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AMENDED IN SENATE MARCH 2, 2006
AMENDED IN SENATE FEBRUARY 9, 2006

SENATE BILL

No. 1128

Introduced by Senator Alquist

January 9, 2006

An act to amend Section 68152 of the Government Code, to amend Sections 209, 220, 269, 288.5, 290, 290.3, 290.46, ~~311, 311.1, 311.2, 311.3, 311.4, 311.5, 311.7, 311.8, 311.10, 311.11, 312.1, 626.8, 647.6, 626.8, 647.6, 667.1, 667.5, 667.51, 667.6, 667.61, 667.71, 800, 1170.125, 1192.7, 1202.8, 1203, 1203c, 1203.06, 1203.065, 1203.075, 3000, 3001, 3005, 12022.75, 13887, and 13887.1~~ of, to add Sections 288.3, 288.7, 290.03, 290.04, 290.05, 290.06, 290.07, 290.08, ~~290.09, 311.12, 311.13, 626.83, and 13105~~ 1203e, 1203f, 5040, and 13887.5 to, to add a heading to Chapter 5.5 (commencing with Section 290) to Title 9 of Part 2 of, and to add ~~Chapter 1.5 (commencing with Section 5040) to Title 7 of Part 3 of, Chapter 7.55 (commencing with Section 312) and Chapter 7.65 (commencing with Section 313.5) to Title 9 of Part 1 of,~~ and to repeal Section 311.9 of, *and to repeal and add Chapter 7.5 (commencing with Section 311) and Chapter 7.6 (commencing with Section 313) to Title 9 of Part 1 of,* the Penal Code, and to amend Sections 6600, 6601, 6604, 6604.1, and 6605 of, ~~and to repeal Section 6608 of,~~ the Welfare and Institutions Code, relating to

sex offenders, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 1128, as amended, Alquist. Sex Offender Punishment, Control, and Containment Act of 2006.

Existing law sets forth timelines for the retention of court records, depending upon the subject matter or criminal offense.

This bill would require courts to keep all records relating to felony or misdemeanor actions resulting in a requirement that the defendant register as a sex offender for 75 years. The bill also would ~~prohibit a state or local law enforcement agency from destroying any~~ *require every district attorney's office, parole office, and the Department of Justice to retain* records relating to a registered sex offender for 75 years *after disposition of the case*. Because the bill would impose new responsibilities on local agencies, the bill would impose a state-mandated local program.

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 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 new offenses for persons who arrange a meeting with a minor or person he or she believes to be a minor for the purpose of exposing his or her genitals or pubic or rectal area, having the child expose any of these areas, or engaging in lewd or lascivious behavior; and for persons who actually go to that arranged meeting.

Under existing law, continuous sexual abuse of a child is a felony punishable by imprisonment in the state prison for 6, 12, or 16 years. Existing law prohibits any other felony sex offense involving the same victim from being charged in the same proceeding, except as specified.

This bill would change that provision to prohibit any other act of substantial sexual conduct with a child under 14 years of age, or lewd and lascivious acts, involving the same victim, from being charged in the same proceeding, except as specified.

Under existing law, the punishment for annoying or molesting a child is a maximum fine of \$1,000 and imprisonment in the county jail.

This bill would increase the maximum fine to \$5,000 and would create a new crime for persons who, motivated by an unnatural or abnormal sexual interest in children, engages in conduct with an adult whom he or she believes to be a child, which conduct, if directed toward a child, would be a violation of the above provision.

Under existing law, lewd or lascivious conduct with a minor is a felony. Under existing law, any person who engages in unlawful sexual intercourse with a minor who is more than 3 years younger than the perpetrator is guilty of either a misdemeanor or felony, and may also be liable for civil penalties.

The bill would provide that any adult who engages in sexual intercourse or sodomy with a child who is 10 years of age or younger is guilty of a felony and shall be punished by imprisonment in the state prison for 25 years to life. Because the bill would create new crimes, the bill would impose a state-mandated local program.

Existing law requires a person convicted of any specified sex offense to register as a sex offender.

This bill would add the above new crimes to the list of crimes that require a person to register as a sex offender, ~~and would require every adult male who is required to register as a sex offender to be assessed for risk of recidivism using the STATIC-99 assessment tool. The bill would require the Department of Corrections and Rehabilitation, in~~

~~consultation with the Department of Mental Health and other experts, to research actuarial risk assessment tools for female and juvenile sex offenders. The bill would require the department to establish a training program for probation officers, parole officers, and others to become designated risk assessment testers. The bill would require the Department of Justice to renovate the Violent Crime Information Network, as specified.~~

This . The bill would make findings and declarations regarding the need for a comprehensive system of risk assessment, supervision, monitoring, and containment for registered sex offenders. The bill would require every person required to register as a sex offender to be subject to assessment using the State-Authorized Risk Assessment Tool for Sex Offenders (SARATSO). The bill would establish the SARATSO Review Committee, the purpose of which is to ensure that the SARATSO reflects the most reliable, objective, and well-established protocols for predicting sex offender risk of recidivism. Commencing January 1, 2007, the SARATSO for adult males would be the STATIC-99 risk assessment scale. The committee would be required to research risk assessment tools for female and juvenile offenders, and to advise the Legislature and Governor of their recommendation. The committee would also periodically evaluate the SARATSO for each population and make any recommendations for changes, and develop and administer a training program for officers who would administer the SARATSO. Persons who administer the SARATSO would be required to be trained at least every 2 years.

The bill would require the Department of Corrections and Rehabilitation to assess every eligible person who is incarcerated or on parole, using the SARATSO. The bill would also require each probation department to assess every eligible person who is under their supervision.

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 fund SAFE teams.

Existing law requires the Department of Justice to make available to the public information regarding registered sex offenders via an Internet Web site.

This bill would *modify the information to be made available to the public, and would* require the Attorney General to develop strategies to assist members of the public in understanding how to use the information on the Web site to further public safety. *The bill would require the Department of Justice to renovate the Violent Crime Information Network, as specified.*

Under existing law, possession of pornographic material that depicts a minor engaging in sexual conduct or sexual exploitation of a child is a misdemeanor, and enticing a minor to perform in matter that depicts sexual conduct by a minor for commercial purposes, or distributing matter that contains a minor engaged in sexual conduct, is a felony.

This bill would change the punishment for importing, producing, publishing, possessing, duplicating, distributing, exhibiting, or exchanging matter that depicts minors engaging in sexual conduct or explicit sexual conduct, depending on the age of the minor and whether or not the person is required to register as a sex offender. The bill would ~~make related changes~~ *revise and recast provisions related to child pornography, obscenity, and harmful matter*. Because the bill would change the scope of a crime, the bill would impose a state-mandated local program.

The bill would authorize any monetary assets gained from the production, publication, sale, distribution, exchange, or control of pornographic material that depicts a minor to be subject to forfeiture.

Under existing law, it is a misdemeanor for any person without any lawful business thereon, including any specified sex offender, to remain on school grounds, or to reenter school grounds, or any public way adjacent thereto, after being asked to leave, as specified.

This bill would instead make it a misdemeanor for any person who is required to register as a sex offender to come into any school building or upon any school ground without lawful business thereon or written permission from the chief administrative official of that school, or who loiters about any street, sidewalk, or public way adjacent to any school building, school grounds, public playground, or other youth recreational facility where minors are present, without lawful business thereon. Because the bill would increase the scope of an existing crime, the bill would impose a state-mandated local program.

This bill also would make it a misdemeanor for a person who is required to register as a sex offender where the victim was an elderly or dependent person to come onto any property where elderly or

dependent persons reside or regularly are present, without lawful business thereon or written permission from the director of the facility.

Existing law, added by initiative acts that require 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 offenses 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 for work, to reduce his or her sentence.

This bill would expand the types of sex crimes to which these provisions 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 offenses 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, 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, prosecution for an offense punishable by imprisonment in the state prison for 8 years or more is required to be commenced within 6 years after the commission of the offense.

This bill would extend the statute of limitations for prosecuting possession of child pornography for commercial purposes to 10 years from the date of production.

Existing law, added by an initiative statute which provides for amendment of its provision by 2/3 vote of the Legislature, prohibits plea bargaining in certain felony cases, except as specified.

This bill would state the intent of the Legislature that district attorneys prosecute violent sex crimes under statutes that provide sentencing under “one strike,” “3 strikes” or habitual sexual offender laws instead of engaging in plea bargaining, and would require a district attorney to state on the record why a sentence should not be prosecuted under those provisions, if he or she engages in plea bargaining despite the stated intent.

Existing law establishes a county probation system.

This bill would require probation officers trained in the use of the ~~STATIC-99 assessment tool~~ SARATSO to perform a presentencing risk assessment of every person convicted of an offense that requires him or her to register as a sex offender. The bill would require each probation department to compile a Facts of Offense Sheet for those offenders, as specified. The bill would require each county to designate certain probation officers to be trained to administer the ~~STATIC-99 assessment tool~~ SARATSO and to monitor registered sex offenders. The bill would require those probationers ~~to report more frequently to their probation officer and to be subject to more intensive scrutiny~~ *who are deemed to be a high risk to the public, as determined by the SARATSO, to be placed on an intensive and specialized probation supervision caseload*. Because the bill would impose additional duties on probation officers, it would impose a state-mandated local program.

Existing law requires a probation officer to prepare a report for the court for each person convicted of a felony.

This bill would require a probation officer to also use the ~~STATIC-99 assessment tool~~ SARATSO on each person convicted of a felony that requires him or her to register as a sex offender, in order to determine the persons’ risk of reoffending, and to include that assessment in the presentencing report. The bill would require the

results of that assessment to be considered by the court in determining suitability for probation.

Existing law provides for a 3-year maximum period of parole for persons who are convicted of a felony, except that the maximum period of parole for persons who are convicted of certain violent felonies is 5 years.

This bill would set the maximum period of parole for persons who are convicted of certain sex offenses at 10 years.

Existing law requires the Department of Corrections and Rehabilitation to ensure that all parolees under active supervision and deemed to pose a high risk to the public of committing a violent sex crime are placed on an intensive and specialized parole supervision caseload.

This bill would instead require those parolees who are deemed to pose a ~~moderate-high~~ or high risk to the public of committing any sex crime, as determined by the ~~STATIC-99 assessment tool~~ SARATSO, to be placed on such a caseload, and to be required to report frequently to designated parole officers. *The bill would authorize the department to place any other parolee on an intensive and specialized caseload, as specified.*

~~This bill would require the department to use the STATIC-99 assessment tool to perform a risk assessment on all inmates who are convicted of a sex offense that requires them to register as a sex offender, upon commitment to the department or prior to being released on parole. The bill would require the department to develop containment and control programming for sex offenders who have been assessed as having a moderate-high or high risk of committing a sex offense, pursuant to that provision.~~

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 authorizes counties to establish sexual assault felony enforcement (SAFE) teams to reduce violent sexual assaults through proactive surveillance of habitual sexual offenders.

