

Introduced by Senator Lara

February 22, 2013

An act to add Section 1385 to the Evidence Code, and to amend Sections 261, 286, 288, 288a, 289, 1048.1, and 1050 of, and to add Section 13519.06 to, the Penal Code, relating to crime.

LEGISLATIVE COUNSEL'S DIGEST

SB 663, as amended, Lara. Sexual assault: victims with intellectual and developmental disabilities.

~~Existing~~

(1) Existing law proscribes various types of sexual assault, including the crime of rape, which rape perpetrated against a person other than the spouse of the perpetrator. Rape perpetrated against a person other than the spouse of the perpetrator is punishable by imprisonment in the state prison for 3, 6, or 8 years. Existing law defines rape of a person other than the spouse of the perpetrator to include circumstances in which the person is incapable of giving consent because of a developmental disability.

Existing law also specifically proscribes crimes committed against elder and dependent adults. Existing law defines, for purposes of these provisions, a "dependent adult" to mean any person who is between 18 and 64 years of age, who has physical or mental limitations which restrict his or her ability to carry out normal activities or to protect his or her rights, including, but not limited to, persons who have physical or developmental disabilities.

The bill would revise the definition of certain sex offenses, including rape, sodomy, and oral copulation, to apply if the victim is

developmentally disabled, as defined, and either (A) the person lacks the legal mental capacity, as defined, to give consent when compared to a reasonable person who does not have a developmental disability and this fact is known or reasonably should be known to the person committing the act, or (B) the defendant is a caretaker, as defined, or a care provider, as defined. By revising the definitions of existing crimes, the bill would impose a state-mandated local program.

(2) Existing law governs the admissibility of evidence in civil and criminal proceedings. Existing law, the hearsay rule, generally excludes from evidence a statement that was made other than by a witness while testifying at a hearing if that statement is offered to prove the truth of the matter stated.

This bill would create an exception to the hearsay rule for certain out-of-court statements made by a person with a developmental disability (A) if the declarant is a victim of a crime, (B) if the statements describe a specified sex offense performed with, by, on, or in the presence of the declarant, (C) if the statements describe any act of child abuse to which the declarant was subjected or which the declarant witnessed, or (D) if the statements describe a specified sex offense or an act of domestic violence, and specified other criteria are met.

(3) Existing law also governs criminal procedure. Among other provisions, existing law requires that, in scheduling a trial date at an arraignment in superior court involving any of specified offenses, including sexual assault, reasonable efforts be made to avoid setting that trial, when that case is assigned to a particular prosecuting attorney, on the same day that another case is set for trial involving the same prosecuting attorney. Existing law also requires that continuances be granted only upon a showing of good cause and defines good cause to include specified cases, including cases of sexual abuse, sexual assault, and domestic violence.

This bill would make those provisions applicable to a case involving a crime against a person with a developmental disability.

(4) Existing law also directs the Commission on Peace Officer Standards and Training to establish minimum standards relating to the training of law enforcement officers and establishes standards that are specifically applicable in specific types of cases, including domestic violence and the handling of persons with developmental disabilities or mental illness.

The bill would require the Commission on Peace Officer Standards and Training to develop, and periodically update as necessary, a model

general order or other formal policy for crime victims with developmental disabilities, as specified. The bill would require each law enforcement agency to adopt and implement the model policy, as specified, within one year of the date when the commission adopts the model policy. By imposing new duties and a higher level of service on law enforcement agencies, the bill would impose a state-mandated local program.

The bill would also express the intent of the Legislature to address the problem of sexual violence against people with intellectual and various developmental disabilities and set forth related findings and declarations.

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 with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

~~*This bill would express the intent of the Legislature to enact legislation that would help to ensure that there is justice for individuals with intellectual and developmental disabilities who are victims of sexual assault and would set forth related findings and declarations.*~~

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

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

- 1 *SECTION 1. (a) The Legislature finds and declares all of the*
- 2 *following:*
- 3 *(1) Throughout society sexual violence against people with*
- 4 *intellectual and various developmental disabilities, including*
- 5 *persons residing in institutions, is a grave problem. The violent*
- 6 *criminals who commit these acts typically go unpunished and*
- 7 *remain free to continue committing these crimes, while the victims*
- 8 *rarely get the support and assistance they need and deserve.*
- 9 *(2) Researchers have noted that over the past decade, crimes*
- 10 *against people with developmental disabilities have reached*

1 epidemic levels. This problem has reached epidemic levels, yet
2 has been ignored, and the criminal justice system has failed to
3 address this public health problem adequately.

4 (3) The epidemic is increasing, and will likely continue to
5 increase, with the aging of the developmental disability population,
6 and the explosive rate of increase of individuals with autism and
7 fetal alcohol syndrome disorder.

8 (4) In enacting Section 13519.06 of the Penal Code, it is the
9 intent of the Legislature to develop and implement training
10 programs similar to the training currently provided to law
11 enforcement employees for handling cases involving domestic
12 violence and other serious crimes, for law enforcement employees
13 handling cases involving sexual violence against persons with
14 developmental disabilities.

15 (b) By the enactment of this act, it is the intent of the Legislature
16 to take serious action to begin to remedy these outrages.

17 SEC. 2. Section 1385 is added to the Evidence Code, to read:

18 1385. (a) Evidence of a statement by a person with a
19 developmental disability is not made inadmissible by the hearsay
20 rule if offered in a criminal or juvenile proceeding in which the
21 person is alleged to have been a victim of a crime and the
22 conditions of subdivision (e) are satisfied.

