

AMENDED IN SENATE JUNE 15, 1998
AMENDED IN ASSEMBLY MAY 19, 1998
AMENDED IN ASSEMBLY APRIL 28, 1998
AMENDED IN ASSEMBLY APRIL 16, 1998

CALIFORNIA LEGISLATURE—1997–98 REGULAR SESSION

ASSEMBLY BILL

No. 2154

Introduced by Assembly Member Pacheco

February 19, 1998

An act to ~~amend Sections 286, 288a, 289, 667.5, and 1192.7 of~~ add Section 152 to the Penal Code, relating to sex crimes.

LEGISLATIVE COUNSEL'S DIGEST

AB 2154, as amended, Pacheco. ~~Sex crimes—Crimes against public justice.~~

~~Under existing law, any person who participates in an act of sodomy or oral copulation with another person who is under 14 years of age and more than 10 years younger than he or she, or 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 or where the act is accomplished against the victim's will by threatening to retaliate in the future against the victim or any other person, and there is a reasonable possibility that the perpetrator will execute the threat is punishable by imprisonment in the state prison for three, six, or eight years. Existing law also provides for sentence enhancements for~~

~~persons who are convicted of violent felonies and have served prior prison terms.~~

~~This bill would redefine the offense of oral copulation by punishing any person who commits an act of oral copulation under the above circumstances. The bill would also make technical revisions to the above provisions relating to sodomy and oral copulation by organizationally separating the age criteria from the violent provisions criteria and, for purposes of the sentence enhancements provisions, would cross-reference the violent crimes by their reorganized designations instead of restating the crimes themselves.~~

~~Under existing law, any person who participates in 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 upon the victim, or by issuance of a credible threat to retaliate against the victim or any other person in the future, is punishable by imprisonment in the state prison for 3, 6, or 8 years.~~

~~This bill would make technical revisions to these provisions by organizationally separating situations where the act is accomplished by means of immediate force or threat to the victim, from situations where the act is accomplished by means of credible threats of future retaliation, either against the victim or any other person.~~

~~Existing law, added by initiative statute, defines "serious felony" for purposes of prohibiting plea bargaining in specified cases, except under specified circumstances.~~

~~This bill would, for purposes of describing a "serious felony" add cross-references to the violent crimes of sodomy and oral copulation discussed above, and add, by cross-reference, specified crimes of rape, spousal rape, and penetrations of genital or anal openings by a foreign object. Because the bill would amend an initiative statute, it would require a $\frac{2}{3}$ vote. In addition, because the bill would increase local prosecution costs, the bill would impose a state-mandated local program.~~

~~*Existing law proscribes violent felonies, as defined, and felony kidnapping, assault, terrorist threat-making, and stalking, as specified.*~~

~~*This bill would provide that any person convicted of the commission or attempted commission of these crimes against*~~



a present or former prosecutor, public defender, peace officer, juror, judge, or the immediate family members of any of the above, in retaliation for or to prevent the performance of his or her official duties, shall receive a 5-year enhancement in addition and consecutive to the penalty prescribed. By creating a new enhancement for existing crimes, 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.

~~The bill would provide that these provisions shall become effective only when submitted to, and approved by, the voters.~~

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

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

1 ~~SECTION 1. Section 286 of the Penal Code is~~
2 ~~amended to read:~~

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

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

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

16 ~~(c) (1) Any person who participates in an act of~~
17 ~~sodomy with another person who is under 14 years of age~~
18 ~~and more than 10 years younger than he or she shall be~~



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

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

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

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

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

34 ~~(f) Any person who commits an act of sodomy, and the~~
35 ~~victim is at the time unconscious of the nature of the act~~
36 ~~and this is known to the person committing the act, shall~~
37 ~~be punished by imprisonment in the state prison for~~
38 ~~three, six, or eight years. As used in this subdivision,~~
39 ~~“unconscious of the nature of the act” means incapable of~~



1 ~~resisting because the victim meets one of the following~~
2 ~~conditions:~~

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

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

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

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

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



1 rendered the alleged victim incapable of giving legal
2 consent.