This bill would require the Corrections Standards Authority to establish standards by which grants are awarded on a competitive basis to counties for SAFE teams. The bill would appropriate \$6,000,000 from the General Fund for that purpose.

This bill would appropriate \$495,000 from the General Fund to the Office of Emergency Services, Division of Criminal Justice Programs for child abuse and abduction programs that provide prevention education to children in schools.

Existing law defines “sexually violent offense” for purposes of the sexually violent predator law.

This bill would include prior convictions for certain offenses convicted as a juvenile or that resulted in an indeterminate sentence in that definition, and would otherwise expand that definition to include additional crimes.

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, as specified.

This bill instead would provide that such a finding shall toll his or her period of parole.

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.~~

The bill would provide that its provisions would be inoperative if a specified initiative measure is enacted at the November 7, 2006 General Election.

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.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. Appropriation: yes. Fiscal committee: yes.
State-mandated local program: yes.

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

SECTION 1. This act shall be known as the Sex Offender Punishment, Control, and Containment Act of 2006.

SEC. 2. The Legislature finds and declares all of the following:

(a) The primary public policy goal of managing sex offenders in the community is the prevention of future victimization.

(b) California's tactics for monitoring registered sex offenders must be transformed into a cohesive and comprehensive system of state and local law enforcement supervision to observe, assess, and proactively respond to patterns and conduct of registered sex offenders in the community.

(c) California's infrastructure for collecting, maintaining, and disseminating information about registered sex offenders must be retooled to ensure that law enforcement and the public have access to accurate, up-to-date, and relevant information about registered sex offenders.

(d) In order to accomplish these goals, the Legislature hereby enacts the Sex Offender Control and Containment Act of 2006.

SEC. 3. Section 68152 of the Government Code is amended to read:

68152. The trial court clerk may destroy court records under Section 68153 after notice of destruction and if there is no request and order for transfer of the records, except the comprehensive historical and sample superior court records preserved for research under the California Rules of Court, when the following times have expired after final disposition of the case in the categories listed:

(a) Adoption: retain permanently.

(b) Change of name: retain permanently.

(c) Other civil actions and proceedings, as follows:

(1) Except as otherwise specified: 10 years.

(2) Where a party appears by a guardian ad litem: 10 years after termination of the court's jurisdiction.

(3) Domestic violence: same period as duration of the restraining or other orders and any renewals, then retain the restraining or other orders as a judgment; 60 days after expiration of the temporary protective or temporary restraining order.

(4) Eminent domain: retain permanently.

1 (5) Family law, except as otherwise specified: 30 years.

2 (6) Harassment: same period as duration of the injunction and
3 any renewals, then retain the injunction as a judgment; 60 days
4 after expiration of the temporary restraining order.

5 (7) Mental health (Lanterman Developmental Disabilities
6 Services Act and Lanterman-Petris-Short Act): 30 years.

7 (8) Paternity: retain permanently.

8 (9) Petition, except as otherwise specified: 10 years.

9 (10) Real property other than unlawful detainer: retain
10 permanently if the action affects title or an interest in real
11 property.

12 (11) Small claims: 10 years.

13 (12) Unlawful detainer: one year if judgment is for possession
14 of the premises; 10 years if judgment is for money.

15 (d) Notwithstanding subdivision (c), any civil or small claims
16 case in the trial court:

17 (1) Involuntarily dismissed by the court for delay in
18 prosecution or failure to comply with state or local rules: one
19 year.

20 (2) Voluntarily dismissed by a party without entry of
21 judgment: one year.

22 Notation of the dismissal shall be made on the civil index of
23 cases or on a separate dismissal index.

24 (e) Criminal.

25 (1) Capital felony (murder with special circumstances where
26 the prosecution seeks the death penalty): retain permanently. If
27 the charge is disposed of by acquittal or a sentence less than
28 death, the case shall be reclassified.

29 (2) Felony, except as otherwise specified: 75 years.

30 (3) Felony, except capital felony, with court records from the
31 initial complaint through the preliminary hearing or plea and for
32 which the case file does not include final sentencing or other
33 final disposition of the case because the case was bound over to
34 the superior court: five years.

35 (4) Misdemeanor, except as otherwise specified: five years.

36 (5) Misdemeanor alleging a violation of the Vehicle Code,
37 except as otherwise specified: three years.

38 (6) Misdemeanor alleging a violation of Section 23103, 23152,
39 or 23153 of the Vehicle Code: 10 years.

(7) Misdemeanor alleging a violation of Section 14601, 14601.1, 20002, 23104, or 23109 of the Vehicle Code: five years.

(8) Misdemeanor alleging a marijuana violation under subdivision (b), (c), (d), or (e) of Section 11357 of the Health and Safety Code, or subdivision (b) of Section 11360 of the Health and Safety Code in accordance with the procedure set forth in Section 11361.5 of the Health and Safety Code: records shall be destroyed two years from the date of conviction or from the date of arrest if no conviction.

(9) Misdemeanor, infraction, or civil action alleging a violation of the regulation and licensing of dogs under Sections 30951 to 30956, inclusive, of the Food and Agricultural Code or violation of any other local ordinance: three years.

(10) Infraction, except as otherwise specified: three years.

(11) Parking infractions, including alleged violations under the stopping, standing, and parking provisions set forth in Chapter 9 (commencing with Section 22500) of Division 11 of the Vehicle Code: two years.

(12) Felony or misdemeanor action resulting in a requirement that the defendant register as a sex offender pursuant to Section 290 of the Penal Code: 75 years. *This paragraph shall apply to records relating to a person convicted on or after the effective date of Senate Bill 1128 of the 2005–06 Regular Session.*

(f) Habeas corpus: same period as period for retention of the records in the underlying case category.

(g) Juvenile.

(1) Dependent (Section 300 of the Welfare and Institutions Code): upon reaching age 28 or on written request shall be released to the juvenile five years after jurisdiction over the person has terminated under subdivision (a) of Section 826 of the Welfare and Institutions Code. Sealed records shall be destroyed upon court order five years after the records have been sealed pursuant to subdivision (c) of Section 389 of the Welfare and Institutions Code.

(2) Ward (Section 601 of the Welfare and Institutions Code): upon reaching age 21 or on written request shall be released to the juvenile five years after jurisdiction over the person has terminated under subdivision (a) of Section 826 of the Welfare and Institutions Code. Sealed records shall be destroyed upon court order five years after the records have been sealed under

1 subdivision (d) of Section 781 of the Welfare and Institutions
2 Code.

3 (3) Ward (Section 602 of the Welfare and Institutions Code):
4 upon reaching age 38 under subdivision (a) of Section 826 of the
5 Welfare and Institutions Code. Sealed records shall be destroyed
6 upon court order when the subject of the record reaches the age
7 of 38 under subdivision (d) of Section 781 of the Welfare and
8 Institutions Code.

9 (4) Traffic and some nontraffic misdemeanors and infractions
10 (Section 601 of the Welfare and Institutions Code): upon
11 reaching age 21 or five years after jurisdiction over the person
12 has terminated under subdivision (c) of Section 826 of the
13 Welfare and Institutions Code. May be microfilmed or
14 photocopied.

15 (5) Marijuana misdemeanor under subdivision (e) of Section
16 11357 of the Health and Safety Code in accordance with
17 procedures specified in subdivision (a) of Section 11361.5 of the
18 Health and Safety Code: upon reaching age 18 the records shall
19 be destroyed.

20 (h) Probate.

21 (1) Conservatorship: 10 years after decree of termination.

22 (2) Guardianship: 10 years after the age of 18.

23 (3) Probate, including probated wills, except as otherwise
24 specified: retain permanently.

25 (i) Court records of the appellate division of the superior court:
26 five years.

27 (j) Other records.

28 (1) Applications in forma pauperis: any time after the
29 disposition of the underlying case.

30 (2) Arrest warrant: same period as period for retention of the
31 records in the underlying case category.

32 (3) Bench warrant: same period as period for retention of the
33 records in the underlying case category.

34 (4) Bond: three years after exoneration and release.

35 (5) Coroner's inquest report: same period as period for
36 retention of the records in the underlying case category; if no
37 case, then permanent.

38 (6) Court orders not associated with an underlying case, such
39 as orders for destruction of court records for telephone taps, or to
40 destroy drugs, and other miscellaneous court orders: three years.

(7) Court reporter notes: 10 years after the notes have been taken in criminal and juvenile proceedings and five years after the notes have been taken in all other proceedings, except notes reporting proceedings in capital felony cases (murder with special circumstances where the prosecution seeks the death penalty and the sentence is death), including notes reporting the preliminary hearing, which shall be retained permanently, unless the Supreme Court on request of the court clerk authorizes the destruction.

(8) Electronic recordings made as the official record of the oral proceedings under the California Rules of Court: any time after final disposition of the case in infraction and misdemeanor proceedings, 10 years in all other criminal proceedings, and five years in all other proceedings.

(9) Electronic recordings not made as the official record of the oral proceedings under the California Rules of Court: any time either before or after final disposition of the case.

(10) Index, except as otherwise specified: retain permanently.

(11) Index for cases alleging traffic violations: same period as period for retention of the records in the underlying case category.

(12) Judgments within the jurisdiction of the superior court other than in a limited civil case, misdemeanor case, or infraction case: retain permanently.

(13) Judgments in misdemeanor cases, infraction cases, and limited civil cases: same period as period for retention of the records in the underlying case category.

(14) Minutes: same period as period for retention of the records in the underlying case category.

(15) Naturalization index: retain permanently.

(16) Ninety-day evaluation (under Section 1203.03 of the Penal Code): same period as period for retention of the records in the underlying case category, or period for completion or termination of probation, whichever is longer.

(17) Register of actions or docket: same period as period for retention of the records in the underlying case category, but in no event less than 10 years for civil and small claims cases.

(18) Search warrant: 10 years, except search warrants issued in connection with a capital felony case defined in paragraph (7), which shall be retained permanently.

1 (k) Retention of any of the court records under this section
2 shall be extended as follows:

3 (1) By order of the court on its own motion, or on application
4 of a party or any interested member of the public for good cause
5 shown and on those terms as are just. A fee shall not be charged
6 for making the application.

7 (2) Upon application and order for renewal of the judgment to
8 the extended time for enforcing the judgment.

