

# Sex Crimes: Definitions and Penalties California

*Last Updated: April 2023*

## Rape

Question	Answer
How is it defined?	<p>An offender commits the crime of rape by engaging in sexual intercourse with another person under any of the following circumstances:</p> <ul style="list-style-type: none"><li>• Where the victim who is not the offender's spouse is incapable of giving consent because of a mental disorder or developmental or physical disability, and this is known or reasonably should be known to the person committing the act;</li><li>• Where the act is accomplished against a victim's will by means of force, violence, duress, menace or fear of immediate and unlawful bodily injury on the person or another;</li><li>• Where the victim is prevented from resisting because of any intoxicating or anesthetic substance, or any controlled substance and the offender knew or reasonably should have known of the victim's condition;</li><li>• Where the victim was unconscious of the nature of the act and this was known to the offender;</li><li>• Where the victim submits under the belief that the offender is someone known to the victim other than the offender, and this false belief was intentionally induced by the offender's artifice, pretense or concealment;</li><li>• 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 offender will execute the threat; or</li><li>• Where the act is accomplished against the victim's will by threatening to use the authority of a public official to incarcerate, arrest, or deport the victim or another person, and the victim has a reasonable belief that the offender is a public official.</li></ul> <p>In the context of the crime of rape, California law does not specifically define "sexual intercourse" (although the term "sexual intercourse" is defined in the specific contexts of certain other crimes). Instead, the legislature broadly construes what kinds of acts constitute rape. The statutes contain the following information:</p> <ul style="list-style-type: none"><li>• All forms of nonconsensual sexual assault may be considered rape.</li><li>• The essential determination of whether an offender is guilty of rape lies in the outrage to the victim's person and the feelings of the victim of the rape.</li><li>• Any sexual penetration, however slight, is sufficient to constitute rape.</li></ul>

<p>What are the punishments for this crime?</p>	<p>The prison sentence for rape depends on certain factors, including the age of the victim and the nature of the crime.</p> <ul style="list-style-type: none"> <li>• Unless otherwise noted, rape is punishable by imprisonment for 3, 6, or 8 years.</li> <li>• In circumstances where the victim is a minor, and the rape is accomplished against a victim's will by means of force, violence, duress, menace or fear of immediate and unlawful bodily injury on the victim or another person: <ul style="list-style-type: none"> <li>• If the victim is under 14 years old, the offender is subject to imprisonment for 9, 11, or 13 years. (§ 264)</li> <li>• If the victim is a minor who is older than 14 years old, the offender is subject to imprisonment for 7, 9, or 11 years. (§ 264)</li> </ul> </li> <li>• Where the offender voluntarily acts in concert with another person, by force of violence and against the will of the victim, either personally or by aiding and abetting the other person: (§ 264.1) <ul style="list-style-type: none"> <li>• If the victim is a non-minor, the offender is subject to imprisonment for 5, 7, or 9 years.</li> <li>• If the victim is under 14 years old, the offender is subject to imprisonment for 10, 12, or 14 years.</li> <li>• If the victim is a minor who is older than 14 years old, the offender is subject to imprisonment for 7, 9, or 11 years.</li> </ul> </li> <li>• A habitual offender is subject to imprisonment of 25 years for violations of paragraph (2) or (6) of subdivision (a) of §286 (§667.71).</li> <li>• If the victim is 65 years of age or older, blind, deaf, developmentally disabled, a paraplegic, or a quadriplegic, or under 14 years of age, and that disability or condition is known or reasonably should be known to the offender, the offender shall receive a one-year enhancement for each violation of paragraph (2) or (6) of subdivision (a) of §286 (§667.9).</li> </ul> <p><b>Note:</b> California has detailed and complicated sentencing guidelines for sex offenses. Under certain circumstances, sex offenses are considered felonies and may be subject to so-called "One Strike" laws, which carry a maximum sentence of life imprisonment. An individual defendant's prison sentence depends on things like: prior convictions; age of the victim; the use of force, threats, violence, or deadly weapons; number of victims; and the relationship of the victim and the offender. ( See §§ 288, 261, 262, 264, 264.1, 269, 288.7, 667.61)</p>
<p>Anything else I should know?</p>	<p>The following definitions are relevant, and apply, to this crime:</p> <ul style="list-style-type: none"> <li>• <b>Duress:</b> a direct or implied threat of force, violence, danger, or retribution sufficient to coerce a reasonable person of ordinary susceptibilities to perform an act which otherwise would not have been performed, or acquiesce in an act to which one otherwise would not have submitted. The total circumstances, including the age of the victim, and his or her relationship to the defendant, are factors to consider in appraising the existence of duress.</li> <li>• <b>Menace:</b> any threat, declaration, or act which shows an intention to inflict an injury upon another.</li> <li>• <b>Minor:</b> a person under the age of 18 years.</li> <li>• <b>Public official:</b> 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.</li> </ul>

