

AMENDED IN SENATE AUGUST 30, 2005

AMENDED IN SENATE AUGUST 16, 2005

CALIFORNIA LEGISLATURE—2005—06 REGULAR SESSION

ASSEMBLY BILL

No. 760

**Introduced by Assembly Member Nava
(Coauthors: Assembly Members DeVore, Dymally, Koretz, and
Leno)**

(Coauthors: Senators Alquist, Kuehl, and Romero)

February 18, 2005

An act to amend ~~Sections 851.5, 1170, 1170.3, and 1203.016 of,~~
~~and to add Sections 833.2 and 13517.7 to,~~ *Section 851.5* of the Penal
Code, relating to criminal procedure.

LEGISLATIVE COUNSEL'S DIGEST

AB 760, as amended, Nava. Criminal procedure.

~~Existing law generally prescribes the authority and obligations of
law enforcement entities in regard to effecting an arrest.~~

~~This bill would state the intent of the Legislature to encourage law
enforcement and county child welfare agencies to develop protocols in
collaboration with local educational, judicial, correctional, and
community-based organizations, when appropriate, regarding how to
best cooperate in their response to the arrest of a caretaker parent in a
home in which a minor child resides, to ensure the child's safety and
well-being.~~

Existing law provides an arrested person with certain rights
regarding the opportunity to make telephone calls incident to the
person being booked or detained, as specified. The willful deprivation
of these rights by a public officer or employee is a misdemeanor.

This bill would, in addition, provide that when, during booking, an arrested person is determined to be a custodial parent of a minor child or children, the person would be entitled to make ~~3~~ 2 telephone calls at no expense, as specified, for the purpose of arranging for the care of the minor child or children.

By imposing additional duties on local government entities, this bill would impose a state-mandated local program. By expanding the scope of an existing crime, this bill would impose a state-mandated local program.

~~Existing law generally regulates sentencing, including the consideration of mitigating factors and other criteria for purposes of sentencing.~~

~~This bill would include a defendant's custodial responsibilities for minor children as an element for consideration for specified purposes related to sentencing.~~

~~Existing law establishes the Commission on Peace Officer Standards and Training and charges it with various duties in connection with training law enforcement personnel.~~

~~This bill would require the commission to establish guidelines and training for use by state and local law enforcement officers to address issues of child safety at the time of a caretaker parent's or guardians arrest.~~

~~This bill would incorporate changes to Section 1203.016 of the Penal Code proposed by this bill and SB 963, which would become operative only if both bills are enacted and become effective on or before January 1, 2006, and this bill is enacted after SB 963.~~

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

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

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

1 ~~SECTION 1. Section 833.2 is added to the Penal Code, to~~
2 ~~read:~~

3 ~~833.2. It is the intent of the Legislature to encourage law~~
4 ~~enforcement and county child welfare agencies to develop~~
5 ~~protocols in collaboration with other local entities, which may~~
6 ~~include local educational, judicial, correctional, and~~
7 ~~community-based organizations, when appropriate, regarding~~
8 ~~how to best cooperate in their response to the arrest of a caretaker~~
9 ~~parent in a home in which a minor child resides, to ensure the~~
10 ~~child's safety and well-being.~~

11 ~~SEC. 2.~~

12 ~~SECTION 1. Section 851.5 of the Penal Code is amended to~~
13 ~~read:~~

14 ~~851.5. (a) Immediately upon being booked, and, except~~
15 ~~where physically impossible, no later than three hours after~~
16 ~~arrest, an arrested person has the right to make at least three~~
17 ~~completed telephone calls, as described in subdivision (b).~~

18 ~~The arrested person shall be entitled to make at least three calls~~
19 ~~at no expense if the calls are completed to telephone numbers~~
20 ~~within the local calling area.~~

21 ~~(b) At any police facility or place where an arrestee is~~
22 ~~detained, a sign containing the following information in bold~~
23 ~~block type shall be posted in a conspicuous place:~~

24 ~~That the arrestee has the right to free telephone calls within the~~
25 ~~local dialing area, or at his or her own expense if outside the~~
26 ~~local area, to three of the following:~~

27 ~~(1) An attorney of his or her choice or, if he or she has no~~
28 ~~funds, the public defender or other attorney assigned by the court~~
29 ~~to assist indigents, whose telephone number shall be posted. This~~
30 ~~telephone call shall not be monitored, eavesdropped upon, or~~
31 ~~recorded.~~

32 ~~(2) A bail bondsman.~~

33 ~~(3) A relative or other person.~~

34 ~~(c) If, upon questioning during the booking process, the~~
35 ~~arrested person is identified as a custodial parent with~~
36 ~~responsibility for a minor child, the arrested person shall be~~
37 ~~entitled to make ~~three~~ two additional calls at no expense if the~~
38 ~~calls are completed to telephone numbers within the local calling~~

1 area to a relative or other person for the purpose of arranging for
2 the care of the minor child or children in the parent's absence.

3 (d) These telephone calls shall be given immediately upon
4 request, or as soon as practicable.

5 (e) This provision shall not abrogate a law enforcement
6 officer's duty to advise a suspect of his or her right to counsel or
7 of any other right.

8 (f) Any public officer or employee who willfully deprives an
9 arrested person of any right granted by this section is guilty of a
10 misdemeanor.