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

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

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

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

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

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



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

3 ~~288a. (a) Oral copulation is the act of copulating the~~
4 ~~mouth of one person with the sexual organ or anus of~~
5 ~~another person.~~

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

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

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

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

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

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



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

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

24 (f) Any person who commits an act of oral copulation,
25 and the victim is at the time unconscious of the nature of
26 the act and this is known to the person committing the
27 act, shall be punished by imprisonment in the state prison
28 for a period of three, six, or eight years. As used in this
29 subdivision, “unconscious of the nature of the act” means
30 incapable of resisting because the victim meets one of the
31 following conditions:

32 (1) Was unconscious or asleep.

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

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

38 (g) Except as provided in subdivision (h), any person
39 who commits an act of oral copulation, and the victim is
40 at the time incapable, because of a mental disorder or



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

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

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

39 ~~(j) Any person who commits an act of oral copulation,~~
40 ~~where the victim submits under the belief that the person~~



1 committing the act is the victim's spouse, and this belief
2 is induced by any artifice, pretense, or concealment
3 practiced by the accused, with intent to induce the belief,
4 shall be punished by imprisonment in the state prison for
5 a period of three, six, or eight years.

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

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

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

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

29 SEC. 3. Section 289 of the Penal Code is amended to
30 read:

31 289. (a) (1) Every person who causes the
32 penetration, however slight, of the genital or anal
33 openings of any person or causes another person to so
34 penetrate the defendant's or another person's genital or
35 anal openings for the purpose of sexual arousal,
36 gratification, or abuse by any foreign object, substance,
37 instrument, or device, or by any unknown object when
38 the act is accomplished against the victim's will by means
39 of force, violence, duress, menace, or fear of immediate
40 and unlawful bodily injury on the victim or another



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

3 ~~(2) Every person who causes the penetration;~~
4 ~~however slight, of the genital or anal openings of any~~
5 ~~person or causes another person to so penetrate the~~
6 ~~defendant's or another person's genital or anal openings~~
7 ~~for the purpose of sexual arousal, gratification, or abuse by~~
8 ~~any foreign object, substance, instrument, or device, or by~~
9 ~~any unknown object where the act is accomplished~~
10 ~~against the victim's will by threatening to retaliate in the~~
11 ~~future against the victim or any other person, and there~~
12 ~~is a reasonable possibility that the perpetrator will~~
13 ~~execute the threat, shall be punished by imprisonment in~~
14 ~~the state prison for three, six, or eight years.~~

15 ~~(b) Except as provided in subdivision (c), every~~
16 ~~person who causes the penetration, however slight, of the~~
17 ~~genital or anal openings of any person or causes another~~
18 ~~person to so penetrate the defendant's or another~~
19 ~~person's genital or anal openings for the purpose of sexual~~
20 ~~arousal, gratification, or abuse by any foreign object,~~
21 ~~substance, instrument, or device, or by any unknown~~
22 ~~object, and the victim is at the time incapable, because of~~
23 ~~a mental disorder or developmental or physical disability,~~
24 ~~of giving legal consent, and this is known or reasonably~~
25 ~~should be known to the person committing the act or~~
26 ~~causing the act to be committed, shall be punished by~~
27 ~~imprisonment in the state prison for three, six, or eight~~
28 ~~years. Notwithstanding the appointment of a conservator~~
29 ~~with respect to the victim pursuant to the provisions of~~
30 ~~the Lanterman-Petris-Short Act (Part 1 (commencing~~
31 ~~with Section 5000) of Division 5 of the Welfare and~~
32 ~~Institutions Code), the prosecuting attorney shall prove,~~
33 ~~as an element of crime, that a mental disorder or~~
34 ~~developmental or physical disability rendered the alleged~~
35 ~~victim incapable of giving legal consent.~~

36 ~~(c) Every person who causes the penetration;~~
37 ~~however slight, of the genital or anal openings of any~~
38 ~~person or causes another person to so penetrate the~~
39 ~~defendant's or another person's genital or anal openings~~
40 ~~for the purpose of sexual arousal, gratification, or abuse by~~



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

22 (d) Every person who causes the penetration,
23 however slight, of the genital or anal openings of any
24 person or causes another person to so penetrate the
25 defendant's or another person's genital or anal openings
26 for the purpose of sexual arousal, gratification, or abuse by
27 any foreign object, substance, instrument, or device, or by
28 any unknown object, and the victim is at the time
29 unconscious of the nature of the act and this is known to
30 the person committing the act or causing the act to be
31 committed, shall be punished by imprisonment in the
32 state prison for three, six, or eight years. As used in this
33 subdivision, "unconscious of the nature of the act" means
34 incapable of resisting because the victim meets one of the
35 following conditions:

36 (1) Was unconscious or asleep.

