

AMENDED IN SENATE JANUARY 6, 2014

AMENDED IN SENATE APRIL 2, 2013

SENATE BILL

No. 663

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, 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. Crimes: persons with developmental and intellectual disabilities.~~

~~(1) Existing law proscribes various types of sexual assault, including the crime of 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)

(1) 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)

(2) 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, upon the next regularly scheduled review of a training module relating to persons with disabilities, to create and make available on DVD and to distribute electronically a course on the steps that may be taken in developing a training course regarding the investigation of crimes against or involving individuals with developmental disabilities, intellectual disabilities, cognitive impairments, and communication impairments, as specified.~~

~~The bill would also express the intent of the Legislature in enacting this provision to address the problem of sexual violence against people with intellectual and various developmental disabilities and set forth related findings and declarations encourage the establishment of crime investigation units in law enforcement agencies throughout the state specializing in investigating crimes against or involving individuals with developmental disabilities, intellectual disabilities, cognitive impairments, and communication impairments, including, but not limited to, investigating crimes involving the sexual exploitation and sexual abuse of developmentally disabled children and adults.~~

~~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.~~

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

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~~
11 ~~epidemic levels. This problem has reached epidemic levels, yet~~
12 ~~has been ignored, and the criminal justice system has failed to~~
13 ~~address this public health problem adequately.~~

14 ~~(3) The epidemic is increasing, and will likely continue to~~
15 ~~increase, with the aging of the developmental disability population,~~
16 ~~and the explosive rate of increase of individuals with autism and~~
17 ~~fetal alcohol syndrome disorder.~~

18 ~~(4) In enacting Section 13519.06 of the Penal Code, it is the~~
19 ~~intent of the Legislature to develop and implement training~~
20 ~~programs similar to the training currently provided to law~~
21 ~~enforcement employees for handling cases involving domestic~~
22 ~~violence and other serious crimes, for law enforcement employees~~
23 ~~handling cases involving sexual violence against persons with~~
24 ~~developmental disabilities.~~

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

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

28 ~~1385. (a) Evidence of a statement by a person with a~~
29 ~~developmental disability is not made inadmissible by the hearsay~~
30 ~~rule if offered in a criminal or juvenile proceeding in which the~~
31 ~~person is alleged to have been a victim of a crime and the~~
32 ~~conditions of subdivision (c) are satisfied.~~

33 ~~(b) Evidence of a statement by a person with a developmental~~
34 ~~disability that describes all or part of an offense described in~~
35 ~~Section 261, 286, 288, 288a, or 289 of the Penal Code performed~~
36 ~~with, by, on, or in the presence of the declarant, is not made~~
37 ~~inadmissible by the hearsay rule if offered in a criminal, juvenile,~~
38 ~~or civil proceeding and the conditions of subdivision (c) are~~
39 ~~satisfied.~~

1 ~~(e) Evidence of a statement by a person with a developmental~~
2 ~~disability that describes any act of child abuse, including, but not~~
3 ~~limited to, the crimes described in Section 273a, 273ab, or 273d~~
4 ~~of the Penal Code, to which the declarant was subjected or which~~
5 ~~the declarant witnessed, is not made inadmissible by the hearsay~~
6 ~~rule if offered in a criminal, juvenile, or civil proceeding in which~~
7 ~~a child is alleged to be a victim of child abuse or the subject of a~~
8 ~~proceeding alleging that a child is within the jurisdiction of the~~
9 ~~juvenile court on the basis of abuse or neglect, pursuant to Section~~
10 ~~300 of the Welfare and Institutions Code, and the conditions of~~
11 ~~subdivision (e) are satisfied.~~

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

18 ~~(e) The exceptions to the hearsay rule described in subdivisions~~
19 ~~(a) to (d), inclusive, of this section shall apply only if the court~~
20 ~~finds in a hearing conducted outside the presence of the jury that~~
21 ~~the time, content, and circumstances of the statement provide~~
22 ~~sufficient safeguards of reliability and either of the following apply:~~

23 ~~(1) The statement is a nontestimonial statement.~~

24 ~~(2) One of the following applies:~~

25 ~~(A) The declarant testifies at the proceeding.~~

26 ~~(B) If the declarant is unavailable to testify, the defendant has~~
27 ~~had an opportunity to cross-examine the declarant in a previous~~
28 ~~proceeding and there is corroborative evidence of the act that is~~
29 ~~the subject of the statement.~~

