

AMENDED IN ASSEMBLY AUGUST 15, 2005

AMENDED IN ASSEMBLY APRIL 11, 2005

CALIFORNIA LEGISLATURE—2005—06 REGULAR SESSION

ASSEMBLY BILL

No. 231

**Introduced by Assembly Member ~~Sharon Runner~~ Members
Sharon Runner and La Suer
(Principal coauthors: Assembly Members Garcia, Shirley Horton,
Houston, and Tran)**

February 7, 2005

~~An act to repeal Section 704.090 of the Code of Civil Procedure, and to amend Section 2932 of, and to add Section 5005.1 to, the Penal Code, relating to the Department of Corrections. An act to amend Sections 209, 220, 269, 290.3, 311.11, 667.1, 667.5, 667.51, 667.6, 667.61, 667.71, 1170.125, 1203.06, 1203.065, 1203.075, 3000, 3001, 3003, 3003.5, 3004, and 12022.75 of, and to add Sections 288.3 and 3000.07 to, the Penal Code, and to amend Sections 6600, 6600.1, 6601, 6604, 6604.1, 6605, and 6608 of the Welfare and Institutions Code, relating to sex offenders.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 231, as amended, Sharon Runner. ~~Department of Corrections. The Sexual Predator Punishment and Control Act: Jessica's Law.~~

Under existing law, the punishment for kidnapping with the intent to commit any of several specified sexual acts is imprisonment in the state prison for life with the possibility of parole.

This bill, to be known as the Sexual Predator Punishment and Control Act: Jessica's Law, would add rape committed in concert and committing lewd and lascivious acts to the above specified sexual acts.

Under existing law, the punishment for assault with intent to commit any of several specified sexual acts is imprisonment in the state prison for 2, 4, or 6 years.

This bill would provide that the punishment for assaulting another person with the intent to commit any of several specified sexual acts while in the commission of a first degree burglary is imprisonment in the state prison for life with the possibility of parole.

Under existing law, a person who commits any of several sexual acts upon a child who is under 14 years of age and 10 or more years younger than the person, is guilty of aggravated sexual assault of a child.

This bill would change the age elements of the crime to 14 years of age and 7 or more years younger than the perpetrator, and would expand the types of sex offenses to which it would apply. The bill would require the court to impose a consecutive sentence for each offense that results in a conviction under this provision.

This bill would create a new felony offense for persons who contact or communicate with a minor, as defined, or who attempt to contact or communicate with a minor, or a person they know or reasonably should know is a minor, with the intent to commit any of several specified sex offenses.

Under existing law, the court is required to impose a fine of \$200 for the first conviction of a person who is convicted of a sex offense for which registration as a sex offender is required, and \$300 for a subsequent conviction.

This bill would increase those fines to \$300 and \$500, respectively, and would allocate \$100 from each fine to the Department of Corrections and Rehabilitation to defray the costs of global positioning systems used to monitor sex offender parolees.

Under existing law, it is a misdemeanor for a person to knowingly possess or control any matter or representation of information, data, or image, as specified, the production of which involves the use of a person under 18 years of age engaging in or simulating sexual conduct. If a person has previously been convicted of that crime, or other crimes related to child pornography, the punishment is imprisonment in the state prison for 2, 4, or 6 years.

This bill would increase the penalty for the first offense of that crime to a misdemeanor or felony. The bill would expand the types of crimes that would trigger punishment for a subsequent offense.

Existing law, which requires amendments to its provisions to be approved by 2/3 of the membership of both houses of the Legislature, defines “violent felony” for purposes of various provisions of the Penal Code.

This bill would include in that definition various sex offenses committed against a child who is under 14 years of age and more than 10 years younger than the perpetrator, or committed in concert.

Existing law provides for an enhanced prison term of 5 years for a person convicted of committing any of several specified sex offenses who had a prior conviction for any of several other specified sex offenses. The enhanced term for a person with 2 or more previous convictions of any of those sex offense is 10 years. The enhanced term does not apply if that person has not been in custody for, or committed a felony during, at least 10 years between the instant and prior offense. Existing law requires the person to receive credits for time served or work, to reduce his or her sentence.

This bill would expand the types of sex crimes to which these provision apply, delete the 10-year exception, and would eliminate the possibility of the person receiving credit to reduce his or her sentence.

Under existing law, persons who are convicted of committing certain sex offense who have previously been convicted of other sex offenses, including habitual sexual offenders, as defined, or who are convicted of certain sex offenses during the commission of another offense, are eligible for credit to reduce the minimum term imposed.

This bill would eliminate that eligibility for those persons.

Under existing law, the punishment for a conviction of certain sex offenses is 25 years to life if the offense was committed in the course of a kidnapping or burglary, the victim was tortured, or the defendant had previously been convicted of one of these sex crimes.

This bill would add continuous sexual abuse of a child to those sex offenses.

Under existing law, the court has the authority to order an action dismissed or to strike a prior conviction, for purposes of sentencing a defendant.

This bill would prohibit a court from striking an allegation, admission, or finding of a prior conviction for, and would prohibit granting probation to, or suspending the execution or imposition of sentence for, defendants who are convicted of certain sex offenses.

Under existing law, a court is prohibited from granting probation to, or suspending the execution or imposition of sentence for any

person who, with the intent to inflict the injury, personally inflicts great bodily injury on another person during the commission of any of several crimes.

This bill would eliminate the intent requirement of that provision.

Under existing law, any finding made that a person is a sexually violent predator, as specified, shall not toll, discharge, or otherwise affect that person's period of parole.

This bill would instead provide that the parole period of a person found to be a sexually violent predator shall be tolled until that person is found to no longer be a sexually violent predator, at which time the period of parole shall begin to run.

Under existing law, the period of parole for a person convicted of certain sex offenses is 5 years, which period may be extended for an additional 5 years after a hearing by the Board of Parole Hearings.

This bill would increase that period of parole to 10 years, would eliminate the possibility of extension of parole, and would authorize that person to be discharged from parole after 6 years, as specified.

Existing law requires all persons convicted of specified sex offense to register as a sex offender, as specified.

This bill would require every person who has been convicted of a felony that triggers the registration requirement, or an attempt to commit such a felony, who is released on parole, to be monitored by a global positioning system for the term of his or her parole. The bill would require the parolee to pay the cost of the monitoring, except upon a finding of the inability to pay. The bill would further require all of those persons to continue being monitored by a global positioning system, once discharged from parole, for the rest of their lives.

Existing law prohibits a person who was convicted of certain sex offenses with children from being placed or residing within 1/4 mile of any public or private school during the period of parole.

This bill would eliminate that prohibition and instead provide that it is unlawful for any person who is required to register as a sex offender to reside within 2000 feet of any public or private school, or any park where children regularly gather.

Existing law provides for an enhanced penalty of 3 years for any person who administers a controlled substance to another person against his or her will, for the purpose of committing a felony.

This bill would create an additional enhancement of 5 years if that felony is any of several specified sex offenses.

Existing law defines “conviction for a sexually violent offense” for purposes of laws pertaining to sexually violent predators.

This bill would expand that definition to include certain prior convictions, and would expand the definition of “sexually violent offense” for those purposes.

Under existing law, if the victim of certain specified sex offenses is a child under 14 years of age and the offending act involved substantial sexual conduct, the offense is considered a “sexually violent offense” for purposes of enhanced punishment.

This bill would eliminate the element of substantial sexual conduct from that definition.

Under existing law, if a person is determined to be a sexually violent predator, he or she is committed to the State Department of Mental Health for 2 years for appropriate treatment and confinement. Confinement may not be extended except by court order.

This bill would change that commitment to an indeterminate term, and would require an annual report to be made about the appropriateness of conditionally releasing the person to a less restrictive environment.

Because this bill would expand the scope of certain crimes, increase the penalties for certain crime, and create a new crime, the bill would impose a state-mandated local program. The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

~~Existing law sets the maximum value of an inmate’s trust account which may be exempt from the enforcement of a money judgment, as specified.~~

~~This bill would eliminate that exemption.~~

~~Existing law establishes the Department of Corrections, which is comprised of the Director of Corrections and the Prison Industry Authority.~~

~~Existing law provides that the department may deny time credits and privileges for inmate misconduct, based upon the severity of the offense, and existing law further provides procedures for investigating and determining appropriate sanctions, as specified.~~

~~This bill would provide that a department hearing officer may suspend an inmate’s privileges for up to 360 days for the commission~~

~~of certain serious offenses such as murder and serious assault, as specified.~~

~~Existing law provides that the department may maintain a canteen for the purpose of selling various items to those persons confined in the state's prisons.~~

~~This bill would provide for the restriction or suspension of an inmate's canteen privileges if he or she is found to have committed any felony involving violence or injury to a nonprisoner, as specified.~~

Vote: ~~majority~~^{2/3}. Appropriation: no. Fiscal committee: yes. State-mandated local program: ~~no~~^{yes}.

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

- 1 SECTION 1. *This act shall be known, and may be cited as,*
- 2 *the Sexual Predator Punishment and Control Act: Jessica's Law.*
- 3 SEC. 2. *The Legislature finds and declares the following:*
- 4 (a) *The State of California currently places a high priority on*
- 5 *maintaining public safety through highly skilled and trained law*
- 6 *enforcement personnel as well as laws that deter and punish*
- 7 *criminal behavior.*
- 8 (b) *Sex offenders have very high recidivism rates. According*
- 9 *to a 1998 report by the U.S. Department of Justice, sex offenders*
- 10 *are the least likely to be cured and the most likely to reoffend,*
- 11 *and they prey on the most innocent members of our society. More*
- 12 *than two-thirds of the victims of rape and sexual assault are*
- 13 *under 18 years of age. Sex offenders have a dramatically higher*
- 14 *recidivism rate for their crimes than any other type of violent*
- 15 *felon.*
- 16 (c) *Child pornography exploits children and robs them of their*
- 17 *innocence. FBI studies have shown that pornography is very*
- 18 *influential in the actions of sex offenders. Statistics show that 90*
- 19 *percent of the predators who molest children have had some type*
- 20 *of involvement with pornography. Predators often use child*
- 21 *pornography to aid in their molestation.*
- 22 (d) *The universal use of the Internet has also ushered in an era*
- 23 *of increased risk to our children by predators using this*
- 24 *technology as a tool to lure children away from their homes and*
- 25 *into dangerous situations. Therefore, to reflect society's*
- 26 *disapproval of this type of activity, adequate penalties must be*
- 27 *enacted to ensure predators cannot escape prosecution.*

1 (e) *With these changes, Californians will be in a better*
2 *position to keep themselves, their children, and their*
3 *communities safe from the threat posed by sex offenders.*

4 (f) *It is the intent of the people in enacting this measure to help*
5 *Californians better protect themselves, their children, and their*
6 *communities; it is not the intent of the people to embarrass or*
7 *harass persons convicted of sex offenses.*

8 (g) *Californians have a right to know about the presence of*
9 *sex offenders in their communities, near their schools, and*
10 *around their children.*

11 (h) *California must also take additional steps to monitor sex*
12 *offenders, to protect the public from them, and to provide*
13 *adequate penalties for and safeguards against sex offenders,*
14 *particularly those who prey on children. Existing laws that*
15 *punish aggravated sexual assault, habitual sexual offenders, and*
16 *child molesters must be strengthened and improved. In addition,*
17 *existing laws that provide for the commitment and control of*
18 *sexually violent predators must be strengthened and improved.*

19 (i) *Additional resources are necessary to adequately monitor*
20 *and supervise sexual predators and offenders. It is vital that the*
21 *lasting effects of the assault do not further victimize victims of*
22 *sexual assault.*

23 (j) *Global Positioning System technology is a useful tool for*
24 *monitoring sexual predators and other sex offenders, and is a*
25 *cost-effective measure for parole supervision. It is critical to*
26 *have close supervision of this class of criminals to monitor these*
27 *offenders and prevent them from committing other crimes.*

28 (k) *California is the only state, of the number of states that*
29 *have enacted laws allowing involuntary civil commitments for*
30 *persons identified as sexually violent predators, that does not*
31 *provide for indeterminate commitments for those persons.*
32 *California automatically allows for a jury trial every two years*
33 *irrespective of whether there is any evidence to suggest or prove*
34 *that the committed person is no longer a sexually violent*
35 *predator. As such, this act allows California to protect the civil*
36 *rights of those persons committed as a sexually violent predator*
37 *while at the same time protecting society and the system from*
38 *unnecessary or frivolous jury trial actions where there is no*
39 *competent evidence to suggest a change in the committed person.*

40 SEC. 3. *Section 209 of the Penal Code is amended to read:*

1 209. (a) Any person who seizes, confines, inveigles, entices,
 2 decoys, abducts, conceals, kidnaps or carries away another
 3 person by any means whatsoever with intent to hold or detain, or
 4 who holds or detains, that person for ransom, reward or to
 5 commit extortion or to exact from another person any money or
 6 valuable thing, or any person who aids or abets any ~~such act of~~
 7 *those acts*, is guilty of a felony, ~~and upon~~. Upon conviction
 8 thereof, *a person* shall be punished by imprisonment in the state
 9 prison for life without possibility of parole in cases in which any
 10 person subjected to any ~~such act of those acts~~ suffers death or
 11 bodily harm, or is intentionally confined in a manner which
 12 exposes that person to a substantial likelihood of death, or shall
 13 be punished by imprisonment in the state prison for life with the
 14 possibility of parole ~~in cases where no such person suffers if the~~
 15 *victim does not suffer* death or bodily harm.

16 (b) (1) Any person who kidnaps or carries away any
 17 individual to commit robbery, rape, spousal rape, oral copulation,
 18 sodomy, or ~~sexual penetration in any~~ violation of Section 264.1,
 19 288, or 289, shall be punished by imprisonment in the state
 20 prison for life with *the* possibility of parole.