	<ul style="list-style-type: none"> <li>• <b>Unconscious of the nature of the act:</b> incapable of resisting because the victim was: (A) unconscious or asleep; (B) not aware, knowing, perceiving, or cognizant that the act occurred; (C) not aware, knowing, perceiving, or cognizant of the essential characteristics of the act due to the perpetrator's fraud in fact; or (D) 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.</li> <li>• <b>Threatening to retaliate:</b> a threat to kidnap or falsely imprison, or to inflict extreme pain, serious bodily injury, or death.</li> <li>• <b>Consent:</b> means positive cooperation in act or attitude pursuant to an exercise of free will. The person must act freely and voluntarily and have knowledge of the nature of the act or transaction involved. A current or previous dating or marital relationship shall not be sufficient to constitute consent. Evidence that the victim suggested, requested, or otherwise communicated to the offender that the offender use a condom or birth control device is not sufficient to constitute consent.</li> <li>• <b>Habitual sexual offender:</b> a person who has been previously convicted of one or more of the specified offenses and who is convicted in the present proceeding of one of those offenses.</li> <li>• <b>Developmentally disabled:</b> means a severe, chronic disability of a person, which is all of the following: (A) attributable to a mental or physical impairment or a combination of mental and physical impairments, (B) likely to continue indefinitely, and (C) results in substantial functional limitation in three or more of the following areas of life activity: (1) self-care, (2) receptive and expressive language, (3) learning, (4) mobility, (5) self-direction, (6) capacity for independent living, and/or (7) economic self-sufficiency.</li> </ul>
Statutory Citation(s):	Cal. Penal Code §§ 261, 261.6, 261.7, 263, 263.1, 264, 288.7, 667.71, 667.9

## Sodomy

Question	Answer
How is it defined?	The crime of sodomy is defined as sexual conduct consisting of contact between the penis of one person and the anus of another person. Any sexual penetration, however slight, is sufficient to complete the crime of sodomy.
What are the punishments for this crime?	<p>An offender guilty of the crime of sodomy is subject to a prison sentence. The prison sentences vary depending on the nature of the crime, as follows</p> <ul style="list-style-type: none"> <li>• Where the victim is under 18 years old: punishable by up to 1 year imprisonment;</li> <li>• Where the offender is over 21 years old and the victim is under 16 years old: the crime is punishable as a felony by a sentence of 16 months, 2 years, or 3 years' imprisonment (see § 1170(h)(1));</li> <li>• Where the victim is under 14 years old and more than 10 years younger than the offender: punishable by</li> </ul>

- 3, 6, or 8 years' imprisonment;
- Where the act is accomplished against the victim's will by means of force, violence, duress, menace, or fear of immediate injury on the victim or another person:
  - With non-minor victims: punishable by 3, 6, or 8 years' imprisonment;
  - With a victim who is a minor 14 years of age or older: punishable by 7, 9, or 11 years' imprisonment; or
  - With a victim who is under 14 years of age: punishable by 9, 11, or 13 years' imprisonment.
- 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: punishable by 3, 6, or 8 years' imprisonment;
- Where the offender was acting or aiding and abetting another, and accomplishes the act by means of force 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:
  - With a non-minor victim: punishable by 5, 7 or 9 years' imprisonment;
  - With a minor who is 14 years of age or old: punishable by 7, 9, or 11 years' imprisonment; or
  - With a victim who is under 14 years of age: punishable by 10, 12, or 14 years' imprisonment.
- Where the victim is confined in any state prison or detention facility: punishable by no more than 1 year imprisonment;
- Where the victim is unconscious of the nature of the act and this is known to the person committing the act: punishable by 3, 6, or 8 years' imprisonment;
- Where the victim is incapable of giving consent due to mental disorder or developmental or physical disability and the offender knows or should reasonably have known that the victim is unable to consent: punishable by 3, 6, or 8 years' imprisonment;
- Where the victim is incapable of giving consent due to mental disorder or developmental or physical disability and the offender knows or should reasonably have known that the victim is unable to consent but both the offender and victim were institutionalized for the treatment of mental disorders: punishable by no more than 1 year imprisonment;
- Where the victim is prevented from resisting by an intoxicating or anesthetic substance, or any controlled substance, and the offender knew or should reasonably have known of the victim's condition: punishable by 3, 6, or 8 years' imprisonment;
- Where the victim submits under the belief that the person committing the act is someone known to the victim other than the accused, and this belief is induced by any artifice, pretense, or concealment practiced by the accused, with intent to induce the victim's false belief: punishable by 3, 6, or 8 years' imprisonment; and
- Where the act is accomplished 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: punishable by 3, 6, or 8 years' imprisonment.
- A habitual offender is subject to imprisonment of 25 years for violations of subdivision (c) or (d) of §286 (§667.71).
- If the victim is 65 years of age or older, blind, deaf, developmentally disabled, a paraplegic, or a