30 ~~(f) If a statement described in this section is admitted into~~
31 ~~evidence, the court shall instruct the jury in the final written~~
32 ~~instructions that during the proceeding the jury heard evidence~~
33 ~~regarding a person's statement, and it is for the jury to determine~~
34 ~~the weight and credit to be given to that statement, and, in making~~
35 ~~that determination, the jury shall consider the nature of the~~
36 ~~statement, the circumstances under which the statement was made,~~
37 ~~and any other relevant factor.~~

38 ~~(g) The proponent of the statement shall give the adverse party~~
39 ~~reasonable notice of his or her intention to offer the statement and~~
40 ~~the particulars of the statement.~~

1 ~~(h) For purposes of this section, a “developmental disability”~~
2 ~~means an intellectual disability that originates before an individual~~
3 ~~attains 18 years of age, continues, or can be expected to continue,~~
4 ~~indefinitely, and constitutes a substantial intellectual disability for~~
5 ~~that individual. This term shall include mental retardation, cerebral~~
6 ~~palsy, epilepsy, and autism if the condition severely impairs the~~
7 ~~cognitive abilities of the individual. This term shall also include~~
8 ~~disabling conditions found to be closely related to mental~~
9 ~~retardation or to require treatment similar to that required for~~
10 ~~individuals with mental retardation, but shall not include other~~
11 ~~disabling conditions that are solely physical in nature.~~

12 ~~SEC. 3. Section 261 of the Penal Code is amended to read:~~

13 ~~261. (a) Rape is an act of sexual intercourse accomplished~~
14 ~~with a person not the spouse of the perpetrator, under any of the~~
15 ~~following circumstances:~~

16 ~~(1) If the person is incapable of giving legal consent and he or~~
17 ~~she is a person described in subparagraph (A) or (B).~~
18 ~~Notwithstanding the existence of a conservatorship pursuant to~~
19 ~~the provisions of the Lanterman-Petris-Short Act (Part 1~~
20 ~~(commencing with Section 5000) of Division 5 of the Welfare and~~
21 ~~Institutions Code), the prosecuting attorney shall prove, as an~~
22 ~~element of the crime, the facts specified in subparagraph (A) or~~
23 ~~(B). For purposes of this paragraph, a person is incapable of giving~~
24 ~~legal consent if he or she:~~

25 ~~(A) Has a mental disorder or physical disability, the mental~~
26 ~~disorder or physical disability rendered the alleged victim incapable~~
27 ~~of giving legal consent, and these facts are known or reasonably~~
28 ~~should be known to the person committing the act.~~

29 ~~(B) Has a developmental disability and either of the following~~
30 ~~applies:~~

31 ~~(i) The person lacks the legal capacity to give consent when~~
32 ~~compared to a reasonable person who does not have a~~
33 ~~developmental disability and this fact is known or reasonably~~
34 ~~should be known to the person committing the act. For purposes~~
35 ~~of this clause, a court shall determine whether a person lacks the~~
36 ~~legal capacity to give consent pursuant to Part 17 (commencing~~
37 ~~with Section 810) of Division 2 of the Probate Code.~~

38 ~~(ii) The defendant is either of the following:~~

39 ~~(I) A caretaker, as defined in Section 288.~~

1 ~~(H) A care provider, meaning a person who provides assistance~~
2 ~~with the activities of daily living, including any person that directly~~
3 ~~or indirectly owns, administers, or operates a developmental center,~~
4 ~~a community care facility as defined in Sections 1502 and 1504~~
5 ~~of the Health and Safety Code, or a health facility, as defined in~~
6 ~~Section 1250 of the Health and Safety Code, and includes all~~
7 ~~agents, employees, and contractors of the care provider who are~~
8 ~~responsible for providing care to clients.~~

9 ~~(2) If it is accomplished against a person’s will by means of~~
10 ~~force, violence, duress, menace, or fear of immediate and unlawful~~
11 ~~bodily injury on the person or another.~~

12 ~~(3) If a person is prevented from resisting by any intoxicating~~
13 ~~or anesthetic substance, or any controlled substance, and this~~
14 ~~condition was known, or reasonably should have been known by~~
15 ~~the accused.~~

16 ~~(4) If a person is at the time unconscious of the nature of the~~
17 ~~act, and this is known to the accused. As used in this paragraph,~~
18 ~~“unconscious of the nature of the act” means incapable of resisting~~
19 ~~because the victim meets one of the following conditions:~~

20 ~~(A) Was unconscious or asleep.~~

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

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

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

30 ~~(5) If a person submits under the belief that the person~~
31 ~~committing the act is the victim’s spouse, and this belief is induced~~
32 ~~by any artifice, pretense, or concealment practiced by the accused,~~
33 ~~with intent to induce the belief.~~