23 (b) Evidence of a statement by a person with a developmental
24 disability that describes all or part of an offense described in
25 Section 261, 286, 288, 288a, or 289 of the Penal Code performed
26 with, by, on, or in the presence of the declarant, is not made
27 inadmissible by the hearsay rule if offered in a criminal, juvenile,
28 or civil proceeding and the conditions of subdivision (e) are
29 satisfied.

30 (c) Evidence of a statement by a person with a developmental
31 disability that describes any act of child abuse, including, but not
32 limited to, the crimes described in Section 273a, 273ab, or 273d
33 of the Penal Code, to which the declarant was subjected or which
34 the declarant witnessed, is not made inadmissible by the hearsay
35 rule if offered in a criminal, juvenile, or civil proceeding in which
36 a child is alleged to be a victim of child abuse or the subject of a
37 proceeding alleging that a child is within the jurisdiction of the
38 juvenile court on the basis of abuse or neglect, pursuant to Section
39 300 of the Welfare and Institutions Code, and the conditions of
40 subdivision (e) are satisfied.

1 (d) Evidence of a statement by a person with a developmental
2 disability, that describes all or part of any offense described in
3 Section 261, 286, 288, 288a, or 289 of the Penal Code, or that
4 describes an act of domestic violence, is not made inadmissible
5 by the hearsay rule if offered in a criminal, juvenile, or civil
6 proceeding and the conditions of subdivision (e) are satisfied.

7 (e) The exceptions to the hearsay rule described in subdivisions
8 (a) to (d), inclusive, of this section shall apply only if the court
9 finds in a hearing conducted outside the presence of the jury that
10 the time, content, and circumstances of the statement provide
11 sufficient safeguards of reliability and either of the following apply:

12 (1) The statement is a nontestimonial statement.

13 (2) One of the following applies:

14 (A) The declarant testifies at the proceeding.

15 (B) If the declarant is unavailable to testify, the defendant has
16 had an opportunity to cross-examine the declarant in a previous
17 proceeding and there is corroborative evidence of the act that is
18 the subject of the statement.

19 (f) If a statement described in this section is admitted into
20 evidence, the court shall instruct the jury in the final written
21 instructions that during the proceeding the jury heard evidence
22 regarding a person's statement, and it is for the jury to determine
23 the weight and credit to be given to that statement, and, in making
24 that determination, the jury shall consider the nature of the
25 statement, the circumstances under which the statement was made,
26 and any other relevant factor.

27 (g) The proponent of the statement shall give the adverse party
28 reasonable notice of his or her intention to offer the statement and
29 the particulars of the statement.

30 (h) For purposes of this section, a "developmental disability"
31 means an intellectual disability that originates before an individual
32 attains 18 years of age, continues, or can be expected to continue,
33 indefinitely, and constitutes a substantial intellectual disability for
34 that individual. This term shall include mental retardation, cerebral
35 palsy, epilepsy, and autism if the condition severely impairs the
36 cognitive abilities of the individual. This term shall also include
37 disabling conditions found to be closely related to mental
38 retardation or to require treatment similar to that required for
39 individuals with mental retardation, but shall not include other
40 disabling conditions that are solely physical in nature.

1 *SEC. 3. Section 261 of the Penal Code is amended to read:*

2 261. (a) Rape is an act of sexual intercourse accomplished
3 with a person not the spouse of the perpetrator, under any of the
4 following circumstances:

5 (1) ~~Where a~~ *If the person is incapable, because of a mental*
6 ~~disorder or developmental or physical disability, of incapable of~~
7 giving legal consent, ~~and this is known or reasonably should be~~
8 ~~known to the person committing the act~~ *consent and he or she is*
9 *a person described in subparagraph (A) or (B). Notwithstanding*
10 the existence of a conservatorship pursuant to the provisions of
11 the 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.~~ *the facts specified*
16 *in subparagraph (A) or (B). For purposes of this paragraph, a*
17 *person is incapable of giving legal consent if he or she:*

18 (A) *Has a mental disorder or physical disability, the mental*
19 *disorder or physical disability rendered the alleged victim*
20 *incapable of giving legal consent, and these facts are known or*
21 *reasonably should be known to the person committing the act.*

22 (B) *Has a developmental disability and either of the following*
23 *applies:*

24 (i) *The person lacks the legal capacity to give consent when*
25 *compared to a reasonable person who does not have a*
26 *developmental disability and this fact is known or reasonably*
27 *should be known to the person committing the act. For purposes*
28 *of this clause, a court shall determine whether a person lacks the*
29 *legal capacity to give consent pursuant to Part 17 (commencing*
30 *with Section 810) of Division 2 of the Probate Code.*

31 (ii) *The defendant is either of the following:*

32 (I) *A caretaker, as defined in Section 288.*

33 (II) *A care provider, meaning a person who provides assistance*
34 *with the activities of daily living, including any person that directly*
35 *or indirectly owns, administers, or operates a developmental*
36 *center, a community care facility as defined in Sections 1502 and*
37 *1504 of the Health and Safety Code, or a health facility, as defined*
38 *in Section 1250 of the Health and Safety Code, and includes all*
39 *agents, employees, and contractors of the care provider who are*
40 *responsible for providing care to clients.*

1 (2) ~~Where~~*If* 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~~*If* 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~~*If* a person is at the time unconscious of the nature
9 of the act, and this is known to the accused. As used in this
10 paragraph, "unconscious of the nature of the act" means incapable
11 of resisting because the victim meets one of the following
12 conditions:

13 (A) Was unconscious or asleep.

