VAWA Definitions

Sexual Violence Sexual Harassment Training (Additional Resources)

VAWA DEFINITIONS (34 CFR 668.46):

Dating violence
Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim.

i. The existence of such a relationship shall be determined based on the reporting party's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

ii. For the purposes of this definition—
   a. Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.
   b. Dating violence does not include acts covered under the definition of domestic violence.

iii. For the purposes of complying with the requirements of this section and § 668.41, any incident meeting this definition is considered a crime for the purposes of Clery Act reporting.

Domestic Violence
Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim.

i. A felony or misdemeanor crime of violence committed -
   a. By a current or former spouse or intimate partner of the victim;
   b. By a person with whom the victim shares a child in common;
   c. By a person who is cohabitating with, or has cohabitated with, the victim as a spouse or intimate partner;
   d. By a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred, or
   e. By any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred.

ii. For the purposes of complying with the requirements of this section and § 668.41, any incident meeting this definition is considered a crime for the purposes of Clery Act reporting.

Sexual assault
An offense that meets the definition of rape, fondling, incest, or statutory rape as used in the FBI's UCR program and included in Appendix A of this subpart. Any sexual act directed against another person, without the consent of the victim, including instances where the victim is incapable of giving consent.

Rape
The penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim.

Fondling
The touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental incapacity. Incest

Incest
Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.

Statutory Rape
Sexual intercourse with a person who is under the statutory age of consent.

Stalking
i. Engaging in a course of conduct directed at a specific person that would cause a reasonable person to—
   a. Fear for the person's safety or the safety of others; or
   b. Suffer substantial emotional distress.

ii. For the purposes of this definition—
a. **Course of conduct** means two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person’s property.

b. **Reasonable person** means a reasonable person under similar circumstances and with similar identities to the victim.

c. **Substantial emotional distress** means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

iii. For the purposes of complying with the requirements of this section and section 668.41, any incident meeting this definition is considered a crime for the purposes of Clery Act reporting.

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**CALIFORNIA STATE LAW DEFINITIONS**

**Dating Violence**

Included within the definition of domestic violence as set forth in California Penal Code Section 13700.

**CALIFORNIA PENAL CODE - Domestic Violence**

“Domestic violence” means abuse committed against an adult or a minor who is a spouse, former spouse, cohabitant, former cohabitant, or person with whom the suspect has had a child or is having or has had a dating or engagement relationship.

- For purposes of this subdivision, “cohabitant” means two unrelated adult persons living together for a substantial period of time, resulting in some permanency of relationship.
  - Factors that may determine whether persons are cohabiting include but are not limited to: sexual relations between the parties while sharing the same living quarters, sharing of income or expenses, joint use or ownership of property, whether the parties hold themselves out as spouses, the continuity of the relationship, and the length of the relationship.
  - “Abuse” means intentionally or recklessly causing or attempting to cause bodily injury or placing another person in reasonable apprehension of imminent serious bodily injury to himself or herself, or another.\(^1\)

**Punishment for battery generally; Punishment for battery against specified officers or others**

- (a) A battery is punishable by a fine not exceeding two thousand dollars ($2,000), or by imprisonment in a county jail not exceeding six months, or by both that fine and imprisonment
- ...
- (d) When a battery is committed against any person and serious bodily injury is inflicted on the person, the battery is punishable by imprisonment in a county jail not exceeding one year or imprisonment pursuant to subdivision (h) of Section 1170 for two, three, or four years.
- (e)(1) When a battery is committed against a spouse, a person with whom the defendant is cohabiting, a person who is the parent of the defendant’s child, former spouse, fiancé, or fiancée, or a person with whom the defendant currently has, or has previously had, a dating or engagement relationship, the battery is punishable by a fine not exceeding two thousand dollars ($2,000), or by imprisonment in a county jail for a period of not more than one year, or by both that fine and imprisonment. If probation is granted, or the execution or imposition of the sentence is suspended, it shall be a condition thereof that the defendant participate in, for no less than one year, and successfully complete, a batterer’s treatment program, or, if none is available, another appropriate counseling program designated by the court.
- ...
- (f) As used in this section
- (4) “Serious bodily injury” means a serious impairment of physical condition, including, but not limited to, the following: loss of consciousness; concussion; bone fracture; protracted loss or impairment of function of any bodily member or organ; a wound requiring extensive suturing; and serious disfigurement
- ...
- (10) “Dating relationship” means frequent, intimate associations primarily characterized by the expectation of affectional or sexual involvement independent of financial considerations.....\(^2\)

**CALIFORNIA FAMILY CODE – Domestic Violence**

- For purposes of this act, “abuse” means any of the following:
  - To intentionally or recklessly cause or attempt to cause bodily injury.