34 ~~(6) If the act is accomplished against the victim’s will by~~
35 ~~threatening to retaliate in the future against the victim or any other~~
36 ~~person, and there is a reasonable possibility that the perpetrator~~
37 ~~will execute the threat. As used in this paragraph, “threatening to~~
38 ~~retaliate” means a threat to kidnap or falsely imprison, or to inflict~~
39 ~~extreme pain, serious bodily injury, or death.~~

1 (7) ~~If the act is accomplished against the victim's will by~~
2 ~~threatening to use the authority of a public official to incarcerate,~~
3 ~~arrest, or deport the victim or another, and the victim has a~~
4 ~~reasonable belief that the perpetrator is a public official. As used~~
5 ~~in this paragraph, "public official" means a person employed by~~
6 ~~a governmental agency who has the authority, as part of that~~
7 ~~position, to incarcerate, arrest, or deport another. The perpetrator~~
8 ~~does not actually have to be a public official.~~

9 (b) ~~As used in this section, the following definitions apply:~~

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

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

20 (3) ~~"Menace" means any threat, declaration, or act which shows~~
21 ~~an intention to inflict an injury upon another.~~

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

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

27 (b) (1) ~~Except as provided in Section 288, any person who~~
28 ~~participates in an act of sodomy with another person who is under~~
29 ~~18 years of age shall be punished by imprisonment in the state~~
30 ~~prison, or in a county jail for not more than one year.~~

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

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

38 (2) (A) ~~Any person who commits an act of sodomy when the~~
39 ~~act is accomplished against the victim's will by means of force,~~
40 ~~violence, duress, menace, or fear of immediate and unlawful bodily~~

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

3 ~~(B) Any person who commits an act of sodomy with another~~
4 ~~person who is under 14 years of age when the act is accomplished~~
5 ~~against the victim's will by means of force, violence, duress,~~
6 ~~menace, or fear of immediate and unlawful bodily injury on the~~
7 ~~victim or another person shall be punished by imprisonment in the~~
8 ~~state prison for 9, 11, or 13 years.~~

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

15 ~~(D) This paragraph does not preclude prosecution under Section~~
16 ~~269, Section 288.7, or any other provision of law.~~

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

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

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 sodomy upon a victim who is under 14~~
36 ~~years of age, when the act is accomplished against the victim's~~
37 ~~will by means of force or fear of immediate and unlawful bodily~~
38 ~~injury on the victim or another person, shall be punished by~~
39 ~~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 sodomy upon a victim who is a minor~~
4 ~~14 years of age or older, when the act is accomplished against the~~
5 ~~victim's will by means of force or fear of immediate and unlawful~~
6 ~~bodily injury on the victim or another person, shall be punished~~
7 ~~by imprisonment in the state prison for 7, 9, or 11 years.~~

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

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

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

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

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

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

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

32 ~~(g) Except as provided in subdivision (h), if a person commits~~
33 ~~an act of sodomy, and the victim is at the time incapable of giving~~
34 ~~legal consent and is described in paragraph (1) or (2), the person~~
35 ~~shall be punished by imprisonment in the state prison for three,~~
36 ~~six, or eight years. Notwithstanding the existence of a~~
37 ~~conservatorship pursuant to the Lanterman-Petris-Short Act (Part~~
38 ~~1 (commencing with Section 5000) of Division 5 of the Welfare~~
39 ~~and Institutions Code), the prosecuting attorney shall prove, as an~~
40 ~~element of the crime, the facts specified in paragraph (1) or (2).~~

1 For purposes of this paragraph, a victim is incapable of giving
2 legal consent if he or 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.

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

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

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

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

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

29 (2) ~~A "caretaker" has the same meaning as set forth in Section~~
30 ~~288.~~

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

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

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

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

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

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

14 ~~(2) Any person who is a caretaker and commits an act described~~
15 ~~in subdivision (a) upon a dependent person, including a person~~
16 ~~with a developmental disability, as defined in subdivision (d), by~~
17 ~~use of force, violence, duress, menace, or fear of immediate and~~
18 ~~unlawful bodily injury on the victim or another person, with the~~
19 ~~intent described in subdivision (a), is guilty of a felony and shall~~
20 ~~be punished by imprisonment in the state prison for 5, 8, or 10~~
21 ~~years.~~