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

16 (C) 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 (D) 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 sexual penetration served a professional
22 purpose when it served no professional purpose.

23 (5) ~~Where~~*If* a person submits under the belief that the person
24 committing the act is the victim's spouse, and this belief is induced
25 by any artifice, pretense, or concealment practiced by the accused,
26 with intent to induce the belief.

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

33 (7) ~~Where~~*If* the act is accomplished against the victim's will
34 by 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.

(b) As used in this section, ~~“duress”~~ *the following definitions apply:*

(1) *“Developmental disability” has the same meaning as found in subdivision (h) of Section 1385 of the Evidence Code.*

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

~~(c)~~

(3) ~~As used in this section, “menace”~~ *“Menace” means any threat, declaration, or act which shows an intention to inflict an injury upon another.*

SEC. 4. Section 286 of the Penal Code is amended to read:

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

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

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

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

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

(B) Any person who commits an act of sodomy with another 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), *if a person who*
28 *commits an act of sodomy, and the victim is at the time incapable,*
29 *because of a mental disorder or developmental or physical*
30 *disability, incapable of giving legal consent, and this is known or*
31 *reasonably should be known to the person committing the act,*
32 *consent and is described in paragraph (1) or (2), the person shall*
33 *be punished by imprisonment in the state prison for three, six, or*
34 *eight years. Notwithstanding the existence of a conservatorship*
35 *pursuant to the Lanterman-Petris-Short Act (Part 1 (commencing*
36 *with Section 5000) of Division 5 of the Welfare and Institutions*
37 *Code), the prosecuting attorney shall prove, as an element of the*
38 *crime, that a mental disorder or developmental or physical*
39 *disability rendered the alleged victim incapable of giving consent.*
40 *the facts specified in paragraph (1) or (2). For purposes of this*

1 *paragraph, a victim is incapable of giving legal consent if he or*
2 *she:*

3 *(1) Is incapable of giving legal consent because of a mental*
4 *disorder or physical disability and this fact is known or reasonably*
5 *should be known to the person committing the act.*

6 *(2) Has a developmental disability and either of the following*
7 *applies:*

8 *(A) The person lacks the legal mental capacity to give consent*
9 *when compared to a reasonable person who does not have a*
10 *developmental disability and this fact is known or reasonably*
11 *should be known to the person committing the act. For purposes*
12 *of this subparagraph, a court shall determine whether a person*
13 *lacks the legal capacity to give consent pursuant to Part 17*
14 *(commencing with Section 810) of Division 2 of the Probate Code.*

15 *(B) The defendant is either of the following:*

16 *(i) A caretaker.*

17 *(ii) A care provider.*

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

34 *(i) Any person who commits an act of sodomy, where the victim*
35 *is prevented from resisting by an intoxicating or anesthetic*
36 *substance, or any controlled substance, and this condition was*
37 *known, or reasonably should have been known by the accused,*
38 *shall be punished by imprisonment in the state prison for three,*
39 *six, or eight years.*

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

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

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

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

~~(m)~~

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

(m) As used in this section, the following definitions apply:

(1) A "care provider" means a person who provides assistance with the activities of daily living, including any person who directly or indirectly owns, administers, or operates a developmental center, a community care facility, as defined in Sections 1502 and 1504 of the Health and Safety Code, or a health facility, as defined in Section 1250 of the Health and Safety Code, and all agents, employees, and contractors of the care provider who are responsible for providing care to clients.

(2) A "caretaker" has the same meaning as set forth in Section 288.

(3) "Developmental disability" has the same meaning as found in subdivision (h) of Section 1385 of the Evidence Code.

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

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

8 SEC. 5. Section 288 of the Penal Code is amended to read:

9 288. (a) Except as provided in subdivision (i), any person who
10 willfully and lewdly commits any lewd or lascivious act, including
11 any of the acts constituting other crimes provided for in Part 1,
12 upon or with the body, or any part or member thereof, of a child
13 who is under the age of 14 years of age, with the intent of arousing,
14 appealing to, or gratifying the lust, passions, or sexual desires of
15 that person or the child, is guilty of a felony and shall be punished
16 by imprisonment in the state prison for three, six, or eight years.

17 (b) (1) Any person who commits an act described in subdivision
18 (a) by use of force, violence, duress, menace, or fear of immediate
19 and unlawful bodily injury on the victim or another person, is
20 guilty of a felony and shall be punished by imprisonment in the
21 state prison for 5, 8, or 10 years.

22 (2) Any person who is a caretaker and commits an act described
23 in subdivision (a) upon a dependent person, *including a person*
24 *with a developmental disability, as defined in subdivision (d)*, by
25 use of force, violence, duress, menace, or fear of immediate and
26 unlawful bodily injury on the victim or another person, with the
27 intent described in subdivision (a), is guilty of a felony and shall
28 be punished by imprisonment in the state prison for 5, 8, or 10
29 years.