11 ~~SEC. 3. Section 1170 of the Penal Code is amended to read:~~

12 ~~1170. (a) (1) The Legislature finds and declares that the~~
13 ~~purpose of imprisonment for crime is punishment. This purpose~~
14 ~~is best served by terms proportionate to the seriousness of the~~
15 ~~offense with provision for uniformity in the sentences of~~
16 ~~offenders committing the same offense under similar~~
17 ~~circumstances. The Legislature further finds and declares that the~~
18 ~~elimination of disparity and the provision of uniformity of~~
19 ~~sentences can best be achieved by determinate sentences fixed by~~
20 ~~statute in proportion to the seriousness of the offense as~~
21 ~~determined by the Legislature to be imposed by the court with~~
22 ~~specified discretion.~~

23 ~~(2) Notwithstanding paragraph (1), the Legislature further~~
24 ~~finds and declares that programs should be available for inmates~~
25 ~~including, but not limited to, educational programs, that are~~
26 ~~designed to prepare nonviolent felony offenders for successful~~
27 ~~reentry into the community. The Legislature encourages the~~
28 ~~development of policies and programs designed to educate and~~
29 ~~rehabilitate nonviolent felony offenders. In implementing this~~
30 ~~section, the Department of Corrections is encouraged to give~~
31 ~~priority enrollment in programs to promote successful return to~~
32 ~~the community to an inmate with a short remaining term of~~
33 ~~commitment and a release date that would allow him or her~~
34 ~~adequate time to complete the program particularly those who are~~
35 ~~sole custodial parents of minor dependent children.~~

36 ~~(3) In any case in which the punishment prescribed by statute~~
37 ~~for a person convicted of a public offense is a term of~~
38 ~~imprisonment in the state prison of any specification of three~~
39 ~~time periods, the court shall sentence the defendant to one of the~~
40 ~~terms of imprisonment specified unless the convicted person is~~

1 ~~given any other disposition provided by law, including a fine,~~
2 ~~jail, probation, or the suspension of imposition or execution of~~
3 ~~sentence or is sentenced pursuant to subdivision (b) of Section~~
4 ~~1168 because he or she had committed his or her crime prior to~~
5 ~~July 1, 1977. In sentencing the convicted person, the court shall~~
6 ~~apply the sentencing rules of the Judicial Council. The court,~~
7 ~~unless it determines that there are circumstances in mitigation of~~
8 ~~the punishment prescribed, shall also impose any other term that~~
9 ~~it is required by law to impose as an additional term. Nothing in~~
10 ~~this article shall affect any provision of law that imposes the~~
11 ~~death penalty, that authorizes or restricts the granting of~~
12 ~~probation or suspending the execution or imposition of sentence,~~
13 ~~or expressly provides for imprisonment in the state prison for~~
14 ~~life. In any case in which the amount of preimprisonment credit~~
15 ~~under Section 2900.5 or any other provision of law is equal to or~~
16 ~~exceeds any sentence imposed pursuant to this chapter, the entire~~
17 ~~sentence shall be deemed to have been served and the defendant~~
18 ~~shall not be actually delivered to the custody of the Director of~~
19 ~~Corrections. The court shall advise the defendant that he or she~~
20 ~~shall serve a period of parole and order the defendant to report to~~
21 ~~the parole office closest to the defendant's last legal residence,~~
22 ~~unless the in-custody credits equal the total sentence, including~~
23 ~~both confinement time and the period of parole. The sentence~~
24 ~~shall be deemed a separate prior prison term under Section 667.5,~~
25 ~~and a copy of the judgment and other necessary documentation~~
26 ~~shall be forwarded to the Director of Corrections.~~

27 ~~(b) When a judgment of imprisonment is to be imposed and~~
28 ~~the statute specifies three possible terms, the court shall order~~
29 ~~imposition of the middle term, unless there are circumstances in~~
30 ~~aggravation or mitigation of the crime. At least four days prior to~~
31 ~~the time set for imposition of judgment, either party or the~~
32 ~~victim, or the family of the victim if the victim is deceased, may~~
33 ~~submit a statement in aggravation or mitigation to dispute facts in~~
34 ~~the record or the probation officer's report, or to present~~
35 ~~additional facts. In determining whether there are circumstances~~
36 ~~that justify imposition of the upper or lower term, the court may~~
37 ~~consider the record in the case, the probation officer's report,~~
38 ~~other reports including reports received pursuant to Section~~
39 ~~1203.03 and statements in aggravation or mitigation submitted by~~
40 ~~the prosecution, the defendant, or the victim, or the family of the~~

1 ~~victim if the victim is deceased, and any further evidence~~
2 ~~introduced at the sentencing hearing. The court shall set forth on~~
3 ~~the record the facts and reasons for imposing the upper or lower~~
4 ~~term. The court may not impose an upper term by using the fact~~
5 ~~of any enhancement upon which sentence is imposed under any~~
6 ~~provision of law. A term of imprisonment shall not be specified~~
7 ~~if imposition of sentence is suspended.~~

8 ~~(e) The court shall state the reasons for its sentence choice on~~
9 ~~the record at the time of sentencing. The court shall also inform~~
10 ~~the defendant that as part of the sentence after expiration of the~~
11 ~~term he or she may be on parole for a period as provided in~~
12 ~~Section 3000.~~