quadriplegic, or under 14 years of age, and that disability or condition is known or reasonably should be known to the offender, the offender shall receive a one-year enhancement for each violation of paragraph (2) or (3) of subdivision (c), or subdivision (d) of §286 (§667.9).

**Note:** California has detailed and complicated sentencing guidelines for sex offenses. Under certain circumstances, sex offenses are considered felonies and may be subject to so-called “One Strike” laws, which carry a maximum sentence of life imprisonment. An individual defendant’s prison sentence depends on things like: prior convictions; age of the victim; the use of force, threats, violence, or deadly weapons; number of victims; and the relationship of the victim and the offender. ( See §§ 288, 261, 262, 264, 264.1, 269, 288.7, 667.61).

Anything else I should know?

The following definitions are relevant, and apply, to this crime:

- **Duress:** a direct or implied threat of force, violence, danger, or retribution sufficient to coerce a reasonable person of ordinary susceptibilities to perform an act which otherwise would not have been performed, or acquiesce in an act to which one otherwise would not have submitted. The total circumstances, including the age of the victim, and his or her relationship to the defendant, are factors to consider in appraising the existence of duress.
- **Menace:** any threat, declaration, or act which shows an intention to inflict an injury upon another.
- **Minor:** a person under the age of 18 years.
- **Public official:** 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.
- **Unconscious of the nature of the act:** incapable of resisting because the victim was: (A) unconscious or asleep; (B) not aware, knowing, perceiving, or cognizant that the act occurred; (C) not aware, knowing, perceiving, or cognizant of the essential characteristics of the act due to the perpetrator's fraud in fact; or (D) 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.
- **Threatening to retaliate:** a threat to kidnap or falsely imprison, or to inflict extreme pain, serious bodily injury, or death.
- **Consent:** means positive cooperation in act or attitude pursuant to an exercise of free will. The person must act freely and voluntarily and have knowledge of the nature of the act or transaction involved. A current or previous dating or marital relationship shall not be sufficient to constitute consent. Evidence that the victim suggested, requested, or otherwise communicated to the offender that the offender use a condom or birth control device is not sufficient to constitute consent.
- **Sodomy:** is sexual conduct consisting of contact between the penis of one person and the anus of another person. Any sexual penetration, however slight, is sufficient to complete the crime of sodomy.
- **Habitual sexual offender:** a person who has been previously convicted of one or more of the specified offenses and who is convicted in the present proceeding of one of those offenses.
- **Developmentally disabled:** means a severe, chronic disability of a person, which is all of the following:  
(A) attributable to a mental or physical impairment or a combination of mental and physical impairments,

	(B) likely to continue indefinitely, and (C) results in substantial functional limitation in three or more of the following areas of life activity: (1) self-care, (2) receptive and expressive language, (3) learning, (4) mobility, (5) self-direction, (6) capacity for independent living, and/or (7) economic self-sufficiency.
Statutory citation(s):	Cal. Penal Code §§ 286, 269, 288.7, 667.71, 667.9, 1170