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

39 (2) Any person who is a caretaker and commits an act described
40 in subdivision (a) upon a dependent person, *including a person*

1 *with a developmental disability, as defined in subdivision (d), with*
2 *the intent described in subdivision (a), is guilty of a public offense*
3 *and shall be punished by imprisonment in the state prison for one,*
4 *two, or three years, or by imprisonment in a county jail for not*
5 *more than one year.*

6 (d) (1) In any arrest or prosecution under this section or Section
7 288.5, the peace officer, district attorney, and the court shall
8 consider the needs of the child victim, *person with a developmental*
9 *disability, or other dependent person* and shall do whatever is
10 necessary, within existing budgetary resources, and constitutionally
11 permissible to prevent psychological harm to the child victim or
12 to prevent psychological harm to the *person with a developmental*
13 *disability or other dependent person* victim resulting from
14 participation in the court process.

15 (2) *For purposes of this subdivision, “developmental disability”*
16 *has the same meaning as found in subdivision (h) of Section 1385*
17 *of the Evidence Code.*

18 (e) Upon the conviction of any person for a violation of
19 subdivision (a) or (b), the court may, in addition to any other
20 penalty or fine imposed, order the defendant to pay an additional
21 fine not to exceed ten thousand dollars (\$10,000). In setting the
22 amount of the fine, the court shall consider any relevant factors,
23 including, but not limited to, the seriousness and gravity of the
24 offense, the circumstances of its commission, whether the
25 defendant derived any economic gain as a result of the crime, and
26 the extent to which the victim suffered economic losses as a result
27 of the crime. Every fine imposed and collected under this section
28 shall be deposited in the Victim-Witness Assistance Fund to be
29 available for appropriation to fund child sexual exploitation and
30 child sexual abuse victim counseling centers and prevention
31 programs pursuant to Section 13837.

32 If the court orders a fine imposed pursuant to this subdivision,
33 the actual administrative cost of collecting that fine, not to exceed
34 2 percent of the total amount paid, may be paid into the general
35 fund of the county treasury for the use and benefit of the county.

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

38 (1) “Caretaker” means an owner, operator, administrator,
39 employee, independent contractor, agent, or volunteer of any of

1 the following public or private facilities when the facilities provide
2 care for elder or dependent persons:

3 (A) Twenty-four hour health facilities, as defined in Sections
4 1250, 1250.2, and 1250.3 of the Health and Safety Code.

5 (B) Clinics.

6 (C) Home health agencies.

7 (D) Adult day health care centers.

8 (E) Secondary schools that serve dependent persons and
9 postsecondary educational institutions that serve dependent persons
10 or elders.

11 (F) Sheltered workshops.

12 (G) Camps.

13 (H) Community care facilities, as defined by Section 1402 of
14 the Health and Safety Code, and residential care facilities for the
15 elderly, as defined in Section 1569.2 of the Health and Safety
16 Code.

17 (I) Respite care facilities.

18 (J) Foster homes.

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

20 (L) A home health agency licensed in accordance with Chapter
21 8 (commencing with Section 1725) of Division 2 of the Health
22 and Safety Code.

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

24 (N) Board and care facilities.

25 (O) Any other protective or public assistance agency that
26 provides health services or social services to elder or dependent
27 persons, including, but not limited to, in-home supportive services,
28 as defined in Section 14005.14 of the Welfare and Institutions
29 Code.

30 (P) Private residences.

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

34 (A) Bathing.

35 (B) Dressing.

36 (C) Grooming.

37 (D) Medication storage.

38 (E) Medical dispensation.

39 (F) Money management.

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

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

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

(i) (1) Any person convicted of a violation of subdivision (a) shall be imprisoned in the state prison for life with the possibility of parole if the defendant personally inflicted bodily harm upon the victim.

(2) The penalty provided in this subdivision shall only apply if the fact that the defendant personally inflicted bodily harm upon the victim is pled and proved.

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

SEC. 6. Section 288a of the Penal Code is amended to read:

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

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

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

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

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

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

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

25 (D) This paragraph does not preclude prosecution under Section
26 269, Section 288.7, or any other provision of law.

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

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

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

17 (A) *Has a mental disorder or physical disability, the mental*
18 *disorder or physical disability rendered the alleged victim*
19 *incapable of giving legal consent, and these facts are known or*
20 *reasonably should be known to the person committing the act.*

21 (B) *Has a developmental disability and either of the following*
22 *applies:*

23 (i) *The person lacks the legal mental capacity to give consent*
24 *when compared to a reasonable person who does not have a*
25 *developmental disability and this fact is known or reasonably*
26 *should be known to the person committing the act. For purposes*
27 *of this clause, a court shall determine whether a person lacks the*
28 *legal capacity to give consent pursuant to Part 17 (commencing*
29 *with Section 810) of Division 2 of the Probate Code.*

30 (ii) *The defendant is either of the following:*

31 (I) *A caretaker, as defined in Section 288.*

32 (II) *A care provider.*

33 (2) Any person who, while voluntarily acting in concert with
34 another person, either personally or aiding and abetting that other
35 person, commits an act of oral copulation upon a victim who is
36 under 14 years of age, when the act is accomplished against the
37 victim's will by means of force or fear of immediate and unlawful
38 bodily injury on the victim or another person, shall be punished
39 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), *if* 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, incapable of giving legal consent, and this is~~
37 ~~known or reasonably should be known to the person committing~~
38 ~~the act~~ *consent as described in paragraph (1) or (2), the person*
39 *who commits the act* shall be punished by imprisonment in the
40 state prison, for three, six, or eight years. Notwithstanding the