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\(^1\) Cal. Penal Code § 13700 (a), (b).

\(^2\) § 243.
Sexual assault.

- To place a person in reasonable apprehension of imminent serious bodily injury to that person or to another.
- To engage in any behavior that has been or could be enjoined pursuant to Section 6320. [Note: “Section 6320 behavior” includes “molesting, attacking, striking, stalking, threatening, sexually assaulting, battering, harassing, telephoning, including, but not limited to, making annoying telephone calls, destroying personal property, contacting, either directly or indirectly, by mail or otherwise, coming within a specified distance of, or disturbing the peace of the other party, and, in the discretion of the court, on a showing of good cause, of other named family or household members.”]

- Abuse is not limited to the actual infliction of physical injury or assault.³
- “Affinity,” “when applied to the marriage relation, signifies the connection existing in consequence of marriage between each of the married persons and the blood relatives of the other.”⁴
- “Cohabitant” “means a person who regularly resides in the household. “Former cohabitant” means a person who formerly regularly resided in the household.”⁵
- “Dating relationship” “means frequent, intimate associations primarily characterized by the expectation of affection or sexual involvement independent of financial considerations.”⁶
- “Domestic violence” “Domestic violence” is abuse perpetrated against any of the following persons:
  - A spouse or former spouse.
  - A cohabitant or former cohabitant, as defined in Section 6209.
  - A person with whom the respondent is having or has had a dating or engagement relationship.
  - A person with whom the respondent has had a child . . .
  - A child of a party or a child who is the subject of an action under the Uniform Parentage Act, where the presumption applies that the male parent is the father of the child to be protected.
  - Any other person related by consanguinity or affinity within the second degree.⁷

Sexual Assault

(Defined under the Clery Act to be an offense that meets the definition of rape, fondling, incest, or statutory rape):

Rape

Rape is an act of sexual intercourse accomplished under any of the following circumstances:

1. If a person who is not the spouse of the person committing the act is incapable, because of a mental disorder or developmental or physical disability, of giving legal consent, and this is known or reasonably should be known to the person committing the act. Notwithstanding the existence of a conservatorship pursuant to the provisions of the Lanterman-Petris-Short Act (Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code), the prosecuting attorney shall prove, as an element of the crime, that a mental disorder or developmental or physical disability rendered the alleged victim incapable of giving consent.
2. If it is accomplished against a person’s will by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the person or another.
3. If a person is prevented from resisting by any intoxicating or anesthetic substance, or a controlled substance, and this condition was known, or reasonably should have been known by the accused.
4. If a person is at the time unconscious of the nature of the act, and this is known to the accused. As used in this paragraph, “unconscious of the nature of the act” means incapable of resisting because the victim meets any one of the following conditions:
   - Was unconscious or asleep.
   - Was not aware, knowing, perceiving, or cognizant that the act occurred.
   - Was not aware, knowing, perceiving, or cognizant of the essential characteristics of the act due to the perpetrator’s fraud in fact.
   - 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.

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⁢ Cal. Family Code § 6203(a), (b).
⁴ § 6205.
⁵ § 6209.
⁶ § 6210.
⁷ § 6211.
If a person 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 belief.

If 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. As used in this paragraph, “threatening to retaliate” means a threat to kidnap or falsely imprison, or to inflict extreme pain, serious bodily injury, or death.

If 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. As used in this paragraph, “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.

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

As used in this Section, “menace” means any threat, declaration, or act that shows an intention to inflict an injury upon another.

Penetration
The essential guilt of rape consists in the outrage to the person and feelings of the victim of the rape. Any sexual penetration, however slight, is sufficient to complete the crime.

Sodomy
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...

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

(3) Any person who commits an act of sodomy 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, shall be punished by imprisonment in the state prison for three, six, or eight years.