21 (2) This subdivision shall only apply if the movement of the
 22 victim is beyond that merely incidental to the commission of, and
 23 increases the risk of harm to the victim over and above that
 24 necessarily present in, the intended underlying offense.

25 (c) In all cases in which probation is granted, the court shall,
 26 except in unusual cases where the interests of justice would best
 27 be served by a lesser penalty, require as a condition of the
 28 probation that the person be confined in the county jail for 12
 29 months. If the court grants probation without requiring the
 30 defendant to be confined in the county jail for 12 months, it shall
 31 specify its reason or reasons for imposing a lesser penalty.

32 (d) Subdivision (b) shall not be construed to supersede or
 33 affect Section 667.61. A person may be charged with a violation
 34 of subdivision (b) and Section 667.61. However, a person may
 35 not be punished under subdivision (b) and Section 667.61 for the
 36 same act that constitutes a violation of both subdivision (b) and
 37 Section 667.61.

38 *SEC. 4. Section 220 of the Penal Code is amended to read:*

39 220. ~~Every~~ *(a) Except as provided in subdivision (b), any*
 40 person who assaults another with intent to commit mayhem, rape,

1 sodomy, oral copulation, or any violation of Section 264.1, 288
2 or 289 ~~is punishable~~ shall be punished by imprisonment in the
3 state prison for two, four, or six years.

4 (b) Any person who, in the commission of a burglary of the
5 first degree, as defined in subdivision (a) of Section 460, assaults
6 another with intent to commit rape, sodomy, oral copulation, or
7 any violation of Section 264.1, 288, or 289 shall be punished by
8 imprisonment in the state prison for life with the possibility of
9 parole.

10 SEC. 5. Section 269 of the Penal Code is amended to read:

11 269. (a) Any person who commits any of the following acts
12 upon a child who is under 14 years of age and ~~10~~ seven or more
13 years younger than the person is guilty of aggravated sexual
14 assault of a child:

15 (1) ~~A Rape~~, in violation of paragraph (2) or (6) of subdivision
16 (a) of Section 261.

17 (2) ~~A Rape or sexual penetration, in concert~~, in violation of
18 Section 264.1.

19 (3) Sodomy, in violation of *paragraph (2) or (3) of*
20 *subdivision (c), or subdivision (d), of Section 286*, ~~when~~
21 ~~committed by force, violence, duress, menace, or fear of~~
22 ~~immediate and unlawful bodily injury on the victim or another~~
23 ~~person.~~

24 (4) Oral copulation, in violation of *paragraph (2) or (3) of*
25 *subdivision (c), or subdivision (d) of Section 288a*, ~~when~~
26 ~~committed by force, violence, duress, menace, or fear of~~
27 ~~immediate and unlawful bodily injury on the victim or another~~
28 ~~person.~~

29 (5) ~~A Sexual penetration~~, in violation of subdivision (a) of
30 Section 289.

31 (b) Any person who violates this section is guilty of a felony
32 and shall be punished by imprisonment in the state prison for 15
33 years to life.

34 (c) *The court shall impose a consecutive sentence for each*
35 *offense that results in a conviction under this section if the crimes*
36 *involve separate victims or involve the same victim on separate*
37 *occasions, as defined in subdivision (d) of Section 667.6.*

38 SEC. 6. Section 288.3 is added to the Penal Code, to read:

39 288.3. (a) Every person who contacts or communicates with
40 a minor, or attempts to contact or communicate with a minor,

1 *who knows or reasonably should know that the person is a*
2 *minor, with intent to commit an offense specified in Section 207,*
3 *209, 261, 264.1, 273a, 286, 288, 288a, 288.2, 289, 311.1, 311.2,*
4 *311.4 or 311.11 involving the minor shall be punished by*
5 *imprisonment in the state prison for the term prescribed for an*
6 *attempt to commit the intended offense.*

7 *(b) As used in this section, “contacts or communicates with”*
8 *shall include direct and indirect contact or communication that is*
9 *achieved personally or by use of an agent or agency, any print*
10 *medium, any postal service, a common carrier or communication*
11 *common carrier, any electronic communications system, or any*
12 *telecommunications, wire, computer, or radio communications*
13 *device or system.*

14 *(c) A person convicted of a violation of subdivision (a) who*
15 *previously has been convicted of a violation of subdivision (a)*
16 *shall be punished by an additional and consecutive term of*
17 *imprisonment in the state prison for five years.*

18 *SEC. 7. Section 290.3 of the Penal Code is amended to read:*

19 290.3. (a) Every person who is convicted of any offense
20 specified in subdivision (a) of Section 290 shall, in addition to
21 any imprisonment or fine, or both, imposed for violation of the
22 underlying offense, be punished by a fine of ~~two~~ three hundred
23 dollars ~~(\$200)~~ (\$300) upon the first conviction or a fine of ~~three~~
24 five hundred dollars ~~(\$300)~~ (\$500) upon the second and each
25 subsequent conviction, unless the court determines that the
26 defendant does not have the ability to pay the fine.

27 An amount equal to all fines collected pursuant to this
28 subdivision during the preceding month upon conviction of, or
29 upon the forfeiture of bail by, any person arrested for, or
30 convicted of, committing an offense specified in subdivision (a)
31 of Section 290, shall be transferred once a month by the county
32 treasurer to the Controller for deposit in the General Fund.
33 Moneys deposited in the General Fund pursuant to this
34 subdivision shall be transferred by the Controller as provided in
35 subdivision (b).

36 ~~Out~~ *Except as provided in subdivision (d), out of the*
37 *moneys deposited pursuant to subdivision (a) as a result of*
38 *second and subsequent convictions of Section 290, one-third*
39 *shall first be transferred to the Department of Justice Sexual*
40 *Habitual Offender Fund, as provided in paragraph (1) of this*

1 subdivision. Out of the remainder of all moneys deposited
2 pursuant to subdivision (a), 50 percent shall be transferred to the
3 Department of Justice Sexual Habitual Offender Fund, as
4 provided in paragraph (1), 25 percent shall be transferred to the
5 Department of Justice DNA Testing Fund, as provided in
6 paragraph (2), and 25 percent shall be allocated equally to
7 counties that maintain a local DNA testing laboratory, as
8 provided in paragraph (3).

9 (1) Those moneys so designated shall be transferred to the
10 Department of Justice Sexual Habitual Offender Fund created
11 pursuant to paragraph (5) of subdivision (b) of Section 11170
12 and, when appropriated by the Legislature, shall be used for the
13 purposes of Chapter 9.5 (commencing with Section 13885) and
14 Chapter 10 (commencing with Section 13890) of Title 6 of Part 4
15 for the purpose of monitoring, apprehending, and prosecuting
16 sexual habitual offenders.

17 (2) Those moneys so designated shall be directed to the
18 Department of Justice and transferred to the Department of
19 Justice DNA Testing Fund, which is hereby created, for the
20 exclusive purpose of testing deoxyribonucleic acid (DNA)
21 samples for law enforcement purposes. The moneys in that fund
22 shall be available for expenditure upon appropriation by the
23 Legislature.

24 (3) Those moneys so designated shall be allocated equally and
25 distributed quarterly to counties that maintain a local DNA
26 testing laboratory. Before making any allocations under this
27 paragraph, the Controller shall deduct the estimated costs that
28 will be incurred to set up and administer the payment of these
29 funds to the counties. Any funds allocated to a county pursuant to
30 this paragraph shall be used by that county for the exclusive
31 purpose of testing DNA samples for law enforcement purposes.

32 (c) Notwithstanding any other provision of this section, the
33 Department of Corrections ~~or the Department of the Youth~~
34 ~~Authority and Rehabilitation~~ may collect a fine imposed
35 pursuant to this section from a person convicted of a violation of
36 any offense listed in subdivision (a) of Section 290, that results in
37 incarceration in a facility under the jurisdiction of the
38 Department of Corrections ~~or the Department of the Youth~~
39 ~~Authority and Rehabilitation~~. All moneys collected by the
40 Department of Corrections ~~or the Department of the Youth~~

1 ~~Authority~~ *and Rehabilitation* under this subdivision shall be
2 transferred, once a month, to the Controller for deposit in the
3 General Fund, as provided in subdivision (a), for transfer by the
4 Controller, as provided in subdivision (b).

5 *(d) An amount equal to one hundred dollars (\$100) for every*
6 *fine imposed pursuant to subdivision (a) in excess of one hundred*
7 *dollars (\$100) shall be transferred to the Department of*
8 *Corrections and Rehabilitation to defray the cost of the global*
9 *positioning system used to monitor sex offender parolees,*
10 *pursuant to Section 3000.07.*

11 *SEC. 8. Section 311.11 of the Penal Code is amended to*
12 *read:*

13 311.11. (a) Every person who knowingly possesses or
14 controls any matter, representation of information, data, or
15 image, including, but not limited to, any film, filmstrip,
16 photograph, negative, slide, photocopy, videotape, video laser
17 disc, computer hardware, computer software, computer floppy
18 disc, data storage media, CD-ROM, or computer-generated
19 equipment or any other computer-generated image that contains
20 or incorporates in any manner, any film or filmstrip, the
21 production of which involves the use of a person under the age of
22 18 years, knowing that the matter depicts a person under the age
23 of 18 years personally engaging in or simulating sexual conduct,
24 as defined in subdivision (d) of Section 311.4, is guilty of a
25 public offense and shall be punished by imprisonment in the
26 county jail for up to one year *or in the state prison*, or by a fine
27 not exceeding two thousand five hundred dollars (\$2,500), or by
28 both the fine and imprisonment.

29 ~~(b) If a person—~~*Every person who commits a violation of*
30 *subdivision (a) and who has been previously convicted of a*
31 *violation of this section, ~~or of a violation of subdivision (b) of~~*
32 *Section 311.2, ~~or subdivision (b) of Section 311.4, he or she an~~*
33 *offense described in subparagraph (A) of paragraph (2) of*
34 *subdivision (a) of Section 290, or an attempt to commit any of the*
35 *offenses listed in this subdivision, is guilty of a felony and shall*
36 *be punished by imprisonment for two, four, or six years.*

37 (c) It is not necessary to prove that the matter is obscene in
38 order to establish a violation of this section.

39 (d) This section does not apply to drawings, figurines, statues,
40 or any film rated by the Motion Picture Association of America,

1 nor does it apply to live or recorded telephone messages when
2 transmitted, disseminated, or distributed as part of a commercial
3 transaction.

4 *SEC. 9. Section 667.1 of the Penal Code is amended to read:*

5 667.1. Notwithstanding subdivision (h) of Section 667, for all
6 offenses committed on or after the effective date of this act, all
7 references to existing statutes in subdivisions (c) to (g), inclusive,
8 of Section 667, are to those statutes as they existed on the
9 effective date of this act, including amendments made to those
10 statutes by ~~this act~~ *the act enacted during the 2005-06 Regular*
11 *Session that amended this section.*

12 *SEC. 10. Section 667.5 of the Penal Code is amended to*
13 *read:*

14 667.5. Enhancement of prison terms for new offenses because
15 of prior prison terms shall be imposed as follows:

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

26 (b) Except where subdivision (a) applies, where the new
27 offense is any felony for which a prison sentence is imposed, in
28 addition and consecutive to any other prison terms therefor, the
29 court shall impose a one-year term for each prior separate prison
30 term served for any felony; provided that no additional term shall
31 be imposed under this subdivision for any prison term served
32 prior to a period of five years in which the defendant remained
33 free of both prison custody and the commission of an offense
34 which results in a felony conviction.

35 (c) For the purpose of this section, “violent felony” shall mean
36 any of the following:

- 37 (1) Murder or voluntary manslaughter.
38 (2) Mayhem.

- 1 (3) Rape as defined in paragraph (2) or (6) of subdivision (a)
2 of Section 261 or paragraph (1) or (4) of subdivision (a) of
3 Section 262.
- 4 (4) ~~Sodomy by force, violence, duress, menace, or fear of~~
5 ~~immediate and unlawful bodily injury on the victim or another~~
6 ~~person, as defined in subdivision (c) or (d) of Section 286.~~
- 7 (5) ~~Oral copulation by force, violence, duress, menace, or fear~~
8 ~~of immediate and unlawful bodily injury on the victim or another~~
9 ~~person, as defined in subdivision (c) or (d) of section 288a.~~
- 10 (6) ~~Lewd acts on a child under the age of 14 years or~~
11 ~~lascivious acts, as defined in subdivision (a) or (b) of Section~~
12 ~~288.~~
- 13 (7) Any felony punishable by death or imprisonment in the
14 state prison for life.
- 15 (8) Any felony in which the defendant inflicts great bodily
16 injury on any person other than an accomplice which has been
17 charged and proved as provided for in Section 12022.7 or
18 12022.9 on or after July 1, 1977, or as specified prior to July 1,
19 1977, in Sections 213, 264, and 461, or any felony in which the
20 defendant uses a firearm which use has been charged and proved
21 as provided in Section 12022.5 or 12022.55.
- 22 (9) Any robbery.
- 23 (10) Arson, in violation of subdivision (a) or (b) of Section
24 451.
- 25 (11) ~~The offense Sexual penetration, as defined in subdivision~~
26 ~~(a) or (j) of Section 289 where the act is accomplished against~~
27 ~~the victim's will by force, violence, duress, menace, or fear of~~
28 ~~immediate and unlawful bodily injury on the victim or another~~
29 ~~person.~~
- 30 (12) Attempted murder.
- 31 (13) A violation of Section 12308, 12309, or 12310.
- 32 (14) Kidnapping.
- 33 (15) Assault with the intent to commit ~~mayhem, rape, sodomy,~~
34 ~~or oral copulation~~ a specified felony, in violation of Section 220.
- 35 (16) Continuous sexual abuse of a child, in violation of
36 Section 288.5.
- 37 (17) Carjacking, as defined in subdivision (a) of Section 215.
- 38 (18) ~~A~~ Rape, spousal rape, or sexual penetration, in concert,
39 in violation of Section 264.1.