22 ~~(e) (1) Any person who commits an act described in subdivision~~
23 ~~(a) with the intent described in that subdivision, and the victim is~~
24 ~~a child of 14 or 15 years, and that person is at least 10 years older~~
25 ~~than the child, is guilty of a public offense and shall be punished~~
26 ~~by imprisonment in the state prison for one, two, or three years,~~
27 ~~or by imprisonment in a county jail for not more than one year. In~~
28 ~~determining whether the person is at least 10 years older than the~~
29 ~~child, the difference in age shall be measured from the birth date~~
30 ~~of the person to the birth date of the child.~~

31 ~~(2) Any person who is a caretaker and commits an act described~~
32 ~~in subdivision (a) upon a dependent person, including a person~~
33 ~~with a developmental disability, as defined in subdivision (d), with~~
34 ~~the intent described in subdivision (a), is guilty of a public offense~~
35 ~~and shall be punished by imprisonment in the state prison for one,~~
36 ~~two, or three years, or by imprisonment in a county jail for not~~
37 ~~more than one year.~~

38 ~~(d) (1) In any arrest or prosecution under this section or Section~~
39 ~~288.5, the peace officer, district attorney, and the court shall~~
40 ~~consider the needs of the child victim, person with a developmental~~

1 disability, or other dependent person and shall do whatever is
2 necessary, within existing budgetary resources, and constitutionally
3 permissible to prevent psychological harm to the child victim or
4 to prevent psychological harm to the person with a developmental
5 disability or other dependent person victim resulting from
6 participation in the court process.

7 (2) For purposes of this subdivision, “developmental disability”
8 has the same meaning as found in subdivision (h) of Section 1385
9 of the Evidence Code.

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

24 If the court orders a fine imposed pursuant to this subdivision,
25 the actual administrative cost of collecting that fine, not to exceed
26 2 percent of the total amount paid, may be paid into the general
27 fund of the county treasury for the use and benefit of the county.

28 (f) For purposes of paragraph (2) of subdivision (b) and
29 paragraph (2) of subdivision (e), the following definitions apply:

30 (1) “Caretaker” means an owner, operator, administrator,
31 employee, independent contractor, agent, or volunteer of any of
32 the following public or private facilities when the facilities provide
33 care for elder or dependent persons:

34 (A) Twenty-four hour health facilities, as defined in Sections
35 1250, 1250.2, and 1250.3 of the Health and Safety Code.

36 (B) Clinics.

37 (C) Home health agencies.

38 (D) Adult day health care centers.

- 1 ~~(E) Secondary schools that serve dependent persons and~~
- 2 ~~postsecondary educational institutions that serve dependent persons~~
- 3 ~~or elders.~~
- 4 ~~(F) Sheltered workshops.~~
- 5 ~~(G) Camps.~~
- 6 ~~(H) Community care facilities, as defined by Section 1402 of~~
- 7 ~~the Health and Safety Code, and residential care facilities for the~~
- 8 ~~elderly, as defined in Section 1569.2 of the Health and Safety~~
- 9 ~~Code.~~
- 10 ~~(I) Respite care facilities.~~
- 11 ~~(J) Foster homes.~~
- 12 ~~(K) Regional centers for persons with developmental disabilities.~~
- 13 ~~(L) A home health agency licensed in accordance with Chapter~~
- 14 ~~8 (commencing with Section 1725) of Division 2 of the Health~~
- 15 ~~and Safety Code.~~
- 16 ~~(M) An agency that supplies in-home supportive services.~~
- 17 ~~(N) Board and care facilities.~~
- 18 ~~(O) Any other protective or public assistance agency that~~
- 19 ~~provides health services or social services to elder or dependent~~
- 20 ~~persons, including, but not limited to, in-home supportive services,~~
- 21 ~~as defined in Section 14005.14 of the Welfare and Institutions~~
- 22 ~~Code.~~
- 23 ~~(P) Private residences.~~
- 24 ~~(2) “Board and care facilities” means licensed or unlicensed~~
- 25 ~~facilities that provide assistance with one or more of the following~~
- 26 ~~activities:~~
- 27 ~~(A) Bathing.~~
- 28 ~~(B) Dressing.~~
- 29 ~~(C) Grooming.~~
- 30 ~~(D) Medication storage.~~
- 31 ~~(E) Medical dispensation.~~
- 32 ~~(F) Money management.~~
- 33 ~~(3) “Dependent person” means any person who has a physical~~
- 34 ~~or mental impairment that substantially restricts his or her ability~~
- 35 ~~to carry out normal activities or to protect his or her rights,~~
- 36 ~~including, but not limited to, persons who have physical or~~
- 37 ~~developmental disabilities or whose physical or mental abilities~~
- 38 ~~have significantly diminished because of age. “Dependent person”~~
- 39 ~~includes any person who is admitted as an inpatient to a 24-hour~~

1 health facility, as defined in Sections 1250, 1250.2, and 1250.3 of
2 the Health and Safety Code.