1 existence of a conservatorship pursuant to the provisions of the
2 Lanterman-Petris-Short Act (Part 1 (commencing with Section
3 5000) of Division 5 of the Welfare and Institutions Code), the
4 prosecuting attorney shall prove, as an element of the crime, ~~that~~
5 ~~a mental disorder or developmental or physical disability rendered~~
6 ~~the alleged victim incapable of giving consent.~~ *the facts specified*
7 *in paragraph (1) or (2). For purposes of this subdivision, a victim*
8 *is incapable of giving legal consent if he or she:*

9 *(1) Is incapable of giving legal consent because of a mental*
10 *disorder or physical disability and this fact is known or reasonably*
11 *should be known to the person committing the act.*

12 *(2) Has a developmental disability and either of the following*
13 *applies:*

14 *(A) The person lacks the legal mental capacity to give consent*
15 *when compared to a reasonable person who does not have a*
16 *developmental disability and this fact is known or reasonably*
17 *should be known to the person committing the act. For purposes*
18 *of this paragraph, a court shall determine whether a person lacks*
19 *the legal capacity to give consent pursuant to Part 17 (commencing*
20 *with Section 810) of Division 2 of the Probate Code.*

21 *(B) The defendant is either of the following:*

22 *(i) A caretaker.*

23 *(ii) A care provider.*

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

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

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

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

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

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

27 ~~(m)~~

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

35 (m) *As used in this section, the following definitions apply:*

36 (1) *A "care provider" means a person who provides assistance*
37 *with the activities of daily living, including any person who directly*
38 *or indirectly owns, administers, or operates a developmental*
39 *center, a community care facility, as defined in Sections 1502 and*
40 *1504 of the Health and Safety Code, or a health facility, as defined*

1 in Section 1250 of the Health and Safety Code, and all agents,
2 employees, and contractors of the care provider who are
3 responsible for providing care to clients.

4 (2) A “caretaker” has the same meaning as set forth in Section
5 288.

6 (3) “Developmental disability” has the same meaning as found
7 in subdivision (h) of Section 1385 of the Evidence Code.

8 (4) As used in subdivision (k), “public official” means a person
9 employed by a governmental agency who has the authority, as
10 part of that position, to incarcerate, arrest, or deport another. The
11 perpetrator does not actually have to be a public official.

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

15 SEC. 7. Section 289 of the Penal Code is amended to read:

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

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

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

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

36 (2) Any person who commits an act of sexual penetration when
37 the act is accomplished against the victim’s will by threatening to
38 retaliate in the future against the victim or any other person, and
39 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 (b) Except as provided in subdivision (c), ~~any if a person who~~
4 commits an act of sexual penetration, and the victim is at the time
5 ~~incapable, because of a mental disorder or developmental or~~
6 ~~physical disability, of incapable of giving legal consent, and this~~
7 ~~is known or reasonably should be known to the person committing~~
8 ~~the act or causing the act to be committed, the victim is a person~~
9 ~~described in paragraph (1) or (2), the person committing the act~~
10 shall be punished by imprisonment in the state prison for three,
11 six, or eight years. Notwithstanding the appointment of a
12 conservator with respect to the victim pursuant to the provisions
13 of the Lanterman-Petris-Short Act (Part 1 (commencing with
14 Section 5000) of Division 5 of the Welfare and Institutions Code),
15 the prosecuting attorney shall prove, as an element of the ~~crime,~~
16 ~~that a mental disorder or developmental or physical disability~~
17 ~~rendered the alleged victim incapable of giving legal consent.~~
18 *crime the facts described in paragraph (1) or (2):*

19 (1) *The victim is incapable of giving legal consent because of*
20 *a mental disorder or physical disability and this fact is known or*
21 *reasonably should be known to the person committing the act.*

22 (2) *The victim has a developmental disability and either of the*
23 *following applies:*

24 (A) *The victim lacks the legal mental capacity to give consent*
25 *when compared to a reasonable person who does not have a*
26 *developmental disability and this fact is known or reasonably*
27 *should be known to the person committing the act. For purposes*
28 *of this paragraph, a court shall determine whether a person lacks*
29 *the legal capacity to give consent pursuant to Part 17 (commencing*
30 *with Section 810) of Division 2 of the Probate Code.*

31 (B) *The person defendant is either of the following:*

32 (i) *A caretaker as defined in Section 288.*

33 (ii) *A care provider.*

34 (c) Any person who commits an act of sexual penetration, and
35 the victim is at the time incapable, because of a mental disorder
36 or developmental or physical disability, of giving legal consent,
37 and this is known or reasonably should be known to the person
38 committing the act or causing the act to be committed and both
39 the defendant and the victim are at the time confined in a state
40 hospital for the care and treatment of the mentally disordered or

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

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

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

35 (f) Any person who commits an act of sexual penetration when
36 the victim submits under the belief that the person committing the
37 act or causing the act to be committed is the victim’s spouse, and
38 this belief is induced by any artifice, pretense, or concealment
39 practiced by the accused, with intent to induce the belief, shall be

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

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

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

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

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

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

27 (k) As used in this section:

28 (1) A "care provider" means a person who provides assistance
29 with the activities of daily living, including any person who directly
30 or indirectly owns, administers, or operates a developmental
31 center, a community care facility, as defined in Sections 1502 and
32 1504 of the Health and Safety Code, or a health facility, as defined
33 in Section 1250 of the Health and Safety Code, and all agents,
34 employees, and contractors of the care provider who are
35 responsible for providing care to clients.