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



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

4 ~~(e) Every person who causes the penetration,~~
5 ~~however slight, of the genital or anal openings of any~~
6 ~~person or causes another person to so penetrate the~~
7 ~~defendant's or another person's genital or anal openings~~
8 ~~for the purpose of sexual arousal, gratification, or abuse by~~
9 ~~any foreign object, substance, instrument, or device, or by~~
10 ~~any unknown object, where the victim is prevented from~~
11 ~~resisting by any intoxicating or anesthetic substance, or~~
12 ~~any controlled substance, and this condition was known,~~
13 ~~or reasonably should have been known by the accused,~~
14 ~~shall be punished by imprisonment in the state prison for~~
15 ~~a period of three, six, or eight years.~~

16 ~~(f) Every person who causes the penetration, however~~
17 ~~slight, of the genital or anal openings of any person or~~
18 ~~causes another person to so penetrate the defendant's or~~
19 ~~another person's genital or anal openings for the purpose~~
20 ~~of sexual arousal, gratification, or abuse by any foreign~~
21 ~~object, substance, instrument, or device, or by any~~
22 ~~unknown object, where the victim submits under the~~
23 ~~belief that the person committing the act or causing the~~
24 ~~act to be committed is the victim's spouse, and this belief~~
25 ~~is induced by any artifice, pretense, or concealment~~
26 ~~practiced by the accused, with intent to induce the belief,~~
27 ~~shall be punished by imprisonment in the state prison for~~
28 ~~a period of three, six, or eight years.~~

29 ~~(g) Every person who causes the penetration,~~
30 ~~however slight, of the genital or anal openings of any~~
31 ~~person or causes another person to so penetrate the~~
32 ~~defendant's or another person's genital or anal openings~~
33 ~~for the purpose of sexual arousal, gratification, or abuse by~~
34 ~~any foreign object, substance, instrument, or device, or by~~
35 ~~any unknown object, where the act is accomplished~~
36 ~~against the victim's will by threatening to use the~~
37 ~~authority of a public official to incarcerate, arrest, or~~
38 ~~deport the victim or another, and the victim has a~~
39 ~~reasonable belief that the perpetrator is a public official,~~



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

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

8 (h) Except as provided in Section 288, any person who
 9 participates in an act of penetration of genital or anal
 10 openings with a foreign object, substance, instrument, or
 11 device, or by any unknown object of a person who is
 12 under 18 years of age or causes another person under 18
 13 years of age to so penetrate the defendant’s or another
 14 person’s genital or anal openings for the purpose of sexual
 15 arousal, gratification, or abuse, shall be punished by
 16 imprisonment in the state prison or in the county jail for
 17 a period of not more than one year.

18 (i) Except as provided in Section 288, any person over
 19 the age of 21 years who participates in an act of
 20 penetration of the genital or anal openings with a foreign
 21 object, substance, instrument, or device, or by any
 22 unknown object of another person who is under 16 years
 23 of age or causes another person under 16 years of age to
 24 so penetrate the defendant’s or another person’s genital
 25 or anal openings for the purpose of sexual arousal,
 26 gratification, or abuse, shall be guilty of a felony.

27 (j) Any person who participates in an act of
 28 penetration of the genital or anal openings with a foreign
 29 object, instrument, or device, or by any unknown object
 30 of another person who is under 14 years of age and who
 31 is more than 10 years younger than he or she or causes
 32 another person who is under 14 years of age and who is
 33 more than 10 years younger than the defendant to so
 34 penetrate the defendant’s or another person’s genital or
 35 anal openings for the purpose of sexual arousal,
 36 gratification, or abuse, shall be punished by
 37 imprisonment in the state prison for three, six, or eight
 38 years.