9 SEC. 4. Section 209 of the Penal Code is amended to read:

10 209. (a) Any person who seizes, confines, inveigles, entices,
11 decoys, abducts, conceals, kidnaps or carries away another
12 person by any means whatsoever with intent to hold or detain, or
13 who holds or detains, that person for ransom, reward or to
14 commit extortion or to exact from another person any money or
15 valuable thing, or any person who aids or abets any of those acts,
16 is guilty of a felony. Upon conviction thereof, he or she shall be
17 punished by imprisonment in the state prison for life without
18 possibility of parole in cases in which any person subjected to
19 any of those acts suffers death or bodily harm, or is intentionally
20 confined in a manner which exposes that person to a substantial
21 likelihood of death, or shall be punished by imprisonment in the
22 state prison for life with the possibility of parole if the victim
23 does not suffer death or bodily harm.

24 (b) (1) Any person who kidnaps or carries away any
25 individual to commit robbery, rape, spousal rape, oral copulation,
26 sodomy, or any violation of Section 264.1, 288, or 289, shall be
27 punished by imprisonment in the state prison for life with the
28 possibility of parole.

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

33 (c) In all cases in which probation is granted, the court shall,
34 except in unusual cases where the interests of justice would best
35 be served by a lesser penalty, require as a condition of the
36 probation that the person be confined in the county jail for 12
37 months. If the court grants probation without requiring the
38 defendant to be confined in the county jail for 12 months, it shall
39 specify its reason or reasons for imposing a lesser penalty.

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

SEC. 5. Section 220 of the Penal Code is amended to read:

220. (a) ~~Every~~ *Except as provided in subdivision (b)*, any person who assaults another with intent to commit mayhem, rape, sodomy, oral copulation, or any violation of Section 264.1, 288, or 289 shall be punished by imprisonment in the state prison for two, four, or six years.

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

SEC. 6. Section 269 of the Penal Code is amended to read:

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

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

(2) Rape or sexual penetration, in concert, in violation of Section 264.1.

(3) Sodomy, in violation of paragraph (2) or (3) of subdivision (c), or subdivision (d), of Section 286.

(4) Oral copulation, in violation of paragraph (2) or (3) of subdivision (c), or subdivision (d), of Section 288a.

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

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

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

1 SEC. 7. Section 288.3 is added to the Penal Code, to read:

2 288.3. (a) (1) Every person who, motivated by an unnatural
3 or abnormal sexual interest in children, arranges a meeting with a
4 minor or a person he or she believes to be a minor for the
5 purpose of exposing his or her genitals or pubic or rectal area,
6 having the child expose his or her genitals or pubic or rectal area,
7 or engaging in lewd or lascivious behavior, shall be punished by
8 a fine not exceeding five thousand dollars (\$5,000), by
9 imprisonment in a county jail not exceeding one year, or by both
10 the fine and imprisonment.

11 (2) Every person who violates this subdivision after a prior
12 conviction for an offense listed in subparagraph (A) of paragraph
13 (2) of subdivision (a) of Section 290 shall be punished by
14 imprisonment in the state prison.

15 (b) Every person described in paragraph (1) of subdivision (a)
16 who goes to the arranged meeting place at or about the arranged
17 time, shall be punished by imprisonment in the state prison for
18 two, three, or four years.

19 (c) Prosecution under this section shall not prohibit
20 prosecution under any other provision of law.

21 SEC. 8. Section 288.5 of the Penal Code is amended to read:

22 288.5. (a) Any person who either resides in the same home
23 with the minor child or has recurring access to the child, who
24 over a period of time, not less than three months in duration,
25 engages in three or more acts of substantial sexual conduct with
26 a child under the age of 14 years at the time of the commission of
27 the offense, as defined in subdivision (b) of Section 1203.066, or
28 three or more acts of lewd or lascivious conduct, as defined in
29 Section 288, with a child under the age of 14 years at the time of
30 the commission of the offense is guilty of the offense of
31 continuous sexual abuse of a child and shall be punished by
32 imprisonment in the state prison for a term of 6, 12, or 16 years.

33 (b) To convict under this section the trier of fact, if a jury,
34 need unanimously agree only that the requisite number of acts
35 occurred not on which acts constitute the requisite number.

36 (c) No other act of substantial sexual conduct, as defined in
37 subdivision (b) of Section 1203.066, with a child under 14 years
38 of age at the time of the commission of the offenses, or lewd and
39 lascivious acts, as defined in Section 288, involving the same
40 victim may be charged in the same proceeding with a charge

1 under this section unless the other charged offense occurred
2 outside the time period charged under this section or the other
3 offense is charged in the alternative. A defendant may be charged
4 with only one count under this section unless more than one
5 victim is involved in which case a separate count may be charged
6 for each victim.

7 SEC. 9. Section 288.7 is added to the Penal Code, to read:

8 288.7. Any person 18 years of age or older who engages in
9 sexual intercourse or sodomy with a child who is 10 years of age
10 or younger is guilty of a felony and shall be punished by
11 imprisonment in the state prison for a term of 25 years to life.

12 SEC. 10. The heading of Chapter 5.5 (commencing with
13 Section 290) is added to Title 9 of Part 2 of the Penal Code, to
14 read:

15
16 CHAPTER 5.5. SEX OFFENDERS
17

18 SEC. 11. Section 290 of the Penal Code is amended to read:

19 290. (a) (1) (A) Every person described in paragraph (2),
20 for the rest of his or her life while residing in California, or while
21 attending school or working in California, as described in
22 subparagraph (G), shall be required to register with the chief of
23 police of the city in which he or she is residing, or the sheriff of
24 the county if he or she is residing in an unincorporated area or
25 city that has no police department, and, additionally, with the
26 chief of police of a campus of the University of California, the
27 California State University, or community college if he or she is
28 residing upon the campus or in any of its facilities, within five
29 working days of coming into, or changing his or her residence
30 within, any city, county, or city and county, or campus in which
31 he or she temporarily resides.

32 (B) If the person who is registering has more than one
33 residence address at which he or she regularly resides, he or she
34 shall register in accordance with subparagraph (A) in each of the
35 jurisdictions in which he or she regularly resides, regardless of
36 the number of days or nights spent there. If all of the addresses
37 are within the same jurisdiction, the person shall provide the
38 registering authority with all of the addresses where he or she
39 regularly resides.

1 (C) Every person described in paragraph (2), for the rest of
2 his or her life while living as a transient in California shall be
3 required to register, as follows:

4 (i) A transient must register, or reregister if the person has
5 previously registered, within five working days from release
6 from incarceration, placement or commitment, or release on
7 probation, pursuant to paragraph (1) of subdivision (a), except
8 that if the person previously registered as a transient less than 30
9 days from the date of his or her release from incarceration, he or
10 she does not need to reregister as a transient until his or her next
11 required 30-day update of registration. If a transient is not
12 physically present in any one jurisdiction for five consecutive
13 working days, he or she must register in the jurisdiction in which
14 he or she is physically present on the fifth working day following
15 release, pursuant to paragraph (1) of subdivision (a). Beginning
16 on or before the 30th day following initial registration upon
17 release, a transient must reregister no less than once every 30
18 days thereafter. A transient shall register with the chief of police
19 of the city in which he or she is physically present within that
20 30-day period, or the sheriff of the county if he or she is
21 physically present in an unincorporated area or city that has no
22 police department, and additionally, with the chief of police of a
23 campus of the University of California, the California State
24 University, or community college if he or she is physically
25 present upon the campus or in any of its facilities. A transient
26 must reregister no less than once every 30 days regardless of the
27 length of time he or she has been physically present in the
28 particular jurisdiction in which he or she reregisters. If a transient
29 fails to reregister within any 30-day period, he or she may be
30 prosecuted in any jurisdiction in which he or she is physically
31 present.

32 (ii) A transient who moves to a residence shall have five
33 working days within which to register at that address, in
34 accordance with subparagraph (A) of paragraph (1) of
35 subdivision (a). A person registered at a residence address in
36 accordance with subparagraph (A) of paragraph (1) of
37 subdivision (a), who becomes transient shall have five working
38 days within which to reregister as a transient in accordance with
39 clause (i).

(iii) Beginning on his or her first birthday following registration, a transient shall register annually, within five working days of his or her birthday, to update his or her registration with the entities described in clause (i). A transient shall register in whichever jurisdiction he or she is physically present on that date. At the 30-day updates and the annual update, a transient shall provide current information as required on the Department of Justice annual update form, including the information described in subparagraphs (A) to (C), inclusive, of paragraph (2) of subdivision (e), and the information specified in clause (iv).

(iv) A transient shall, upon registration and reregistration, provide current information as required on the Department of Justice registration forms, and shall also list the places where he or she sleeps, eats, works, frequents, and engages in leisure activities. If a transient changes or adds to the places listed on the form during the 30-day period, he or she does not need to report the new place or places until the next required reregistration.

(v) Failure to comply with the requirement of reregistering every 30 days following initial registration pursuant to clause (i) of this subparagraph shall be punished in accordance with paragraph (6) of subdivision (g). Failure to comply with any other requirement of this section shall be punished in accordance with either paragraph (1) or (2) of subdivision (g).

(vi) A transient who moves out of state shall inform, in person, the chief of police in the city in which he or she is physically present, or the sheriff of the county if he or she is physically present in an unincorporated area or city that has no police department, within five working days, of his or her move out of state. The transient shall inform that registering agency of his or her planned destination, residence or transient location out of state, and any plans he or she has to return to California, if known. The law enforcement agency shall, within three days after receipt of this information, forward a copy of the change of location information to the Department of Justice. The department shall forward appropriate registration data to the law enforcement agency having local jurisdiction of the new place of residence or location.

(vii) For purposes of this section, “transient” means a person who has no residence. “Residence” means one or more addresses

1 at which a person regularly resides, regardless of the number of
2 days or nights spent there, such as a shelter or structure that can
3 be located by a street address, including, but not limited to,
4 houses, apartment buildings, motels, hotels, homeless shelters,
5 and recreational and other vehicles.

6 (viii) The transient registrant's duty to update his or her
7 registration no less than every 30 days shall begin with his or her
8 second transient update following the date this subdivision
9 became effective.

10 (D) Beginning on his or her first birthday following
11 registration or change of address, the person shall be required to
12 register annually, within five working days of his or her birthday,
13 to update his or her registration with the entities described in
14 subparagraph (A). At the annual update, the person shall provide
15 current information as required on the Department of Justice
16 annual update form, including the information described in
17 subparagraphs (A) to (C), inclusive, of paragraph (2) of
18 subdivision (e).

19 (E) In addition, every person who has ever been adjudicated a
20 sexually violent predator, as defined in Section 6600 of the
21 Welfare and Institutions Code, shall, after his or her release from
22 custody, verify his or her address no less than once every 90 days
23 and place of employment, including the name and address of the
24 employer, in a manner established by the Department of Justice.

25 (F) No entity shall require a person to pay a fee to register or
26 update his or her registration pursuant to this section. The
27 registering agency shall submit registrations, including annual
28 updates or changes of address, directly into the Department of
29 Justice Violent Crime Information Network (VCIN). The
30 registering agency shall give the registrant a copy of the
31 completed Department of Justice form each time the person
32 registers or reregisters, including at the annual update.