13 ~~(d) When a defendant subject to this section or subdivision (b)~~
14 ~~of Section 1168 has been sentenced to be imprisoned in the state~~
15 ~~prison and has been committed to the custody of the Director of~~
16 ~~Corrections, the court may, within 120 days of the date of~~
17 ~~commitment on its own motion, or at any time upon the~~
18 ~~recommendation of the Director of Corrections or the Board of~~
19 ~~Prison Terms, recall the sentence and commitment previously~~
20 ~~ordered and resentence the defendant in the same manner as if he~~
21 ~~or she had not previously been sentenced, provided the new~~
22 ~~sentence, if any, is no greater than the initial sentence. The~~
23 ~~resentence under this subdivision shall apply the sentencing rules~~
24 ~~of the Judicial Council so as to eliminate disparity of sentences~~
25 ~~and to promote uniformity of sentencing. Credit shall be given~~
26 ~~for time served.~~

27 ~~(e) (1) Notwithstanding any other law and consistent with~~
28 ~~paragraph (1) of subdivision (a) of Section 1170, if the Director~~
29 ~~of Corrections or the Board of Prison Terms or both determine~~
30 ~~that a prisoner satisfies the criteria set forth in paragraph (2), the~~
31 ~~director or the board may recommend to the court that the~~
32 ~~prisoner's sentence be recalled.~~

33 ~~(2) The court shall have the discretion to resentence or recall if~~
34 ~~the court finds both of the following:~~

35 ~~(A) The prisoner is terminally ill with an incurable condition~~
36 ~~caused by an illness or disease that would produce death within~~
37 ~~six months, as determined by a physician employed by the~~
38 ~~department.~~

39 ~~(B) The conditions under which the prisoner would be~~
40 ~~released or receive treatment do not pose a threat to public safety.~~

1 The Board of Prison Terms shall make findings pursuant to this
2 subdivision before making a recommendation for resentence or
3 recall to the court. This subdivision does not apply to a prisoner
4 sentenced to death or a term of life without the possibility of
5 parole.

6 ~~(3) Within 10 days of receipt of a positive recommendation by~~
7 ~~the director or the board, the court shall hold a hearing to~~
8 ~~consider whether the prisoner's sentence should be recalled.~~

9 ~~(4) The prisoner or his or her family member or designee may~~
10 ~~request consideration for recall and resentencing by contacting~~
11 ~~the chief medical officer at the prison or the Director of~~
12 ~~Corrections. Upon receipt of the request, if the director~~
13 ~~determines that the prisoner satisfies the criteria set forth in~~
14 ~~paragraph (2), the director or board may recommend to the court~~
15 ~~that the prisoner's sentence be recalled. The director shall submit~~
16 ~~a recommendation for release within 30 days in the case of~~
17 ~~inmates sentenced to determinate terms and, in the case of~~
18 ~~inmates sentenced to indeterminate terms, the director may make~~
19 ~~a recommendation to the Board of Prison Terms with respect to~~
20 ~~the inmates who have applied under this section. The board shall~~
21 ~~consider this information and make an independent judgment~~
22 ~~pursuant to paragraph (2) and make findings related thereto~~
23 ~~before rejecting the request or making a recommendation to the~~
24 ~~court. This action shall be taken at the next lawfully noticed~~
25 ~~board meeting.~~

26 ~~(5) Any recommendation for recall submitted to the court by~~
27 ~~the Director of Corrections or the Board of Prison Terms shall~~
28 ~~include one or more medical evaluations, a postrelease plan, and~~
29 ~~findings pursuant to paragraph (2).~~

30 ~~(6) If possible, the matter shall be heard before the same judge~~
31 ~~of the court who sentenced the prisoner.~~

32 ~~(f) Any sentence imposed under this article shall be subject to~~
33 ~~the provisions of Sections 3000 and 3057 and any other~~
34 ~~applicable provisions of law.~~

35 ~~(g) A sentence to state prison for a determinate term for which~~
36 ~~only one term is specified, is a sentence to state prison under this~~
37 ~~section.~~

38 ~~SEC. 4. Section 1170.3 of the Penal Code is amended to read:~~

39 ~~1170.3. The Judicial Council shall seek to promote~~
40 ~~uniformity in sentencing under Section 1170, by:~~

1 ~~(a) The adoption of rules providing criteria for the~~
2 ~~consideration of the trial judge at the time of sentencing~~
3 ~~regarding the court's decision to:~~

4 ~~(1) Grant or deny probation.~~

5 ~~(2) Impose the lower or upper prison term.~~

6 ~~(3) Impose concurrent or consecutive sentences.~~

7 ~~(4) Determine whether or not to impose an enhancement~~
8 ~~where that determination is permitted by law.~~

9 ~~(b) The adoption of rules standardizing the minimum content~~
10 ~~and the sequential presentation of material in probation officer~~
11 ~~reports submitted to the court, including a defendant's custodial~~
12 ~~responsibilities for minor children.~~