39 (k) As used in this section:



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

3 ~~(2) “Unknown object” shall include any foreign~~
4 ~~object, substance, instrument, or device, or any part of~~
5 ~~the body, including a penis, when it is not known whether~~
6 ~~penetration was by a penis or by a foreign object,~~
7 ~~substance, instrument, or device, or by any other part of~~
8 ~~the body.~~

9 ~~(l) As used in subdivision (a), “threatening to~~
10 ~~retaliate” means a threat to kidnap or falsely imprison, or~~
11 ~~infract extreme pain, serious bodily injury or death.~~

12 ~~(m) As used in this section, “victim” includes any~~
13 ~~person who the defendant causes to penetrate the genital~~
14 ~~or anal openings of the defendant or another person or~~
15 ~~whose genital or anal openings are caused to be~~
16 ~~penetrated by the defendant or another person and who~~
17 ~~otherwise qualifies as a victim under the requirements of~~
18 ~~this section.~~

19 ~~SEC. 4. Section 667.5 of the Penal Code is amended to~~
20 ~~read:~~

21 ~~667.5. Enhancement of prison terms for new offenses~~
22 ~~because of prior prison terms shall be imposed as follows:~~

23 ~~(a) Where one of the new offenses is one of the violent~~
24 ~~felonies specified in subdivision (c), in addition and~~
25 ~~consecutive to any other prison terms therefor, the court~~
26 ~~shall impose a three-year term for each prior separate~~
27 ~~prison term served by the defendant where the prior~~
28 ~~offense was one of the violent felonies specified in~~
29 ~~subdivision (c). However, no additional term shall be~~
30 ~~imposed under this subdivision for any prison term~~
31 ~~served prior to a period of 10 years in which the defendant~~
32 ~~remained free of both prison custody and the commission~~
33 ~~of an offense which results in a felony conviction.~~

34 ~~(b) Except where subdivision (a) applies, where the~~
35 ~~new offense is any felony for which a prison sentence is~~
36 ~~imposed, in addition and consecutive to any other prison~~
37 ~~terms therefor, the court shall impose a one-year term for~~
38 ~~each prior separate prison term served for any felony;~~
39 ~~provided that no additional term shall be imposed under~~
40 ~~this subdivision for any prison term served prior to a~~



1 ~~period of five years in which the defendant remained free~~
2 ~~of both prison custody and the commission of an offense~~
3 ~~which results in a felony conviction.~~

4 ~~(e) For the purpose of this section, “violent felony”~~
5 ~~means any of the following:~~

6 ~~(1) Murder or voluntary manslaughter.~~

7 ~~(2) Mayhem.~~

8 ~~(3) Rape as defined in paragraph (2) or (6) of~~
9 ~~subdivision (a) of Section 261 or paragraph (1) or (4) of~~
10 ~~subdivision (a) of Section 262.~~

11 ~~(4) Sodomy as defined in paragraph (2) or (3) of~~
12 ~~subdivision (e) or in subdivision (d) of Section 286.~~

13 ~~(5) Oral copulation as defined in paragraph (2) or (3)~~
14 ~~of subdivision (e) or in subdivision (d) of Section 288a.~~

15 ~~(6) Lewd acts on a child under the age of 14 years as~~
16 ~~defined in Section 288.~~

17 ~~(7) Any felony punishable by death or imprisonment~~
18 ~~in the state prison for life.~~

19 ~~(8) Any felony in which the defendant inflicts great~~
20 ~~bodily injury on any person other than an accomplice~~
21 ~~which has been charged and proved as provided for in~~
22 ~~Section 12022.7 or 12022.9 on or after July 1, 1977, or as~~
23 ~~specified prior to July 1, 1977, in Sections 213, 264, and 461,~~
24 ~~or any felony in which the defendant uses a firearm which~~
25 ~~use has been charged and proved as provided in Section~~
26 ~~12022.5, 12022.53, or 12022.55.~~

27 ~~(9) Any robbery perpetrated in an inhabited dwelling~~
28 ~~house, vessel, as defined in Section 21 of the Harbors and~~
29 ~~Navigation Code, which is inhabited and designed for~~
30 ~~habitation, an inhabited floating home as defined in~~
31 ~~subdivision (d) of Section 18075.55 of the Health and~~
32 ~~Safety Code, an inhabited trailer coach, as defined in the~~
33 ~~Vehicle Code, or in the inhabited portion of any other~~
34 ~~building, wherein it is charged and proved that the~~
35 ~~defendant personally used a deadly or dangerous~~
36 ~~weapon, as provided in subdivision (b) of Section 12022,~~
37 ~~in the commission of that robbery.~~