## Forcible Acts of Sexual Penetration

Question	Answer
How is it defined?	<p>An offender commits the crime of forcible acts of sexual penetration by committing an act of sexual penetration under any of the following circumstances:</p> <ul style="list-style-type: none"> <li>• Where 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;</li> <li>• 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 offender will execute the threat;</li> <li>• Where the victim is incapable of giving consent because of a mental disorder or developmental or physical disability, and this is known or reasonably should be known to the person committing the act;</li> <li>• Where the victim is incapable of giving consent because of a mental disorder or developmental or physical disability, and both the victim and offender are confined in a state hospital for treatment of the mentally disordered;</li> <li>• Where the victim was unconscious of the nature of the act and this was known to the offender;</li> <li>• Where the victim is unable to resist because of any intoxicating or anesthetic substance, or any controlled substance and the offender knew or reasonably should have known of the victim's condition;</li> <li>• Where the victim submits under the belief that the offender is someone known to the victim other than the offender, and this false belief was intentionally induced by the offender's artifice, pretense or concealment;</li> <li>• Where the act is accomplished against the victim's will by threatening to use the authority of a public official to incarcerate, arrest, or deport the victim or another person, and the victim has a reasonable belief that the offender is a public official; or</li> <li>• Where the act is accomplished against a victim who is under 18 years of age.</li> </ul>
What are the punishments for this crime?	<p>An offender guilty of the crime of forcible acts of sexual penetration is subject to a prison sentence which varies depending on the nature of the crime, in accordance with the following:</p> <ul style="list-style-type: none"> <li>• Where the act is accomplished by means of force, violence, duress, menace, or fear of immediate injury on the victim or another person:</li> </ul>

- With non-minor victims: punishable by 3, 6, or 8 years' imprisonment;
- With a victim who is under 14 years of age: punishable by 8, 10, or 12 years' imprisonment; or
- With a victim who is a minor 14 years of age or older: punishable by 6, 8, or 10 years' imprisonment;
- Where the act is accomplished by threat of retaliation and there is a reasonable probability the offender will execute the threat: punishable by 3, 6, or 8 years' imprisonment;
- Where the victim is incapable of giving consent due to mental disorder or physical or developmental disability and the offender knows or should reasonably have known that the victim is unable to consent: punishable by 3, 6, or 8 years' imprisonment;
- Where the victim is incapable of giving consent due to mental disorder or physical or developmental disability but both the offender and victim were institutionalized for the treatment of mental disorders: punishable by no more than 1 year of imprisonment;
- Where the victim is unconscious of the nature of the act and this is known to the person committing the act: punishable by 3, 6, or 8 years' imprisonment;
- Where the victim is prevented from resisting by an intoxicating or anesthetic substance and this was known or reasonably should have been known to the offender: punishable by 3, 6, or 8 years' imprisonment;
- Where the victim is fraudulently induced to submit to the act, believing that the person committing the act is someone known to the victim other than the accused: punishable by 3, 6, or 8 years' imprisonment; and
- Where the act is accomplished 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 believe the perpetrator is a public official: punishable by 3, 6, or 8 years' imprisonment.
- Where the victim is under 18 years old: punishable by up to 1 year of imprisonment;
- Where the offender is over 21 years old and the victim is under 16 years old: the crime is punishable as a felony, including a sentence of 16 months, 2 years, or 3 years' imprisonment (see § 1170(h)(1)); and
- Where the victim is under 14 years old and more than 10 years younger than the offender: punishable by 3, 6, or 8 years' imprisonment.
- A habitual offender is subject to imprisonment of 25 years for violations of subdivision (a) or (j) of §289 (§667.71).
- If the victim is 65 years of age or older, blind, deaf, developmentally disabled, a paraplegic, or a quadriplegic, or under 14 years of age, and that disability or condition is known or reasonably should be known to the offender, the offender shall receive a two-year enhancement for each violation of subdivision (a) of §289 (§667.10).

**Note:** California has detailed and complicated sentencing guidelines for sex offenses. Under certain circumstances, sex offenses are considered felonies and may be subject to so-called "One Strike" laws, which carry a maximum sentence of life imprisonment. An individual defendant's prison sentence depends on things like: prior convictions; age of the victim; the use of force, threats, violence, or deadly weapons; number of victims; and the relationship of the victim and the offender. ( See §§ 288, 261, 262, 264, 264.1, 269, 288.7, 667.61)

Anything else I should know?

The following definitions are relevant, and apply, to this crime:

- **Minor:** a person under the age of 18 years.
- **Victim:** 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.
- **Unconscious of the nature of the act:** incapable of resisting because the victim was: (A) unconscious or asleep; (B) not aware, knowing, perceiving, or cognizant that the act occurred; (C) not aware, knowing, perceiving, or cognizant of the essential characteristics of the act due to the perpetrator's fraud in fact; or (D) 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.
- **Sexual penetration:** 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.
- **Foreign object, substance, instrument, or device:** any part of the body, except a sexual organ.
- **Unknown object:** 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.
- **Public official:** 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.
- **Threatening to retaliate:** a threat to kidnap or falsely imprison, or inflict extreme pain, serious bodily injury or death.
- **Habitual sexual offender:** a person who has been previously convicted of one or more of the specified offenses and who is convicted in the present proceeding of one of those offenses.
- **Developmentally disabled:** means a severe, chronic disability of a person, which is all of the following: (A) attributable to a mental or physical impairment or a combination of mental and physical impairments, (B) likely to continue indefinitely, and (C) results in substantial functional limitation in three or more of the following areas of life activity: (1) self-care, (2) receptive and expressive language, (3) learning, (4) mobility, (5) self-direction, (6) capacity for independent living, and/or (7) economic self-sufficiency.