(d)(1) Any person who, while voluntarily acting in concert with another person, either personally or aiding and abetting that other person, commits an act of sodomy when the act is accomplished against the victim’s will 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, shall be punished by imprisonment in the state prison for five, seven, or nine years.

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

- Was unconscious or asleep.
- Was not aware, knowing, perceiving, or cognizant that the act occurred.
- Was not aware, knowing, perceiving, or cognizant of the essential characteristics of the act due to the perpetrator’s fraud in fact.

(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.

(g)...[A] person who commits an act of sodomy, and the victim is at the time incapable, because of a mental disorder or developmental or physical disability, of giving legal consent, and this is known or reasonably should be known to the person committing the act, shall be punished by imprisonment in the state prison for three, six, or eight years. Notwithstanding the existence of a conservatorship..., the prosecuting attorney shall prove, as an element of the crime, that a mental disorder or developmental or physical disability rendered the alleged victim incapable of giving consent.

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8 § 261.

9 § 263.
Any person who commits an act of sodomy, where the victim is prevented from resisting by an 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 three, six, or eight years.

(j) Any person who commits an act of sodomy, where the victim submits under the belief that the person committing the act is 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 belief, shall be punished by imprisonment in the state prison for three, six, or eight years.

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

Oral Copulation

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

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

(3) Any person who commits an act of oral copulation 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, shall be punished by imprisonment in the state prison for three, six, or eight years.

(d)(1) Any person who, while voluntarily acting in concert with another person, either personally or by aiding and abetting that other person, commits an act of oral copulation (A) when the act is accomplished against the victim’s will by means of force or fear of immediate and unlawful bodily injury on the victim or another person, or (B) 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, or (C) where the victim is at the time incapable, because of a mental disorder or developmental or physical disability, of giving legal consent, and this is known or reasonably should be known to the person committing the act, shall be punished by imprisonment in the state prison for three, six, or eight years.

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

- Was unconscious or asleep.
- Was not aware, knowing, perceiving, or cognizant that the act occurred.
- Was not aware, knowing, perceiving, or cognizant of the essential characteristics of the act due to the perpetrator’s fraud in fact.
- Was not aware, knowing, perceiving, or cognizant of the essential characteristics of the act due to the perpetrator’s fraudulent representation that the oral copulation served a professional purpose when it served no professional purpose.

(g) . . . any person who commits an act of oral copulation, and the victim is at the time incapable, because of a mental disorder or developmental or physical disability, of giving legal consent, and this is known or reasonably should be known to the person committing the act, shall be punished by imprisonment in the state prison, for three, six, or eight years. Notwithstanding the existence of a conservatorship . . . the prosecuting attorney shall prove, as an element of the crime, that a mental disorder or developmental or physical disability rendered the alleged victim incapable of giving consent.

- Any person who commits an act of oral copulation, where 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.

(j) Any person who commits an act of oral copulation, 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 belief, shall be punished by imprisonment in the state prison for a period of three, six, or eight years.

10 § 286.
11 § 287.
Penetration by Foreign Object

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

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

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

- (2) Any person who commits an act of sexual penetration when 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, shall be punished by imprisonment in the state prison for three, six, or eight years.

- (b) Except as provided in subdivision (c), any person who commits an act of sexual penetration, and the victim is at the time unconscious of the nature of the act, and this is known or reasonably should be known to the person committing the act or causing the act to be committed, shall be punished by imprisonment in the state prison for three, six, or eight years. Notwithstanding the appointment of a conservator . . . the prosecuting attorney shall prove, as an element of the crime, that a mental disorder or developmental or physical disability rendered the alleged victim incapable of giving legal consent. . .

- Any person who commits an act of sexual penetration, and the victim is at the time unconscious of the nature of the act, and this is known to the person committing the act or causing the act to be committed, shall be punished by imprisonment in the state prison for three, six, or eight years. As used in this subdivision, “unconscious of the nature of the act” means incapable of resisting because the victim meets one of the following conditions:
  - (1) Was unconscious or asleep.
  - (2) Was not aware, knowing, perceiving, or cognizant that the act occurred.
  - (3) Was not aware, knowing, perceiving, or cognizant of the essential characteristics of the act due to the perpetrator’s fraud in fact.
  - (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 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 belief, shall be punished by imprisonment in the state prison for a period of three, six, or eight years . . .