38 ~~(10) Arson, in violation of subdivision (a) of Section~~
39 ~~451.~~



1 ~~(11) The offense defined in subdivision (a) of Section~~
2 ~~289.~~

3 ~~(12) Attempted murder.~~

4 ~~(13) A violation of Section 12308.~~

5 ~~(14) Kidnapping, in violation of subdivision (b) of~~
6 ~~Section 207.~~

7 ~~(15) Kidnapping, as punished in subdivision (b) of~~
8 ~~Section 208.~~

9 ~~(16) Continuous sexual abuse of a child, in violation of~~
10 ~~Section 288.5.~~

11 ~~(17) Carjacking, as defined in subdivision (a) of~~
12 ~~Section 215, if it is charged and proved that the defendant~~
13 ~~personally used a dangerous or deadly weapon as~~
14 ~~provided in subdivision (b) of Section 12022 in the~~
15 ~~commission of the carjacking.~~

16 ~~(18) Any robbery of the first degree punishable~~
17 ~~pursuant to subparagraph (A) of paragraph (1) of~~
18 ~~subdivision (a) of Section 213.~~

19 ~~(19) A violation of Section 264.1.~~

20 ~~The Legislature finds and declares that these specified~~
21 ~~crimes merit special consideration when imposing a~~
22 ~~sentence to display society's condemnation for these~~
23 ~~extraordinary crimes of violence against the person.~~

24 ~~(d) For the purposes of this section, the defendant~~
25 ~~shall be deemed to remain in prison custody for an offense~~
26 ~~until the official discharge from custody or until release~~
27 ~~on parole, whichever first occurs, including any time~~
28 ~~during which the defendant remains subject to~~
29 ~~reimprisonment for escape from custody or is~~
30 ~~reimprisoned on revocation of parole. The additional~~
31 ~~penalties provided for prior prison terms shall not be~~
32 ~~imposed unless they are charged and admitted or found~~
33 ~~true in the action for the new offense.~~

34 ~~(e) The additional penalties provided for prior prison~~
35 ~~terms shall not be imposed for any felony for which the~~
36 ~~defendant did not serve a prior separate term in state~~
37 ~~prison.~~

38 ~~(f) A prior conviction of a felony shall include a~~
39 ~~conviction in another jurisdiction for an offense which, if~~
40 ~~committed in California, is punishable by imprisonment~~



1 in the state prison if the defendant served one year or
2 more in prison for the offense in the other jurisdiction. A
3 prior conviction of a particular felony shall include a
4 conviction in another jurisdiction for an offense which
5 includes all of the elements of the particular felony as
6 defined under California law if the defendant served one
7 year or more in prison for the offense in the other
8 jurisdiction.

9 (g) A prior separate prison term for the purposes of
10 this section shall mean a continuous completed period of
11 prison incarceration imposed for the particular offense
12 alone or in combination with concurrent or consecutive
13 sentences for other crimes, including any
14 reimprisonment on revocation of parole which is not
15 accompanied by a new commitment to prison, and
16 including any reimprisonment after an escape from
17 incarceration.

18 (h) Serving a prison term includes any confinement
19 time in any state prison or federal penal institution as
20 punishment for commission of an offense, including
21 confinement in a hospital or other institution or facility
22 credited as service of prison time in the jurisdiction of the
23 confinement.

24 (i) For the purposes of this section, a commitment to
25 the State Department of Mental Health as a mentally
26 disordered sex offender following a conviction of a felony,
27 which commitment exceeds one year in duration, shall be
28 deemed a prior prison term.

29 (j) For the purposes of this section, when a person
30 subject to the custody, control, and discipline of the
31 Director of Corrections is incarcerated at a facility
32 operated by the Department of the Youth Authority, that
33 incarceration shall be deemed to be a term served in state
34 prison.