1 (19) Extortion, as defined in Section 518, which would
2 constitute a felony violation of Section 186.22 of the Penal Code.

3 (20) Threats to victims or witnesses, as defined in Section
4 136.1, which would constitute a felony violation of Section
5 186.22 of the Penal Code.

6 (21) Any burglary of the first degree, as defined in subdivision
7 (a) of Section 460, wherein it is charged and proved that another
8 person, other than an accomplice, was present in the residence
9 during the commission of the burglary.

10 (22) Any violation of Section 12022.53.

11 (23) A violation of subdivision (b) or (c) of Section 11418.

12 The Legislature finds and declares that these specified crimes
13 merit special consideration when imposing a sentence to display
14 society's condemnation for these extraordinary crimes of
15 violence against the person.

16 (d) For the purposes of this section, the defendant shall be
17 deemed to remain in prison custody for an offense until the
18 official discharge from custody or until release on parole,
19 whichever first occurs, including any time during which the
20 defendant remains subject to reimprisonment for escape from
21 custody or is reimprisoned on revocation of parole. The
22 additional penalties provided for prior prison terms shall not be
23 imposed unless they are charged and admitted or found true in
24 the action for the new offense.

25 (e) The additional penalties provided for prior prison terms
26 shall not be imposed for any felony for which the defendant did
27 not serve a prior separate term in state prison.

28 (f) A prior conviction of a felony shall include a conviction in
29 another jurisdiction for an offense which, if committed in
30 California, is punishable by imprisonment in the state prison if
31 the defendant served one year or more in prison for the offense in
32 the other jurisdiction. A prior conviction of a particular felony
33 shall include a conviction in another jurisdiction for an offense
34 which includes all of the elements of the particular felony as
35 defined under California law if the defendant served one year or
36 more in prison for the offense in the other jurisdiction.

37 (g) A prior separate prison term for the purposes of this
38 section shall mean a continuous completed period of prison
39 incarceration imposed for the particular offense alone or in
40 combination with concurrent or consecutive sentences for other

1 crimes, including any reimprisonment on revocation of parole
2 which is not accompanied by a new commitment to prison, and
3 including any reimprisonment after an escape from incarceration.

4 (h) Serving a prison term includes any confinement time in
5 any state prison or federal penal institution as punishment for
6 commission of an offense, including confinement in a hospital or
7 other institution or facility credited as service of prison time in
8 the jurisdiction of the confinement.

9 (i) For the purposes of this section, a commitment to the State
10 Department of Mental Health as a mentally disordered sex
11 offender following a conviction of a felony, which commitment
12 exceeds one year in duration, shall be deemed a prior prison
13 term.

14 (j) For the purposes of this section, when a person subject to
15 the custody, control, and discipline of the Director of Corrections
16 *and Rehabilitation* is incarcerated at a facility operated by the
17 ~~Department of the Youth Authority Division of Juvenile~~
18 ~~Facilities~~, that incarceration shall be deemed to be a term served
19 in state prison.

20 (k) Notwithstanding subdivisions (d) and (g) or any other
21 provision of law, where one of the new offenses is committed
22 while the defendant is temporarily removed from prison pursuant
23 to Section 2690 or while the defendant is transferred to a
24 community facility pursuant to Section 3416, 6253, or 6263, or
25 while the defendant is on furlough pursuant to Section 6254, the
26 defendant shall be subject to the full enhancements provided for
27 in this section.

28 This subdivision shall not apply when a full, separate, and
29 consecutive term is imposed pursuant to any other provision of
30 law.

31 *SEC. 11. Section 667.51 of the Penal Code is amended to*
32 *read:*

33 667.51. (a) Any person who is ~~found guilty convicted~~ of
34 violating Section 288 *or 288.5* shall receive a five-year
35 enhancement for a prior conviction of an offense ~~listed specified~~
36 in subdivision (b), ~~provided that no additional term shall be~~
37 ~~imposed under this subdivision for any prison term served prior~~
38 ~~to a period of 10 years in which the defendant remained free of~~
39 ~~both prison custody and the commission of an offense that results~~
40 ~~in a felony conviction.~~

1 (b) Section 261, 262, 264.1, 269, 285, 286, 288, 288a, 288.5,
2 or 289, or any offense committed in another jurisdiction that
3 includes all of the elements of any of the offenses set forth
4 *specified* in this subdivision.

5 (c) ~~Section 261, 264.1, 286, 288, 288a, 288.5, or 289, or any~~
6 ~~offense committed in another jurisdiction that includes all of the~~
7 ~~elements of any of the offenses set forth in this subdivision.~~

8 (d) A violation of Section 288 *or* 288.5 by a person who has
9 been previously convicted two or more times of an offense listed
10 *specified* in subdivision (c) ~~is punishable as a felony~~ (b) *shall be*
11 *punished* by imprisonment in the state prison for 15 years to life.
12 However, if the two or more prior convictions were for violations
13 of Section 288, this subdivision is applicable only if the current
14 violation or at least one of the prior convictions is for an offense
15 other than a violation of subdivision (a) of Section 288. For
16 purposes of this subdivision, a prior conviction is required to
17 have been for charges brought and tried separately. The
18 provisions of Article 2.5 (commencing with Section 2930) of
19 Chapter 7 of Title 1 of Part 3 shall apply to reduce any minimum
20 term in a state prison imposed pursuant to this section, but that
21 person shall not otherwise be released on parole prior to that
22 time.

23 *SEC. 12. Section 667.6 of the Penal Code is amended to*
24 *read:*

25 667.6. (a) Any person who is ~~found guilty of violating~~
26 ~~paragraph (2), (3), (6), or (7) of subdivision (a) of Section 261,~~
27 ~~paragraph (1), (4), or (5) of subdivision (a) of Section 262,~~
28 ~~Section 264.1, subdivision (b) of Section 288, Section 288.5 or~~
29 ~~subdivision (a) of Section 289, of committing sodomy in~~
30 ~~violation of subdivision (k) of Section 286, of committing oral~~
31 ~~copulation in violation of subdivision (k) of Section 288a, or of~~
32 ~~committing sodomy or oral copulation in violation of Section 286~~
33 ~~or 288a by force, violence, duress, menace, or fear of immediate~~
34 ~~and unlawful bodily injury on the victim or another person~~
35 ~~convicted of an offense specified in subdivision (e) and who has~~
36 ~~been convicted previously of any of those offenses shall receive~~
37 ~~a five-year enhancement for each of those prior convictions~~
38 ~~provided that no enhancement shall be imposed under this~~
39 ~~subdivision for any conviction occurring prior to a period of 10~~
40 ~~years in which the person remained free of both prison custody~~

1 and the commission of an offense which results in a felony
2 conviction. In addition to the five-year enhancement imposed
3 under this subdivision, the court also may impose a fine not to
4 exceed twenty thousand dollars (\$20,000) for anyone sentenced
5 under these provisions. The fine imposed and collected pursuant
6 to this subdivision shall be deposited in the Victim-Witness
7 Assistance Fund to be available for appropriation to fund child
8 sexual exploitation and child sexual abuse victim counseling
9 centers and prevention programs established pursuant to Section
10 13837.

11 (b) Any person *who is* convicted of an offense specified in
12 subdivision ~~(a)~~ *(e)* and who has served two or more prior prison
13 terms as defined in Section 667.5 for any ~~offense specified in~~
14 ~~subdivision (a); of those offenses~~ shall receive a 10-year
15 enhancement for each of those prior terms ~~provided that no~~
16 ~~additional enhancement shall be imposed under this subdivision~~
17 ~~for any prison term served prior to a period of 10 years in which~~
18 ~~the person remained free of both prison custody and the~~
19 ~~commission of an offense which results in a felony conviction. In~~
20 ~~addition to the 10-year enhancement imposed under this~~
21 ~~subdivision, the court also may impose a fine not to exceed~~
22 ~~twenty thousand dollars (\$20,000) for any person sentenced~~
23 ~~under this subdivision. The fine imposed and collected pursuant~~
24 ~~to this subdivision shall be deposited in the Victim-Witness~~
25 ~~Assistance Fund to be available for appropriation to fund child~~
26 ~~sexual exploitation and child sexual abuse victim counseling~~
27 ~~centers and prevention programs established pursuant to Section~~
28 ~~13837.~~

29 (c) In lieu of the term provided in Section 1170.1, a full,
30 separate, and consecutive term may be imposed for each
31 violation of ~~Section 220, other than an assault with intent to~~
32 ~~commit mayhem, provided that the person has been convicted~~
33 ~~previously of violating Section 220 for an offense other than an~~
34 ~~assault with intent to commit mayhem, paragraph (2), (3), (6), or~~
35 ~~(7) of subdivision (a) of Section 261, paragraph (1), (4), or (5) of~~
36 ~~subdivision (a) of Section 262, Section 264.1, subdivision (b) of~~
37 ~~Section 288, Section 288.5 or subdivision (a) of Section 289, of~~
38 ~~committing sodomy in violation of subdivision (k) of Section~~
39 ~~286, of committing oral copulation in violation of subdivision (k)~~
40 ~~of Section 288a, or of committing sodomy or oral copulation in~~

1 violation of Section 286 or 288a by force, violence, duress,
2 menace, or fear of immediate and unlawful bodily injury on the
3 victim or another person whether or not the crimes were
4 committed during a single transaction *an offense specified in*
5 *subdivision (e) if the crimes involved the same victim on the same*
6 *occasion. A term may be imposed consecutively pursuant to this*
7 *subdivision if a person is convicted of at least one offense*
8 *specified in subdivision (e). If the term is imposed consecutively*
9 *pursuant to this subdivision, it shall be served consecutively to*
10 *any other term of imprisonment, and shall commence from the*
11 *time the person otherwise would have been released from*
12 *imprisonment. The term shall not be included in any*
13 *determination pursuant to Section 1170.1. Any other term*
14 *imposed subsequent to that term shall not be merged therein but*
15 *shall commence at the time the person otherwise would have*
16 *been released from prison.*

17 (d) A full, separate, and consecutive term shall be served
18 *imposed* for each violation of Section 220, ~~other than an assault~~
19 ~~with intent to commit mayhem, provided that the person has been~~
20 ~~convicted previously of violating Section 220 for an offense~~
21 ~~other than an assault with intent to commit mayhem, paragraph~~
22 ~~(2), (3), (6), or (7) of subdivision (a) of Section 261, paragraph~~
23 ~~(1), (4), or (5) of subdivision (a) of Section 262, Section 264.1,~~
24 ~~subdivision (b) of Section 288, subdivision (a) of Section 289, of~~
25 ~~committing sodomy in violation of subdivision (k) of Section~~
26 ~~286, of committing oral copulation in violation of subdivision (k)~~
27 ~~of Section 288a, or of committing sodomy or oral copulation in~~
28 ~~violation of Section 286 or 288a by force, violence, duress,~~
29 ~~menace, or fear of immediate and unlawful bodily injury on the~~
30 ~~victim or another person~~ *an offense specified in subdivision (e) if*
31 *the crimes involve separate victims or involve the same victim on*
32 *separate occasions.*

33 In determining whether crimes against a single victim were
34 committed on separate occasions under this subdivision, the court
35 shall consider whether, between the commission of one sex crime
36 and another, the defendant had a reasonable opportunity to reflect
37 upon his or her actions and nevertheless resumed sexually
38 assaultive behavior. Neither the duration of time between crimes,
39 nor whether or not the defendant lost or abandoned his or her
40 opportunity to attack, shall be, in and of itself, determinative on

1 the issue of whether the crimes in question occurred on separate
2 occasions.

3 The term shall be served consecutively to any other term of
4 imprisonment and shall commence from the time the person
5 otherwise would have been released from imprisonment. The
6 term shall not be included in any determination pursuant to
7 Section 1170.1. Any other term imposed subsequent to that term
8 shall not be merged therein but shall commence at the time the
9 person otherwise would have been released from prison.

10 (e) *This section shall apply to the following offenses:*

11 (1) *Rape, in violation of paragraph (2), (3), (6), or (7) of*
12 *subdivision (a) of Section 261.*

13 (2) *Spousal rape, in violation of paragraph (1), (4), or (5) of*
14 *subdivision (a) of Section 262.*

15 (3) *Rape, spousal rape, or sexual penetration, in concert, in*
16 *violation of Section 264.1.*

17 (4) *Sodomy, in violation of paragraph (2) or (3) of subdivision*
18 *(c), or subdivision (d) or (k), of Section 286.*

19 (5) *Lewd or lascivious act, in violation of subdivision (b) of*
20 *Section 288.*

21 (6) *Continuous sexual abuse of a child, in violation of Section*
22 *288.5.*

23 (7) *Oral copulation, in violation of paragraph (2) or (3) of*
24 *subdivision (c), or subdivision (d) or (k), of Section 288a.*

25 (8) *Sexual penetration, in violation of subdivision (a) or (g) of*
26 *Section 289.*

27 (9) *As a present offense under subdivision (c) or (d), assault*
28 *with intent to commit a specified sexual offense, in violation of*
29 *Section 220.*

30 (10) *As a prior conviction under subdivision (a) or (b), an*
31 *offense committed in another jurisdiction that includes all of the*
32 *elements of an offense specified in this subdivision.*

33 (f) *In addition to any enhancement imposed pursuant to*
34 *subdivision (a) or (b), the court may also impose a fine not to*
35 *exceed twenty thousand dollars (\$20,000) for anyone sentenced*
36 *under those provisions. The fine imposed and collected pursuant*
37 *to this subdivision shall be deposited in the Victim-Witness*
38 *Assistance Fund to be available for appropriation to fund child*
39 *sexual exploitation and child sexual abuse victim counseling*

1 *centers and prevention programs established pursuant to Section*
2 *13837.*

3 (g) If the court orders a fine to be imposed pursuant to
4 ~~subdivision (a) or (b) this section~~, the actual administrative cost
5 of collecting that fine, not to exceed 2 percent of the total amount
6 paid, may be paid into the general fund of the county treasury for
7 the use and benefit of the county.