36 (2) "Developmental disability" has the same meaning as found
37 in subdivision (h) of Section 1385 of the Evidence Code.

38 (1)

39 (3) "Sexual penetration" is the act of causing the penetration,
40 however slight, of the genital or anal opening of any person or

1 causing another person to so penetrate the defendant's or another
2 person's genital or anal opening for the purpose of sexual arousal,
3 gratification, or abuse by any foreign object, substance, instrument,
4 or device, or by any unknown object.

5 (2)

6 (4) "Foreign object, substance, instrument, or device" shall
7 include any part of the body, except a sexual organ.

8 (3)

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

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

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

23 SEC. 8. Section 1048.1 of the Penal Code is amended to read:

24 1048.1. (a) In scheduling a trial date at an arraignment in
25 superior court involving ~~murder~~, any of the following offenses,
26 reasonable efforts shall be made to avoid setting that trial, when
27 that case is assigned to a particular prosecuting attorney, on the
28 same day that another case is set for trial involving the same
29 prosecuting attorney:

30 (1) Murder, as defined in subdivision (a) of Section 187, ~~an~~
31 alleged.

32 (2) An alleged sexual assault offense, as described in
33 subdivisions (a) and (b) of Section 11165.1, ~~or an alleged~~.

34 (3) Alleged child abuse offense, as described in Section 11165.6;
35 ~~or a~~.

36 (4) A case being handled in the Career Criminal Prosecution
37 Program pursuant to Sections 999b through to 999h, ~~reasonable~~
38 ~~efforts shall be made to avoid setting that trial, when that case is~~
39 ~~assigned to a particular prosecuting attorney, on the same day that~~

1 ~~another case is set for trial involving the same prosecuting attorney~~
2 ~~inclusive.~~

3 (5) *A case involving an allegation of a crime committed against*
4 *a person with a developmental disability.*

5 (b) *For purposes of this section, a “developmental disability”*
6 *has the same meaning as found in subdivision (h) of Section 1385*
7 *of the Evidence Code.*

8 SEC. 9. *Section 1050 of the Penal Code is amended to read:*

9 1050. (a) The welfare of the people of the State of California
10 requires that all proceedings in criminal cases shall be set for trial
11 and heard and determined at the earliest possible time. To this end,
12 the Legislature finds that the criminal courts are becoming
13 increasingly congested with resulting adverse consequences to the
14 welfare of the people and the defendant. Excessive continuances
15 contribute substantially to this congestion and cause substantial
16 hardship to victims and other witnesses. Continuances also lead
17 to longer periods of presentence confinement for those defendants
18 in custody and the concomitant overcrowding and increased
19 expenses of local jails. It is therefore recognized that the people,
20 the defendant, and the victims and other witnesses have the right
21 to an expeditious disposition, and to that end it shall be the duty
22 of all courts and judicial officers and of all counsel, both for the
23 prosecution and the defense, to expedite these proceedings to the
24 greatest degree that is consistent with the ends of justice. In
25 accordance with this policy, criminal cases shall be given
26 precedence over, and set for trial and heard without regard to the
27 pendency of, any civil matters or proceedings. In further accordance
28 with this policy, death penalty cases in which both the prosecution
29 and the defense have informed the court that they are prepared to
30 proceed to trial shall be given precedence over, and set for trial
31 and heard without regard to the pendency of, other criminal cases
32 and any civil matters or proceedings, unless the court finds in the
33 interest of justice that it is not appropriate.

34 (b) To continue any hearing in a criminal proceeding, including
35 the trial, (1) a written notice shall be filed and served on all parties
36 to the proceeding at least two court days before the hearing sought
37 to be continued, together with affidavits or declarations detailing
38 specific facts showing that a continuance is necessary and (2)
39 within two court days of learning that he or she has a conflict in
40 the scheduling of any court hearing, including a trial, an attorney

1 shall notify the calendar clerk of each court involved, in writing,
2 indicating which hearing was set first. A party shall not be deemed
3 to have been served within the meaning of this section until that
4 party actually has received a copy of the documents to be served,
5 unless the party, after receiving actual notice of the request for
6 continuance, waives the right to have the documents served in a
7 timely manner. Regardless of the proponent of the motion, the
8 prosecuting attorney shall notify the people's witnesses and the
9 defense attorney shall notify the defense's witnesses of the notice
10 of motion, the date of the hearing, and the witnesses' right to be
11 heard by the court.

12 (c) Notwithstanding subdivision (b), a party may make a motion
13 for a continuance without complying with the requirements of that
14 subdivision. However, unless the moving party shows good cause
15 for the failure to comply with those requirements, the court may
16 impose sanctions as provided in Section 1050.5.

17 (d) When a party makes a motion for a continuance without
18 complying with the requirements of subdivision (b), the court shall
19 hold a hearing on whether there is good cause for the failure to
20 comply with those requirements. At the conclusion of the hearing,
21 the court shall make a finding whether good cause has been shown
22 and, if it finds that there is good cause, shall state on the record
23 the facts proved that justify its finding. A statement of the finding
24 and a statement of facts proved shall be entered in the minutes. If
25 the moving party is unable to show good cause for the failure to
26 give notice, the motion for continuance shall not be granted.

27 (e) Continuances shall be granted only upon a showing of good
28 cause. Neither the convenience of the parties nor a stipulation of
29 the parties is in and of itself good cause.