Statutory citation(s):

Cal. Penal Code §§ 289, 269, 288.7, 667.71, 667.10, 1170

## Oral Copulation

Question	Answer
How is it defined?	The crime of oral copulation involves copulating the mouth of one person with the sexual organ or anus of another person.
What are the punishments for this crime?	<p>An offender guilty of the crime of oral copulation is subject to a prison sentence which varies depending on the nature of the crime, in accordance with the following:</p> <ul style="list-style-type: none"> <li>• Where the victim is under 18 years old: punishable by up to 1 year of imprisonment;</li> <li>• Where the offender is over 21 years old and the victim is under 16 years old: the crime is punishable as a felony, including a sentence of 16 months, 2 years, or 3 years' imprisonment (see § 1170(h)(1));</li> <li>• Where the victim is under 14 years old and more than 10 years younger than the offender: punishable by 3, 6, or 8 years' imprisonment;</li> <li>• Where the act is accomplished against the victim's will by means of force, violence, duress, menace, or fear of immediate injury on the victim or another person: <ul style="list-style-type: none"> <li>• With non-minor victims: punishable by 3, 6, or 8 years' imprisonment;</li> <li>• With a victim who is under 14 years of age: punishable by 8, 10, or 12 years' imprisonment; or</li> <li>• With a victim who is a minor 14 years of age or older: punishable by 6, 8, or 10 years' imprisonment;</li> </ul> </li> <li>• Where the act is accomplished against the victim's will by threat of retaliation and there is a reasonable probability the offender will execute the threat: punishable by 3, 6, or 8 years' imprisonment;</li> <li>• Where the offender voluntarily acts in concert with another person (either personally or by aiding and abetting) and against the will of the victim by means of force or fear of immediate injury to the victim or another; or by threatening to retaliate against the victim or another person and there is a reasonable probability the offender will execute the threat; or where the victim is at the time unable to consent due to a mental disorder or developmental or physical disability and was known or reasonably should have been known to the offender: <ul style="list-style-type: none"> <li>• If the victim is a non-minor, the offender is subject to imprisonment for 5, 7, or 9 years;</li> <li>• If the victim is a minor over 14 years old and the act is accomplished against the will of the victim by means of force or fear of immediate injury to the victim or another, the offender is subject to imprisonment for 8, 10, or 12 years;</li> <li>• If the victim is under 14 years old and the act is accomplished against the will of the victim by means of force or fear of immediate injury to the victim or another, the offender is subject to imprisonment for 10, 12, or 14 years;</li> </ul> </li> <li>• Where the act occurs while confined in a state prison or detention facility: punishable by up to 1 year imprisonment;</li> <li>• Where the victim is unconscious of the nature of the act and this is known to the person committing the act: punishable by 3, 6, or 8 years' imprisonment;</li> <li>• Where the victim is incapable of giving consent due to mental disorder or physical or developmental disability and the offender knows or should reasonably have known that the victim is unable to consent: punishable by 3, 6, or 8 years' imprisonment;</li> <li>• Where the victim is incapable of giving consent due to mental disorder or physical or developmental disability but both the offender and victim were institutionalized for the treatment of mental disorders:</li> </ul>

- punishable by no more than 1 year imprisonment;
- Where the victim is prevented from resisting by an intoxicating or anesthetic substance: punishable by 3, 6, or 8 years' imprisonment;
- Where the victim is fraudulently induced to submit to the act, believing that the person committing the act is someone known to the victim other than the accused: punishable by 3, 6, or 8 years' imprisonment; and
- Where the act is accomplished 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 believe that the perpetrator is a public official: punishable by 3, 6, or 8 years.
- A habitual offender is subject to imprisonment of 25 years for violations of subdivision (c) or (d) of §287 (§667.71).
- If the victim is 65 years of age or older, blind, deaf, developmentally disabled, a paraplegic, or a quadriplegic, or under 14 years of age, and that disability or condition is known or reasonably should be known to the offender, the offender shall receive a one-year enhancement for each violation of paragraph (2) or (3) of subdivision (c), or subdivision (d) of § 287 (§667.9).
- In addition to any incarceration, the judge may assess a fine of up to \$70.