8 *SEC. 13. Section 667.61 of the Penal Code is amended to*
9 *read:*

10 667.61. (a) ~~Any person who is convicted of an offense~~
11 ~~specified in subdivision (c) under one or more of the~~
12 ~~circumstances specified in subdivision (d) or under two or more~~
13 ~~of the circumstances specified in subdivision (e) shall be~~
14 ~~punished by imprisonment in the state prison for life and shall~~
15 ~~not be eligible for release on parole for 25 years except as~~
16 ~~provided in subdivision (j) 25 years to life.~~

17 (b) Except as provided in subdivision (a), ~~a~~ any person who is
18 convicted of an offense specified in subdivision (c) under one of
19 the circumstances specified in subdivision (e) shall be punished
20 by imprisonment in the state prison for life and shall not be
21 eligible for release on parole for 15 years except as provided in
22 ~~subdivision (j) 15 years to life.~~

23 (c) This section shall apply to any of the following offenses:

24 (1) ~~Rape, in violation of paragraph (2) or (6) of subdivision~~
25 ~~(a) of Section 261.~~

26 (2) ~~Spousal rape, in violation of paragraph (1) or (4) of~~
27 ~~subdivision (a) of Section 262.~~

28 (3) ~~Rape, spousal rape, or sexual penetration, in concert, in~~
29 ~~violation of Section 264.1.~~

30 (4) ~~A lewd or lascivious act, in violation of subdivision (b) of~~
31 ~~Section 288.~~

32 (5) ~~Sexual penetration, in violation of subdivision (a) of~~
33 ~~Section 289.~~

34 (6) ~~Sodomy or oral copulation, in violation of Section 286 or~~
35 ~~288a by force, violence, duress, menace, or fear of immediate~~
36 ~~and unlawful bodily injury on the victim or another person.~~

37 (7) ~~Oral copulation, in violation of paragraph (2) or (3) of~~
38 ~~subdivision (c), or subdivision (d) of Section 288a.~~

1 (8) *A lewd or lascivious act, in violation of subdivision (a) of*
2 *Section 288, unless the defendant qualifies for probation under*
3 *subdivision (c) of Section 1203.066.*

4 (9) *Continuous sexual abuse of a child, in violation of Section*
5 *288.5.*

6 (d) The following circumstances shall apply to the offenses
7 specified in subdivision (c):

8 (1) The defendant has been previously convicted of an offense
9 specified in subdivision (c), including an offense committed in
10 another jurisdiction that includes all of the elements of an offense
11 specified in subdivision (c).

12 (2) The defendant kidnapped the victim of the present offense
13 and the movement of the victim substantially increased the risk
14 of harm to the victim over and above that level of risk necessarily
15 inherent in the underlying offense in subdivision (c).

16 (3) The defendant inflicted aggravated mayhem or torture on
17 the victim or another person in the commission of the present
18 offense in violation of Section 205 or 206.

19 (4) The defendant committed the present offense during the
20 commission of a burglary *of the first degree*, as defined in
21 subdivision (a) of Section 460, with intent to commit an offense
22 specified in subdivision (c).

23 (5) *The defendant committed the present offense in violation of*
24 *Section 264.1, subdivision (d) of Section 286, or subdivision (d)*
25 *of Section 288a, and, in the commission of that offense, any*
26 *person committed any act described in paragraph (2), (3), or (4)*
27 *of this subdivision.*

28 (e) The following circumstances shall apply to the offenses
29 specified in subdivision (c):

30 (1) Except as provided in paragraph (2) of subdivision (d), the
31 defendant kidnapped the victim of the present offense in
32 violation of Section 207, 209, or 209.5.

33 (2) Except as provided in paragraph (4) of subdivision (d), the
34 defendant committed the present offense during the commission
35 of a burglary, ~~as defined in subdivision (a) of Section 460, or~~
36 ~~during the commission of a burglary of a building, including any~~
37 ~~commercial establishment, which was then closed to the public,~~
38 in violation of Section 459.

1 (3) The defendant personally inflicted great bodily injury on
2 the victim or another person in the commission of the present
3 offense in violation of Section 12022.53, 12022.7, or 12022.8.

4 (4) The defendant personally used a dangerous or deadly
5 weapon or firearm in the commission of the present offense in
6 violation of Section 12022, 12022.3, 12022.5, or 12022.53.

7 (5) The defendant has been convicted in the present case or
8 cases of committing an offense specified in subdivision (c)
9 against more than one victim.

10 (6) The defendant engaged in the tying or binding of the
11 victim or another person in the commission of the present
12 offense.

13 (7) The defendant administered a controlled substance to the
14 victim ~~by force, violence, or fear~~ in the commission of the
15 present offense in violation of Section 12022.75.

16 (8) *The defendant committed the present offense in violation of*
17 *Section 264.1, subdivision (d) of Section 286, or subdivision (d)*
18 *of Section 288a, and, in the commission of that offense, any*
19 *person committed any act described in paragraph (1), (2), (3),*
20 *(4), (6), or (7) of this subdivision.*

21 (f) If only the minimum number of circumstances specified in
22 subdivision (d) or (e) ~~which~~ *that* are required for the punishment
23 provided in subdivision (a) or (b) to apply have been pled and
24 proved, that circumstance or those circumstances shall be used as
25 the basis for imposing the term provided in subdivision (a) or (b),
26 *whichever is greater*, rather than being used to impose the
27 punishment authorized under any other *provision of law*, unless
28 another *provision of law* provides for a greater penalty, *or the*
29 *punishment under another provision of law may be imposed in*
30 *addition to the punishment provided by this section*. However, if
31 any additional circumstance or circumstances specified in
32 subdivision (d) or (e) have been pled and proved, the minimum
33 number of circumstances shall be used as the basis for imposing
34 the term provided in subdivision (a), and any other additional
35 circumstance or circumstances shall be used to impose any
36 punishment or enhancement authorized under any other *provision*
37 *of law*. ~~Notwithstanding~~

38 (g) *Notwithstanding Section 1385 or any other provision of*
39 *law, the court shall not strike any allegation, admission, or*
40 *finding of any of the circumstances specified in subdivision (d) or*

1 (e) for any person who is subject to punishment under this
2 section.

3 ~~(g) The term specified in subdivision (a) or (b) shall be~~
4 ~~imposed on the defendant once for any offense or offenses~~
5 ~~committed against a single victim during a single occasion. If~~
6 ~~there are multiple victims during a single occasion, the term~~
7 ~~specified in subdivision (a) or (b) shall be imposed on the~~
8 ~~defendant once for each separate victim. Terms for other offenses~~
9 ~~committed during a single occasion shall be imposed as~~
10 ~~authorized under any other law, including Section 667.6, if~~
11 ~~applicable.~~

12 ~~(h) Probation—Notwithstanding any other provision of law,~~
13 ~~probation shall not be granted to, nor shall the execution or~~
14 ~~imposition of sentence be suspended for, any person who is~~
15 ~~subject to punishment under this section for any offense specified~~
16 ~~in paragraphs (1) to (6), inclusive, of subdivision (c).~~

17 ~~(i) For the penalties any offense specified in paragraphs (1) to~~
18 ~~(7), inclusive, of subdivision (c), the court shall impose a~~
19 ~~consecutive sentence for each offense that results in a conviction~~
20 ~~under this section if the crimes involve separate victims or~~
21 ~~involve the same victim on separate occasions as defined in~~
22 ~~subdivision (d) of Section 667.6.~~

23 ~~(j) The penalties provided in this section to shall apply; only if~~
24 ~~the existence of any fact required under circumstance specified in~~
25 ~~subdivision (d) or (e) shall be is alleged in the accusatory~~
26 ~~pleading pursuant to this section and either admitted by the~~
27 ~~defendant in open court or found to be true by the trier of fact.~~

28 ~~(j) Article 2.5 (commencing with Section 2930) of Chapter 7~~
29 ~~of Title 1 of Part 3 shall apply to reduce the minimum term of 25~~
30 ~~years in the state prison imposed pursuant to subdivision (a) or~~
31 ~~15 years in the state prison imposed pursuant to subdivision (b).~~
32 ~~However, in no case shall the minimum term of 25 or 15 years be~~
33 ~~reduced by more than 15 percent for credits granted pursuant to~~
34 ~~Section 2933, 4019, or any other law providing for conduct credit~~
35 ~~reduction. In no case shall any person who is punished under this~~
36 ~~section be released on parole prior to serving at least 85 percent~~
37 ~~of the minimum term of 25 or 15 years in the state prison.~~

38 *SEC. 14. Section 667.71 of the Penal Code is amended to*
39 *read:*

1 667.71. (a) For the purpose of this section, a habitual sexual
2 offender is a person who has been previously convicted of one or
3 more of the offenses ~~listed~~ *specified* in subdivision (c) and who is
4 convicted in the present proceeding of one of those offenses.

5 (b) A habitual sexual offender ~~is punishable~~ *shall be punished*
6 by imprisonment in the state prison for 25 years to life. ~~Article~~
7 ~~2.5 (commencing with Section 2930) of Chapter 7 of Title 1 of~~
8 ~~Part 3 shall apply to reduce any minimum term of 25 years in the~~
9 ~~state prison imposed pursuant to this section. However, in no~~
10 ~~case shall the minimum term of 25 years be reduced by more~~
11 ~~than 15 percent for credits granted pursuant to Section 2933,~~
12 ~~4019, or any other law providing for conduct credit reduction. In~~
13 ~~no case shall any person who is punished under this section be~~
14 ~~released on parole prior to serving at least 85 percent of the~~
15 ~~minimum term of 25 years in the state prison.~~

16 (c) This section shall apply to any of the following offenses:

17 (1) ~~A Rape, in violation of paragraph (2) or (6) of subdivision~~
18 ~~(a) of Section 261.~~

19 (2) ~~A Spousal rape, in violation of paragraph (1) or (4) of~~
20 ~~subdivision (a) of Section 262.~~

21 (3) ~~A Rape, spousal rape, or sexual penetration, in concert, in~~
22 ~~violation of Section 264.1.~~

23 (4) ~~A lewd or lascivious act, in violation of subdivision (a) or~~
24 ~~(b) of Section 288.~~

25 (5) ~~A Sexual penetration, in violation of subdivision (a) or (j)~~
26 ~~of Section 289.~~

27 (6) ~~A Continuous sexual abuse of a child, in violation of~~
28 ~~Section 288.5.~~

29 (7) ~~A Sodomy, in violation of subdivision (c) or (d) of Section~~
30 ~~286 by force, violence, duress, menace, or fear of immediate and~~
31 ~~unlawful bodily injury on the victim or another person.~~

32 (8) ~~A violation of subdivision (d) of Section 286.~~

33 (9) ~~A~~

34 (8) ~~Oral copulation, in violation of subdivision (c) or (d) of~~
35 ~~Section 288a by force, violence, duress, menace, or fear of~~
36 ~~immediate and unlawful bodily injury on the victim or another~~
37 ~~person.~~

38 (10) ~~A~~

39 (9) ~~Kidnapping, in violation of subdivision (b) of Section 207.~~

40 (11) ~~A~~

1 (10) Kidnapping, in violation of former subdivision (d) of
2 Section 208 (kidnapping to commit specified sex offenses).

3 ~~(12)~~

4 (11) Kidnapping in violation of *subdivision (b)* of Section 209
5 with the intent to commit ~~rape, spousal rape, oral copulation, or~~
6 ~~sodomy or sexual penetration in violation of Section 289 a~~
7 *specified sexual offense.*

8 ~~(13) A~~

9 (12) Aggravated sexual assault of a child, in violation of
10 Section 269.

11 ~~(14)~~

12 (13) An offense committed in another jurisdiction that ~~has~~
13 *includes* all of the elements of an offense specified in ~~paragraphs~~
14 ~~(1) to (13), inclusive,~~ of this subdivision.

15 (d) *Notwithstanding Section 1385 or any other provision of*
16 *law, the court shall not strike any allegation, admission, or*
17 *finding of any prior conviction specified in subdivision (c) for*
18 *any person who is subject to punishment under this section.*

19 (e) *Notwithstanding any other provision of law, probation*
20 *shall not be granted to, nor shall the execution or imposition of*
21 *sentence be suspended for, any person who is subject to*
22 *punishment under this section.*

23 (f) This section shall apply only if the defendant's status as a
24 habitual sexual offender is alleged in the ~~information~~ *accusatory*
25 *pleading*, and either admitted by the defendant in open court, or
26 found to be true by the ~~jury trying the issue of guilt or by the~~
27 ~~court where guilt is established by a plea of guilty or nolo~~
28 ~~contendere or by trial by court sitting without a jury trier of fact.~~

29 SEC. 15. *Section 1170.125 of the Penal Code is amended to*
30 *read:*

31 1170.125. *Notwithstanding Section 2 of Proposition 184, as*
32 *adopted at the November 8, 1994 General Election, for all*
33 *offenses committed on or after the effective date of this act, all*
34 *references to existing statutes in Section 1170.12 are to those*
35 *statutes as they existed on the effective date of this act, including*
36 *amendments made to those statutes by ~~this act~~ the act enacted*
37 *during the 2005-06 Regular Session that amended this section.*

38 SEC. 16. *Section 1203.06 of the Penal Code is amended to*
39 *read:*

40 1203.06. ~~Notwithstanding Section 1203:~~

1 (a) ~~Probation~~ *Notwithstanding any other provision of law,*
2 *probation shall not be granted to, nor shall the execution or*
3 *imposition of sentence be suspended for, nor shall a finding*
4 *bringing the defendant within this section be stricken pursuant to*
5 *Section 1385 for, any of the following persons:*

6 (1) Any person who personally used a firearm during the
7 commission or attempted commission of any of the following
8 crimes:

9 (A) Murder.