30 (f) At the conclusion of the motion for continuance, the court
31 shall make a finding whether good cause has been shown and, if
32 it finds that there is good cause, shall state on the record the facts
33 proved that justify its finding. A statement of facts proved shall
34 be entered in the minutes.

35 (g) (1) When deciding whether or not good cause for a
36 continuance has been shown, the court shall consider the general
37 convenience and prior commitments of all witnesses, including
38 peace officers. Both the general convenience and prior
39 commitments of each witness also shall be considered in selecting
40 a continuance date if the motion is granted. The facts as to

1 inconvenience or prior commitments may be offered by the witness
2 or by a party to the case.

3 (2) For purposes of this section, “good cause” includes, but is
4 not limited to, those cases ~~involving murder, as where any of the~~
5 ~~following has occurred and the prosecuting attorney assigned to~~
6 ~~the case has another trial, preliminary hearing, or motion to~~
7 ~~suppress in progress in that court or another court:~~

8 (A) ~~Murder, as defined in subdivision (a) of Section 187;~~
9 ~~allegations.~~

10 (B) ~~Allegations that involve stalking, as defined in Section 646.9;~~
11 ~~a violation.~~

12 (C) ~~A violation of one or more of the sections specified in~~
13 ~~subdivision (a) of Section 11165.1 or Section 11165.6, or domestic~~
14 ~~11165.6.~~

15 (D) ~~Domestic violence as defined in Section 13700, or a.~~

16 (E) ~~A case being handled in the Career Criminal Prosecution~~
17 ~~Program pursuant to Sections 999b through to 999h, or a inclusive.~~

18 (F) ~~A hate crime, as defined in Title 11.6 (commencing with~~
19 ~~Section 422.6) of Part 1, has occurred and the prosecuting attorney~~
20 ~~assigned to the case has another trial, preliminary hearing, or~~
21 ~~motion to suppress in progress in that court or another court. A~~
22 ~~continuance.~~

23 (G) ~~A case involving a crime against a person with a~~
24 ~~developmental disability.~~

25 (H) ~~A continuance under this paragraph subdivision shall be~~
26 ~~limited to a maximum of 10 additional court days.~~

27 (3) Only one continuance per case may be granted to the people
28 under this subdivision for cases involving stalking, hate crimes,
29 or cases handled under the Career Criminal Prosecution Program.
30 Any continuance granted to the people in a case involving stalking
31 or handled under the Career Criminal Prosecution Program shall
32 be for the shortest time possible, not to exceed 10 court days.

33 (h) Upon a showing that the attorney of record at the time of
34 the defendant’s first appearance in the superior court on an
35 indictment or information is a Member of the Legislature of this
36 state and that the Legislature is in session or that a legislative
37 interim committee of which the attorney is a duly appointed
38 member is meeting or is to meet within the next seven days, the
39 defendant shall be entitled to a reasonable continuance not to
40 exceed 30 days.

1 (i) A continuance shall be granted only for that period of time
2 shown to be necessary by the evidence considered at the hearing
3 on the motion. Whenever any continuance is granted, the court
4 shall state on the record the facts proved that justify the length of
5 the continuance, and those facts shall be entered in the minutes.

6 (j) Whenever it shall appear that any court may be required,
7 because of the condition of its calendar, to dismiss an action
8 pursuant to Section 1382, the court must immediately notify the
9 Chair of the Judicial Council.

10 (k) This section shall not apply when the preliminary
11 examination is set on a date less than 10 court days from the date
12 of the defendant's arraignment on the complaint, and the
13 prosecution or the defendant moves to continue the preliminary
14 examination to a date not more than 10 court days from the date
15 of the defendant's arraignment on the complaint.

16 (l) This section is directory only and does not mandate dismissal
17 of an action by its terms.

18 (m) *For purposes of this section, a "developmental disability"*
19 *has the same meaning as found in subdivision (h) of Section 1385*
20 *of the Evidence Code.*

21 *SEC. 10. Section 13519.06 is added to the Penal Code, to read:*
22 *13519.06. (a) The Commission on Peace Officer Standards*
23 *and Training shall develop, and periodically update as necessary,*
24 *a model general order or other formal policy for dealing with*
25 *crime victims with developmental disabilities.*

26 *(b) The purpose of the model policy shall be to ensure equal*
27 *protection of the law for people with developmental disabilities*
28 *by ensuring highly professional law enforcement that takes full*
29 *account of the unique needs of victims with developmental*
30 *disabilities. To that end, the model policy shall include all of the*
31 *following:*

32 *(1) Information on the wide prevalence of crimes against people*
33 *with developmental disabilities.*

34 *(2) A statement from the agency's law enforcement executive*
35 *emphasizing the agency's high-priority commitment to providing*
36 *equal protection to meeting the special needs of victims with*
37 *developmental disabilities.*

38 *(3) The fact that victims and witnesses with developmental*
39 *disabilities can be highly credible witnesses when interviewed*

1 appropriately and when given instructions for appropriate
2 interview techniques.

3 (4) A description of the training materials that are available,
4 including, but not limited to, further interview training
5 opportunities and the telecourse developed by the commission
6 pursuant to Section 13515.

7 (5) The definitions of a “dependent adult,” as set forth in Section
8 368, and “dependent person,” as set forth in Section 288, noting
9 that they apply to people with developmental disabilities regardless
10 of the fact that some may live independently.