33 (G) Persons required to register in their state of residence who
34 are out-of-state residents employed, or carrying on a vocation in
35 California on a full-time or part-time basis, with or without
36 compensation, for more than 14 days, or for an aggregate period
37 exceeding 30 days in a calendar year, shall register in accordance
38 with subparagraph (A). Persons described in paragraph (2) who
39 are out-of-state residents enrolled in any educational institution
40 in California, as defined in Section 22129 of the Education Code,

1 on a full-time or part-time basis, shall register in accordance with
2 subparagraph (A). The place where the out-of-state resident is
3 located, for purposes of registration, shall be the place where the
4 person is employed, carrying on a vocation, or attending school.
5 The out-of-state resident subject to this subparagraph shall, in
6 addition to the information required pursuant to subdivision (e),
7 provide the registering authority with the name of his or her place
8 of employment or the name of the school attended in California,
9 and his or her address or location in his or her state of residence.
10 The registration requirement for persons subject to this
11 subparagraph shall become operative on November 25, 2000.
12 The terms “employed or carries on a vocation” include
13 employment whether or not financially compensated,
14 volunteered, or performed for government or educational benefit.
15 (2) The following persons shall be required to register
16 pursuant to paragraph (1):

17 (A) Any person who, since July 1, 1944, has been or is
18 hereafter convicted in any court in this state or in any federal or
19 military court of a violation of Section 207 or 209 committed
20 with intent to violate Section 261, 286, 288, 288a, or 289,
21 Section 220, except assault to commit mayhem, Section 243.4,
22 paragraph (1), (2), (3), (4), or (6) of subdivision (a) of Section
23 261, or paragraph (1) of subdivision (a) of Section 262 involving
24 the use of force or violence for which the person is sentenced to
25 the state prison, Section 264.1, 266, or 266c, subdivision (b) of
26 Section 266h, subdivision (b) of Section 266i, Section 266j, 267,
27 269, 285, 286, 288, 288a, 288.5, 288.7, or 289, Section 311.1,
28 subdivision (b), (c), or (d) of Section 311.2, Section 311.3, 311.4,
29 311.10, 311.11, 626.83, or 647.6, former Section 647a,
30 subdivision (c) of Section 653f, subdivision 1 or 2 of Section
31 314, any offense involving lewd or lascivious conduct under
32 Section 272, or any felony violation of Section 288.2; or any
33 statutory predecessor that includes all elements of one of the
34 above-mentioned offenses; or any person who since that date has
35 been or is hereafter convicted of the attempt to commit any of the
36 above-mentioned offenses.

37 (B) Any person who, since July 1, 1944, has been or hereafter
38 is released, discharged, or paroled from a penal institution where
39 he or she was confined because of the commission or attempted

1 commission of one of the offenses described in subparagraph
2 (A).

3 (C) Any person who, since July 1, 1944, has been or hereafter
4 is determined to be a mentally disordered sex offender under
5 Article 1 (commencing with Section 6300) of Chapter 2 of Part 2
6 of Division 6 of the Welfare and Institutions Code or any person
7 who has been found guilty in the guilt phase of a trial for an
8 offense for which registration is required by this section but who
9 has been found not guilty by reason of insanity in the sanity
10 phase of the trial.

11 (D) (i) Any person who, since July 1, 1944, has been, or is
12 hereafter convicted in any other court, including any state,
13 federal, or military court, of any offense that, if committed or
14 attempted in this state, would have been punishable as one or
15 more of the offenses described in subparagraph (A).

16 (ii) Any person ordered by any other court, including any
17 state, federal, or military court, to register as a sex offender for
18 any offense, if the court found at the time of conviction or
19 sentencing that the person committed the offense as a result of
20 sexual compulsion or for purposes of sexual gratification.

21 (iii) Except as provided in clause (iv), any person who would
22 be required to register while residing in the state of conviction for
23 a sex offense committed in that state.

24 (iv) Clause (iii) shall not apply to a person required to register
25 in the state of conviction if the conviction was for the equivalent
26 of one of the following offenses, and the person is not subject to
27 clause (i):

28 (I) Indecent exposure, pursuant to Section 314.

29 (II) Unlawful sexual intercourse, pursuant to Section 261.5.

30 (III) Incest, pursuant to Section 285.

31 (IV) Sodomy, pursuant to Section 286, or oral copulation,
32 pursuant to Section 288a, provided that the offender notifies the
33 Department of Justice that the sodomy or oral copulation
34 conviction was for conduct between consenting adults, as
35 described in subparagraph (F) of paragraph (2) of subdivision (a),
36 and the department is able, upon the exercise of reasonable
37 diligence, to verify that fact.

38 (E) Any person ordered by any court to register pursuant to
39 this section for any offense not included specifically in this
40 section if the court finds at the time of conviction or sentencing

1 that the person committed the offense as a result of sexual
2 compulsion or for purposes of sexual gratification. The court
3 shall state on the record the reasons for its findings and the
4 reasons for requiring registration.

5 (F) Any person required to register pursuant to any provision
6 of this section, regardless of whether the person's conviction has
7 been dismissed pursuant to Section 1203.4, unless the person
8 obtains a certificate of rehabilitation and is entitled to relief from
9 registration pursuant to Section 290.5.

10 (G) (i) Notwithstanding any other subdivision, a person who
11 was convicted before January 1, 1976, under subdivision (a) of
12 Section 286, or Section 288a, shall not be required to register
13 pursuant to this section for that conviction if the conviction was
14 for conduct between consenting adults that was decriminalized
15 by Chapter 71 of the Statutes of 1975 or Chapter 1139 of the
16 Statutes of 1976. The Department of Justice shall remove that
17 person from the Sex Offender Registry, and the person is
18 discharged from his or her duty to register pursuant to the
19 following procedure:

20 (I) The person submits to the Department of Justice official
21 documentary evidence, including court records or police reports,
22 that demonstrate that the person's conviction pursuant to either of
23 those sections was for conduct between consenting adults that
24 was decriminalized; or

25 (II) The person submits to the department a declaration stating
26 that the person's conviction pursuant to either of those sections
27 was for consensual conduct between adults that has been
28 decriminalized. The declaration shall be confidential and not a
29 public record, and shall include the person's name, address,
30 telephone number, date of birth, and a summary of the
31 circumstances leading to the conviction, including the date of the
32 conviction and county of the occurrence.

33 (III) The department shall determine whether the person's
34 conviction was for conduct between consensual adults that has
35 been decriminalized. If the conviction was for consensual
36 conduct between adults that has been decriminalized, and the
37 person has no other offenses for which he or she is required to
38 register pursuant to this section, the department shall, within 60
39 days of receipt of those documents, notify the person that he or
40 she is relieved of the duty to register, and shall notify the local

1 law enforcement agency with which the person is registered that
 2 he or she has been relieved of the duty to register. The local law
 3 enforcement agency shall remove the person's registration from
 4 its files within 30 days of receipt of notification. If the
 5 documentary or other evidence submitted is insufficient to
 6 establish the person's claim, the department shall, within 60 days
 7 of receipt of those documents, notify the person that his or her
 8 claim cannot be established, and that the person shall continue to
 9 register pursuant to this section. The department shall provide,
 10 upon the person's request, any information relied upon by the
 11 department in making its determination that the person shall
 12 continue to register pursuant to this section. Any person whose
 13 claim has been denied by the department pursuant to this clause
 14 may petition the court to appeal the department's denial of the
 15 person's claim.

16 (ii) On or before July 1, 1998, the department shall make a
 17 report to the Legislature concerning the status of persons who
 18 may come under the provisions of this subparagraph, including
 19 the number of persons who were convicted before January 1,
 20 1976, under subdivision (a) of Section 286 or Section 288a and
 21 are required to register under this section, the average age of
 22 these persons, the number of these persons who have any
 23 subsequent convictions for a registerable sex offense, and the
 24 number of these persons who have sought successfully or
 25 unsuccessfully to be relieved of their duty to register under this
 26 section.

27 (b) (1) Any person who is released, discharged, or paroled
 28 from a jail, state or federal prison, school, road camp, or other
 29 institution where he or she was confined because of the
 30 commission or attempted commission of one of the offenses
 31 specified in subdivision (a) or is released from a state hospital to
 32 which he or she was committed as a mentally disordered sex
 33 offender under Article 1 (commencing with Section 6300) of
 34 Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions
 35 Code, shall, prior to discharge, parole, or release, be informed of
 36 his or her duty to register under this section by the official in
 37 charge of the place of confinement or hospital, and the official
 38 shall require the person to read and sign any form that may be
 39 required by the Department of Justice, stating that the duty of the
 40 person to register under this section has been explained to the

1 person. The official in charge of the place of confinement or
2 hospital shall obtain the address where the person expects to
3 reside upon his or her discharge, parole, or release and shall
4 report the address to the Department of Justice. The official shall
5 at the same time forward a current photograph of the person to
6 the Department of Justice.

7 (2) The official in charge of the place of confinement or
8 hospital shall give one copy of the form to the person and shall
9 send one copy to the Department of Justice and one copy to the
10 appropriate law enforcement agency or agencies having
11 jurisdiction over the place the person expects to reside upon
12 discharge, parole, or release. If the conviction that makes the
13 person subject to this section is a felony conviction, the official
14 in charge shall, not later than 45 days prior to the scheduled
15 release of the person, send one copy to the appropriate law
16 enforcement agency or agencies having local jurisdiction where
17 the person expects to reside upon discharge, parole, or release;
18 one copy to the prosecuting agency that prosecuted the person;
19 and one copy to the Department of Justice. The official in charge
20 of the place of confinement or hospital shall retain one copy.

21 (c) (1) Any person who is convicted in this state of the
22 commission or attempted commission of any of the offenses
23 specified in subdivision (a) and who is released on probation,
24 shall, prior to release or discharge, be informed of the duty to
25 register under this section by the probation department, and a
26 probation officer shall require the person to read and sign any
27 form that may be required by the Department of Justice, stating
28 that the duty of the person to register under this section has been
29 explained to him or her. The probation officer shall obtain the
30 address where the person expects to reside upon release or
31 discharge and shall report within three days the address to the
32 Department of Justice. The probation officer shall give one copy
33 of the form to the person, send one copy to the Department of
34 Justice, and forward one copy to the appropriate law enforcement
35 agency or agencies having local jurisdiction where the person
36 expects to reside upon his or her discharge, parole, or release.