- (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.12

Sexual Battery (Fondling)

- (a) Any person who touches an intimate part of another person while that person is unlawfully restrained by the accused or an accomplice, and if the touching is against the will of the person touched and is for the purpose of sexual arousal, sexual gratification, or sexual abuse, is guilty of sexual battery...

12 § 289.
(b) Any person who touches an intimate part of another person who is institutionalized for medical treatment and who is seriously disabled or medically incapacitated, if the touching is against the will of the person touched, and if the touching is for the purpose of sexual arousal, sexual gratification, or sexual abuse, is guilty of sexual battery.

(c) Any person who touches 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, is guilty of sexual battery.

(d) Any person who, for the purpose of sexual arousal, sexual gratification, or sexual abuse, causes another, against that person’s will while that person is unlawfully restrained either by the accused or an accomplice, or is institutionalized for medical treatment and is seriously disabled or medically incapacitated, to masturbate or touch an intimate part of either of those persons or a third person, is guilty of sexual battery.

(e)(1) Any person who touches an intimate part of another person, if the touching is against the will of the person touched, and is for the specific purpose of sexual arousal, sexual gratification, or sexual abuse, is guilty of misdemeanor sexual battery.

(e)(2) As used in this subdivision, “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.

(f) As used in subdivisions (a), (b), (c), and (d), “touches” means physical contact with the skin of another person whether accomplished directly or through the clothing of the person committing the offense.

(g) As used in this Section, the following terms have the following meanings:

- “Intimate part” means the sexual organ, anus, groin, or buttocks of any person, and the breast of a female.
- “Sexual battery” does not include the crimes defined in Section 261 or 289.
- “Seriously disabled” means a person with severe physical or sensory disabilities.
- “Medically incapacitated” means a person who is incapacitated as a result of prescribed sedatives, anesthesia, or other medication.
- “Institutionalized” means a person who is located voluntarily or involuntarily in a hospital, medical treatment facility, nursing home, acute care facility, or mental hospital.
- “Minor” means a person under 18 years of age.

Incest
Persons being within the degrees of consanguinity within which marriages are declared by law to be incestuous and void, who intermarry with each other, or who being 14 years of age or older, commit fornication or adultery with each other, are punishable by imprisonment in the state prison.

Statutory Rape
- (a) Unlawful sexual intercourse is an act of sexual intercourse accomplished with a person who is not the spouse of the perpetrator if the person is a minor. For the purposes of this Section, a “minor” is a person under the age of 18 years and an “adult” is a person who is at least 18 years of age.
- (b) Any person who engages in an act of unlawful sexual intercourse with a minor who is not more than three years older or three years younger than the perpetrator, is guilty of a misdemeanor.
- (c) Any person who engages in an act of unlawful sexual intercourse with a minor who is more than three years younger than the perpetrator is guilty of either a misdemeanor or a felony and shall be punished by imprisonment in a county jail not exceeding one year, or by imprisonment pursuant to subdivision (h) of Section 1170.
- (d) Any person 21 years of age or older who engages in an act of unlawful sexual intercourse with a minor who is under 16 years of age is guilty of either a misdemeanor or a felony and shall be punished by imprisonment in a county jail not exceeding one year, or by imprisonment pursuant to subdivision (h) of Section 1170 for two, three, or four years.

Stalking
- (a) Any person who willfully, maliciously, and repeatedly follows or willfully and maliciously harasses another person and who makes a credible threat with the intent to place that person in reasonable fear for his or her safety, or the safety of his or her immediate family is guilty of the crime of stalking.
- (e) For the purposes of this Section, “harasses” means engages in a knowing and willful course of conduct directed at a specific person that seriously alarms, annoys, torments, or terrorizes the person, and that serves no legitimate purpose.
- (f) For the purposes of this Section, “course of conduct” means two or more acts occurring over a period of time, however short, evidencing a continuity of purpose. Constitutionally protected activity is not included within the meaning of “course of conduct.”