13 ~~SEC. 5. Section 1203.016 of the Penal Code is amended to~~
14 ~~read:~~

15 ~~1203.016. (a) Notwithstanding any other provision of law,~~
16 ~~the board of supervisors of any county may authorize the~~
17 ~~correctional administrator, as defined in subdivision (h), to offer~~
18 ~~a program under which minimum security inmates and low-risk~~
19 ~~offenders committed to a county jail or other county correctional~~
20 ~~facility or granted probation, or inmates participating in a work~~
21 ~~furlough program, may voluntarily participate in a home~~
22 ~~detention program during their sentence in lieu of confinement in~~
23 ~~the county jail or other county correctional facility or program~~
24 ~~under the auspices of the probation officer. Low-risk offenders~~
25 ~~who are the sole custodial parents of minor children should~~
26 ~~especially be considered for the program, if otherwise eligible.~~

27 ~~(b) The board of supervisors may prescribe reasonable rules~~
28 ~~and regulations under which a home detention program may~~
29 ~~operate. As a condition of participation in the home detention~~
30 ~~program, the inmate shall give his or her consent in writing to~~
31 ~~participate in the home detention program and shall in writing~~
32 ~~agree to comply with the rules and regulations of the program,~~
33 ~~including, but not limited to, the following rules:~~

34 ~~(1) The participant shall remain within the interior premises of~~
35 ~~his or her residence during the hours designated by the~~
36 ~~correctional administrator.~~

37 ~~(2) The participant shall admit any person or agent designated~~
38 ~~by the correctional administrator into his or her residence at any~~
39 ~~time for purposes of verifying the participant's compliance with~~
40 ~~the conditions of his or her detention.~~

1 ~~(3) The participant shall agree to the use of electronic~~
2 ~~monitoring or supervising devices for the purpose of helping to~~
3 ~~verify his or her compliance with the rules and regulations of the~~
4 ~~home detention program. The devices shall not be used to~~
5 ~~eavesdrop or record any conversation, except a conversation~~
6 ~~between the participant and the person supervising the participant~~
7 ~~which is to be used solely for the purposes of voice~~
8 ~~identification.~~

9 ~~(4) The participant shall agree that the correctional~~
10 ~~administrator in charge of the county correctional facility from~~
11 ~~which the participant was released may, without further order of~~
12 ~~the court, immediately retake the person into custody to serve the~~
13 ~~balance of his or her sentence if the electronic monitoring or~~
14 ~~supervising devices are unable for any reason to properly~~
15 ~~perform their function at the designated place of home detention,~~
16 ~~if the person fails to remain within the place of home detention as~~
17 ~~stipulated in the agreement, if the person willfully fails to pay~~
18 ~~fees to the provider of electronic home detention services, as~~
19 ~~stipulated in the agreement, subsequent to the written notification~~
20 ~~of the participant that the payment has not been received and that~~
21 ~~return to custody may result, or if the person for any other reason~~
22 ~~no longer meets the established criteria under this section. A~~
23 ~~copy of the agreement shall be delivered to the participant and a~~
24 ~~copy retained by the correctional administrator.~~

25 ~~(e) Whenever the peace officer supervising a participant has~~
26 ~~reasonable cause to believe that the participant is not complying~~
27 ~~with the rules or conditions of the program, or that the electronic~~
28 ~~monitoring devices are unable to function properly in the~~
29 ~~designated place of confinement, the peace officer may, under~~
30 ~~general or specific authorization of the correctional~~
31 ~~administrator, and without a warrant of arrest, retake the person~~
32 ~~into custody to complete the remainder of the original sentence.~~

33 ~~(d) Nothing in this section shall be construed to require the~~
34 ~~correctional administrator to allow a person to participate in this~~
35 ~~program if it appears from the record that the person has not~~
36 ~~satisfactorily complied with reasonable rules and regulations~~
37 ~~while in custody. A person shall be eligible for participation in a~~
38 ~~home detention program only if the correctional administrator~~
39 ~~concludes that the person meets the criteria for release~~
40 ~~established under this section and that the person's participation~~

1 is consistent with any reasonable rules and regulations prescribed
2 by the board of supervisors or the administrative policy of the
3 correctional administrator.

4 (1) ~~The rules and regulations and administrative policy of the~~
5 ~~program shall be written and reviewed on an annual basis by the~~
6 ~~county board of supervisors and the correctional administrator.~~
7 ~~The rules and regulations shall be given to or made available to~~
8 ~~any participant upon request.~~

9 (2) ~~The correctional administrator, or his or her designee, shall~~
10 ~~have the sole discretionary authority to permit program~~
11 ~~participation as an alternative to physical custody. All persons~~
12 ~~referred or recommended by the court to participate in the home~~
13 ~~detention program pursuant to subdivision (c) who are denied~~
14 ~~participation or all persons removed from program participation~~
15 ~~shall be notified in writing of the specific reasons for the denial~~
16 ~~or removal. The notice of denial or removal shall include the~~
17 ~~participant's appeal rights, as established by program~~
18 ~~administrative policy.~~

19 (e) ~~The court may recommend or refer a person to the~~
20 ~~correctional administrator for consideration for placement in the~~
21 ~~home detention program. The recommendation or referral of the~~
22 ~~court shall be given great weight in the determination of~~
23 ~~acceptance or denial. At the time of sentencing or at any time that~~
24 ~~the court deems it necessary, the court may restrict or deny the~~
25 ~~defendant's participation in a home detention program.~~