**Note:** California has detailed and complicated sentencing guidelines for sex offenses. Under certain circumstances, sex offenses are considered felonies and may be subject to so-called "One Strike" laws, which carry a maximum sentence of life imprisonment. An individual defendant's prison sentence depends on things like: prior convictions; age of the victim; the use of force, threats, violence, or deadly weapons; number of victims; and the relationship of the victim and the offender. ( See §§ 288, 261, 262, 264, 264.1, 269, 288.7, 667.61)

Anything else I should know?

The following definitions are relevant, and apply, to this crime:

- **Minor:** a person under the age of 18 years.
- **Unconscious of the nature of the act:** incapable of resisting because the victim was: (A) unconscious or asleep; (B) not aware, knowing, perceiving, or cognizant that the act occurred; (C) not aware, knowing, perceiving, or cognizant of the essential characteristics of the act due to the perpetrator's fraud in fact; or (D) 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
- **Public official:** 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.
- **Threatening to retaliate:** a threat to kidnap or falsely imprison, or to inflict extreme pain, serious bodily injury, or death.
- **Habitual sexual offender:** a person who has been previously convicted of one or more of the specified offenses and who is convicted in the present proceeding of one of those offenses.
- **Developmentally disabled:** means a severe, chronic disability of a person, which is all of the following: (A) attributable to a mental or physical impairment or a combination of mental and physical impairments,

	(B) likely to continue indefinitely, and (C) results in substantial functional limitation in three or more of the following areas of life activity: (1) self-care, (2) receptive and expressive language, (3) learning, (4) mobility, (5) self-direction, (6) capacity for independent living, and/or (7) economic self-sufficiency.
Statutory Citation(s):	Cal. Penal Code §§ 287, 269, 288.7, 667.71, 667.9, 1170

## Sexual Battery

Question	Answer
How is it defined?	<p>An offender commits the crime of sexual battery in the following circumstances:</p> <ul style="list-style-type: none"> <li>• By touching an intimate part of another person while that person is unlawfully restrained by the accused or an accomplice, the touching is against the will of the person touched, and the touching is for the purpose of sexual arousal, sexual gratification, or sexual abuse;</li> <li>• By touching an intimate part of another person who is institutionalized for medical treatment and who is seriously disabled or medically incapacitated, the touching is against the will of the person touched, and the touching is for the purpose of sexual arousal, sexual gratification, or sexual abuse;</li> <li>• By touching an intimate part of another person for the purpose of sexual arousal, sexual gratification, or sexual abuse, and the victim is at the time unconscious of the nature of the act because the perpetrator fraudulently represented that the touching served a professional purpose;</li> <li>• By causing a victim to masturbate or touch an intimate part of the offender, the victim, or a third person for the purpose of sexual arousal, sexual gratification, or sexual abuse, where the victim is either unlawfully restrained by the offender or an accomplice or is institutionalized for medical treatment and is seriously disabled or medically incapacitated; and</li> <li>• By touching an intimate part of another person where the touching is against the will of the victim and the touching is for the specific purpose of sexual arousal, sexual gratification, or sexual abuse.</li> </ul> <p>Sexual battery does not include rape or forcible acts of sexual penetration; these are separate crimes.</p>
What are the punishments for this crime?	<p>The punishment for sexual battery depends on the circumstances of the crime, as follows:</p> <ul style="list-style-type: none"> <li>• When the victim is either unlawfully restrained, unconscious of the nature of the act, or seriously disabled or medically incapacitated, the punishment is either: imprisonment in a county prison for 1 year or less and a fine not exceeding \$2,000; or imprisonment in the state prison for two, three, or four years, and a fine not exceeding \$10,000. <ul style="list-style-type: none"> <li>• If the victim is a minor and the offender has a prior felony conviction for sexual battery, then the crime is classified as a felony and the punishment is imprisonment for two, three, or four years and a fine not exceeding \$10,000.</li> </ul> </li> </ul>

