

AMENDED IN ASSEMBLY JULY 3, 2013

AMENDED IN ASSEMBLY JUNE 12, 2013

AMENDED IN SENATE APRIL 16, 2013

AMENDED IN SENATE FEBRUARY 14, 2013

**SENATE BILL**

**No. 59**

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**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,  
V. Manuel Pérez, Quirk-Silva, and Ting)**

January 7, 2013

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An act to amend Sections ~~261, 286, 288a, 288a~~ and 289 of 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, 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,~~ *copulation* and sexual penetration occur where the individual submits under the belief that the individual committing the act is someone known to the victim other than the accused.

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

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

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

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

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

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

1     ~~SECTION 1.—Section 261 of the Penal Code is amended to~~  
 2     ~~read:~~  
 3     ~~261. (a) Rape is an act of sexual intercourse accomplished~~  
 4     ~~with a person not the spouse of the perpetrator, under any of the~~  
 5     ~~following circumstances:~~  
 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 someone known to the victim other than the~~  
24 ~~accused and this belief is induced by any artifice, pretense, or~~  
25 ~~concealment practiced by the accused, with intent to induce the~~  
26 ~~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 (e) ~~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 286 of the Penal Code is amended to read:~~

13 ~~286. (a) Sodomy is sexual conduct consisting of contact~~  
14 ~~between the penis of one person and the anus of another person.~~  
15 ~~Any sexual penetration, however slight, is sufficient to complete~~  
16 ~~the crime of sodomy.~~

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

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

24 ~~(c) (1) Any person who participates in an act of sodomy with~~  
25 ~~another person who is under 14 years of age and more than 10~~  
26 ~~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 sodomy when the~~  
29 ~~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 sodomy with another~~  
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 the~~  
38 ~~state prison for 9, 11, or 13 years.~~

39 ~~(C) Any person who commits an act of sodomy with another~~  
40 ~~person who is a minor 14 years of age or older when the act is~~

1 accomplished against the victim's will by means of force, violence,  
2 duress, menace, or fear of immediate and unlawful bodily injury  
3 on the victim or another person shall be punished by imprisonment  
4 in the state prison for 7, 9, or 11 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 sodomy where the act  
8 is accomplished against the victim's will by threatening to retaliate  
9 in the future against the victim or any other person, and there is a  
10 reasonable possibility that the perpetrator will execute the threat,  
11 shall be punished by imprisonment in the state prison for three,  
12 six, or eight years.

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

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

30 (3) 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 sodomy upon a victim who is a minor  
33 14 years of age or older, 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 7, 9, or 11 years.

37 (4) This subdivision does not preclude prosecution under Section  
38 269, Section 288.7, or any other provision of law.

39 (e) Any person who participates in an act of sodomy with any  
40 person of any age while confined in any state prison, as defined

1 in Section 4504, or in any local detention facility, as defined in  
2 Section 6031.4, shall be punished by imprisonment in the state  
3 prison, or in a county jail for not more than one year.

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

11 (1) Was unconscious or asleep.

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

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

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

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

33 (h) Any person who commits an act of sodomy, and the victim  
34 is at the time incapable, because of a mental disorder or  
35 developmental or physical disability, of giving legal consent, and  
36 this is known or reasonably should be known to the person  
37 committing the act, and both the defendant and the victim are at  
38 the time confined in a state hospital for the care and treatment of  
39 the mentally disordered or in any other public or private facility  
40 for the care and treatment of the mentally disordered approved by

1 a county mental health director, shall be punished by imprisonment  
2 in the state prison, or in a county jail for not more than one year.  
3 Notwithstanding the existence of a conservatorship pursuant to  
4 the Lanterman-Petris-Short Act (Part 1 (commencing with Section  
5 5000) of Division 5 of the Welfare and Institutions Code), the  
6 prosecuting attorney shall prove, as an element of the crime, that  
7 a mental disorder or developmental or physical disability rendered  
8 the alleged victim incapable of giving legal consent.

9 (i) ~~Any person who commits an act of sodomy, where the victim  
10 is prevented from resisting by an intoxicating or anesthetic  
11 substance, or any controlled substance, and this condition was  
12 known, or reasonably should have been known by the accused,  
13 shall be punished by imprisonment in the state prison for three,  
14 six, or eight years.~~

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

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

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

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

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

1     ~~SEC. 3.~~

2     ~~SECTION 1.~~ Section 288a of the Penal Code is amended to  
3 read:

4     288a. (a) Oral copulation is the act of copulating the mouth  
5 of one person with the sexual organ or anus of another person.

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

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

14     (c) (1) Any person who participates in an act of oral copulation  
15 with another person who is under 14 years of age and more than  
16 10 years younger than he or she shall be punished by imprisonment  
17 in the state prison for three, six, or eight years.