26 (f) ~~The correctional administrator may permit home detention~~
27 ~~program participants to seek and retain employment in the~~
28 ~~community, attend psychological counseling sessions or~~
29 ~~educational or vocational training classes, or seek medical and~~
30 ~~dental assistance. Willful failure of the program participant to~~
31 ~~return to the place of home detention not later than the expiration~~
32 ~~of any period of time during which he or she is authorized to be~~
33 ~~away from the place of home detention pursuant to this section~~
34 ~~and unauthorized departures from the place of home detention~~
35 ~~are punishable as provided in Section 4532.~~

36 (g) ~~The board of supervisors may prescribe a program~~
37 ~~administrative fee to be paid by each home detention participant~~
38 ~~that shall be determined according to his or her ability to pay.~~
39 ~~Inability to pay all or a portion of the program fees shall not~~
40 ~~preclude participation in the program, and eligibility shall not be~~

1 enhanced by reason of ability to pay. All program administration
2 and supervision fees shall be administered in compliance with
3 Section 1208.2.

4 (h) As used in this section, the following words have the
5 following meanings:

6 (1) “Correctional administrator” means the sheriff, probation
7 officer, or director of the county department of corrections.

8 (2) “Minimum security inmate” means an inmate who, by
9 established local classification criteria, would be eligible for
10 placement in a Type IV local detention facility, as described in
11 Title 15 of the California Code of Regulations, or for placement
12 into the community for work or school activities, or who is
13 determined to be a minimum security risk under a classification
14 plan developed pursuant to Section 1050 of Title 15 of the
15 California Code of Regulations.

16 (3) “Low-risk offender” means a probationer, as defined by
17 the National Institute of Corrections model probation system.

18 (i) Notwithstanding any other law, the police department of a
19 city where an office is located to which persons on an electronic
20 monitoring program report may require the county correctional
21 administrator to provide information concerning those persons.
22 This information shall be limited to the name, address, date of
23 birth, and offense committed by the home detainee. Any
24 information received by a police department pursuant to this
25 paragraph shall be used only for the purpose of monitoring the
26 impact of home detention programs on the community.

27 (j) It is the intent of the Legislature that home detention
28 programs established under this section maintain the highest
29 public confidence, credibility, and public safety. In the
30 furtherance of these standards, the following shall apply:

31 (1) The correctional administrator, with the approval of the
32 board of supervisors, may administer a home detention program
33 pursuant to written contracts with appropriate public or private
34 agencies or entities to provide specified program services. No
35 public or private agency or entity may operate a home detention
36 program in any county without a written contract with that
37 county’s correctional administrator. However, this does not apply
38 to the use of electronic monitoring by the California Department
39 of Corrections or the Department of the Youth Authority as
40 established in Section 3004. No public or private agency or entity

1 entering into a contract may itself employ any person who is in
2 the home detention program.

3 (2) Program acceptance shall not circumvent the normal
4 booking process for sentenced offenders. All home detention
5 program participants shall be supervised.

6 (3) (A) All privately operated home detention programs shall
7 be under the jurisdiction of, and subject to the terms and
8 conditions of the contract entered into with, the correctional
9 administrator.

10 (B) Each contract shall include, but not be limited to, all of the
11 following:

12 (i) A provision whereby the private agency or entity agrees to
13 operate in compliance with any available standards promulgated
14 by state correctional agencies and bodies, including the Board of
15 Corrections, and all statutory provisions and mandates, state and
16 county, as appropriate and applicable to the operation of home
17 detention programs and the supervision of sentenced offenders in
18 a home detention program.

19 (ii) A provision that clearly defines areas of respective
20 responsibility and liability of the county and the private agency
21 or entity.

22 (iii) A provision that requires the private agency or entity to
23 demonstrate evidence of financial responsibility, submitted and
24 approved by the board of supervisors, in amounts and under
25 conditions sufficient to fully indemnify the county for reasonably
26 foreseeable public liability, including legal defense costs, that
27 may arise from, or be proximately caused by, acts or omissions
28 of the contractor. The contract shall provide for annual review by
29 the correctional administrator to ensure compliance with
30 requirements set by the board of supervisors and for adjustment
31 of the financial responsibility requirements if warranted by
32 caseload changes or other factors.

33 (iv) A provision that requires the private agency or entity to
34 provide evidence of financial responsibility, such as certificates
35 of insurance or copies of insurance policies, prior to commencing
36 any operations pursuant to the contract or at any time requested
37 by the board of supervisors or correctional administrator.

38 (v) A provision that permits the correctional administrator to
39 immediately terminate the contract with a private agency or

1 ~~entity at any time that the contractor fails to demonstrate~~
2 ~~evidence of financial responsibility.~~

3 ~~(C) All privately operated home detention programs shall~~
4 ~~comply with all appropriate, applicable ordinances and~~
5 ~~regulations specified in subdivision (a) of Section 1208.~~

6 ~~(D) The board of supervisors, the correctional administrator,~~
7 ~~and the designee of the correctional administrator shall comply~~
8 ~~with Section 1090 of the Government Code in the consideration,~~
9 ~~making, and execution of contracts pursuant to this section.~~

10 ~~(E) The failure of the private agency or entity to comply with~~
11 ~~statutory provisions and requirements or with the standards~~
12 ~~established by the contract and with the correctional~~
13 ~~administrator may be sufficient cause to terminate the contract.~~