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

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

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

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

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

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

25 ~~288a. (a) Oral copulation is the act of copulating the mouth~~
26 ~~of one person with the sexual organ or anus of another person.~~

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

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

35 ~~(c) (1) Any person who participates in an act of oral copulation~~
36 ~~with another person who is under 14 years of age and more than~~
37 ~~10 years younger than he or she shall be punished by imprisonment~~
38 ~~in the state prison for three, six, or eight years.~~

39 ~~(2) (A) Any person who commits an act of oral copulation when~~
40 ~~the act is accomplished against the victim’s will by means of force,~~

1 violence, duress, menace, or fear of immediate and unlawful bodily
2 injury on the victim or another person shall be punished by
3 imprisonment in the state prison for three, six, or eight years.

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

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

16 (D) This paragraph does not preclude prosecution under Section
17 269, Section 288.7, or any other provision of law.

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

24 (d) (1) Any person who, while voluntarily acting in concert
25 with another person, either personally or by aiding and abetting
26 that other person, commits an act of oral copulation (1) when the
27 act is accomplished against the victim's will by means of force or
28 fear of immediate and unlawful bodily injury on the victim or
29 another person, or (2) where the act is accomplished against the
30 victim's will by threatening to retaliate in the future against the
31 victim or any other person, and there is a reasonable possibility
32 that the perpetrator will execute the threat, or (3) where the victim
33 is at the time incapable of giving legal consent as described in
34 subparagraph (A) or (B), shall be punished by imprisonment in
35 the state prison for five, seven, or nine years. Notwithstanding the
36 appointment of a conservator with respect to the victim pursuant
37 to the provisions of the Lanterman-Petris-Short Act (Part 1
38 (commencing with Section 5000) of Division 5 of the Welfare and
39 Institutions Code), the prosecuting attorney shall prove, as an
40 element of the crime described under paragraph (3), the facts

1 ~~specified in subparagraph (A) or (B). For purposes of this~~
2 ~~paragraph, a victim is incapable of giving legal consent if he or~~
3 ~~she:~~

4 ~~(A) Has a mental disorder or physical disability, the mental~~
5 ~~disorder or physical disability rendered the alleged victim incapable~~
6 ~~of giving legal consent, and these facts are known or reasonably~~
7 ~~should be known to the person committing the act.~~

8 ~~(B) Has a developmental disability and either of the following~~
9 ~~applies:~~

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

17 ~~(ii) The defendant is either of the following:~~

18 ~~(I) A caretaker, as defined in Section 288.~~

19 ~~(II) A care provider.~~

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

27 ~~(3) Any person who, while voluntarily acting in concert with~~
28 ~~another person, either personally or aiding and abetting that other~~
29 ~~person, commits an act of oral copulation upon a victim who is a~~
30 ~~minor 14 years of age or older, when the act is accomplished~~
31 ~~against the victim's will by means of force or fear of immediate~~
32 ~~and unlawful bodily injury on the victim or another person, shall~~
33 ~~be punished by imprisonment in the state prison for 8, 10, or 12~~
34 ~~years.~~

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

37 ~~(e) Any person who participates in an act of oral copulation~~
38 ~~while confined in any state prison, as defined in Section 4504 or~~
39 ~~in any local detention facility as defined in Section 6031.4, shall~~

1 be punished by imprisonment in the state prison, or in a county
2 jail for a period of not more than one year.

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

10 (1) Was unconscious or asleep.

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

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

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

20 (g) Except as provided in subdivision (h), if any person commits
21 an act of oral copulation, and the victim is at the time incapable
22 of giving legal consent as described in paragraph (1) or (2), the
23 person who commits the act shall be punished by imprisonment
24 in the state prison, for three, six, or eight years. Notwithstanding
25 the existence of a conservatorship pursuant to the provisions of
26 the Lanterman-Petris-Short Act (Part 1 (commencing with Section
27 5000) of Division 5 of the Welfare and Institutions Code), the
28 prosecuting attorney shall prove, as an element of the crime, the
29 facts specified in paragraph (1) or (2). For purposes of this
30 subdivision, a victim is incapable of giving legal consent if he or
31 she:

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

35 (2) Has a developmental disability and either of the following
36 applies:

37 (A) The person lacks the legal mental capacity to give consent
38 when compared to a reasonable person who does not have a
39 developmental disability and this fact is known or reasonably
40 should be known to the person committing the act. For purposes

1 of this paragraph, a court shall determine whether a person lacks
2 the legal capacity to give consent pursuant to Part 17 (commencing
3 with Section 810) of Division 2 of the Probate Code.