37 (2) Any person who is convicted in this state of the
38 commission or attempted commission of any of the offenses
39 specified in subdivision (a) and who is granted conditional
40 release without supervised probation, or discharged upon

1 payment of a fine, shall, prior to release or discharge, be
2 informed of the duty to register under this section in open court
3 by the court in which the person has been convicted, and the
4 court shall require the person to read and sign any form that may
5 be required by the Department of Justice, stating that the duty of
6 the person to register under this section has been explained to
7 him or her. If the court finds that it is in the interest of the
8 efficiency of the court, the court may assign the bailiff to require
9 the person to read and sign forms under this section. The court
10 shall obtain the address where the person expects to reside upon
11 release or discharge and shall report within three days the address
12 to the Department of Justice. The court shall give one copy of the
13 form to the person, send one copy to the Department of Justice,
14 and forward one copy to the appropriate law enforcement agency
15 or agencies having local jurisdiction where the person expects to
16 reside upon his or her discharge, parole, or release.

17 (d) (1) Any person who, on or after January 1, 1986, is
18 discharged or paroled from the Department of Corrections and
19 Rehabilitation to the custody of which he or she was committed
20 after having been adjudicated a ward of the juvenile court
21 pursuant to Section 602 of the Welfare and Institutions Code
22 because of the commission or attempted commission of any
23 offense described in paragraph (3) shall be subject to registration
24 under the procedures of this section.

25 (2) Any person who is discharged or paroled from a facility in
26 another state that is equivalent to the Division of Juvenile Justice,
27 to the custody of which he or she was committed because of an
28 offense which, if committed or attempted in this state, would
29 have been punishable as one or more of the offenses described in
30 paragraph (3), shall be subject to registration under the
31 procedures of this section.

32 (3) Any person described in this subdivision who committed
33 an offense in violation of any of the following provisions shall be
34 required to register pursuant to this section:

35 (A) Assault with intent to commit rape, sodomy, oral
36 copulation, or any violation of Section 264.1, 288, or 289 under
37 Section 220.

38 (B) Any offense defined in paragraph (1), (2), (3), (4), or (6)
39 of subdivision (a) of Section 261, Section 264.1, 266c, or 267,
40 paragraph (1) of subdivision (b) of, or subdivision (c) or (d) of,

1 Section 286, Section 288 or 288.5, paragraph (1) of subdivision
2 (b) of, or subdivision (c) or (d) of, Section 288a, subdivision (a)
3 of Section 289, or Section 647.6.

4 (C) A violation of Section 207 or 209 committed with the
5 intent to violate Section 261, 286, 288, 288a, or 289.

6 (4) Prior to discharge or parole from the Department of
7 Corrections and Rehabilitation, any person who is subject to
8 registration under this subdivision shall be informed of the duty
9 to register under the procedures set forth in this section.
10 Department officials shall transmit the required forms and
11 information to the Department of Justice.

12 (5) All records specifically relating to the registration in the
13 custody of the Department of Justice, law enforcement agencies,
14 and other agencies or public officials shall be destroyed when the
15 person who is required to register has his or her records sealed
16 under the procedures set forth in Section 781 of the Welfare and
17 Institutions Code. This subdivision shall not be construed as
18 requiring the destruction of other criminal offender or juvenile
19 records relating to the case that are maintained by the
20 Department of Justice, law enforcement agencies, the juvenile
21 court, or other agencies and public officials unless ordered by a
22 court under Section 781 of the Welfare and Institutions Code.

23 (e) (1) On or after January 1, 1998, upon incarceration,
24 placement, or commitment, or prior to release on probation, any
25 person who is required to register under this section shall
26 preregister. The preregistering official shall be the admitting
27 officer at the place of incarceration, placement, or commitment,
28 or the probation officer if the person is to be released on
29 probation. The preregistration shall consist of all of the
30 following:

31 (A) A preregistration statement in writing, signed by the
32 person, giving information that shall be required by the
33 Department of Justice.

34 (B) The fingerprints and a current photograph of the person.

35 (C) Any person who is preregistered pursuant to this
36 subdivision is required to be preregistered only once.

37 (2) A person described in paragraph (2) of subdivision (a)
38 shall register, or reregister if the person has previously registered,
39 upon release from incarceration, placement, commitment, or

1 release on probation pursuant to paragraph (1) of subdivision (a).

2 The registration shall consist of all of the following:

3 (A) A statement in writing signed by the person, giving
4 information as shall be required by the Department of Justice and
5 giving the name and address of the person's employer, and the
6 address of the person's place of employment if that is different
7 from the employer's main address.

8 (B) The fingerprints and a current photograph of the person
9 taken by the registering official.

10 (C) The license plate number of any vehicle owned by,
11 regularly driven by, or registered in the name of the person.

12 (D) Notice to the person that, in addition to the requirements
13 of paragraph (4), he or she may have a duty to register in any
14 other state where he or she may relocate.

15 (E) Copies of adequate proof of residence, which shall be
16 limited to a California driver's license, California identification
17 card, recent rent or utility receipt, printed personalized checks or
18 other recent banking documents showing that person's name and
19 address, or any other information that the registering official
20 believes is reliable. If the person has no residence and no
21 reasonable expectation of obtaining a residence in the foreseeable
22 future, the person shall so advise the registering official and shall
23 sign a statement provided by the registering official stating that
24 fact. Upon presentation of proof of residence to the registering
25 official or a signed statement that the person has no residence,
26 the person shall be allowed to register. If the person claims that
27 he or she has a residence but does not have any proof of
28 residence, he or she shall be allowed to register but shall furnish
29 proof of residence within 30 days of the date he or she is allowed
30 to register.

31 (3) Within three days thereafter, the preregistering official or
32 the registering law enforcement agency or agencies shall forward
33 the statement, fingerprints, photograph, and vehicle license plate
34 number, if any, to the Department of Justice.

35 (f) (1) (A) Any person who was last registered at a residence
36 address pursuant to this section who changes his or her residence
37 address, whether within the jurisdiction in which he or she is
38 currently registered or to a new jurisdiction inside or outside the
39 state, shall, in person, within five working days of the move,
40 inform the law enforcement agency or agencies with which he or

1 she last registered of the move, the new address or transient
2 location, if known, and any plans he or she has to return to
3 California.

4 (B) If the person does not know the new residence address or
5 location at the time of the move, the registrant shall, in person,
6 within five working days of the move, inform the last registering
7 agency or agencies that he or she is moving. The person shall
8 later notify the last registering agency or agencies, in writing,
9 sent by certified or registered mail, of the new address or location
10 within five working days of moving into the new residence
11 address or location, whether temporary or permanent.

12 (C) The law enforcement agency or agencies shall, within
13 three working days after receipt of this information, forward a
14 copy of the change of address information to the Department of
15 Justice. The Department of Justice shall forward appropriate
16 registration data to the law enforcement agency or agencies
17 having local jurisdiction of the new place of residence.

18 (2) If the person's new address is in a Department of
19 Corrections and Rehabilitation facility or state mental institution,
20 an official of the place of incarceration, placement, or
21 commitment shall, within 90 days of receipt of the person,
22 forward the registrant's change of address information to the
23 Department of Justice. The agency need not provide a physical
24 address for the registrant but shall indicate that he or she is
25 serving a period of incarceration or commitment in a facility
26 under the agency's jurisdiction. This paragraph shall apply to
27 persons received in a department facility or state mental
28 institution on or after January 1, 1999. The Department of Justice
29 shall forward the change of address information to the agency
30 with which the person last registered.

31 (3) If any person who is required to register pursuant to this
32 section changes his or her name, the person shall inform, in
33 person, the law enforcement agency or agencies with which he or
34 she is currently registered within five working days. The law
35 enforcement agency or agencies shall forward a copy of this
36 information to the Department of Justice within three working
37 days of its receipt.

38 (g) (1) Any person who is required to register under this
39 section based on a misdemeanor conviction or juvenile
40 adjudication who willfully violates any requirement of this

1 section is guilty of a misdemeanor punishable by imprisonment
2 in a county jail not exceeding one year.

3 (2) Except as provided in paragraphs (5), (7), and (9), any
4 person who is required to register under this section based on a
5 felony conviction or juvenile adjudication who willfully violates
6 any requirement of this section or who has a prior conviction or
7 juvenile adjudication for the offense of failing to register under
8 this section and who subsequently and willfully violates any
9 requirement of this section is guilty of a felony and shall be
10 punished by imprisonment in the state prison for 16 months, or
11 two or three years.

12 If probation is granted or if the imposition or execution of
13 sentence is suspended, it shall be a condition of the probation or
14 suspension that the person serve at least 90 days in a county jail.
15 The penalty described in this paragraph shall apply whether or
16 not the person has been released on parole or has been discharged
17 from parole.

18 (3) Any person determined to be a mentally disordered sex
19 offender or who has been found guilty in the guilt phase of trial
20 for an offense for which registration is required under this
21 section, but who has been found not guilty by reason of insanity
22 in the sanity phase of the trial, or who has had a petition
23 sustained in a juvenile adjudication for an offense for which
24 registration is required under this section pursuant to subdivision
25 (d), but who has been found not guilty by reason of insanity, who
26 willfully violates any requirement of this section is guilty of a
27 misdemeanor and shall be punished by imprisonment in a county
28 jail not exceeding one year. For any second or subsequent willful
29 violation of any requirement of this section, the person is guilty
30 of a felony and shall be punished by imprisonment in the state
31 prison for 16 months, or two or three years.

32 (4) If, after discharge from parole, the person is convicted of a
33 felony or suffers a juvenile adjudication as specified in this
34 subdivision, he or she shall be required to complete parole of at
35 least one year, in addition to any other punishment imposed
36 under this subdivision. A person convicted of a felony as
37 specified in this subdivision may be granted probation only in the
38 unusual case where the interests of justice would best be served.
39 When probation is granted under this paragraph, the court shall
40 specify on the record and shall enter into the minutes the

1 circumstances indicating that the interests of justice would best
2 be served by the disposition.

3 (5) Any person who has ever been adjudicated a sexually
4 violent predator, as defined in Section 6600 of the Welfare and
5 Institutions Code, and who fails to verify his or her registration
6 every 90 days as required pursuant to subparagraph (E) of
7 paragraph (1) of subdivision (a), shall be punished by
8 imprisonment in the state prison, or in a county jail not exceeding
9 one year.

10 (6) Except as otherwise provided in paragraph (5), any person
11 who is required to register or reregister pursuant to clause (i) of
12 subparagraph (C) of paragraph (1) of subdivision (a) and
13 willfully fails to comply with the requirement that he or she
14 reregister no less than every 30 days is guilty of a misdemeanor
15 and shall be punished by imprisonment in a county jail at least 30
16 days, but not exceeding six months. A person who willfully fails
17 to comply with the requirement that he or she reregister no less
18 than every 30 days shall not be charged with this violation more
19 often than once for a failure to register in any period of 90 days.
20 Any person who willfully commits a third or subsequent
21 violation of the requirements of subparagraph (C) of paragraph
22 (1) of subdivision (a) that he or she reregister no less than every
23 30 days shall be punished in accordance with either paragraph (1)
24 or (2) of this subdivision.