14 ~~(F) Upon the discovery that a private agency or entity with~~
15 ~~whom there is a contract is not in compliance pursuant to this~~
16 ~~paragraph, the correctional administrator shall give 60 days'~~
17 ~~notice to the director of the private agency or entity that the~~
18 ~~contract may be canceled if the specified deficiencies are not~~
19 ~~corrected.~~

20 ~~(G) Shorter notice may be given or the contract may be~~
21 ~~canceled without notice whenever a serious threat to public~~
22 ~~safety is present because the private agency or entity has failed to~~
23 ~~comply with this section.~~

24 ~~(k) For purposes of this section, "evidence of financial~~
25 ~~responsibility" may include, but is not limited to, certified copies~~
26 ~~of any of the following:~~

27 ~~(1) A current liability insurance policy.~~

28 ~~(2) A current errors and omissions insurance policy.~~

29 ~~(3) A surety bond.~~

30 ~~SEC. 6. Section 13517.7 is added to the Penal Code, to read:~~

31 ~~13517.7. (a) The commission shall develop guidelines and~~
32 ~~training for use by state and local law enforcement officers to~~
33 ~~address issues related to child safety when a caretaker parent or~~
34 ~~guardian is arrested.~~

35 ~~(b) The guidelines and training shall, at a minimum, address~~
36 ~~the following subjects:~~

37 ~~(1) Procedures to ensure that officers and custodial employees~~
38 ~~inquire whether an arrestee has minor dependent children without~~
39 ~~appropriate supervision.~~

1 ~~(2) Authorizing additional telephone calls by arrestees so that~~
2 ~~they may arrange for the care of minor dependent children.~~

3 ~~(3) Use of county child welfare services, as appropriate, and~~
4 ~~other similar service providers to assist in the placement of~~
5 ~~dependent children when the parent or guardian is unable or~~
6 ~~unwilling to arrange suitable care for the child or children.~~

7 ~~(4) Identification of local governmental or nongovernmental~~
8 ~~agencies able to provide appropriate custodial services.~~

9 ~~(5) Temporary supervision of minor children to ensure their~~
10 ~~safety and well-being.~~

11 ~~(6) Sample procedures to assist state and local law enforcement~~
12 ~~agencies to develop ways to ensure the safety and well-being of~~
13 ~~children when the parent or guardian has been arrested.~~

14 ~~(e) The commission shall use appropriate subject matter~~
15 ~~experts, including representatives of law enforcement and county~~
16 ~~child welfare agencies, in developing the guidelines and training~~
17 ~~required by this section.~~

18 ~~SEC. 6.5. Section 1203.016 of the Penal Code is amended to~~
19 ~~read:~~

20 ~~1203.016. (a) Notwithstanding any other provision of law,~~
21 ~~the board of supervisors of any county may authorize the~~
22 ~~correctional administrator, as defined in subdivision (h), to offer~~
23 ~~a program under which minimum security inmates and low-risk~~
24 ~~offenders committed to a county jail or other county correctional~~
25 ~~facility or granted probation, or inmates participating in a work~~
26 ~~furlough program, may voluntarily participate in a home~~
27 ~~detention program during their sentence in lieu of confinement in~~
28 ~~the county jail or other county correctional facility or program~~
29 ~~under the auspices of the probation officer. Low-risk offenders~~
30 ~~who are the sole custodial parents of minor children should~~
31 ~~especially be considered for the program, if otherwise eligible.~~

32 ~~(b) The board of supervisors may prescribe reasonable rules~~
33 ~~and regulations under which a home detention program may~~
34 ~~operate. As a condition of participation in the home detention~~
35 ~~program, the inmate shall give his or her consent in writing to~~
36 ~~participate in the home detention program and shall in writing~~
37 ~~agree to comply with the rules and regulations of the program,~~
38 ~~including, but not limited to, the following rules:~~

1 ~~(1) The participant shall remain within the interior premises of~~
2 ~~his or her residence during the hours designated by the~~
3 ~~correctional administrator.~~

4 ~~(2) The participant shall admit any person or agent designated~~
5 ~~by the correctional administrator into his or her residence at any~~
6 ~~time for purposes of verifying the participant's compliance with~~
7 ~~the conditions of his or her detention.~~

8 ~~(3) The participant shall agree to the use of electronic~~
9 ~~monitoring, which may include global positioning system~~
10 ~~devices or other supervising devices for the purpose of helping to~~
11 ~~verify his or her compliance with the rules and regulations of the~~
12 ~~home detention program. The devices shall not be used to~~
13 ~~eavesdrop or record any conversation, except a conversation~~
14 ~~between the participant and the person supervising the participant~~
15 ~~which is to be used solely for the purposes of voice~~
16 ~~identification.~~

17 ~~(4) The participant shall agree that the correctional~~
18 ~~administrator in charge of the county correctional facility from~~
19 ~~which the participant was released may, without further order of~~
20 ~~the court, immediately retake the person into custody to serve the~~
21 ~~balance of his or her sentence if the electronic monitoring or~~
22 ~~supervising devices are unable for any reason to properly~~
23 ~~perform their function at the designated place of home detention,~~
24 ~~if the person fails to remain within the place of home detention as~~
25 ~~stipulated in the agreement, if the person willfully fails to pay~~
26 ~~fees to the provider of electronic home detention services, as~~
27 ~~stipulated in the agreement, subsequent to the written notification~~
28 ~~of the participant that the payment has not been received and that~~
29 ~~return to custody may result, or if the person for any other reason~~
30 ~~no longer meets the established criteria under this section. A~~
31 ~~copy of the agreement shall be delivered to the participant and a~~
32 ~~copy retained by the correctional administrator.~~