4 (B) The defendant is either of the following:

5 (i) A caretaker.

6 (ii) A care provider.

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

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

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

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

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

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

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

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

19 ~~(2) A "caretaker" has the same meaning as set forth in Section
20 288.~~

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

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

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

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

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

37 ~~(B) Any person who commits an act of sexual penetration upon
38 a child who is under 14 years of age, when the act is accomplished
39 against the victim's will by means of force, violence, duress,
40 menace, or fear of immediate and unlawful bodily injury on the~~

1 victim or another person, shall be punished by imprisonment in
2 the state prison for 8, 10, or 12 years.

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

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

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

17 (b) Except as provided in subdivision (c), if a person commits
18 an act of sexual penetration, and the victim is at the time incapable
19 of giving legal consent, and the victim is a person described in
20 paragraph (1) or (2), the person committing the act shall be
21 punished by imprisonment in the state prison for three, six, or eight
22 years. Notwithstanding the appointment of a conservator with
23 respect to the victim pursuant to the provisions of the
24 Lanterman-Petris-Short Act (Part 1 (commencing with Section
25 5000) of Division 5 of the Welfare and Institutions Code), the
26 prosecuting attorney shall prove, as an element of the crime the
27 facts described in paragraph (1) or (2):

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

31 (2) The victim has a developmental disability and either of the
32 following applies:

33 (A) The victim lacks the legal mental capacity to give consent
34 when compared to a reasonable person who does not have a
35 developmental disability and this fact is known or reasonably
36 should be known to the person committing the act. For purposes
37 of this paragraph, a court shall determine whether a person lacks
38 the legal capacity to give consent pursuant to Part 17 (commencing
39 with Section 810) of Division 2 of the Probate Code.

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

1 ~~(i) A caretaker as defined in Section 288.~~

2 ~~(ii) A care provider.~~

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

21 ~~(d) Any person who commits an act of sexual penetration, and~~
22 ~~the victim is at the time unconscious of the nature of the act and~~
23 ~~this is known to the person committing the act or causing the act~~
24 ~~to be committed, shall be punished by imprisonment in the state~~
25 ~~prison for three, six, or eight years. As used in this subdivision,~~
26 ~~“unconscious of the nature of the act” means incapable of resisting~~
27 ~~because the victim meets one of the following conditions:~~

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

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

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

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

38 ~~(e) Any person who commits an act of sexual penetration when~~
39 ~~the victim is prevented from resisting by any intoxicating or~~
40 ~~anesthetic substance, or any controlled substance, and this condition~~

1 was known, or reasonably should have been known by the accused,
2 shall be punished by imprisonment in the state prison for a period
3 of three, six, or eight years.

4 (f) Any person who commits an act of sexual penetration when
5 the victim submits under the belief that the person committing the
6 act or causing the act to be committed is the victim's spouse, and
7 this belief is induced by any artifice, pretense, or concealment
8 practiced by the accused, with intent to induce the belief, shall be
9 punished by imprisonment in the state prison for a period of three,
10 six, or eight years.

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

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

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

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

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

35 (k) As used in this section:

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 center,
39 a community care facility, as defined in Sections 1502 and 1504
40 of the Health and Safety Code, or a health facility, as defined in

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

4 ~~(2) “Developmental disability” has the same meaning as found~~
5 ~~in subdivision (h) of Section 1385 of the Evidence Code.~~

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

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

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

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

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

28 ~~SEC. 8.~~

29 ~~SECTION 1.~~ Section 1048.1 of the Penal Code is amended to
30 read:

31 1048.1. (a) In scheduling a trial date at an arraignment in
32 superior court involving any of the following offenses, reasonable
33 efforts shall be made to avoid setting that trial, when that case is
34 assigned to a particular prosecuting attorney, on the same day that
35 another case is set for trial involving the same prosecuting attorney:

- 36 (1) Murder, as defined in subdivision (a) of Section 187.
37 (2) An alleged sexual assault offense, as described in
38 subdivisions (a) and (b) of Section 11165.1.
39 (3) Alleged child abuse offense, as described in Section 11165.6.

1 (4) A case being handled in the Career Criminal Prosecution
2 Program pursuant to Sections 999b to 999h, 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.~~

9 *SEC. 2.* Section 1050 of the Penal Code is amended to read:

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

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

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

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

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

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

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

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

1 a continuance date if the motion is granted. The facts as to
2 inconvenience or prior commitments may be offered by the witness
3 or by a party to the case.