13 § 243.4.
14 § 285.
15 § 261.5.
(g) For the purposes of this Section, “credible threat” means a verbal or written threat, including that performed through the use of an electronic communication device, or a threat implied by a pattern of conduct or a combination of verbal, written, or electronically communicated statements and conduct, made with the intent to place the person that is the target of the threat in reasonable fear for his or her safety or the safety of his or her family, and made with the apparent ability to carry out the threat so as to cause the person who is the target of the threat to reasonably fear for his or her safety or the safety of his or her family. It is not necessary to prove that the defendant had the intent to actually carry out the threat. The present incarceration of a person making the threat shall not be a bar to prosecution under this Section. Constitutionally protected activity is not included within the meaning of “credible threat.”

(h) For purposes of this Section, the term “electronic communication device” includes, but is not limited to, telephones, cellular phones, computers, video recorders, fax machines, or pagers. “Electronic communication” has the same meaning as the term defined in Subsection 12 of Section 2510 of Title 18 of the United States Code.

(i) For purposes of this Section, “immediate family” means any spouse, parent, child, any person related by consanguinity or affinity within the second degree, or any other person who regularly resides in the household, or who, within the prior six months, regularly resided in the household.16

Use of electronic communication to instill fear or to harass; Misdemeanor -

(a) Every person who, with intent to place another person in reasonable fear for his or her safety, or the safety of the other person’s immediate family, by means of an electronic communication device, and without consent of the other person, and for the purpose of imminently causing that other person unwanted physical contact, injury, or harassment, by a third party, electronically distributes, publishes, e-mails, hyperlinks, or makes available for downloading, personal identifying information, including, but not limited to, a digital image of another person, or an electronic message of a harassing nature about another person, which would be likely to incite or produce that unlawful action, is guilty of a misdemeanor . . . .

(b) For purposes of this section, “electronic communication device” includes, but is not limited to, telephones, cell phones, computers, Internet Web pages or sites, Internet phones, hybrid cellular/Internet/wireless devices, personal digital assistants (PDAs), video recorders, fax machines, or pagers. “Electronic communication” has the same meaning as the term is defined in Section 2510(12) of Title 18 of the United States Code.

(c) For purposes of this section, the following terms apply:
   o (1) “Harassment” means a knowing and willful course of conduct directed at a specific person that a reasonable person would consider as seriously alarming, seriously annoying, seriously tormenting, or seriously terrorizing the person and that serves no legitimate purpose.
   o (2) “Of a harassing nature” means of a nature that a reasonable person would consider as seriously alarming, seriously annoying, seriously tormenting, or seriously terrorizing of the person and that serves no legitimate purpose.17

Consent in reference to sexual activity is defined under California law as the following:

In prosecutions under Section 261, 286, 287, or 289, or former Section 262 or 288a, in which consent is at issue, evidence that the victim suggested, requested, or otherwise communicated to the defendant that the defendant use a condom or other birth control device, without additional evidence of consent, is not sufficient to constitute consent.18

Every person who induces any other person to engage in sexual intercourse, sexual penetration, oral copulation, or sodomy when his or her consent is procured by false or fraudulent representation or pretense that is made with the intent to create fear, and which does induce fear, and that would cause a reasonable person in like circumstances to act contrary to the person’s free will, and does cause the victim to so act, is punishable by imprisonment in a county jail for not more than one year or in the state prison for two, three, or four years. As used in this section, “fear” means the fear of physical injury or death to the person or to any relative of the person or member of the person’s family.19

Consent in reference to sexual activity is defined under California law as the following: In prosecutions under Section 261, 286, 287, or 289, or former Section 262 or 288a, in which consent is at issue, evidence that the victim suggested, requested,

16 § 646.9.
17 § 653.2.
18 § 261.7.
19 § 266c.
or otherwise communicated to the defendant that the defendant use a condom or other birth control device, without additional evidence of consent, is not sufficient to constitute consent. *Cal Penal Code § 261.7.*

- Every person who induces any other person to engage in sexual intercourse, sexual penetration, oral copulation, or sodomy when his or her consent is procured by false or fraudulent representation or pretense that is made with the intent to create fear, and which does induce fear, and that would cause a reasonable person in like circumstances to act contrary to the person’s free will, and does cause the victim to so act, is punishable by imprisonment in a county jail for not more than one year or in the state prison for two, three, or four years. As used in this section, “fear” means the fear of physical injury or death to the person or to any relative of the person or member of the person’s family. *Cal Penal Code § 266c.*