11 (6) The importance of enforcing provisions requiring certain
12 persons to report elder and dependent adult abuse and child abuse
13 and that prohibit interference with that reporting.

14 (7) A list of resources available to law enforcement agencies,
15 including any local resources.

16 (8) A general requirement that suspects in these cases be
17 arrested whenever there is probable cause and absent exigent
18 circumstances, including cases of violations of emergency
19 protective orders, temporary restraining orders, or similar court
20 orders, and cases of mandated reporters who fail to make a report
21 as required by law.

22 (9) Assisting victims in pursuing criminal options, including
23 connecting the victim with the appropriate social service agencies
24 that can provide them additional support.

25 (10) Detailed instructions regarding the procedures for
26 obtaining an emergency protective order and specifying that the
27 order may be sought at any time, and including a space for the
28 telephone number for the court clerk in the appropriate court
29 jurisdiction.

30 (11) Procedures to handle each report, including (A) prompt
31 response to all reported serious or violent crimes in progress and
32 cases in which serious or violent crimes may be imminent, or (B)
33 followup of each report to determine whether there is probable
34 cause for arrest or other law enforcement intervention.

35 (12) Procedures for seeking assistance from the Bureau of
36 Medi-Cal Fraud and Elder Abuse.

37 (13) Procedures for cooperating with county adult protective
38 services and child protective services and local long-term care
39 ombudsman programs, and stating that law enforcement agencies

1 *shall retain responsibility for all criminal investigations, pursuant*
2 *to subdivision (b) of Section 368.5.*

3 *(14) The law enforcement agency's reporting and*
4 *cross-reporting requirements, including those pursuant to*
5 *paragraph (1) of subdivision (a) of Section 422.55 and Section*
6 *13023 of this code, and subdivisions (b), (c), (e), and (f) of Section*
7 *15640 of the Welfare and Institutions Code.*

8 *(15) A requirement that the law enforcement agency report to*
9 *the appropriate professional licensing, credentialing, or regulatory*
10 *agency where there is reasonable suspicion that a professional*
11 *person subject the regulatory agency's jurisdiction committed a*
12 *crime against a person with a developmental disability or failed*
13 *to report, as required, regardless of whether the law enforcement*
14 *agency or a prosecutor has pursued or intends to pursue criminal*
15 *prosecution.*

16 *(16) A procedure to allow designated supervisors to develop*
17 *alternative provisions of the policy to apply in unusual individual*
18 *cases, including a requirement for written reports to the chief,*
19 *sheriff, or director of the law enforcement agency each time this*
20 *occurs.*

21 *(c) In developing the model policy, the commission shall consult*
22 *the California Police Chiefs Association, the California State*
23 *Sheriffs' Association, the California District Attorneys Association,*
24 *the Bureau of Medi-Cal Fraud and Elder Abuse, the California*
25 *Long-Term Care Ombudsman Association, the County Welfare*
26 *Directors Association, and subject-matter experts from the*
27 *developmental disability field including the State Department of*
28 *Developmental Services, regional centers, and advocacy*
29 *organizations, including those the commission consulted in*
30 *developing the telecourse pursuant to Section 13515.*

31 *(d) Within one year of the date when the commission adopts the*
32 *model policy, each law enforcement agency in this state shall adopt*
33 *and implement the model policy, including any changes consistent*
34 *with subdivision (b) that the agency deems appropriate.*

35 *SEC. 11. No reimbursement is required by this act pursuant*
36 *to Section 6 of Article XIII B of the California Constitution for*
37 *certain costs that may be incurred by a local agency or school*
38 *district because, in that regard, this act creates a new crime or*
39 *infraction, eliminates a crime or infraction, or changes the penalty*
40 *for a crime or infraction, within the meaning of Section 17556 of*

1 *the Government Code, or changes the definition of a crime within*
2 *the meaning of Section 6 of Article XIII B of the California*
3 *Constitution.*

4 *However, if the Commission on State Mandates determines that*
5 *this act contains other costs mandated by the state, reimbursement*
6 *to local agencies and school districts for those costs shall be made*
7 *pursuant to Part 7 (commencing with Section 17500) of Division*
8 *4 of Title 2 of the Government Code.*

9 ~~SECTION 1. (a) The Legislature hereby finds and declares~~
10 ~~all of the following:~~

11 ~~(1) Research has found that despite a high number of sexual~~
12 ~~assaults committed against people with intellectual disabilities,~~
13 ~~there are very few criminal convictions in these cases.~~

14 ~~(2) Research indicates that no action was taken in almost half~~
15 ~~of these cases and that prosecution or disciplinary action took place~~
16 ~~in only 18.5 percent of the cases.~~

17 ~~(3) It has been reported that 65 percent of these cases that were~~
18 ~~reported to the police were not prosecuted because the police~~
19 ~~declined to press charges, usually citing the victim as an~~
20 ~~incompetent witness.~~

21 ~~(4) It is understood that among the factors that contribute to the~~
22 ~~difficulty in obtaining criminal convictions in these cases is a lack~~
23 ~~of clear protocols and direction for law enforcement, and a lack~~
24 ~~of necessary or additional protections for people with intellectual~~
25 ~~and developmental disabilities.~~

26 ~~(b) It is the intent of the Legislature to enact legislation that~~
27 ~~would help to ensure that there is justice for individuals with~~
28 ~~intellectual and developmental disabilities who are victims of~~
29 ~~sexual assault.~~