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

9 (A) Murder, as defined in subdivision (a) of Section 187.

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

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

14 (D) Domestic violence as defined in Section 13700.

15 (E) A case being handled in the Career Criminal Prosecution
16 Program pursuant to Sections 999b to 999h, inclusive.

17 (F) A hate crime, as defined in Title 11.6 (commencing with
18 Section 422.6) of Part 1.

19 (G) A case involving a crime against a person with a
20 developmental disability.

21 (H) A continuance under this subdivision shall be limited to a
22 maximum of 10 additional court days.

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

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

37 (i) A continuance shall be granted only for that period of time
38 shown to be necessary by the evidence considered at the hearing
39 on the motion. Whenever any continuance is granted, the court

1 shall state on the record the facts proved that justify the length of
2 the continuance, and those facts shall be entered in the minutes.

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

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

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

15 (m) For purposes of this section, a "developmental disability"
16 has the same meaning as found in subdivision (h) of Section 1385
17 of the Evidence Code.

18 ~~SEC. 10. Section 13519.06 is added to the Penal Code, to read:~~

19 ~~13519.06. (a) The Commission on Peace Officer Standards~~
20 ~~and Training shall develop, and periodically update as necessary,~~
21 ~~a model general order or other formal policy for dealing with crime~~
22 ~~victims with developmental disabilities.~~

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

29 ~~(1) Information on the wide prevalence of crimes against people~~
30 ~~with developmental disabilities.~~

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

35 ~~(3) The fact that victims and witnesses with developmental~~
36 ~~disabilities can be highly credible witnesses when interviewed~~
37 ~~appropriately and when given instructions for appropriate interview~~
38 ~~techniques.~~

39 ~~(4) A description of the training materials that are available,~~
40 ~~including, but not limited to, further interview training~~

1 opportunities and the telecourse developed by the commission
2 pursuant to Section 13515.

3 (5) The definitions of a “dependent adult,” as set forth in Section
4 368, and “dependent person,” as set forth in Section 288, noting
5 that they apply to people with developmental disabilities regardless
6 of the fact that some may live independently.

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

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

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

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

20 (10) Detailed instructions regarding the procedures for obtaining
21 an emergency protective order and specifying that the order may
22 be sought at any time, and including a space for the telephone
23 number for the court clerk in the appropriate court jurisdiction.

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

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

31 (13) Procedures for cooperating with county adult protective
32 services and child protective services and local long-term care
33 ombudsman programs, and stating that law enforcement agencies
34 shall retain responsibility for all criminal investigations, pursuant
35 to subdivision (b) of Section 368.5.

36 (14) The law enforcement agency’s reporting and cross-reporting
37 requirements, including those pursuant to paragraph (1) of
38 subdivision (a) of Section 422.55 and Section 13023 of this code,
39 and subdivisions (b), (c), (e), and (f) of Section 15640 of the
40 Welfare and Institutions Code.

1 ~~(15) A requirement that the law enforcement agency report to~~
2 ~~the appropriate professional licensing, credentialing, or regulatory~~
3 ~~agency where there is reasonable suspicion that a professional~~
4 ~~person subject the regulatory agency's jurisdiction committed a~~
5 ~~crime against a person with a developmental disability or failed~~
6 ~~to report, as required, regardless of whether the law enforcement~~
7 ~~agency or a prosecutor has pursued or intends to pursue criminal~~
8 ~~prosecution.~~

9 ~~(16) A procedure to allow designated supervisors to develop~~
10 ~~alternative provisions of the policy to apply in unusual individual~~
11 ~~cases, including a requirement for written reports to the chief,~~
12 ~~sheriff, or director of the law enforcement agency each time this~~
13 ~~occurs.~~

14 ~~(e) In developing the model policy, the commission shall consult~~
15 ~~the California Police Chiefs Association, the California State~~
16 ~~Sheriffs' Association, the California District Attorneys Association,~~
17 ~~the Bureau of Medi-Cal Fraud and Elder Abuse, the California~~
18 ~~Long-Term Care Ombudsman Association, the County Welfare~~
19 ~~Directors Association, and subject-matter experts from the~~
20 ~~developmental disability field including the State Department of~~
21 ~~Developmental Services, regional centers, and advocacy~~
22 ~~organizations, including those the commission consulted in~~
23 ~~developing the telecourse pursuant to Section 13515.~~

