

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

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

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

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

As used in this subdivision, "public official" means a person employed by a governmental agency who has the authority, as part of that position, to incarcerate, arrest, or deport another. The perpetrator does not actually have to be a public official. (h) Except as provided in Section 288, any person who participates in an act of sexual penetration with another person who is under 18 years of age shall be punished by imprisonment in the state prison or in the county jail for a period of not more than one year. (i) Except as provided in Section 288, any person over the age of 21 years who participates in an act of sexual penetration with another person who is under 16 years of age shall be guilty of a felony.

(j) 1) Any person who participates in an act of sexual penetration *or oral copulation* with another person who is under 14 years of age and who is more than 10 years younger than he or she shall be punished by imprisonment in the state prison for ~~three, six, or eight years~~ *or twelve years and receive counseling during the imprisonment and for a period of at least 1 year following release. This counseling shall be structured in a way so that it does not endanger the prisoners life or safety.*

2) *A second conviction of this offense, plead and proved separately will result in imprisonment in the state prison for 25-life. If the victim is under the age of ten the on the first offense the prosecution may seek a 25-life sentence, but the court retains discretion to sentence under 289 subdivision (j) 1*

(k) As used in this section:

(1) "Sexual penetration" is the act of causing the penetration, however slight, of the genital or anal opening of any person or causing another person to so penetrate the defendant's or another person's genital or anal opening for the purpose of sexual arousal, gratification, or abuse by any foreign object, substance, instrument, or device, or by any unknown object.

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

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

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

(m) As used in this section, "victim" includes any person who the defendant causes to penetrate the genital or anal opening of the defendant or another person or whose genital or anal opening is

caused to be penetrated by the defendant or another person and who otherwise qualifies as a victim under the requirements of this section.

SECTION 5. AMENDMENTS TO SECTION 667 OF THE PENAL CODE
(This format presents struck wording in ~~italics and strikeout~~ and new wording in *italics*.)

Section 667. of the Penal Code is hereby amended to read:

(a) (1) In compliance with subdivision (b) of Section 1385, any person convicted of a serious felony who previously has been convicted of a serious felony in this state or of any offense committed in another jurisdiction which includes all of the elements of any serious felony, shall receive, in addition to the sentence imposed by the court for the present offense, a five-year enhancement for each such prior conviction on charges brought and tried separately. The terms of the present offense and each enhancement shall run consecutively.

(2) This subdivision shall not be applied when the punishment imposed under other provisions of law would result in a longer term of imprisonment. There is no requirement of prior incarceration or commitment for this subdivision to apply.

(3) The Legislature may increase the length of the enhancement of sentence provided in this subdivision by a statute passed by majority vote of each house thereof.

(4) As used in this subdivision, "serious felony" means *any serious felonies* listed in subdivision (c) of Section 1192.7 *as amended in this act* :

(5) This subdivision shall not apply to a person convicted of selling, furnishing, administering, or giving, or offering to sell, furnish, administer, or give to a minor any methamphetamine-related drug or any precursors of methamphetamine unless the prior conviction was for a serious felony described in subparagraph (24) of subparagraph of subdivision (c) of Section 1192.7.

(b) It is the intent of the ~~Legislature~~ *People of the State of California* in enacting subdivisions (b) to (i), inclusive, to ensure longer prison sentences and greater punishment for those who commit a *serious and/or violent* felony and have been previously convicted of serious and/or violent felony offenses.

(c) Notwithstanding any other *provision of law*, if a defendant has been convicted of a *serious and/or violent* felony and it has been pled and proved that the defendant has one or more prior *serious and/or violent* felony convictions *that were brought and tried separately* as defined in subdivision (d), the court shall adhere to each of the following:

(1) There shall not be an aggregate term limitation for purposes of consecutive sentencing for any subsequent *serious and/or violent* felony conviction.

(2) Probation for the current offense shall not be granted, nor shall execution or imposition of the sentence be suspended for any prior offense.

(3) The length of time between the prior *serious and/or violent* felony conviction and the current *serious and/or violent* felony conviction shall not affect the imposition of *the* sentence.

(4) There shall not be a commitment to any other facility other than the state prison.

Diversion shall not be granted nor shall the defendant be eligible for commitment to the California Rehabilitation Center as provided in Article 2 (commencing with Section 3050) of Chapter 1 of Division 3 of the Welfare and Institutions Code.

(5) The total amount of credits awarded pursuant to Article 2.5 (commencing with