	<ul style="list-style-type: none"> <li>• For subsection (5), the penalty is: a fine not exceeding \$2,000, or imprisonment in a county jail not exceeding six months, or by both that fine and imprisonment.</li> <li>• In all other cases where the touching is against the will of the victim, but the victim is not unlawfully restrained, unconscious of the act, or seriously disabled, the crime is considered a misdemeanor, and the punishment is imprisonment in county jail not exceeding 6 months and/or a fine not exceeding \$2,000. <ul style="list-style-type: none"> <li>• However, if the offender was an employer and the victim was an employee of the defendant, the misdemeanor sexual battery shall be punishable by imprisonment in county jail not exceeding 6 months and/or a fine not exceeding \$3,000.</li> </ul> </li> </ul> <p><b>Note:</b> California has detailed and complicated sentencing guidelines for sex offenses. Under certain circumstances, sex offenses are considered felonies and may be subject to so-called “One Strike” laws, which carry a maximum sentence of life imprisonment. An individual defendant’s prison sentence depends on things like: prior convictions; age of the victim; the use of force, threats, violence, or deadly weapons; number of victims; and the relationship of the victim and the offender. ( See §§ 288, 261, 262, 264, 264.1, 269, 288.7, 667.61)</p>
Anything else I should know?	<p>The following definitions are relevant, and apply, to this crime:</p> <ul style="list-style-type: none"> <li>• <b>Touches:</b> the term “touches” has two meanings: (1) when the victim is either unlawfully restrained, unconscious of the nature of the act, or seriously disabled or medically incapacitated, the term “touches” means physical contact with the skin of another person whether accomplished directly or through the clothing of the person committing the offense and (2) in all other instances, the term “touches” means physical contact with another person, whether accomplished directly, through the clothing of the person committing the offense, or through the clothing of the victim.</li> <li>• <b>Intimate part:</b> the sexual organ, anus, groin, or buttocks of any person, and the breast of a female.</li> <li>• <b>Seriously disabled:</b> a person with severe physical or sensory disabilities.</li> <li>• <b>Medically incapacitated:</b> a person who is incapacitated as a result of prescribed sedatives, anesthesia, or other medication.</li> <li>• <b>Institutionalized:</b> a person who is located voluntarily or involuntarily in a hospital, medical treatment facility, nursing home, acute care facility, or mental hospital.</li> <li>• <b>Minor:</b> a person under 18 years of age.</li> </ul> <p>A conviction for sexual battery by fraud can be accomplished even when the victim has agreed to the act in question. So long as the victim was unaware of the essential characteristics of the act, <i>i.e.</i>, the sexual nature of the act itself, the unconsciousness requirement will be satisfied. <i>People v. Sommer</i>, 61 Cal. App. 5th 696, 702, 275 Cal. Rptr. 3d 872, 876 (2021).</p>
Statutory citation(s):	Cal. Penal Code §§ 243.4, 269, 288.7, 1170

## Unlawful Sexual Acts Procured By Fraud or False Pretenses

Question	Answer
How is it defined?	<p>An offender unlawfully procures consent to sexual acts by false or fraudulent representation with intent to create fear under the following circumstances:</p> <ul style="list-style-type: none"> <li>• When the offender induces any other person to engage in sexual intercourse, sexual penetration, oral copulation, or sodomy;</li> <li>• The victim's consent is procured through false or fraudulent representation or pretense that is made with the intent to create fear and which does induce fear;</li> <li>• The fear would cause a reasonable person in similar circumstances to act contrary to the person's free will; and</li> <li>• The victim does act contrary to his or her free will.</li> </ul>
What are the punishments for this crime?	This crime is punishable by either imprisonment in a county jail for not more than 1 year, or imprisonment in a state prison for 2, 3, or 4 years.
Anything else I should know?	<p>The following definition is relevant, and applies, to this crime:</p> <ul style="list-style-type: none"> <li>• <b>Fear:</b> The fear of physical injury or death to the person or to any relative of the person or member of the person's family.</li> </ul>
Statutory citation(s):	Cal. Penal Code §§ 266c, 269, 288.7, 1170

## Aggravated Sexual Assault of a Child

Question	Answer
How is it defined?	<p>An offender commits aggravated sexual assault of a child by committing the following crimes on a child under the age of 14 years old who is 7 or more years younger than the offender:</p> <ul style="list-style-type: none"> <li>• Where the crime of rape, sodomy, oral copulation, or a forcible act of sexual penetration is committed, 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;</li> <li>• Where the crime of rape, sodomy, oral copulation, or a forcible act of sexual penetration is committed, 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 offender will execute the threat;</li> <li>• Where the crime of rape, sodomy, oral copulation or sexual penetration is committed and the offender voluntarily acts in concert with another person and against the will of the victim by means of force or fear of immediate injury to the victim or another person.</li> </ul>