33 ~~(e) Whenever the peace officer supervising a participant has~~
34 ~~reasonable cause to believe that the participant is not complying~~
35 ~~with the rules or conditions of the program, or that the electronic~~
36 ~~monitoring devices are unable to function properly in the~~
37 ~~designated place of confinement, the peace officer may, under~~
38 ~~general or specific authorization of the correctional~~
39 ~~administrator, and without a warrant of arrest, retake the person~~
40 ~~into custody to complete the remainder of the original sentence.~~

1 ~~(d) Nothing in this section shall be construed to require the~~
2 ~~correctional administrator to allow a person to participate in this~~
3 ~~program if it appears from the record that the person has not~~
4 ~~satisfactorily complied with reasonable rules and regulations~~
5 ~~while in custody. A person shall be eligible for participation in a~~
6 ~~home detention program only if the correctional administrator~~
7 ~~concludes that the person meets the criteria for release~~
8 ~~established under this section and that the person's participation~~
9 ~~is consistent with any reasonable rules and regulations prescribed~~
10 ~~by the board of supervisors or the administrative policy of the~~
11 ~~correctional administrator.~~

12 ~~(1) The rules and regulations and administrative policy of the~~
13 ~~program shall be written and reviewed on an annual basis by the~~
14 ~~county board of supervisors and the correctional administrator.~~
15 ~~The rules and regulations shall be given to or made available to~~
16 ~~any participant upon request.~~

17 ~~(2) The correctional administrator, or his or her designee, shall~~
18 ~~have the sole discretionary authority to permit program~~
19 ~~participation as an alternative to physical custody. All persons~~
20 ~~referred or recommended by the court to participate in the home~~
21 ~~detention program pursuant to subdivision (c) who are denied~~
22 ~~participation or all persons removed from program participation~~
23 ~~shall be notified in writing of the specific reasons for the denial~~
24 ~~or removal. The notice of denial or removal shall include the~~
25 ~~participant's appeal rights, as established by program~~
26 ~~administrative policy.~~

27 ~~(e) The court may recommend or refer a person to the~~
28 ~~correctional administrator for consideration for placement in the~~
29 ~~home detention program. The recommendation or referral of the~~
30 ~~court shall be given great weight in the determination of~~
31 ~~acceptance or denial. At the time of sentencing or at any time that~~
32 ~~the court deems it necessary, the court may restrict or deny the~~
33 ~~defendant's participation in a home detention program.~~

34 ~~(f) The correctional administrator may permit home detention~~
35 ~~program participants to seek and retain employment in the~~
36 ~~community, attend psychological counseling sessions or~~
37 ~~educational or vocational training classes, or seek medical and~~
38 ~~dental assistance. Willful failure of the program participant to~~
39 ~~return to the place of home detention not later than the expiration~~
40 ~~of any period of time during which he or she is authorized to be~~

1 away from the place of home detention pursuant to this section
2 and unauthorized departures from the place of home detention
3 are punishable as provided in Section 4532.

4 ~~(g) The board of supervisors may prescribe a program
5 administrative fee to be paid by each home detention participant
6 that shall be determined according to his or her ability to pay.
7 Inability to pay all or a portion of the program fees shall not
8 preclude participation in the program, and eligibility shall not be
9 enhanced by reason of ability to pay. All program administration
10 and supervision fees shall be administered in compliance with
11 Section 1208.2.~~

12 ~~(h) As used in this section, the following words have the
13 following meanings:~~

14 ~~(1) "Correctional administrator" means the sheriff, probation
15 officer, or director of the county department of corrections.~~

16 ~~(2) "Minimum security inmate" means an inmate who, by
17 established local classification criteria, would be eligible for
18 placement in a Type IV local detention facility, as described in
19 Title 15 of the California Code of Regulations, or for placement
20 into the community for work or school activities, or who is
21 determined to be a minimum security risk under a classification
22 plan developed pursuant to Section 1050 of Title 15 of the
23 California Code of Regulations.~~

24 ~~(3) "Low-risk offender" means a probationer, as defined by
25 the National Institute of Corrections model probation system.~~

26 ~~(i) Notwithstanding any other law, the police department of a
27 city where an office is located to which persons on an electronic
28 monitoring program report may require the county correctional
29 administrator to provide information concerning those persons.
30 This information shall be limited to the name, address, date of
31 birth, and offense committed by the home detainee. Any
32 information received by a police department pursuant to this
33 paragraph shall be used only for the purpose of monitoring the
34 impact of home detention programs on the community.~~

35 ~~(j) It is the intent of the Legislature that home detention
36 programs established under this section maintain the highest
37 public confidence, credibility, and public safety. In the
38 furtherance of these standards, the following shall apply:~~

39 ~~(1) The correctional administrator, with the approval of the
40 board of supervisors, may administer a home detention program~~

1 pursuant to written contracts with appropriate public or private
2 agencies or entities to provide specified program services. No
3 public or private agency or entity may operate a home detention
4 program in any county without a written contract with that
5 county's correctional administrator. However, this does not apply
6 to the use of electronic monitoring by the California Department
7 of Corrections or the Department of the Youth Authority as
8 established in Section 3004. No public or private agency or entity
9 entering into a contract may itself employ any person who is in
10 the home detention program.