10 (B) Robbery, in violation of Section 211.

11 (C) Kidnapping, in violation of Section 207, 209, or 209.5.

12 (D) ~~Kidnapping in violation of Section 209—A lewd or~~
13 ~~lascivious act, in violation of Section 288.~~

14 (E) Burglary of the first degree, as defined in Section 460.

15 (F) ~~Except as provided in Section 1203.065, rape—Rape,~~ in
16 violation of paragraph (2) of subdivision (a) of Section 261, 262,
17 or 264.1.

18 (G) Assault with intent to commit ~~rape or sodomy~~ *a specified*
19 *sexual offense*, in violation of Section 220.

20 (H) Escape, in violation of Section 4530 or 4532.

21 (I) Carjacking, in violation of Section 215.

22 (J) ~~Any person convicted of aggravated~~ *Aggravated mayhem*
23 *in violation of Section 205.*

24 (K) Torture, in violation of Section 206.

25 (L) ~~Kidnapping, in violation of Section 209.5—Continuous~~
26 ~~sexual abuse of a child, in violation of Section 288.5.~~

27 (M) A felony violation of Section 136.1 or 137.

28 (N) Sodomy, in violation of Section 286.

29 (O) Oral Copulation, in violation of Section 288a.

30 (P) Sexual penetration, in violation of Section 289 or 264.1.

31 (Q) *Aggravated sexual assault of a child, in violation of*
32 *Section 269.*

33 (2) Any person previously convicted of a felony specified in
34 ~~subparagraphs (A) to (L), inclusive,~~ of paragraph (1), or assault
35 with intent to commit murder under former Section 217, who is
36 convicted of a subsequent felony and who was personally armed
37 with a firearm at any time during its commission or attempted
38 commission or was unlawfully armed with a firearm at the time
39 of his or her arrest for the subsequent felony.

40 (3) Aggravated arson, in violation of Section 451.5.

1 (b) (1) The existence of any fact ~~which~~ *that* would make a
 2 person ineligible for probation under subdivision (a) shall be
 3 alleged in the accusatory pleading, and either admitted by the
 4 defendant in open court, or found to be true by the jury ~~trying the~~
 5 ~~issue of guilt, by the court where guilt is established by plea of~~
 6 ~~guilty or nolo contendere, or by trial by the court sitting without~~
 7 ~~a jury trier of fact.~~

8 (2) ~~This subdivision does not prohibit the adjournment of~~
 9 ~~criminal proceedings pursuant to Division 6 (commencing with~~
 10 ~~Section 6000) of the Welfare and Institutions Code.~~

11 (3) As used in subdivision (a), “used a firearm” means to
 12 display a firearm in a menacing manner, to intentionally fire it, ~~or~~
 13 to intentionally strike or hit a human being with it, *or to use it in*
 14 *any manner that qualifies under Section 12022.5.*

15 (4) ~~—~~

16 (3) As used in subdivision (a), “armed with a firearm” means
 17 to knowingly carry *or have available for use* a firearm as a
 18 means of offense or defense.

19 *SEC. 17. Section 1203.065 of the Penal Code is amended to*
 20 *read:*

21 1203.065. (a) Notwithstanding any other *provision of law,*
 22 probation shall not be granted to, nor shall the execution or
 23 imposition of sentence be suspended for, any person who is
 24 convicted of violating paragraph (2) *or (6)* of subdivision (a) of
 25 Section 261, Section 264.1, 266h, 266i, ~~or 266j, or 269, or~~
 26 *paragraph (2) or (3) of subdivision (c) or subdivision (d) of*
 27 *Section 286 or 288a, or subdivision (a) of Section 289, or*
 28 ~~committing sodomy or oral copulation in violation of Section 286~~
 29 ~~or 288a by force, violence, duress, menace, or fear of immediate~~
 30 ~~and unlawful bodily injury on the victim or another person, or of~~
 31 ~~violating subdivision (c) of Section 311.4.~~

32 (b) (1) Except in unusual cases where the interests of justice
 33 would best be served if the person is granted probation, probation
 34 shall not be granted to any person who is convicted of ~~a violation~~
 35 ~~of violating~~ paragraph (7) of subdivision (a) of Section 261,
 36 subdivision (k) of Section 286, subdivision (k) of Section 288a,
 37 or Section 220 for assault with intent to commit ~~any of the~~
 38 ~~following: rape, sodomy, oral copulation, or any violation of~~
 39 ~~Section 264.1, subdivision (b) of Section 288, or Section 289 a~~
 40 *specified sexual offense.*

1 (2) When probation is granted, the court shall specify on the
2 record and shall enter on the minutes the circumstances
3 indicating that the interests of justice would best be served by the
4 disposition.

5 SEC. 18. Section 1203.075 of the Penal Code is amended to
6 read:

7 1203.075. ~~Notwithstanding the provisions of Section 1203:~~

8 (a) ~~Probation~~ *Notwithstanding any other provision of law,*
9 *probation shall not be granted to, nor shall the execution or*
10 *imposition of sentence be suspended for, nor shall a finding*
11 *bringing the defendant within this section be stricken pursuant to*
12 *Section 1385 for, any person who, with the intent to inflict the*
13 *injury, personally inflicts great bodily injury, as defined in*
14 *Section 12022.7, on the person of another in the commission or*
15 *attempted commission of any of the following crimes:*

- 16 (1) Murder.
- 17 (2) Robbery, in violation of Section 211.
- 18 (3) Kidnapping, in violation of Section 207, 209, or 209.5.
- 19 (4) ~~Kidnapping, in violation of Section 209A~~ *lewd or*
20 *lascivious act, in violation of Section 288.*
- 21 (5) Burglary of the first degree, as defined in Section 460.
- 22 (6) Rape, in violation of paragraph (2) or (6) of subdivision (a)
23 ~~of Section 261 or paragraph (1) or (4) of subdivision (a) of~~
24 ~~Section 262~~ *Section 261, 262, or 264.1.*
- 25 (7) Assault with intent to commit ~~rape or sodomy~~ *a specified*
26 *sexual offense, in violation of Section 220.*
- 27 (8) Escape, in violation of Section 4530 or 4532.
- 28 (9) ~~A~~ *Sexual penetration, in violation of subdivision (a) of*
29 *Section 264.1 or 289.*
- 30 (10) Sodomy, in violation of Section 286.
- 31 (11) Oral copulation, in violation of Section 288a.
- 32 (12) Carjacking, in violation of Section 215.
- 33 (13) ~~Kidnapping, in violation of Section 209.5~~ *Continuous*
34 *sexual abuse of a child, in violation of Section 288.5.*
- 35 (14) *Aggravated sexual assault of a child, in violation of*
36 *Section 269.*

37 (b) ~~(4)~~ The existence of any fact ~~which~~ *that* would make a
38 person ineligible for probation under subdivision (a) shall be
39 alleged in the accusatory pleading, and either admitted by the
40 defendant in open court, or found to be true by the jury trying the

1 ~~issue of guilt or by the court where guilt is established by a plea~~
2 ~~of guilty or nolo contendere or by a trial by the court sitting~~
3 ~~without a jury trier of fact.~~

4 ~~(2) This subdivision does not prohibit the adjournment of~~
5 ~~criminal proceedings pursuant to Division 3 (commencing with~~
6 ~~Section 3000) or Division 6 (commencing with Section 6000) of~~
7 ~~the Welfare and Institutions Code.~~

8 ~~(3) As used in subdivision (a), “great bodily injury” means~~
9 ~~“great bodily injury” as defined in Section 12022.7.~~

10 *SEC. 19. Section 3000 of the Penal Code is amended to read:*

11 3000. (a) (1) The Legislature finds and declares that the
12 period immediately following incarceration is critical to
13 successful reintegration of the offender into society and to
14 positive citizenship. It is in the interest of public safety for the
15 state to provide for the supervision of and surveillance of
16 parolees, including the judicious use of revocation actions, and to
17 provide educational, vocational, family and personal counseling
18 necessary to assist parolees in the transition between
19 imprisonment and discharge. A sentence pursuant to Section
20 1168 or 1170 shall include a period of parole, unless waived, as
21 provided in this section.

22 (2) The Legislature finds and declares that it is not the intent
23 of this section to diminish resources allocated to the Department
24 of Corrections *and Rehabilitation* for parole functions for which
25 the department is responsible. It is also not the intent of this
26 section to diminish the resources allocated to the Board of ~~Prison~~
27 ~~Terms Parole Hearings~~ to execute its duties with respect to
28 parole functions for which the board is responsible.

29 (3) The Legislature finds and declares that diligent effort must
30 be made to ensure that parolees are held accountable for their
31 criminal behavior, including, but not limited to, the satisfaction
32 of restitution fines and orders.

33 ~~(4) Any finding made pursuant to Article 4 (commencing with~~
34 ~~Section 6600) of Chapter 2 of Part 2 of Division 6 of the Welfare~~
35 ~~and Institutions Code, that a person is~~ *The parole period of any*
36 *person found to be a sexually violent predator shall not toll,*
37 *discharge, or otherwise affect that person’s period of parole be*
38 *tolled until that person is found to no longer be a sexually violent*
39 *predator, at which time the period of parole, or any remaining*
40 *portion thereof, shall begin to run.*

1 (b) Notwithstanding any provision to the contrary in Article 3
2 (commencing with Section 3040) of this chapter, the following
3 shall apply:

4 (1) At the expiration of a term of imprisonment of one year
5 and one day, or a term of imprisonment imposed pursuant to
6 Section 1170 or at the expiration of a term reduced pursuant to
7 Section 2931 or 2933, if applicable, the inmate shall be released
8 on parole for a period not exceeding three years, except that any
9 inmate sentenced for an offense specified in paragraph (3), (4),
10 (5), (6), (11), (16), or (18) of subdivision (c) of Section 667.5
11 shall be released on parole for a period not exceeding five years,
12 unless in either case the parole authority for good cause waives
13 parole and discharges the inmate from the custody of the
14 department.

15 (2) In the case of any inmate sentenced under Section 1168,
16 the period of parole shall not exceed five years in the case of an
17 inmate imprisoned for any offense other than first or second
18 degree murder for which the inmate has received a life sentence,
19 and shall not exceed three years in the case of any other inmate,
20 unless in either case the parole authority for good cause waives
21 parole and discharges the inmate from custody of the department.
22 This subdivision shall also be applicable to inmates who
23 committed crimes prior to July 1, 1977, to the extent specified in
24 Section 1170.2.

25 (3) Notwithstanding paragraphs (1) and (2), in the case of any
26 offense for which the inmate has received a life sentence
27 pursuant to Section 667.61 or 667.71, the period of parole shall
28 be ~~five~~ 10 years. ~~Upon the request of the Department of~~
29 ~~Corrections, and on the grounds that the paroled inmate may pose~~
30 ~~a substantial danger to public safety, the Board of Prison Terms~~
31 ~~shall conduct a hearing to determine if the parolee shall be~~
32 ~~subject to a single additional five-year period of parole. The~~
33 ~~board shall conduct the hearing pursuant to the procedures and~~
34 ~~standards governing parole revocation. The request for parole~~
35 ~~extension shall be made no less than 180 days prior to the~~
36 ~~expiration of the initial five-year period of parole.~~

37 (4) The parole authority shall consider the request of any
38 inmate regarding the length of his or her parole and the
39 conditions thereof.

1 (5) Upon successful completion of parole, or at the end of the
2 maximum statutory period of parole specified for the inmate
3 under paragraph (1), (2), or (3), as the case may be, whichever is
4 earlier, the inmate shall be discharged from custody. The date of
5 the maximum statutory period of parole under this subdivision
6 and paragraphs (1), (2), and (3) shall be computed from the date
7 of initial parole ~~or from the date of extension of parole pursuant~~
8 ~~to paragraph (3)~~ and shall be a period chronologically
9 determined. Time during which parole is suspended because the
10 prisoner has absconded or has been returned to custody as a
11 parole violator shall not be credited toward any period of parole
12 unless the prisoner is found not guilty of the parole violation.
13 However, ~~in no case, except~~ *the period of parole is subject to the*
14 *following:*

15 (A) *Except* as provided in Section 3064, ~~may a prisoner an~~
16 *inmate* subject to three years on parole *may not* be retained under
17 parole supervision or in custody for a period longer than four
18 years from the date of his or her initial parole, ~~and, except as.~~

19 (B) *Except* as provided in Section 3064, ~~in no case may a~~
20 *prisoner an inmate* subject to five years on parole *may not* be
21 retained under parole supervision or in custody for a period
22 longer than seven years from the date of his or her initial parole
23 ~~or from the date of extension of parole pursuant to paragraph (3).~~

24 (C) *Except* as provided in Section 3064, *an inmate subject to*
25 *10 years on parole may not be retained under parole supervision*
26 *or in custody for a period longer than 15 years from the date of*
27 *his or her initial parole.*

28 (6) The Department of Corrections *and Rehabilitation* shall
29 meet with each inmate at least 30 days prior to his or her good
30 time release date and shall provide, under guidelines specified by
31 the parole authority, the conditions of parole and the length of
32 parole up to the maximum period of time provided by law. The
33 inmate has the right to reconsideration of the length of parole and
34 conditions thereof by the parole authority. The Department of
35 Corrections *and Rehabilitation* or the Board of ~~Prison Terms~~
36 *Parole Hearings* may impose as a condition of parole that a
37 ~~prisoner an inmate~~ make payments on ~~the prisoner's~~ *his or her*
38 outstanding restitution fines or orders imposed pursuant to
39 subdivision (a) or (c) of Section 13967 of the Government Code,

1 as operative prior to September 28, 1994, or subdivision (b) or (f)
2 of Section 1202.4.