What are the punishments for this crime?	Aggravated sexual assault of a child is a felony, and it is punishable by imprisonment in state prison for 15 years to life. Further, an offender is subject to consecutive sentences for each offense under § 269 of the California Penal Code, whether the crimes involve separate victims or the same victim on separate occasions.  A habitual offender is subject to imprisonment of 25 years for violation §269 (§667.71).
Anything else I should know?	Technically, aggravated sexual assault of a child is a sentencing modification of the crimes of rape, sodomy, oral copulation, or forcible acts of sexual penetration. For more information, see the sections on those specific crimes.  The following definition is relevant, and applies, to this crime:  <ul style="list-style-type: none"> <li>• <b>Habitual sexual offender:</b> a person who has been previously convicted of one or more of the specified offenses and who is convicted in the present proceeding of one of those offenses.</li> </ul>
Statutory citation(s):	Cal. Penal Code § 269

## Sexual Acts with a Child 10 Years of age or Younger

Question	Answer
How is it defined?	When the offender is at least 18 years old and the victim is 10 years old or younger, and the offender commits the crime of rape, sodomy, or oral copulation, the crimes are re-classified as sexual acts with a child 10 years of age or younger.
What are the punishments for this crime?	When the offender is at least 18 years old and engages in sexual intercourse or sodomy with a child who is 10 years of age or younger, the punishment is imprisonment for 25 years to life.  When the offender is at least 18 years old and engages in oral copulation or sexual penetration with a child who is 10 years of age or younger, the punishment is imprisonment for 15 years to life.
Anything else I should know?	Technically, sexual acts with a child 10 years of age or younger consists of sentencing modifications to the crimes of rape, sodomy, oral copulation, or forcible acts of sexual penetration. For more information, see the sections on those specific crimes.
Statutory citation(s):	Cal. Penal Code § 288.7

## Unlawful Sexual Intercourse With a Person Under 18

Question	Answer
How is it defined?	<p>The crime of “unlawful sexual intercourse with a person under 18” consists of an act of sexual intercourse with a victim who is not the spouse of the perpetrator, if the victim is a minor and the perpetrator is an “adult” person who is at least 18 years of age.</p> <p>There are also additional laws in California that criminalize other sexual acts with minors, including laws surrounding sodomy, sexual penetration, and oral copulation.</p>
What are the punishments for this crime?	<p>The punishments for unlawful sexual intercourse with a person under 18 vary depending on the age of the offender and the age of the victim.</p> <p>Prison sentences:</p> <ul style="list-style-type: none"> <li>• Where the minor is not more than 3 years older or 3 years younger than the offender, the crime is a misdemeanor, punishable by no more than 1 year imprisonment;</li> <li>• Where the minor is more than 3 years younger than the offender, the crime is either a misdemeanor (punishable by no more than 1 year imprisonment) or a felony (punishable by imprisonment of 16 months, 2 years, or 3 years);</li> <li>• Where the offender is 21 years old or older and the minor is under 16 years old is either a misdemeanor (punishable by no more than 1 year imprisonment) or a felony (punishable by imprisonment of 2, 3, or 4 years).</li> </ul> <p>Additionally, where an adult offender is convicted of this crime, he or she may be subject to the following civil penalties:</p> <ul style="list-style-type: none"> <li>• Where the minor is less than 2 years younger than the adult, the adult may be subject to a fine not exceeding \$2,000;</li> <li>• Where the minor is at least 2 years younger than the adult, the adult may be subject to a fine not exceeding \$5,000;</li> <li>• Where the minor is at least 3 years younger than the adult, the adult may be subject to a fine not exceeding \$10,000; and</li> <li>• Where the adult is over 21 years old and the minor is under 16 years of age, the adult may be subject to a fine not exceeding \$25,000.</li> </ul> <p>The judge may also impose a fine of \$70.</p>
Anything else I should know?	<p>The following definitions are relevant, and apply, to this crime:</p> <ul style="list-style-type: none"> <li>• <b>Minor:</b> a person under the age of 18.</li> <li>• <b>Adult:</b> a person at least 18 years of age.</li> <li>• <b>Sodomy:</b> is sexual conduct consisting of contact between the penis of one person and the anus of another person. Any sexual penetration, however slight, is sufficient to complete the crime of</li> </ul>

sodomy.

- **Unlawful sexual intercourse:** an act of sexual intercourse accomplished with a person who is not the spouse of the perpetrator, if the person is a minor.

Statutory citation(s):

Cal. Penal Code §§ 261.5, 269, 288.7, 1170