an act of sodomy with another
2 person who is under 14 years of age 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 the
6 state prison for 9, 11, or 13 years.

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

13 (D) This paragraph does not preclude prosecution under Section
14 269, Section 288.7, or any other provision of law.

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

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

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

38 (3) Any person who, while voluntarily acting in concert with
39 another person, either personally or aiding and abetting that other
40 person, commits an act of sodomy upon a victim who is a minor

1 14 years of age or older, when the act is accomplished against the
2 victim's will by means of force or fear of immediate and unlawful
3 bodily injury on the victim or another person, shall be punished
4 by imprisonment in the state prison for 7, 9, or 11 years.

5 (4) This subdivision 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 sodomy with any
8 person of any age while confined in any state prison, as defined
9 in Section 4504, or in any local detention facility, as defined in
10 Section 6031.4, shall be punished by imprisonment in the state
11 prison, or in a county jail for not more than one year.

12 (f) Any person who commits an act of sodomy, and the victim
13 is at the time unconscious of the nature of the act and this is known
14 to the person committing the act, shall be punished by
15 imprisonment in the state prison for three, six, or eight years. As
16 used in this subdivision, "unconscious of the nature of the act"
17 means incapable of resisting because the victim meets one of the
18 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 sexual penetration served a professional
28 purpose when it served no professional purpose.

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

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

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

23 (j) Any person who commits an act of sodomy, where the victim
24 submits under the belief that the person committing the act is ~~the~~
25 ~~victim's sexual partner, as defined in Section 261.1~~ *someone known*
26 *to the victim other than the accused*, and this belief is induced by
27 any artifice, pretense, or concealment practiced by the accused,
28 with intent to induce the belief, shall be punished by imprisonment
29 in the state prison for three, six, or eight years.

30 (k) Any person who commits an act of sodomy, where the act
31 is accomplished against the victim's will by threatening to use the
32 authority of a public official to incarcerate, arrest, or deport the
33 victim or another, and the victim has a reasonable belief that the
34 perpetrator is a public official, shall be punished by imprisonment
35 in the state prison for three, six, or eight 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 (l) As used in subdivisions (c) and (d), “threatening to retaliate”
2 means a threat to kidnap or falsely imprison, or inflict extreme
3 pain, serious bodily injury, or death.

4 (m) 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 this section, with the proceeds of
7 this fine to be used in accordance with Section 1463.23. The court,
8 however, shall take into consideration the defendant’s ability to
9 pay, and no defendant shall be denied probation because of his or
10 her inability to pay the fine permitted under this subdivision.

11 ~~SEC. 4.~~

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

13 288a. (a) Oral copulation is the act of copulating the mouth
14 of one person with the sexual organ or anus of another person.

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

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

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

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

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

39 (C) Any person who commits an act of oral copulation upon a
40 minor who is 14 years of age or older, 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
4 the state prison for 6, 8, or 10 years.

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

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

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

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 oral copulation upon a victim who is
37 under 14 years of age, when the act is accomplished against the
38 victim’s will by means of force or fear of immediate and unlawful
39 bodily injury on the victim or another person, shall be punished
40 by 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 oral copulation upon a victim who is a
4 minor 14 years of age or older, when the act is accomplished
5 against the victim's will by means of force or fear of immediate
6 and unlawful bodily injury on the victim or another person, shall
7 be punished by imprisonment in the state prison for 8, 10, or 12
8 years.

9 (4) This paragraph does not preclude prosecution under Section
10 269, Section 288.7, or any other provision of law.

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

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

23 (1) Was unconscious or asleep.

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

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

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

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

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

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

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

29 (j) Any person who commits an act of oral copulation, where
30 the victim submits under the belief that the person committing the
31 act is ~~the victim's sexual partner, as defined in Section 261.1~~
32 *someone known to the victim other than the accused*, and this belief
33 is induced by any artifice, pretense, or concealment practiced by
34 the accused, with intent to induce the belief, shall be punished by
35 imprisonment in the state prison for a period of three, six, or eight
36 years.

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

1 the perpetrator is a public official, shall be punished by
2 imprisonment in the state prison for a period of three, six, or eight
3 years.

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

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

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

18 ~~SEC. 5.~~

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 ~~the victim’s sexual partner,~~
25 ~~as defined in Section 261.1~~ *someone known to the victim other*
26 *than the accused*, and this belief is induced by any artifice,
27 pretense, or concealment practiced by the accused, with intent to
28 induce the belief, shall be punished by imprisonment in the state
29 prison for a period of three, six, or eight years.

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

37 As used in this subdivision, “public official” means a person
38 employed by a governmental agency who has the authority, as part
39 of that position, to incarcerate, arrest, or deport another. The
40 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 of age who participates in an act of sexual penetration
8 with another person who is under 16 years of age shall be guilty
9 of a 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. 6.~~

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

1 district will be incurred because this act creates a new crime or
2 infraction, eliminates a crime or infraction, or changes the penalty
3 for a crime or infraction, within the meaning of Section 17556 of
4 the Government Code, or changes the definition of a crime within
5 the meaning of Section 6 of Article XIII B of the California
6 Constitution.

7 ~~SEC. 7.~~

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

12 In order to protect the public safety by minimizing the threat
13 posed by sexual predators at the earliest possible time, it is
14 necessary that this act take effect immediately.

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