25 (7) Any person who fails to provide proof of residence as
26 required by subparagraph (E) of paragraph (2) of subdivision (e),
27 regardless of the offense upon which the duty to register is based,
28 is guilty of a misdemeanor punishable by imprisonment in a
29 county jail not exceeding six months.

30 (8) Any person who is required to register under this section
31 who willfully violates any requirement of this section is guilty of
32 a continuing offense as to each requirement he or she violated.

33 (9) In addition to any other penalty imposed under this
34 subdivision, the failure to provide information required on
35 registration and reregistration forms of the Department of Justice,
36 or the provision of false information, is a crime punishable by
37 imprisonment in a county jail for a period not exceeding one
38 year.

39 (h) Whenever any person is released on parole or probation
40 and is required to register under this section but fails to do so

1 within the time prescribed, the parole authority or the court, as
2 the case may be, shall order the parole or probation of the person
3 revoked. For purposes of this subdivision, “parole authority” has
4 the same meaning as described in Section 3000.

5 (i) Except as otherwise provided by law, the statements,
6 photographs, and fingerprints required by this section shall not be
7 open to inspection by the public or by any person other than a
8 regularly employed peace officer or other law enforcement
9 officer.

10 (j) In any case in which a person who would be required to
11 register pursuant to this section for a felony conviction is to be
12 temporarily sent outside the institution where he or she is
13 confined on any assignment within a city or county including
14 firefighting, disaster control, or of whatever nature the
15 assignment may be, the local law enforcement agency having
16 jurisdiction over the place or places where the assignment shall
17 occur shall be notified within a reasonable time prior to removal
18 from the institution. This subdivision shall not apply to any
19 person who is temporarily released under guard from the
20 institution where he or she is confined.

21 (k) As used in this section, “mentally disordered sex offender”
22 includes any person who has been determined to be a sexual
23 psychopath or a mentally disordered sex offender under any
24 provision which, on or before January 1, 1976, was contained in
25 Division 6 (commencing with Section 6000) of the Welfare and
26 Institutions Code.

27 (l) (1) Every person who, prior to January 1, 1997, is required
28 to register under this section, shall be notified whenever he or she
29 next reregisters of the reduction of the registration period from
30 14 to 5 working days. This notice shall be provided in writing by
31 the registering agency or agencies. Failure to receive this
32 notification shall be a defense against the penalties prescribed by
33 subdivision (g) if the person did register within 14 days.

34 (2) Every person who, as a sexually violent predator, as
35 defined in Section 6600 of the Welfare and Institutions Code, is
36 required to verify his or her registration every 90 days, shall be
37 notified wherever he or she next registers of his or her increased
38 registration obligations. This notice shall be provided in writing
39 by the registering agency or agencies. Failure to receive this

1 notice shall be a defense against the penalties prescribed by
2 paragraph (5) of subdivision (g).

3 (m) The registration provisions of this section are applicable to
4 every person described in this section, without regard to when his
5 or her crime or crimes were committed or his or her duty to
6 register pursuant to this section arose, and to every offense
7 described in this section, regardless of when it was committed.

8 (n) On or before ~~January 1, 2011~~ *June 1, 2010*, the Department
9 of Justice shall renovate the VCIN to do the following:

10 (1) Correct all software deficiencies affecting data integrity
11 and include designated data fields for all mandated sex offender
12 data.

13 (2) Consolidate and simplify program logic, thereby increasing
14 system performance and reducing system maintenance costs.

15 (3

16 (3) Provide all necessary data storage, processing, and search
17 capabilities.

18 (4) Provide law enforcement agencies with full Internet access
19 to all sex offender data and photos.

20 (5) Incorporate a flexible design structure to readily meet
21 future demands for enhanced system functionality, including
22 public Internet access to sex offender information pursuant to
23 Section 290.46.

24 SEC. 12. Section 290.03 is added to the Penal Code, to read:

25 290.03. (a) The Legislature finds and declares that a
26 comprehensive system of risk assessment, supervision,
27 monitoring and containment for registered sex offenders residing
28 in California communities is necessary to enhance public safety
29 and reduce the risk of recidivism posed by these offenders. The
30 Legislature further affirms and incorporates the following
31 findings and declarations, previously reflected in its enactment of
32 “Megan’s Law”:

33 (1) Sex offenders pose a potentially high risk of committing
34 further sex offenses after release from incarceration or
35 commitment, and the protection of the public from reoffending
36 by these offenders is a paramount public interest.

37 (2) It is a compelling and necessary public interest that the
38 public have information concerning persons convicted of
39 offenses involving unlawful sexual behavior collected pursuant
40 to Sections 290 and 290.4 to allow members of the public to

1 adequately protect themselves and their children from these
2 persons.

3 (3) Persons convicted of these offenses involving unlawful
4 sexual behavior have a reduced expectation of privacy because of
5 the public's interest in public safety.

6 (4) In balancing the offenders' due process and other rights
7 against the interests of public security, the Legislature finds that
8 releasing information about sex offenders under the
9 circumstances specified in the Sex Offender Punishment,
10 Control, and Containment Act of 2006 will further the primary
11 government interest of protecting vulnerable populations from
12 potential harm.

13 (5) The registration of sex offenders, the public release of
14 specified information about certain sex offenders pursuant to
15 Sections 290 and 290.4, and public notice of the presence of
16 certain high risk sex offenders in communities will further the
17 governmental interests of public safety and public scrutiny of the
18 criminal and mental health systems that deal with these
19 offenders.

20 (6) To protect the safety and general welfare of the people of
21 this state, it is necessary to provide for continued registration of
22 sex offenders, for the public release of specified information
23 regarding certain more serious sex offenders, and for community
24 notification regarding high risk sex offenders who are about to be
25 released from custody or who already reside in communities in
26 this state. This policy of authorizing the release of necessary and
27 relevant information about serious and high risk sex offenders to
28 members of the general public is a means of assuring public
29 protection and shall not be construed as punitive.

30 (7) The Legislature also declares, however, that in making
31 information available about certain sex offenders to the public, it
32 does not intend that the information be used to inflict retribution
33 or additional punishment on any person convicted of a sex
34 offense. While the Legislature is aware of the possibility of
35 misuse, it finds that the dangers to the public of nondisclosure far
36 outweigh the risk of possible misuse of the information. The
37 Legislature is further aware of studies in Oregon and Washington
38 indicating that community notification laws and public release of
39 similar information in those states have resulted in little criminal

1 misuse of the information and that the enhancement to public
2 safety has been significant.

3 (b) In enacting the Sex Offender Punishment, Control, and
4 Containment Act of 2006, the Legislature hereby creates a
5 standardized, statewide system to identify, assess, monitor and
6 contain known sex offenders for the purpose of reducing the risk
7 of recidivism posed by these offenders, thereby protecting
8 victims and potential victims from future harm.

9 SEC. 13. ~~Section 290.04 is added to the Penal Code, to read:~~

10 290.04. (a) ~~Commencing on January 1, 2007, all adult males~~
11 ~~who are required to register as a sex offender pursuant to Section~~
12 ~~290 shall be subject to assessment by the STATIC-99 assessment~~
13 ~~tool. The STATIC-99 and its successor instruments shall be the~~
14 ~~sole actuarial risk assessment instrument used for registered sex~~
15 ~~offenders.~~

16 (b) ~~The Department of Corrections and Rehabilitation, in~~
17 ~~consultation with the Attorney General and local law~~
18 ~~enforcement, shall establish and implement a schedule for~~
19 ~~conducting, no later than January 1, 2012, STATIC-99~~
20 ~~assessments of adult male registered sex offenders living in~~
21 ~~California who no longer are in custody, on probation, or on~~
22 ~~parole as of the effective date of this section. These persons shall~~
23 ~~be administered a STATIC-99 assessment according to the~~
24 ~~implementation schedule during their annual registration update~~
25 ~~by persons authorized to administer the instrument. The schedule~~
26 ~~adopted by the department shall give priority to assessing those~~
27 ~~registrants with the most recent sex offense convictions. Any~~
28 ~~adult male required to register as a sex offender pursuant to~~
29 ~~Section 290 may seek an assessment by a state agency before~~
30 ~~their scheduled assessment period at his or her own cost as~~
31 ~~determined by the department. These assessments shall be~~
32 ~~conducted in a manner consistent with the requirements of this~~
33 ~~section.~~

34 (c) ~~On or before January 1, 2010, the Department of~~
35 ~~Corrections and Rehabilitation, in consultation with the~~
36 ~~Department of Mental Health and experts in sex offender risk~~
37 ~~assessment and the use of actuarial instruments in predicting sex~~
38 ~~offender risk, shall periodically evaluate and update the~~
39 ~~STATIC-99 or its successor instrument to ensure that~~
40 ~~California's standardized actuarial assessment instrument for~~

1 ~~assessing sex offender risk reflects reliable, objective and~~
2 ~~well-established protocols for predicting sex offender risk of~~
3 ~~recidivism, has been scientifically validated with multiple~~
4 ~~cross-validations, and is widely accepted by the courts.~~

5 ~~(d) On or before January 1, 2008, the Department of~~
6 ~~Corrections and Rehabilitation, in consultation with the~~
7 ~~Department of Mental Health and experts in sex offender risk~~
8 ~~assessment and the use of actuarial instruments in predicting sex~~
9 ~~offender risk, shall research actuarial risk assessment tools for~~
10 ~~female and juvenile registered sex offenders, and shall make~~
11 ~~recommendations to the Governor and to the Legislature~~
12 ~~concerning the appropriate actuarial risk assessment instrument~~
13 ~~to be used to assess those populations.~~

14 ~~(e) On or before January 1, 2008, the Department of~~
15 ~~Corrections and Rehabilitation, in consultation with the~~
16 ~~Department of Mental Health and experts in sex offender risk~~
17 ~~assessment and the use of actuarial instruments in predicting sex~~
18 ~~offender risk, shall establish a training program for probation~~
19 ~~officers, parole officers, and any other persons authorized by law~~
20 ~~to perform risk assessment. The department shall use an expert in~~
21 ~~the field of risk assessment and the use of actuarial instruments in~~
22 ~~predicting sex offender risk to conduct periodic training.~~
23 ~~Probation departments and regional parole officers shall~~
24 ~~designate persons within their organizations to attend a yearly~~
25 ~~training and shall train others within their organizations who are~~
26 ~~designated to perform risk assessments as required or authorized~~
27 ~~by law.~~

28 SEC. 14. Section 290.05 is added to the Penal Code, to read:

29 290.05. (a) Commencing on January 1, 2007, and subject to
30 the provisions of Section 290.04, the actuarial risk assessment
31 instrument for adult males required to register as sex offenders
32 pursuant to Section 290 shall be the STATIC-99.