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

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

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

35     (D) This paragraph does not preclude prosecution under Section  
36 269, Section 288.7, or any other provision of law.

37     (3) Any person who commits an act of oral copulation where  
38 the act is accomplished against the victim's will by threatening to  
39 retaliate in the future against the victim or any other person, and  
40 there is a reasonable possibility that the perpetrator will execute

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

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

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

31 (3) 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 oral copulation upon a victim who is a  
34 minor 14 years of age or older, when the act is accomplished  
35 against the victim's will by means of force or fear of immediate  
36 and unlawful bodily injury on the victim or another person, shall  
37 be punished by imprisonment in the state prison for 8, 10, or 12  
38 years.

39 (4) This paragraph does not preclude prosecution under Section  
40 269, Section 288.7, or any other provision of law.

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

6 (f) Any person who commits an act of oral copulation, and the  
7 victim is at the time unconscious of the nature of the act and this  
8 is known to the person committing the act, shall be punished by  
9 imprisonment in the state prison for a period of three, six, or eight  
10 years. As used in this subdivision, “unconscious of the nature of  
11 the act” means incapable of resisting because the victim meets one  
12 of the following conditions:

13 (1) Was unconscious or asleep.

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

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

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

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

36 (h) Any person who commits an act of oral copulation, and the  
37 victim is at the time incapable, because of a mental disorder or  
38 developmental or physical disability, of giving legal consent, and  
39 this is known or reasonably should be known to the person  
40 committing the act, and both the defendant and the victim are at

1 the time confined in a state hospital for the care and treatment of  
2 the mentally disordered or in any other public or private facility  
3 for the care and treatment of the mentally disordered approved by  
4 a county mental health director, shall be punished by imprisonment  
5 in the state prison, or in a county jail for a period of not more than  
6 one year. Notwithstanding the existence of a conservatorship  
7 pursuant to the provisions of the Lanterman-Petris-Short Act (Part  
8 1 (commencing with Section 5000) of Division 5 of the Welfare  
9 and 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 (i) Any person who commits an act of oral copulation, where  
14 the victim is prevented from resisting by any intoxicating or  
15 anesthetic substance, or any controlled substance, and this condition  
16 was known, or reasonably should have been known by the accused,  
17 shall be punished by imprisonment in the state prison for a period  
18 of three, six, or eight years.

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

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

9 *SEC. 2.* Section 289 of the Penal Code is amended to read:

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

16 (B) Any person who commits an act of sexual penetration upon  
17 a child who is under 14 years of age, when the act is accomplished  
18 against the victim's will by means of force, violence, duress,  
19 menace, or fear of immediate and unlawful bodily injury on the  
20 victim or another person, shall be punished by imprisonment in  
21 the state prison for 8, 10, or 12 years.

22 (C) Any person who commits an act of sexual penetration upon  
23 a minor who is 14 years of age or older, when the act is  
24 accomplished against the victim's will by means of force, violence,  
25 duress, menace, or fear of immediate and unlawful bodily injury  
26 on the victim or another person, shall be punished by imprisonment  
27 in the state prison for 6, 8, or 10 years.

28 (D) This paragraph does not preclude prosecution under Section  
29 269, Section 288.7, or any other provision of law.

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

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

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

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

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

- 35 (1) Was unconscious or asleep.
- 36 (2) Was not aware, knowing, perceiving, or cognizant that the  
37 act occurred.
- 38 (3) Was not aware, knowing, perceiving, or cognizant of the  
39 essential characteristics of the act due to the perpetrator’s fraud in  
40 fact.

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

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

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

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

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

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

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

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

1 (k) As used in this section:

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

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

10 (3) “Unknown object” shall include any foreign object,  
11 substance, instrument, or device, or any part of the body, including  
12 a penis, when it is not known whether penetration was by a penis  
13 or by a foreign object, substance, instrument, or device, or by any  
14 other part of the body.

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

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

24 ~~SEC. 5.~~

25 *SEC. 3.* No reimbursement is required by this act pursuant to  
26 Section 6 of Article XIII B of the California Constitution because  
27 the only costs that may be incurred by a local agency or school  
28 district will be incurred because this act creates a new crime or  
29 infraction, eliminates a crime or infraction, or changes the penalty  
30 for a crime or infraction, within the meaning of Section 17556 of  
31 the Government Code, or changes the definition of a crime within  
32 the meaning of Section 6 of Article XIII B of the California  
33 Constitution.

34 ~~SEC. 6.~~

35 *SEC. 4.* This act is an urgency statute necessary for the  
36 immediate preservation of the public peace, health, or safety within  
37 the meaning of Article IV of the Constitution and shall go into  
38 immediate effect. The facts constituting the necessity are:

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

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