3 (7) For purposes of this chapter, the Board of ~~Prison Terms~~
4 *Parole Hearings* shall be considered the parole authority.

5 (8) The sole authority to issue warrants for the return to actual
6 custody of any state ~~prisoner~~ *inmate* released on parole rests with
7 the Board of ~~Prison Terms~~ *Parole Hearings*, except for any
8 escaped state ~~prisoner~~ *inmate* or any state ~~prisoner~~ *inmate*
9 released prior to his or her scheduled release date who should be
10 returned to custody, and Section 3060 shall apply.

11 (9) It is the intent of the Legislature that efforts be made with
12 respect to persons who are subject to subparagraph (C) of
13 paragraph (1) of subdivision (a) of Section 290 who are on parole
14 to engage them in treatment.

15 *SEC. 20. Section 3000.07 is added to the Penal Code, to*
16 *read:*

17 *3000.07. (a) Every person who has been convicted for any*
18 *felony violation of a registerable sex offense described in*
19 *subparagraph (A) of paragraph (2) of subdivision (a) of Section*
20 *290, or any attempt to commit any of those offenses, who is*
21 *released on parole pursuant to Section 3000 or 3000.1, shall be*
22 *monitored by a global positioning system for the term of his or*
23 *her parole, or for the duration or any remaining part thereof,*
24 *whichever period of time is less.*

25 *(b) A parolee shall be required to pay for the costs associated*
26 *with the monitoring by a global positioning system. However, the*
27 *Department of Corrections and Rehabilitation shall waive any or*
28 *all of that payment upon a finding of an inability to pay. The*
29 *department shall consider any remaining amounts the parolee*
30 *has been ordered to pay in fines, assessments and restitution*
31 *fines, fees, and orders, and shall give priority to the payment of*
32 *those items before requiring that the parolee pay for the global*
33 *positioning system monitoring. No inmate shall be denied parole*
34 *on the basis of his or her inability to pay for those monitoring*
35 *costs.*

36 *SEC. 21. Section 3001 of the Penal Code is amended to read:*

37 *3001. (a) Notwithstanding any other provision of law, when*
38 *any person referred to in paragraph (1) of subdivision (b) of*
39 *Section 3000 who was not imprisoned for committing a violent*
40 *felony, as defined in subdivision (c) of Section 667.5, has been*

1 released on parole from the state prison, and has been on parole
2 continuously for one year since release from confinement, within
3 30 days, that person shall be discharged from parole, unless the
4 Department of Corrections *and Rehabilitation* recommends to the
5 Board of ~~Prison Terms~~ *Parole Hearings* that the person be
6 retained on parole and the board, for good cause, determines that
7 the person will be retained. Notwithstanding any other provision
8 of law, when any person referred to in paragraph (1) of
9 subdivision (b) of Section 3000 who was imprisoned for
10 committing a violent felony, as defined in subdivision (c) of
11 Section 667.5, has been released on parole from the state prison
12 for a period not exceeding three years and has been on parole
13 continuously for two years since release from confinement, or
14 has been released on parole from the state prison for a period not
15 exceeding five years and has been on parole continuously for
16 three years since release from confinement, the department shall
17 discharge, within 30 days, that person from parole, unless the
18 department recommends to the board that the person be retained
19 on parole and the board, for good cause, determines that the
20 person will be retained. The board shall make a written record of
21 its determination and the department shall transmit a copy thereof
22 to the parolee.

23 (b) Notwithstanding any other provision of law, when any
24 person referred to in paragraph (2) ~~or (3)~~ of subdivision (b) of
25 Section 3000 has been released on parole from the state prison,
26 and has been on parole continuously for three years since release
27 from confinement ~~or since extension of parole~~, the board shall
28 discharge, within 30 days, the person from parole, unless the
29 board, for good cause, determines that the person will be retained
30 on parole. The board shall make a written record of its
31 determination and the department shall transmit a copy thereof to
32 the parolee.

33 (c) *Notwithstanding any other provision of law, when any*
34 *person referred to in paragraph (3) of subdivision (b) of Section*
35 *3000 has been released on parole from the state prison, and has*
36 *been on parole continuously for six years since release from*
37 *confinement, the board shall discharge, within 30 days, the*
38 *person from parole, unless the board, for good cause, determines*
39 *that the person will be retained on parole. The board shall make*

1 *a written record of its determination and the department shall*
2 *transmit a copy thereof to the parolee.*

3 (d) In the event of a retention on parole, the parolee shall be
4 entitled to a review by the parole authority each year thereafter
5 until the maximum statutory period of parole has expired.

6 ~~(d)~~

7 (e) The amendments to this section made during the 1987–88
8 Regular Session of the Legislature shall only be applied
9 prospectively and shall not extend the parole period for any
10 person whose eligibility for discharge from parole was fixed as
11 of the effective date of those amendments.

12 *SEC. 22. Section 3003 of the Penal Code is amended to read:*

13 3003. (a) Except as otherwise provided in this section, an
14 inmate who is released on parole shall be returned to the county
15 that was the last legal residence of the inmate prior to his or her
16 incarceration.

17 For purposes of this subdivision, “last legal residence” shall
18 not be construed to mean the county wherein the inmate
19 committed an offense while confined in a state prison or local jail
20 facility or while confined for treatment in a state hospital.

21 (b) Notwithstanding subdivision (a), an inmate may be
22 returned to another county if that would be in the best interests of
23 the public. If the Board of ~~Prison Terms~~ *Parole Hearings* setting
24 the conditions of parole for inmates sentenced pursuant to
25 subdivision (b) of Section 1168, as determined by the parole
26 consideration panel, or the Department of Corrections *and*
27 *Rehabilitation* setting the conditions of parole for inmates
28 sentenced pursuant to Section 1170, decides on a return to
29 another county, it shall place its reasons in writing in the
30 parolee’s permanent record and include these reasons in the
31 notice to the sheriff or chief of police pursuant to Section 3058.6.
32 In making its decision, the paroling authority shall consider,
33 among others, the following factors, giving the greatest weight to
34 the protection of the victim and the safety of the community:

35 (1) The need to protect the life or safety of a victim, the
36 parolee, a witness, or any other person.

37 (2) Public concern that would reduce the chance that the
38 inmate’s parole would be successfully completed.

39 (3) The verified existence of a work offer, or an educational or
40 vocational training program.

1 (4) The existence of family in another county with whom the
2 inmate has maintained strong ties and whose support would
3 increase the chance that the inmate's parole would be
4 successfully completed.

5 (5) The lack of necessary outpatient treatment programs for
6 parolees receiving treatment pursuant to Section 2960.

7 (c) The Department of Corrections *and Rehabilitation*, in
8 determining an out-of-county commitment, shall give priority to
9 the safety of the community and any witnesses and victims.

10 (d) In making its decision about an inmate who participated in
11 a joint venture program pursuant to Article 1.5 (commencing
12 with Section 2717.1) of Chapter 5, the ~~paroling~~ parole authority
13 shall give serious consideration to releasing him or her to the
14 county where the joint venture program employer is located if
15 that employer states to the paroling authority that he or she
16 intends to employ the inmate upon release.

17 (e) (1) The following information, if available, shall be
18 released by the Department of Corrections *and Rehabilitation* to
19 local law enforcement agencies regarding a paroled inmate who
20 is released in their jurisdictions:

21 (A) Last, first, and middle name.

22 (B) Birth date.

23 (C) Sex, race, height, weight, and hair and eye color.

24 (D) Date of parole and discharge.

25 (E) Registration status, if the inmate is required to register as a
26 result of a controlled substance, sex, or arson offense.

27 (F) California Criminal Information Number, FBI number,
28 social security number, and driver's license number.

29 (G) County of commitment.

30 (H) A description of scars, marks, and tattoos on the inmate.

31 (I) Offense or offenses for which the inmate was convicted
32 that resulted in parole in this instance.

33 (J) Address, including all of the following information:

34 (i) Street name and number. Post office box numbers are not
35 acceptable for purposes of this subparagraph.

36 (ii) City and ZIP Code.

37 (iii) Date that the address provided pursuant to this
38 subparagraph was proposed to be effective.

39 (K) Contact officer and unit, including all of the following
40 information:

1 (i) Name and telephone number of each contact officer.

2 (ii) Contact unit type of each contact officer such as units
3 responsible for parole, registration, or county probation.

4 (L) A digitized image of the photograph and at least a single
5 digit fingerprint of the parolee.

6 (M) A geographic coordinate for the parolee's residence
7 location for use with a Geographical Information System (GIS)
8 or comparable computer program.

9 (2) The information required by this subdivision shall come
10 from the statewide parolee database. The information obtained
11 from each source shall be based on the same timeframe.

12 (3) All of the information required by this subdivision shall be
13 provided utilizing a computer-to-computer transfer in a format
14 usable by a desktop computer system. The transfer of this
15 information shall be continually available to local law
16 enforcement agencies upon request.

17 (4) The unauthorized release or receipt of the information
18 described in this subdivision is a violation of Section 11143.

19 (f) Notwithstanding any other provision of law, an inmate who
20 is released on parole shall not be returned to a location within 35
21 miles of the actual residence of a victim of, or a witness to, a
22 violent felony as defined in paragraphs (1) to (7), inclusive, of
23 subdivision (c) of Section 667.5 or a felony in which the
24 defendant inflicts great bodily injury on any person other than an
25 accomplice that has been charged and proved as provided for in
26 Section 12022.53, 12022.7, or 12022.9, if the victim or witness
27 has requested additional distance in the placement of the inmate
28 on parole, and if the Board of ~~Prison Terms~~ *Parole Hearings* or
29 the Department of Corrections *and Rehabilitation* finds that there
30 is a need to protect the life, safety, or well-being of a victim or
31 witness.

32 ~~(g) Notwithstanding any other law, an inmate who is released~~
33 ~~on parole for any violation of Section 288 or 288.5 shall not be~~
34 ~~placed or reside, for the duration of his or her period of parole,~~
35 ~~within one-quarter mile of any public or private school including~~
36 ~~any or all of kindergarten and grades 1 to 8, inclusive.~~

37 ~~(h)~~ Notwithstanding any other law, an inmate who is released
38 on parole for an offense involving stalking shall not be returned
39 to a location within 35 miles of the victim's actual residence or
40 place of employment if the victim or witness has requested

1 additional distance in the placement of the inmate on parole, and
2 if the Board of ~~Prison Terms~~ *Parole Hearings* or the Department
3 of Corrections *and Rehabilitation* finds that there is a need to
4 protect the life, safety, or well-being of the victim.

5 ~~(i)~~

6 *(h)* The authority shall give consideration to the equitable
7 distribution of parolees and the proportion of out-of-county
8 commitments from a county compared to the number of
9 commitments from that county when making parole decisions.

10 ~~(j)~~

11 *(i)* An inmate may be paroled to another state pursuant to any
12 other law.

13 ~~(k)~~

14 *(j)* (1) Except as provided in paragraph (2), the Department of
15 Corrections *and Rehabilitation* shall be the agency primarily
16 responsible for, and shall have control over, the program,
17 resources, and staff implementing the Law Enforcement
18 Automated Data System (LEADS) in conformance with
19 subdivision (e).

20 (2) Notwithstanding paragraph (1), the Department of Justice
21 shall be the agency primarily responsible for the proper release of
22 information under LEADS that relates to fingerprint cards.

23 *SEC. 23. Section 3003.5 of the Penal Code is amended to*
24 *read:*

25 3003.5. *(a)* Notwithstanding any other provision of law, when
26 a person is released on parole after having served a term of
27 imprisonment in state prison for any offense for which
28 registration is required pursuant to Section 290, that person may
29 not, during the period of parole, reside in any single family
30 dwelling with any other person also required to register pursuant
31 to Section 290, unless those persons are legally related by blood,
32 marriage, or adoption. For purposes of this section, “single
33 family dwelling” shall not include a residential facility which
34 serves six or fewer persons.

35 *(b)* *Notwithstanding any other provision of law, it is unlawful*
36 *for any person for whom registration is required pursuant to*
37 *Section 290 to reside within 2000 feet of any public or private*
38 *school, or park where children regularly gather.*

39 *(c)* *Nothing in this section shall prohibit municipal*
40 *jurisdictions from enacting local ordinances that further restrict*

1 *the residency of any person for whom registration is required*
2 *pursuant to Section 290.*

3 *SEC. 24. Section 3004 of the Penal Code is amended to read:*

4 3004. (a) Notwithstanding any other law, the parole
5 authority may require, as a condition of release on parole or
6 reinstatement on parole, or as an intermediate sanction in lieu of
7 return to prison, that an inmate or parolee agree in writing to the
8 use of electronic monitoring or supervising devices for the
9 purpose of helping to verify his or her compliance with all other
10 conditions of parole. The devices shall not be used to eavesdrop
11 or record any conversation, except a conversation between the
12 parolee and the agent supervising the parolee which is to be used
13 solely for the purposes of voice identification.