11 (2) Program acceptance shall not circumvent the normal
12 booking process for sentenced offenders. All home detention
13 program participants shall be supervised.

14 (3) (A) All privately operated home detention programs shall
15 be under the jurisdiction of, and subject to the terms and
16 conditions of the contract entered into with, the correctional
17 administrator.

18 (B) Each contract shall include, but not be limited to, all of the
19 following:

20 (i) A provision whereby the private agency or entity agrees to
21 operate in compliance with any available standards promulgated
22 by state correctional agencies and bodies, including the Board of
23 Corrections, and all statutory provisions and mandates, state and
24 county, as appropriate and applicable to the operation of home
25 detention programs and the supervision of sentenced offenders in
26 a home detention program.

27 (ii) A provision that clearly defines areas of respective
28 responsibility and liability of the county and the private agency
29 or entity.

30 (iii) A provision that requires the private agency or entity to
31 demonstrate evidence of financial responsibility, submitted and
32 approved by the board of supervisors, in amounts and under
33 conditions sufficient to fully indemnify the county for reasonably
34 foreseeable public liability, including legal defense costs, that
35 may arise from, or be proximately caused by, acts or omissions
36 of the contractor. The contract shall provide for annual review by
37 the correctional administrator to ensure compliance with
38 requirements set by the board of supervisors and for adjustment
39 of the financial responsibility requirements if warranted by
40 caseload changes or other factors.

1 ~~(iv) A provision that requires the private agency or entity to~~
2 ~~provide evidence of financial responsibility, such as certificates~~
3 ~~of insurance or copies of insurance policies, prior to commencing~~
4 ~~any operations pursuant to the contract or at any time requested~~
5 ~~by the board of supervisors or correctional administrator.~~

6 ~~(v) A provision that permits the correctional administrator to~~
7 ~~immediately terminate the contract with a private agency or~~
8 ~~entity at any time that the contractor fails to demonstrate~~
9 ~~evidence of financial responsibility.~~

10 ~~(C) All privately operated home detention programs shall~~
11 ~~comply with all appropriate, applicable ordinances and~~
12 ~~regulations specified in subdivision (a) of Section 1208.~~

13 ~~(D) The board of supervisors, the correctional administrator,~~
14 ~~and the designee of the correctional administrator shall comply~~
15 ~~with Section 1090 of the Government Code in the consideration,~~
16 ~~making, and execution of contracts pursuant to this section.~~

17 ~~(E) The failure of the private agency or entity to comply with~~
18 ~~statutory provisions and requirements or with the standards~~
19 ~~established by the contract and with the correctional~~
20 ~~administrator may be sufficient cause to terminate the contract.~~

21 ~~(F) Upon the discovery that a private agency or entity with~~
22 ~~whom there is a contract is not in compliance pursuant to this~~
23 ~~paragraph, the correctional administrator shall give 60 days'~~
24 ~~notice to the director of the private agency or entity that the~~
25 ~~contract may be canceled if the specified deficiencies are not~~
26 ~~corrected.~~

27 ~~(G) Shorter notice may be given or the contract may be~~
28 ~~canceled without notice whenever a serious threat to public~~
29 ~~safety is present because the private agency or entity has failed to~~
30 ~~comply with this section.~~

31 ~~(k) For purposes of this section, "evidence of financial~~
32 ~~responsibility" may include, but is not limited to, certified copies~~
33 ~~of any of the following:~~

34 ~~(1) A current liability insurance policy.~~

35 ~~(2) A current errors and omissions insurance policy.~~

36 ~~(3) A surety bond.~~

37 ~~SEC. 7. Section 6.5 of this bill incorporates amendments to~~
38 ~~Section 1203.016 of the Penal Code proposed by this bill and~~
39 ~~Senate Bill No. 963. It shall only become operative if (1) both~~
40 ~~bills are enacted and become effective on or before January 1,~~

1 ~~2006, (2) each bill amends Section 1203.016 of the Penal Code,~~
 2 ~~and (3) this bill is enacted after Senate Bill No. 963, in which~~
 3 ~~case Section 1203.016 of the Penal Code, as amended by Senate~~
 4 ~~Bill No. 963, shall remain operative only until the operative date~~
 5 ~~of this bill, at which time Section 6.5 of this bill shall become~~
 6 ~~operative, and Section 5 of this bill shall not become operative.~~

7 ~~SEC. 8.~~

8 *SEC. 2.* No reimbursement is required by this act pursuant to
 9 Section 6 of Article XIII B of the California Constitution for
 10 certain costs that may be incurred by a local agency or school
 11 district because, in that regard, this act creates a new crime or
 12 infraction, eliminates a crime or infraction, or changes the
 13 penalty for a crime or infraction, within the meaning of Section
 14 17556 of the Government Code, or changes the definition of a
 15 crime within the meaning of Section 6 of Article XIII B of the
 16 California Constitution.

17 However, if the Commission on State Mandates determines
 18 that this act contains other costs mandated by the state,
 19 reimbursement to local agencies and school districts for those
 20 costs shall be made pursuant to Part 7 (commencing with Section
 21 17500) of Division 4 of Title 2 of the Government Code.