24 ~~(d) Within one year of the date when the commission adopts~~
25 ~~the model policy, each law enforcement agency in this state shall~~
26 ~~adopt and implement the model policy, including any changes~~
27 ~~consistent with subdivision (b) that the agency deems appropriate.~~

28 ~~SEC. 11. No reimbursement is required by this act pursuant to~~
29 ~~Section 6 of Article XIII B of the California Constitution for certain~~
30 ~~costs that may be incurred by a local agency or school district~~
31 ~~because, in that regard, this act creates a new crime or infraction,~~
32 ~~eliminates a crime or infraction, or changes the penalty for a crime~~
33 ~~or infraction, within the meaning of Section 17556 of the~~
34 ~~Government Code, or changes the definition of a crime within the~~
35 ~~meaning of Section 6 of Article XIII B of the California~~
36 ~~Constitution.~~

37 ~~However, if the Commission on State Mandates determines that~~
38 ~~this act contains other costs mandated by the state, reimbursement~~
39 ~~to local agencies and school districts for those costs shall be made~~

1 pursuant to Part 7 (commencing with Section 17500) of Division
2 4 of Title 2 of the Government Code.

3 *SEC. 3. Section 13519.06 is added to the Penal Code, to read:*

4 *13519.06. (a) It is the intent of the Legislature in enacting this*
5 *section to encourage the establishment of crime investigation units*
6 *in law enforcement agencies throughout the state specializing in*
7 *investigating crimes against or involving individuals with*
8 *developmental disabilities, intellectual disabilities, cognitive*
9 *impairments, and communication impairments, including, but not*
10 *limited to, investigating crimes involving the sexual exploitation*
11 *and sexual abuse of developmentally disabled children and adults.*

12 *(b) The Commission on Peace Officer Standards and Training,*
13 *upon the next regularly scheduled review of a training module*
14 *relating to persons with disabilities, shall create and make*
15 *available on DVD and may distribute electronically a course on*
16 *the steps that may be taken in developing a training course*
17 *regarding the investigation of crimes against or involving*
18 *individuals with developmental disabilities, intellectual disabilities,*
19 *cognitive impairments, and communication impairments. The*
20 *course regarding the development of the training course shall be*
21 *developed in consultation with appropriate community, local, and*
22 *state organizations and agencies that have expertise in the area*
23 *of developmental disabilities and with appropriate consumer and*
24 *family advocacy groups. The training shall, at a minimum, include*
25 *all of the following subjects:*

26 *(1) Statutes, ordinances, and other state and federal laws*
27 *relating to crimes involving persons with developmental*
28 *disabilities, intellectual disabilities, cognitive impairments, and*
29 *communication impairments.*

30 *(2) The prevalence, nature, and recognition of developmental*
31 *disabilities, intellectual disabilities, cognitive impairments, and*
32 *communication impairments.*

33 *(3) The incidences of crime involving persons who suffer from*
34 *developmental disabilities, intellectual disabilities, cognitive*
35 *impairments, and communication impairments.*

36 *(4) Reporting requirements and procedures for crimes involving*
37 *persons who suffer from developmental disabilities, intellectual*
38 *disabilities, cognitive impairments, and communication*
39 *impairments.*

1 (5) *The unique characteristics, barriers, and challenges of*
2 *individuals with developmental disabilities, intellectual disabilities,*
3 *cognitive impairments, and communication impairments who may*
4 *be victims of abuse or exploitation, including issues relating to*
5 *capacity and consent, and specific examples of abuse and*
6 *exploitation, including incidents perpetrated by caregivers, facility*
7 *or program staff, contractors, or facilities and programs serving*
8 *individuals with developmental disabilities, intellectual disabilities,*
9 *cognitive impairments, and communication impairments.*

10 (6) *Techniques to accommodate, interview, and converse with*
11 *an individual who may require assistive devices in order to*
12 *communicate for himself or herself.*

13 (7) *Techniques for conducting investigations in which a criminal*
14 *defendant may also be a caregiver or provider of therapeutic or*
15 *other services.*

16 (8) *Procedures for minimizing the number of times individuals*
17 *with developmental disabilities, developmental disabilities,*
18 *intellectual disabilities, cognitive impairments, and communication*
19 *impairments are interviewed by law enforcement personnel.*

20 (9) *Appropriate language and communication when interacting*
21 *with people with developmental disabilities, intellectual disabilities,*
22 *cognitive impairments, and communication impairments.*

23 (10) *Community and state resources and advocacy support and*
24 *services available to serve people with developmental disabilities,*
25 *intellectual disabilities, cognitive impairments, and communication*
26 *impairments and how these resources can best be utilized by law*
27 *enforcement.*

O