14 (b) *Every person who has been convicted for any felony*
15 *violation of a registerable sex offense described in subparagraph*
16 *(A) of paragraph (2) of subdivision (a) of Section 290, or any*
17 *attempt to commit any of those offenses, who is discharged from*
18 *parole shall be monitored by a global positioning system for life.*

19 (c) *A person subject to subdivision (b) shall be required to pay*
20 *for the costs associated with the monitoring by a global*
21 *positioning system. However, the Department of Corrections and*
22 *Rehabilitation shall waive any or all of that payment upon a*
23 *finding of an inability to pay. The department shall consider any*
24 *remaining amounts the person has been ordered to pay in fines,*
25 *assessments and restitution fines, fees, and orders, and shall give*
26 *priority to the payment of those items before requiring that the*
27 *person pay for the global positioning monitoring.*

28 *SEC. 25. Section 12022.75 of the Penal Code is amended to*
29 *read:*

30 12022.75. ~~Any~~ (a) *Except as provided in subdivision (b), any*
31 *person who, for the purpose of committing a felony, administers*
32 *by injection, inhalation, ingestion, or any other means, any*
33 *controlled substance listed in Section 11054, 11055, 11056,*
34 *11057, or 11058 of the Health and Safety Code, against the*
35 *victim's will by means of force, violence, or fear of immediate*
36 *and unlawful bodily injury to the victim or another person, shall,*
37 *in addition and consecutive to the penalty provided for the felony*
38 *or attempted felony of which he or she has been convicted, be*
39 *punished by an additional term of three years.*

1 (b) (1) Any person who, in the commission or attempted
2 commission of any offense specified in paragraph (2),
3 administers any controlled substance listed in Section 11054,
4 11055, 11056, 11057, or 11058 of the Health and Safety Code to
5 the victim shall be punished by an additional and consecutive
6 term of imprisonment in the state prison for five years.

7 (2) This subdivision shall apply to the following offenses:

8 (A) Rape, in violation of paragraph (3) or (4) of subdivision
9 (a) of Section 261.

10 (B) Sodomy, in violation of subdivision (f) or (i) of Section
11 286.

12 (C) Oral copulation, in violation of subdivision (f) or (i) of
13 Section 288a.

14 (D) Sexual penetration, in violation of subdivision (d) or (e) of
15 Section 289.

16 (E) Any offense specified in subdivision (c) of Section 667.61.

17 SEC. 26. Section 6600 of the Welfare and Institutions Code is
18 amended to read:

19 6600. As used in this article, the following terms have the
20 following meanings:

21 (a) (1) “Sexually violent predator” means a person who has
22 been convicted of a sexually violent offense against ~~two~~ one or
23 more victims and who has a diagnosed mental disorder that
24 makes the person a danger to the health and safety of others in
25 that it is likely that he or she will engage in sexually violent
26 criminal behavior.

27 (2) For purposes of this subdivision any of the following shall
28 be considered a conviction for a sexually violent offense:

29 (A) A prior or current conviction that resulted in a determinate
30 prison sentence for an offense described in subdivision (b).

31 (B) A conviction for an offense described in subdivision (b)
32 that was committed prior to July 1, 1977, and that resulted in an
33 indeterminate prison sentence.

34 (C) A prior conviction in another jurisdiction for an offense
35 that includes all of the elements of an offense described in
36 subdivision (b).

37 (D) A conviction for an offense under a predecessor statute
38 that includes all of the elements of an offense described in
39 subdivision (b).

1 (E) A prior conviction for which the inmate received a grant of
2 probation for an offense described in subdivision (b).

3 (F) A prior finding of not guilty by reason of insanity for an
4 offense described in subdivision (b).

5 (G) A conviction resulting in a finding that the person was a
6 mentally disordered sex offender.

7 (H) *A prior conviction for an offense described in subdivision*
8 *(b) for which the person was committed to the Department of*
9 *Corrections and Rehabilitation, Division of Juvenile Facilities,*
10 *pursuant to Section 1731.5.*

11 (I) *A prior conviction for an offense described in subdivision*
12 *(b) that resulted in an indeterminate prison sentence.*

13 (3) Conviction of one or more of the crimes enumerated in this
14 section shall constitute evidence that may support a court or jury
15 determination that a person is a sexually violent predator, but
16 shall not be the sole basis for the determination. The existence of
17 any prior convictions may be shown with documentary evidence.
18 The details underlying the commission of an offense that led to a
19 prior conviction, including a predatory relationship with the
20 victim, may be shown by documentary evidence, including, but
21 not limited to, preliminary hearing transcripts, trial transcripts,
22 probation and sentencing reports, and evaluations by the State
23 Department of Mental Health. Jurors shall be admonished that
24 they may not find a person a sexually violent predator based on
25 prior offenses absent relevant evidence of a currently diagnosed
26 mental disorder that makes the person a danger to the health and
27 safety of others in that it is likely that he or she will engage in
28 sexually violent criminal behavior.

29 (4) The provisions of this section shall apply to any person
30 against whom proceedings were initiated for commitment as a
31 sexually violent predator on or after January 1, 1996.

32 (b) “Sexually violent offense” means the following acts when
33 committed by force, violence, duress, menace, ~~or~~ fear of
34 immediate and unlawful bodily injury on the victim or another
35 person, *or threatening to retaliate in the future against the victim*
36 *or any other person*, and that are committed on, before, or after
37 the effective date of this article and result in a conviction or a
38 finding of not guilty by reason of insanity, ~~as provided~~ *defined* in
39 subdivision (a): a felony violation of ~~paragraph (2) of subdivision~~
40 ~~(a) of Section 261, paragraph (1) of subdivision (a) of Section~~

1 262, ~~Section 264.1, subdivision (a) or (b) of Section 269, 286,~~
2 288, 288a, 288.5 or ~~subdivision (a) of Section 289 of the Penal~~
3 Code, or ~~sodomy or oral copulation in violation of Section 286 or~~
4 ~~288a~~ any felony violation of Section 207, 209, or 220 of the
5 Penal Code, committed with the intent to commit a violation of
6 Section 261, 262, 264.1, 269, 288, 288a, or 289 of the Penal
7 Code.

8 (c) “Diagnosed mental disorder” includes a congenital or
9 acquired condition affecting the emotional or volitional capacity
10 that predisposes the person to the commission of criminal sexual
11 acts in a degree constituting the person a menace to the health
12 and safety of others.

13 (d) “Danger to the health and safety of others” does not
14 require proof of a recent overt act while the offender is in
15 custody.

16 (e) “Predatory” means an act is directed toward a stranger, a
17 person of casual acquaintance with whom no substantial
18 relationship exists, or an individual with whom a relationship has
19 been established or promoted for the primary purpose of
20 victimization.

21 (f) “Recent overt act” means any criminal act that manifests a
22 likelihood that the actor may engage in sexually violent predatory
23 criminal behavior.

24 (g) Notwithstanding any other provision of law and for
25 purposes of this section, ~~no more than one~~ a prior juvenile
26 adjudication of a sexually violent offense may constitute a prior
27 conviction for which the person received a determinate term if all
28 of the following ~~applies~~ apply:

29 (1) The juvenile was 16 years of age or older at the time he or
30 she committed the prior offense.

31 (2) The prior offense is a sexually violent offense as specified
32 in subdivision (b). ~~Notwithstanding Section 6600.1, only an~~
33 ~~offense described in subdivision (b) shall constitute a sexually~~
34 ~~violent offense for purposes of this subdivision.~~

35 (3) The juvenile was adjudged a ward of the juvenile court
36 within the meaning of Section 602 because of the person’s
37 commission of the offense giving rise to the juvenile court
38 adjudication.

1 (4) The juvenile was committed to the Department of ~~the~~
2 ~~Youth Authority~~ *Corrections and Rehabilitation, Division of*
3 *Juvenile Facilities* for the sexually violent offense.

4 (h) A minor adjudged a ward of the court for commission of
5 an offense that is defined as a sexually violent offense shall be
6 entitled to specific treatment as a sexual offender. The failure of
7 a minor to receive that treatment shall not constitute a defense or
8 bar to a determination that any person is a sexually violent
9 predator within the meaning of this article.

10 *SEC. 27. Section 6600.1 of the Welfare and Institutions Code*
11 *is amended to read:*

12 6600.1. ~~(a)~~ If the victim of an underlying offense that is
13 specified in subdivision (b) of Section 6600 is a child under the
14 age of 14 ~~and the offending act or acts involved substantial~~
15 ~~sexual conduct~~, the offense shall constitute a “sexually violent
16 offense” for purposes of Section 6600.

17 ~~(b) “Substantial sexual conduct” means penetration of the~~
18 ~~vagina or rectum of either the victim or the offender by the penis~~
19 ~~of the other or by any foreign object, oral copulation, or~~
20 ~~masturbation of either the victim or the offender.~~

21 *SEC. 28. Section 6601 of the Welfare and Institutions Code is*
22 *amended to read:*

23 6601. (a) (1) Whenever the ~~Director~~ *Secretary of the*
24 *Department of Corrections and Rehabilitation* determines that an
25 individual who is in custody under the jurisdiction of the
26 ~~Department of Corrections~~ *department*, and who is either serving
27 a determinate prison sentence or whose parole has been revoked,
28 may be a sexually violent predator, the ~~director~~ *secretary* shall, at
29 least six months prior to that individual’s scheduled date for
30 release from prison, refer the person for evaluation in accordance
31 with this section. However, if the inmate was received by the
32 department with less than nine months of his or her sentence to
33 serve, or if the inmate’s release date is modified by judicial or
34 administrative action, the ~~director~~ *secretary* may refer the person
35 for evaluation in accordance with this section at a date that is less
36 than six months prior to the inmate’s scheduled release date.

37 (2) A petition may be filed under this section if the individual
38 was in custody pursuant to his or her determinate prison term,
39 parole revocation term, or a hold placed pursuant to Section
40 6601.3, at the time the petition is filed. A petition shall not be

1 dismissed on the basis of a later judicial or administrative
2 determination that the individual's custody was unlawful, if the
3 unlawful custody was the result of a good faith mistake of fact or
4 law. This paragraph shall apply to any petition filed on or after
5 January 1, 1996.

6 (b) The person shall be screened by the Department of
7 Corrections *and Rehabilitation* and the Board of ~~Prison Terms~~
8 *Parole Hearings* based on whether the person has committed a
9 sexually violent predatory offense and on a review of the
10 person's social, criminal, and institutional history. This screening
11 shall be conducted in accordance with a structured screening
12 instrument developed and updated by the State Department of
13 Mental Health in consultation with the Department of
14 Corrections *and Rehabilitation*. If as a result of this screening it
15 is determined that the person is likely to be a sexually violent
16 predator, the Department of Corrections *and Rehabilitation* shall
17 refer the person to the State Department of Mental Health for a
18 full evaluation of whether the person meets the criteria in Section
19 6600.

20 (c) The State Department of Mental Health shall evaluate the
21 person in accordance with a standardized assessment protocol,
22 developed and updated by the State Department of Mental
23 Health, to determine whether the person is a sexually violent
24 predator as defined in this article. The standardized assessment
25 protocol shall require assessment of diagnosable mental
26 disorders, as well as various factors known to be associated with
27 the risk of reoffense among sex offenders. Risk factors to be
28 considered shall include criminal and psychosexual history, type,
29 degree, and duration of sexual deviance, and severity of mental
30 disorder.

31 (d) Pursuant to subdivision (c), the person shall be evaluated
32 by two practicing psychiatrists or psychologists, or one practicing
33 psychiatrist and one practicing psychologist, designated by the
34 Director of Mental Health. If both evaluators concur that the
35 person has a diagnosed mental disorder so that he or she is likely
36 to engage in acts of sexual violence without appropriate
37 treatment and custody, the Director of Mental Health shall
38 forward a request for a petition for commitment under Section
39 6602 to the county designated in subdivision (i). Copies of the
40 evaluation reports and any other supporting documents shall be

1 made available to the attorney designated by the county pursuant
2 to subdivision (i) who may file a petition for commitment.

3 (e) If one of the professionals performing the evaluation
4 pursuant to subdivision (d) does not concur that the person meets
5 the criteria specified in subdivision (d), but the other professional
6 concludes that the person meets those criteria, the Director of
7 Mental Health shall arrange for further examination of the person
8 by two independent professionals selected in accordance with
9 subdivision (g).

10 (f) If an examination by independent professionals pursuant to
11 subdivision (e) is conducted, a petition to request commitment
12 under this article shall only be filed if both independent
13 professionals who evaluate the person pursuant to subdivision (e)
14 concur that the person meets the criteria for commitment
15 specified in subdivision (d). The professionals selected to
16 evaluate the person pursuant to subdivision (g) shall inform the
17 person that the purpose of their examination is not treatment but
18 to determine if the person meets certain criteria to be
19 involuntarily committed pursuant to this article. It is not required
20 that the person appreciate or understand that information.

21 (g) Any independent professional who is designated by the
22 ~~Director of Corrections~~ *Secretary of the Department of*
23 *Corrections and Rehabilitation* or the Director of Mental Health
24 for purposes of this section shall not be a state government
25 employee, shall have at least five years of experience in the
26 diagnosis and treatment of mental disorders, and shall include
27 psychiatrists and licensed psychologists who have a doctoral
28 degree in psychology. The requirements set forth in this section
29 also shall apply to any professionals appointed by the court to
30 evaluate the person for purposes of any other proceedings under
31 this article.