33 (b) There shall be four risk assessment tier levels assignable to
34 registered sex offenders under this instrument: low, moderate
35 low, moderate high, and high.

36 SEC. 15. Section 290.06 is added to the Penal Code, to read:

37 290.06. (a) Probation officers trained in the use of
38 STATIC-99 shall perform a presentencing risk assessment of
39 every adult male convicted of an offense that requires him to
40 register as a sex offender pursuant to Section 290. Probation

~~1 officers shall assign a risk assessment tier level score to the
2 assessment, and shall include that score in a presentencing or
3 probation officer's report. Probation officers who conduct sex
4 offender risk assessments shall be trained in an approved
5 program established pursuant to subdivision (e) of Section
6 290.04, and shall receive updated training no less frequently than
7 every two years, as determined by the Department of Corrections
8 and Rehabilitation.~~

~~9 (b) (1) The probation department shall compile a Facts of
10 Offense Sheet for every person convicted of an offense that
11 requires him or her to register as a sex offender under Section
12 290 containing the following information concerning the
13 offender: name; CII number; criminal history, including all
14 arrests and convictions for any registerable sex offenses or any
15 violent offense; circumstances of the offense for which
16 registration is required, including, but not limited to, weapons
17 used and victim pattern; and risk assessment tier level, if required
18 pursuant to subdivision (a). The Facts of Offense Sheet shall be
19 included in the probation officer's report. The defendant may
20 move the court to correct the Facts of Offense Sheet. Any
21 corrections to that sheet shall be made consistent with procedures
22 contained in Section 1204. The probation officer shall send a
23 copy of the Facts of Offense Sheet to the Department of Justice
24 Sex Offender Tracking Program within 30 days of the person's
25 sex offense conviction, and it shall be made part of the registered
26 sex offender's file maintained by the Sex Offender Tracking
27 Program. The Facts of Offense Sheet shall thereafter be made
28 available to law enforcement by the Department of Justice, which
29 shall post it with the offender's record on the Department of
30 Justice Internet Web site maintained pursuant to Section 290.46,
31 and shall be accessible only to law enforcement.~~

~~32 (2) If the registered sex offender is sentenced to a period of
33 incarceration, at either the state prison or a county jail, the Facts
34 of Offense Sheet shall be sent by the Department of Corrections
35 and Rehabilitation or the county sheriff to the registering law
36 enforcement agency in the jurisdiction where the registered sex
37 offender will be paroled or will live on release, within three days
38 of the person's release. If the registered sex offender is
39 committed to the Department of Mental Health, the Facts of
40 Offense Sheet shall be sent by the Department of Mental Health~~

1 to the registering law enforcement agency in the jurisdiction
2 where the person will live on release, within three days of
3 release.

4 SEC. 16. Section 290.07 is added to the Penal Code, to read:

5 290.07. (a) All adult males who have been convicted of an
6 offense for which they are required to register as a sex offender
7 pursuant to Section 290 and who are incarcerated in state prison
8 or committed to the Department of Mental Health shall be
9 subject to sex offender risk assessment pursuant to the provisions
10 of this chapter. The assessment shall take place at least four
11 months, but no sooner than 10 months, prior to release from
12 incarceration or commitment.

13 (b) The prerelease risk assessment shall be performed by the
14 Department of Corrections and Rehabilitation. Persons
15 administering the assessment shall be trained through an
16 approved program established pursuant to subdivision (e) of
17 Section 290.04, and shall receive updated training no less
18 frequently than every two years as determined by the Department
19 of Corrections and Rehabilitation.

20 (c) Adult male registered sex offenders who, subsequent to
21 their conviction for a sex offense, are convicted of a separate
22 criminal offense resulting in incarceration or commitment, or
23 which would require a probation officer's report, but who have
24 not been the subject of a risk assessment, shall be assessed in
25 accordance with this chapter.

26 SEC. 17. Section 290.08 is added to the Penal Code, to read:

27 290.08. (a) Adult male registered sex offenders who are on
28 probation or parole as of the effective date of this section shall be
29 subject to a risk assessment using the STATIC-99. Adult male
30 sex offenders convicted in a jurisdiction other than California
31 who are required to register while living in California pursuant to
32 Section 290, who are being supervised in California under an
33 interstate compact or who are on federal or military supervision
34 in California, shall be also be assessed. Those offenders who
35 were assigned the highest risk level under the STATIC-99 in the
36 jurisdiction where they were convicted shall be given priority in
37 performing a new risk assessment.

38 (b) Probation departments and the parole authority shall create
39 specialized caseloads for all sex offenders, and shall develop
40 expertise in sex offender management. Sex offenders assessed at

1 high risk levels shall be monitored by agents responsible for
2 reduced caseloads.

3 (c) The risk assessment tier level assigned to a registered sex
4 offender shall be used to determine the level of monitoring and
5 control on supervision.

6 SEC. 18. Section 290.09 is added to the Penal Code, to read:

7 290.09. (a) Notwithstanding any other law, any person
8 authorized and trained to perform STATIC-99 risk assessments
9 shall be granted access to all relevant records pertaining to a
10 registered sex offender, including, but not limited to, criminal
11 histories, sex offender registration records, police reports,
12 probation and presentencing reports, judicial records and case
13 files, juvenile records, records maintained by Child Protective
14 Services, psychological evaluations and psychiatric hospital
15 reports, sexually violent predator treatment program reports, and
16 records that have been sealed by the courts or the Department of
17 Justice. Records and information obtained under this section shall
18 not be subject to the California Public Records Act, Chapter 3.5
19 (commencing with Section 6250) of Division 7 of Title 1 of the
20 Government Code.

21 (b) Every districts attorney's office, parole office, and the
22 Department of Justice shall maintain records relating to a person
23 convicted of an offense for which registration is required
24 pursuant to Section 290 for a period of 75 years after disposition
25 of the case.

26 SEC. 13. Section 290.04 is added to the Penal Code, to read:

27 290.04. (a) (1) The sex offender risk assessment tools
28 authorized by this section for use with selected populations shall
29 be known, with respect to each population, as the
30 State-Authorized Risk Assessment Tool for Sex Offenders
31 (SARATSO). If a SARATSO has not been selected for a given
32 population pursuant to this section, no duty to administer the
33 SARATSO elsewhere in this code shall apply with respect to that
34 population. Every person required to register as a sex offender
35 shall be subject to assessment with the SARATSO as set forth in
36 this section and elsewhere in this code.

37 (2) A representative of the Department of Corrections and
38 Rehabilitation, in consultation with a representative of the
39 Department of Mental Health and a representative of the
40 Attorney General's office, shall comprise the SARATSO Review

1 Committee. The purpose of the committee shall be to ensure that
2 the SARATSO reflects the most reliable, objective and
3 well-established protocols for predicting sex offender risk of
4 recidivism, has been scientifically validated with multiple
5 cross-validations, and is widely accepted by the courts. The
6 committee shall consult with experts in the fields of risk
7 assessment and the use of actuarial instruments in predicting sex
8 offender risk, sex offending, sex offender treatment, mental
9 health, and law, as it deems appropriate.

10 (b) (1) Commencing January 1, 2007, the SARATSO for adult
11 males required to register as sex offenders shall be the
12 STATIC-99 risk assessment scale.

13 (2) On or before January 1, 2008, the SARATSO Review
14 Committee shall determine whether the STATIC-99 should be
15 supplemented with an actuarial instrument that measures
16 dynamic risk factors or whether the STATIC-99 should be
17 replaced as the SARATSO with a different risk assessment tool. If
18 the committee unanimously agrees on changes to be made to the
19 SARATSO, it shall advise the Governor and the Legislature of the
20 changes, and it shall post its decision on the Department of
21 Corrections and Rehabilitation's Internet Web site. Sixty days
22 after the decision is posted, the selected tool shall become the
23 SARATSO for adult males.

24 (c) On or before July 1, 2007, the SARATSO Review
25 Committee shall research risk assessment tools for females
26 required to register as sex offenders. If the committee
27 unanimously agrees on an appropriate risk assessment tool to be
28 used to assess this population, it shall advise the Governor and
29 the Legislature of the selected tool, and it shall post its decision
30 on the Department of Corrections and Rehabilitation's Internet
31 Web site. Sixty days after the decision is posted, the selected tool
32 shall become the SARATSO for females.

33 (d) On or before January 1, 2007, the SARATSO Review
34 Committee shall research risk assessment tools for juveniles
35 required to register as sex offenders. If the committee
36 unanimously agrees on an appropriate risk assessment tool to be
37 used to assess this population, it shall advise the Governor and
38 the Legislature of the selected tool, and it shall post its decision
39 on the Department of Corrections and Rehabilitation's Internet

1 Web site. Sixty days after the decision is posted, the selected tool
2 shall become the SARATSO for juveniles.

3 (e) The committee shall periodically evaluate the SARATSO
4 for each specified population. If the committee unanimously
5 agrees on a change to the SARATSO for any population, it shall
6 advise the Governor and the Legislature of the selected tool, and
7 it shall post its decision on the Department of Corrections and
8 Rehabilitation's Internet Web site. Sixty days after the decision is
9 posted, the selected tool shall become the SARATSO for that
10 population.

11 (f) The committee shall perform other functions as necessary
12 to carry out the provisions of this act or as may be otherwise
13 required by law. The committee shall be immune from liability
14 for good faith conduct under this act.

15 SEC. 14. Section 290.05 is added to the Penal Code, to read:

16 290.05. (a) On or before January 1, 2008, the SARATSO
17 Review Committee established pursuant to Section 290.04, in
18 consultation with probation officers and parole officers, shall
19 develop a training program for probation officers, parole
20 officers, local law enforcement personnel, and any other persons
21 authorized by this code to administer the SARATSO, as set forth
22 in Section 290.04. The Department of Corrections and
23 Rehabilitation shall be responsible for overseeing the training,
24 which shall be conducted by experts in the field of risk
25 assessment and the use of actuarial instruments in predicting sex
26 offender risk. Subject to requirements promulgated by the
27 committee, probation departments, regional parole officers, and
28 local law enforcement agencies shall designate key persons
29 within their organizations to attend training and, as authorized
30 by the department, to train others within their organizations
31 designated to perform risk assessments as required or authorized
32 by law. Any person who administers the SARATSO shall receive
33 training no less frequently than every two years.

34 (b) The SARATSO may be performed for purposes authorized
35 by statute only by persons trained pursuant to this section.

36 SEC. 15. Section 290.06 is added to the Penal Code, to read:

37 290.06. Effective on or before July 1, 2008, the SARATSO, as
38 set forth in Section 290.04, shall be administered as follows:

39 (a) (1) The Department of Corrections and Rehabilitation
40 shall assess every eligible person who is incarcerated in state

1 prison. The assessment shall take place at least four months, but
2 no sooner than 10 months, prior to release from incarceration.