35 (k) Notwithstanding subdivisions (d) and (g) or any
36 other provision of law, where one of the new offenses is
37 committed while the defendant is temporarily removed
38 from prison pursuant to Section 2690 or while the
39 defendant is transferred to a community facility pursuant
40 to Section 3416, 6253, or 6263, or while the defendant is on



1 ~~furlough pursuant to Section 6254, the defendant shall be~~
2 ~~subject to the full enhancements provided for in this~~
3 ~~section.~~

4 ~~This subdivision shall not apply when a full, separate,~~
5 ~~and consecutive term is imposed pursuant to any other~~
6 ~~provision of law.~~

7 ~~SEC. 5. Section 1192.7 of the Penal Code is amended~~
8 ~~to read:~~

9 ~~1192.7. (a) Plea bargaining in any case in which the~~
10 ~~indictment or information charges any serious felony, any~~
11 ~~felony in which it is alleged that a firearm was personally~~
12 ~~used by the defendant, or any offense of driving while~~
13 ~~under the influence of alcohol, drugs, narcotics, or any~~
14 ~~other intoxicating substance, or any combination thereof,~~
15 ~~is prohibited, unless there is insufficient evidence to~~
16 ~~prove the people's case, or testimony of a material witness~~
17 ~~cannot be obtained, or a reduction or dismissal would not~~
18 ~~result in a substantial change in sentence.~~

19 ~~(b) As used in this section "plea bargaining" means~~
20 ~~any bargaining, negotiation, or discussion between a~~
21 ~~criminal defendant, or his or her counsel, and a~~
22 ~~prosecuting attorney or judge, whereby the defendant~~
23 ~~agrees to plead guilty or nolo contendere, in exchange for~~
24 ~~any promises, commitments, concessions, assurances, or~~
25 ~~consideration by the prosecuting attorney or judge~~
26 ~~relating to any charge against the defendant or to the~~
27 ~~sentencing of the defendant.~~

28 ~~(c) As used in this section, "serious felony" means any~~
29 ~~of the following:~~

- 30 ~~(1) Murder or voluntary manslaughter; (2) mayhem;~~
31 ~~(3) rape; (4) sodomy by force, violence, duress, menace,~~
32 ~~threat of great bodily injury, or fear of immediate and~~
33 ~~unlawful bodily injury on the victim or another person or~~
34 ~~sodomy as defined in subdivision (c) or (d) of Section 286;~~
35 ~~(5) oral copulation by force, violence, duress, menace,~~
36 ~~threat of great bodily injury, or fear of immediate and~~
37 ~~unlawful bodily injury on the victim or another person or~~
38 ~~oral copulation as defined in subdivision (c) or (d) of~~
39 ~~Section 288a; (6) lewd or lascivious act on a child under~~
40 ~~the age of 14 years; (7) any felony punishable by death or~~



1 ~~imprisonment in the state prison for life; (8) any other~~
2 ~~felony in which the defendant personally inflicts great~~
3 ~~bodily injury on any person, other than an accomplice, or~~
4 ~~any felony in which the defendant personally uses a~~
5 ~~firearm; (9) attempted murder; (10) assault with intent~~
6 ~~to commit rape or robbery; (11) assault with a deadly~~
7 ~~weapon or instrument on a peace officer; (12) assault by~~
8 ~~a life prisoner on a noninmate; (13) assault with a deadly~~
9 ~~weapon by an inmate; (14) arson; (15) exploding a~~
10 ~~destructive device or any explosive with intent to injure;~~
11 ~~(16) exploding a destructive device or any explosive~~
12 ~~causing great bodily injury or mayhem; (17) exploding a~~
13 ~~destructive device or any explosive with intent to~~
14 ~~murder; (18) burglary of an inhabited dwelling house, or~~
15 ~~trailer coach as defined by the Vehicle Code, or inhabited~~
16 ~~portion of any other building; (19) robbery or bank~~
17 ~~robbery; (20) kidnapping; (21) holding of a hostage by a~~
18 ~~person confined in a state prison; (22) attempt to commit~~
19 ~~a felony punishable by death or imprisonment in the state~~
20 ~~prison for life; (23) any felony in which the defendant~~
21 ~~personally used a dangerous or deadly weapon; (24)~~
22 ~~selling, furnishing, administering, giving, or offering to~~
23 ~~sell, furnish, administer, or give to a minor any heroin,~~
24 ~~cocaine, phenethylamine (PCP), or any~~
25 ~~methamphetamine-related drug, as described in~~
26 ~~paragraph (2) of subdivision (d) of Section 11055 of the~~
27 ~~Health and Safety Code, or any of the precursors of~~
28 ~~methamphetamines, as described in subparagraph (A) of~~
29 ~~paragraph (1) of subdivision (f) of Section 11055 or~~
30 ~~subdivision (a) of Section 11100 of the Health and Safety~~
31 ~~Code; (25) any violation of subdivision (a) of Section 289;~~
32 ~~(26) grand theft involving a firearm; (27) carjacking; (28)~~
33 ~~a violation of Section 264.1; (29) any attempt to commit~~
34 ~~a crime listed in this subdivision other than an assault; and~~
35 ~~(30) any conspiracy to commit an offense described in~~
36 ~~paragraph (24) as it applies to Section 11370.4 of the~~
37 ~~Health and Safety Code where the defendant conspirator~~
38 ~~was substantially involved in the planning, direction, or~~
39 ~~financing of the underlying offense.~~