32 (h) If the State Department of Mental Health determines that
33 the person is a sexually violent predator as defined in this article,
34 the Director of Mental Health shall forward a request for a
35 petition to be filed for commitment under this article to the
36 county designated in subdivision (i). Copies of the evaluation
37 reports and any other supporting documents shall be made
38 available to the attorney designated by the county pursuant to
39 subdivision (i) who may file a petition for commitment in the
40 superior court.

1 (i) If the county's designated counsel concurs with the
2 recommendation, a petition for commitment shall be filed in the
3 superior court of the county in which the person was convicted of
4 the offense for which he or she was committed to the jurisdiction
5 of the Department of Corrections *and Rehabilitation*. The
6 petition shall be filed, and the proceedings shall be handled, by
7 either the district attorney or the county counsel of that county.
8 The county board of supervisors shall designate either the district
9 attorney or the county counsel to assume responsibility for
10 proceedings under this article.

11 (j) The time limits set forth in this section shall not apply
12 during the first year that this article is operative.

13 (k) If the person is otherwise subject to parole, a finding or
14 placement made pursuant to this article shall ~~not toll, discharge,~~
15 ~~or otherwise affect~~ the term of parole pursuant to Article 1
16 (commencing with Section 3000) of Chapter 8 of Title 1 of Part
17 3 of the Penal Code.

18 (l) Pursuant to subdivision (d), the attorney designated by the
19 county pursuant to subdivision (i) shall notify the State
20 Department of Mental Health of its decision regarding the filing
21 of a petition for commitment within 15 days of making that
22 decision.

23 *SEC. 29. Section 6604 of the Welfare and Institutions Code is*
24 *amended to read:*

25 6604. The court or jury shall determine whether, beyond a
26 reasonable doubt, the person is a sexually violent predator. If the
27 court or jury is not satisfied beyond a reasonable doubt that the
28 person is a sexually violent predator, the court shall direct that
29 the person be released at the conclusion of the term for which he
30 or she was initially sentenced, or that the person be
31 unconditionally released at the end of parole, whichever is
32 applicable. If the court or jury determines that the person is a
33 sexually violent predator, the person shall be committed for ~~two~~
34 ~~years~~ *an indeterminate term* to the custody of the State
35 Department of Mental Health for appropriate treatment and
36 confinement in a secure facility designated by the Director of
37 Mental Health, ~~and the person shall not be kept in actual custody~~
38 ~~longer than two years unless a subsequent extended commitment~~
39 ~~is obtained from the court incident to the filing of a petition for~~
40 ~~extended commitment under this article or unless the term of~~

1 ~~commitment changes pursuant to subdivision (c) of Section 6605.~~
2 ~~Time spent on conditional release shall not count toward the~~
3 ~~two-year term of commitment, unless the person is placed in a~~
4 ~~locked facility by the conditional release program, in which case~~
5 ~~the time in a locked facility shall count toward the two-year term~~
6 ~~of commitment.~~ The facility shall be located on the grounds of an
7 institution under the jurisdiction of the Department of
8 *Corrections and Rehabilitation.*

9 *SEC. 30. Section 6604.1 of the Welfare and Institutions Code*
10 *is amended to read:*

11 6604.1. (a) ~~The two-year indeterminate term of commitment~~
12 ~~provided for in Section 6604 shall commence on the date upon~~
13 ~~which the court issues the initial order of commitment pursuant~~
14 ~~to that section. The initial two-year term shall not be reduced by~~
15 ~~any time spent in a secure facility prior to the order of~~
16 ~~commitment. For any subsequent extended commitments, the~~
17 ~~term of commitment shall be for two years commencing from the~~
18 ~~date of the termination of the previous commitment.~~

19 (b) The person shall be evaluated by two practicing
20 psychologists or psychiatrists, or by one practicing psychologist
21 and one practicing psychiatrist, designated by the State
22 Department of Mental Health. The provisions of subdivisions (c)
23 to (i), inclusive, of Section 6601 shall apply to evaluations
24 performed for purposes of extended commitments. The rights,
25 requirements, and procedures set forth in Section 6603 shall
26 apply to ~~extended~~ *all* commitment proceedings.

27 *SEC. 31. Section 6605 of the Welfare and Institutions Code is*
28 *amended to read:*

29 6605. (a) A person found to be a sexually violent predator
30 and committed to the custody of the State Department of Mental
31 Health shall have a current examination of his or her mental
32 condition made at least once every year. *The annual report shall*
33 *include consideration of whether the committed person currently*
34 *meets the definition of a sexually violent predator and whether*
35 *conditional release to a less restrictive alternative or an*
36 *unconditional release is in the best interest of the person, and*
37 *conditions can be imposed that would adequately protect the*
38 *community. The Department of Mental Health shall file this*
39 *periodic report with the court that committed the person under*
40 *this section. The report shall be in the form of a declaration and*

1 *shall be prepared by a professionally qualified person. A copy of*
2 *the report shall be served on the prosecuting agency involved in*
3 *the initial commitment and upon the committed person. The*
4 *person may retain, or if he or she is indigent and so requests, the*
5 *court may appoint, a qualified expert or professional person to*
6 *examine him or her, and the expert or professional person shall*
7 *have access to all records concerning the person.*

8 ~~(b) The director shall provide the committed person with an~~
9 ~~annual written notice of his or her right to petition the court for~~
10 ~~conditional release under Section 6608. The notice shall contain~~
11 ~~a waiver of rights. The director shall forward the notice and~~
12 ~~waiver form to the court with the annual report. If the person~~
13 ~~does not affirmatively waive his or her right to petition the court~~
14 ~~for conditional release, the court shall set a show cause hearing to~~
15 ~~determine whether facts exist that warrant a hearing on whether~~
16 ~~the person's condition has so changed that he or she would not be~~
17 ~~a danger to the health and safety of others if discharged. The~~
18 ~~committed person shall have the right to be present and to have~~
19 ~~an attorney represent him or her at the show cause hearing.~~
20 *If the*
21 *Department of Mental Health determines that either: (1) the*
22 *person's condition has so changed that the person no longer*
23 *meets the definition of a sexually violent predator, or (2)*
24 *conditional release to a less restrictive alternative is in the best*
25 *interest of the person and conditions can be imposed that*
26 *adequately protect the community, the director shall authorize*
27 *the person to petition the court for conditional release to a less*
28 *restrictive alternative or for an unconditional discharge. The*
29 *petition shall be filed with the court and served upon the*
30 *prosecuting agency responsible for the initial commitment. The*
31 *court, upon receipt of the petition for conditional release to a*
32 *less restrictive alternative or unconditional discharge, shall*
33 *order a show cause hearing at which the court can consider the*
34 *petition and any accompanying documentation provided by the*
35 *medical director, the prosecuting attorney or the committed*

36 *person.*
37 (c) If the court at the show cause hearing determines that
38 probable cause exists to believe that the committed person's
39 diagnosed mental disorder has so changed that he or she is not a
danger to the health and safety of others and is not likely to

1 engage in sexually violent criminal behavior if discharged, then
2 the court shall set a hearing on the issue.

3 (d) At the hearing, the committed person shall have the right to
4 be present and shall be entitled to the benefit of all constitutional
5 protections that were afforded to him or her at the initial
6 commitment proceeding. The attorney designated by the county
7 pursuant to subdivision (i) of Section 6601 shall represent the
8 state and shall have the right to demand a jury trial and to have
9 the committed person evaluated by experts chosen by the state.
10 The committed person also shall have the right to demand a jury
11 trial and to have experts evaluate him or her on his or her behalf.
12 The court shall appoint an expert if the person is indigent and
13 requests an appointment. The burden of proof at the hearing shall
14 be on the state to prove beyond a reasonable doubt that the
15 committed person's diagnosed mental disorder remains such that
16 he or she is a danger to the health and safety of others and is
17 likely to engage in sexually violent criminal behavior if
18 discharged.

19 (e) If the court or jury rules against the committed person at
20 the hearing conducted pursuant to subdivision (d), the term of
21 commitment of the person shall run for ~~a period of two years~~ *an*
22 *indeterminate period* from the date of this ruling. If the court or
23 jury rules for the committed person, he or she shall be
24 unconditionally released and unconditionally discharged.

25 (f) In the event that the State Department of Mental Health has
26 reason to believe that a person committed to it as a sexually
27 violent predator is no longer a sexually violent predator, it shall
28 seek judicial review of the person's commitment pursuant to the
29 procedures set forth in Section 7250 in the superior court from
30 which the commitment was made. If the superior court
31 determines that the person is no longer a sexually violent
32 predator, he or she shall be unconditionally released and
33 unconditionally discharged.

34 *SEC. 32. Section 6608 of the Welfare and Institutions Code is*
35 *amended to read:*

36 6608. (a) Nothing in this article shall prohibit the person who
37 has been committed as a sexually violent predator from
38 petitioning the court for conditional release ~~and subsequent~~ *or an*
39 unconditional discharge without the recommendation or
40 concurrence of the Director of Mental Health. If a person has

1 previously filed a petition for conditional release without the
2 concurrence of the director and the court determined, either upon
3 review of the petition or following a hearing, that the petition
4 was frivolous or that the committed person's condition had not so
5 changed that he or she would not be a danger to others in that it is
6 not likely that he or she will engage in sexually violent criminal
7 behavior if placed under supervision and treatment in the
8 community, then the court shall deny the subsequent petition
9 unless it contains facts upon which a court could find that the
10 condition of the committed person had so changed that a hearing
11 was warranted. Upon receipt of a first or subsequent petition
12 from a committed person without the concurrence of the director,
13 the court shall endeavor whenever possible to review the petition
14 and determine if it is based upon frivolous grounds and, if so,
15 shall deny the petition without a hearing. The person petitioning
16 for conditional release and unconditional discharge under this
17 subdivision shall be entitled to assistance of counsel.

18 (b) The court shall give notice of the hearing date to the
19 attorney designated in subdivision (i) of Section 6601, the
20 retained or appointed attorney for the committed person, and the
21 Director of Mental Health at least 15 court days before the
22 hearing date.

23 (c) No hearing upon the petition shall be held until the person
24 who is committed has been under commitment for confinement
25 and care in a facility designated by the Director of Mental Health
26 for not less than one year from the date of the order of
27 commitment.

28 (d) The court shall hold a hearing to determine whether the
29 person committed would be a danger to the health and safety of
30 others in that it is likely that he or she will engage in sexually
31 violent criminal behavior due to his or her diagnosed mental
32 disorder if under supervision and treatment in the community. If
33 the court at the hearing determines that the committed person
34 would not be a danger to others due to his or her diagnosed
35 mental disorder while under supervision and treatment in the
36 community, the court shall order the committed person placed
37 with an appropriate forensic conditional release program
38 operated by the state for one year. A substantial portion of the
39 state-operated forensic conditional release program shall include
40 outpatient supervision and treatment. The court shall retain

1 jurisdiction of the person throughout the course of the program.
2 At the end of one year, the court shall hold a hearing to
3 determine if the person should be unconditionally released from
4 commitment on the basis that, by reason of a diagnosed mental
5 disorder, he or she is not a danger to the health and safety of
6 others in that it is not likely that he or she will engage in sexually
7 violent criminal behavior. The court shall not make this
8 determination until the person has completed at least one year in
9 the state-operated forensic conditional release program. The
10 court shall notify the Director of Mental Health of the hearing
11 date.

12 (e) Before placing a committed person in a state-operated
13 forensic conditional release program, the community program
14 director designated by the State Department of Mental Health
15 shall submit a written recommendation to the court stating which
16 forensic conditional release program is most appropriate for
17 supervising and treating the committed person. If the court does
18 not accept the community program director's recommendation,
19 the court shall specify the reason or reasons for its order on the
20 record. The procedures described in Sections 1605 to 1610,
21 inclusive, of the Penal Code shall apply to the person placed in
22 the forensic conditional release program.

23 (f) If the court determines that the person should be transferred
24 to a state-operated forensic conditional release program, the
25 community program director, or his or her designee, shall make
26 the necessary placement arrangements and, within 21 days after
27 receiving notice of the court's finding, the person shall be placed
28 in the community in accordance with the treatment and
29 supervision plan unless good cause for not doing so is presented
30 to the court.

31 (g) If the court rules against the committed person at the trial
32 for unconditional release from commitment, the court may place
33 the committed person on outpatient status in accordance with the
34 procedures described in Title 15 (commencing with Section
35 1600) of Part 2 of the Penal Code.

36 (h) If the court denies the petition to place the person in an
37 appropriate forensic conditional release program or if the petition
38 for unconditional discharge is denied, the person may not file a
39 new application until one year has elapsed from the date of the
40 denial.

1 (i) In any hearing authorized by this section, the petitioner
2 shall have the burden of proof by a preponderance of the
3 evidence.

4 (j) If the petition for conditional release is not made by the
5 director of the treatment facility to which the person is
6 committed, no action on the petition shall be taken by the court
7 without first obtaining the written recommendation of the
8 director of the treatment facility.

9 (k) Time spent in a conditional release program pursuant to
10 this section shall not count toward the term of commitment under
11 this article unless the person is confined in a locked facility by
12 the conditional release program, in which case the time spent in a
13 locked facility shall count toward the term of commitment.

14 *SEC. 33. No reimbursement is required by this act pursuant*
15 *to Section 6 of Article XIII B of the California Constitution*
16 *because the only costs that may be incurred by a local agency or*
17 *school district will be incurred because this act creates a new*
18 *crime or infraction, eliminates a crime or infraction, or changes*
19 *the penalty for a crime or infraction, within the meaning of*
20 *Section 17556 of the Government Code, or changes the definition*
21 *of a crime within the meaning of Section 6 of Article XIII B of the*
22 *California Constitution.*

23
24
25 **All matter omitted in this version of the bill**
26 **appears in the bill as amended in Assembly,**
27 **April 11, 2005 (JR11)**
28