1 ~~(d) As used in this section, “bank robbery” means to~~
2 ~~take or attempt to take, by force or violence, or by~~
3 ~~intimidation from the person or presence of another any~~
4 ~~property or money or any other thing of value belonging~~
5 ~~to, or in the care, custody, control, management, or~~
6 ~~possession of, any bank, credit union, or any savings and~~
7 ~~loan association.~~

8 ~~As used in this subdivision, the following terms have the~~
9 ~~following meanings:~~

10 ~~(1) “Bank” means any member bank of the Federal~~
11 ~~Reserve System, and any bank, banking association, trust~~
12 ~~company, savings bank, or other banking institution~~
13 ~~organized or operating under the laws of the United~~
14 ~~States, and any bank the deposits of which are insured by~~
15 ~~the Federal Deposit Insurance Corporation.~~

16 ~~(2) “Savings and loan association” means any federal~~
17 ~~savings and loan association and any “insured institution”~~
18 ~~as defined in Section 401 of the National Housing Act, as~~
19 ~~amended, and any federal credit union as defined in~~
20 ~~Section 2 of the Federal Credit Union Act.~~

21 ~~(3) “Credit union” means any federal credit union and~~
22 ~~any state chartered credit union the accounts of which~~
23 ~~are insured by the Administrator of the National Credit~~
24 ~~Union Administration.~~

25 ~~(e) The provisions of this section shall not be amended~~
26 ~~by the Legislature except by statute passed in each house~~
27 ~~by rolleall vote entered in the journal, two-thirds of the~~
28 ~~membership concurring, or by a statute that becomes~~
29 ~~effective only when approved by the electors.~~

30 ~~SEC. 6. The amendments to Sections 286, 288a, and~~
31 ~~289 of the Penal Code made by this act that number~~
32 ~~certain subdivisions with paragraphs, are intended to be~~
33 ~~technical amendments only and make no substantive~~
34 ~~changes to those sections.~~

35 ~~SEC. 7.~~

36 ~~SECTION 1. Section 152 is added to the Penal Code,~~
37 ~~to read:~~

38 ~~152. (a) Any person who is convicted of the~~
39 ~~commission or attempted commission of any crime listed~~
40 ~~in subdivision (c) of Section 667.5 or a felony violation of~~



1 Section 207, 245, 422, or 646.9 against a present or former
2 prosecutor, public defender, peace officer, juror, judge,
3 or the immediate family members of any of the above, in
4 retaliation for or to prevent the performance of his or her
5 official duties, shall receive a five-year enhancement in
6 addition and consecutive to the penalty prescribed.

7 (b) For the purposes of this section, the following
8 words have the following meanings:

9 (1) "Immediate family" means spouse, child,
10 stepchild, brother, stepbrother, sister, stepsister, mother,
11 stepmother, father, or stepfather.

12 (2) "Peace officer" means any person specified in
13 subdivision (a) of Section 830.1 or Section 830.5.

14 SEC. 2. No reimbursement is required by this act
15 pursuant to Section 6 of Article XIII B of the California
16 Constitution because the only costs that may be incurred
17 by a local agency or school district will be incurred
18 because this act creates a new crime or infraction,
19 eliminates a crime or infraction, or changes the penalty
20 for a crime or infraction, within the meaning of Section
21 17556 of the Government Code, or changes the definition
22 of a crime within the meaning of Section 6 of Article
23 XIII B of the California Constitution.

24 Notwithstanding Section 17580 of the Government
25 Code, unless otherwise specified, the provisions of this act
26 shall become operative on the same date that the act
27 takes effect pursuant to the California Constitution.