3 (2) The department shall assess every eligible person who is
4 on parole. The assessment shall take place at least four months,
5 but no sooner than 10 months, prior to termination of parole.

6 (3) The Department of Mental Health shall assess every
7 eligible person who is committed to that department. The
8 assessment shall take place at least four months, but no sooner
9 than 10 months, prior to release from commitment.

10 (4) Each probation department shall assess every eligible
11 person for whom it prepares a report pursuant to Section 1203.

12 (5) Each probation department shall assess every eligible
13 person under its supervision who was not assessed pursuant to
14 paragraph (3). The assessment shall take place prior to the
15 termination of probation, but no later than January 1, 2010.

16 (b) If a person required to be assessed pursuant to subdivision
17 (a) was assessed pursuant to that subdivision within the previous
18 five years, a reassessment is permissible but not required.

19 (c) The SARATSO Review Committee established pursuant to
20 Section 290.04, in consultation with probation officers and local
21 law enforcement agencies, shall establish a plan and a schedule
22 for assessing eligible persons not assessed pursuant to
23 subdivision (a). The plan shall provide for adult males to be
24 assessed on or before January 1, 2012, and for females and
25 juveniles to be assessed on or before January 1, 2013, and it
26 shall give priority to assessing those persons most recently
27 convicted of an offense requiring registration as a sex offender.
28 On or before January 15, 2008, the committee shall introduce
29 legislation to implement the plan.

30 (d) On or before January 1, 2008, the SARATSO Review
31 Committee shall research the appropriateness and feasibility of
32 providing a means by which an eligible person subject to
33 assessment may, at his or her own expense, be assessed with the
34 SARATSO by a governmental entity prior to his or her scheduled
35 assessment. If the committee unanimously agrees that such a
36 process is appropriate and feasible, it shall advise the Governor
37 and the Legislature of the selected tool, and it shall post its
38 decision on the Department of Corrections and Rehabilitation's
39 Internet Web site. Sixty days after the decision is posted, the
40 established process shall become effective.

1 (e) For purposes of this section, “eligible person” means a
2 person who was convicted of an offense that requires him or her
3 to register as a sex offender pursuant to Section 290 and who has
4 not been assessed with the SARATSO within the previous five
5 years.

6 SEC. 16. Section 290.07 is added to the Penal Code, to read:

7 290.07. Notwithstanding any other provision of law, any
8 person authorized by statute to administer the State Authorized
9 Risk Assessment Tool for Sex Offenders and trained pursuant to
10 Section 290.06 shall be granted access to all relevant records
11 pertaining to a registered sex offender, including, but not limited
12 to, criminal histories, sex offender registration records, police
13 reports, probation and presentencing reports, judicial records
14 and case files, juvenile records, records maintained by Child
15 Protective Services, psychological evaluations and psychiatric
16 hospital reports, sexually violent predator treatment program
17 reports, and records that have been sealed by the courts or the
18 Department of Justice. Records and information obtained under
19 this section shall not be subject to the California Public Records
20 Act, Chapter 3.5 (commencing with Section 6250) of Division 7
21 of Title 1 of the Government Code.

22 SEC. 17. Section 290.08 is added to the Penal Code, to read:

23 290.08. Every district attorney’s office, parole office, and the
24 Department of Justice shall retain records relating to a person
25 convicted of an offense for which registration is required
26 pursuant to Section 290 for a period of 75 years after disposition
27 of the case.

28 ~~SEC. 19.~~

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

30 290.3. (a) Every person who is convicted of any offense
31 specified in subdivision (a) of Section 290 shall, in addition to
32 any imprisonment or fine, or both, imposed for violation of the
33 underlying offense, be punished by a fine of three hundred
34 dollars (\$300) upon the first conviction or a fine of five hundred
35 dollars (\$500) upon the second and each subsequent conviction,
36 unless the court determines that the defendant does not have the
37 ability to pay the fine.

38 An amount equal to all fines collected pursuant to this
39 subdivision during the preceding month upon conviction of, or
40 upon the forfeiture of bail by, any person arrested for, or

1 convicted of, committing an offense specified in subdivision (a)
2 of Section 290, shall be transferred once a month by the county
3 treasurer to the Controller for deposit in the General Fund.
4 Moneys deposited in the General Fund pursuant to this
5 subdivision shall be transferred by the Controller as provided in
6 subdivision (b).

7 (b) Out of the moneys deposited pursuant to subdivision (a) as
8 a result of second and subsequent convictions of Section 290,
9 one-third shall first be transferred to the Department of Justice
10 Sexual Habitual Offender Fund, as provided in paragraph (1) of
11 this subdivision. Out of the remainder of all moneys deposited
12 pursuant to subdivision (a), 50 percent shall be transferred to the
13 Department of Justice Sexual Habitual Offender Fund, as
14 provided in paragraph (1), 25 percent shall be transferred to the
15 Department of Justice DNA Testing Fund, as provided in
16 paragraph (2), and 25 percent shall be allocated equally to
17 counties that maintain a local DNA testing laboratory, as
18 provided in paragraph (3).

19 (1) Those moneys so designated shall be transferred to the
20 Department of Justice Sexual Habitual Offender Fund created
21 pursuant to paragraph (5) of subdivision (b) of Section 11170
22 and, when appropriated by the Legislature, shall be used for the
23 purposes of Chapter 9.5 (commencing with Section 13885) and
24 Chapter 10 (commencing with Section 13890) of Title 6 of Part 4
25 for the purpose of monitoring, apprehending, and prosecuting
26 sexual habitual offenders.

27 (2) Those moneys so designated shall be directed to the
28 Department of Justice and transferred to the Department of
29 Justice DNA Testing Fund, which is hereby created, for the
30 exclusive purpose of testing deoxyribonucleic acid (DNA)
31 samples for law enforcement purposes. The moneys in that fund
32 shall be available for expenditure upon appropriation by the
33 Legislature.

34 (3) Those moneys so designated shall be allocated equally and
35 distributed quarterly to counties that maintain a local DNA
36 testing laboratory. Before making any allocations under this
37 paragraph, the Controller shall deduct the estimated costs that
38 will be incurred to set up and administer the payment of these
39 funds to the counties. Any funds allocated to a county pursuant to

1 this paragraph shall be used by that county for the exclusive
2 purpose of testing DNA samples for law enforcement purposes.

3 (c) Notwithstanding any other provision of this section, the
4 Department of Corrections and Rehabilitation may collect a fine
5 imposed pursuant to this section from a person convicted of a
6 violation of any offense listed in subdivision (a) of Section 290
7 that results in incarceration in a facility under the jurisdiction of
8 the department. All moneys collected by the department under
9 this subdivision shall be transferred, once a month, to the
10 Controller for deposit in the General Fund, as provided in
11 subdivision (a), for transfer by the Controller, as provided in
12 subdivision (b).

13 (d) An amount equal to one hundred dollars (\$100) for every
14 fine imposed pursuant to subdivision (a) in excess of one
15 hundred dollars (\$100) shall be transferred to the Department of
16 Corrections and Rehabilitation to fund SAFE teams pursuant to
17 Chapter 9.7 (commencing with Section 13887) of Title 6 of Part
18 4.

19 ~~SEC. 20.~~

20 *SEC. 19.* Section 290.46 of the Penal Code is amended to
21 read:

22 290.46. (a) (1) On or before the dates specified in this
23 section, the Department of Justice shall make available
24 information concerning persons who are required to register
25 pursuant to Section 290 to the public via an Internet Web site as
26 specified in this section. The department shall update the Internet
27 Web site on an ongoing basis. All information identifying the
28 victim by name, birth date, address, or relationship to the
29 registrant shall be excluded from the Internet Web site. The name
30 or address of the person's employer and the listed person's
31 criminal history other than the specific crimes for which the
32 person is required to register shall not be included on the Internet
33 Web site. ~~The The Internet Web site shall be translated into~~
34 *languages other than English, as determined by the department.*

35 (2) (A) *On or before June 1, 2010, the Department of Justice*
36 *shall make available to the public, as to any person described in*
37 *subdivisions (b), (c), or (d), the year of conviction of his or her*
38 *most recent offense requiring registration pursuant to Section*
39 *290, and the year he or she was released from incarceration for*
40 *that crime. However, no year of conviction shall be made*

1 available to the public unless the Department of Justice also is
2 able to display the year of release from incarceration.

3 (B) (i) Any state or local facility that release from
4 incarceration a person who was incarcerated because of a crime
5 for which he or she was required to register as a sex offender
6 pursuant to Section 290 shall, within 30 days of that person's
7 release, provide the year of conviction and year of release from
8 incarceration for that crime to the Department of Justice, in a
9 manner and format approved by the Department of Justice.

10 (ii) Any state or local facility that, prior to January 1, 2007,
11 released from incarceration a person described in subparagraph
12 (i), shall provide to the Department of Justice the year of
13 conviction and year of release for that person's most recent
14 offense that required registration.

15 (3) The Department of Mental Health shall provide to the
16 Department of Justice Sex Offender Tracking Program the names
17 of all persons committed to its custody pursuant to Article 4
18 (commencing with Section 6600) of Chapter 2 of Part 2 of
19 Division 6 of the Welfare and Institutions Code, within 30 days
20 of commitment, and shall provide the names of all of those
21 persons released from its custody within five working days of
22 release. ~~The Department of Corrections and Rehabilitation shall~~
23 ~~provide the actual release date of each registered sex offender to~~
24 ~~the Department of Justice Sex Offender Tracking Program within~~
25 ~~five days of release or as soon as practicable thereafter. The Web~~
26 ~~site shall display the date of conviction and the date of release~~
27 ~~from incarceration or commitment for each posted registrant. The~~
28 ~~Web site shall also post, in a separate section from those listing~~
29 ~~current registered sex offenders, the names and reported state of~~
30 ~~destination, if any, of former registrants who have been deported~~
31 ~~or moved out of state. The Internet Web site shall be translated~~
32 ~~into languages other than English as determined by the~~
33 ~~department.~~

34 (b) (1) On or before July 1, 2005, with respect to a person
35 who has been convicted of the commission or the attempted
36 commission of any of the offenses listed in, or who is described
37 in, paragraph (2), the Department of Justice shall make available
38 to the public via the Internet Web site his or her name and known
39 aliases, a photograph, a physical description, including gender
40 and race, date of birth, criminal history, prior adjudication as a

1 sexually violent predator, the address at which the person resides,
2 and any other information that the Department of Justice deems
3 relevant, but not the information excluded pursuant to
4 subdivision (a).

5 (2) This subdivision shall apply to the following offenses and
6 offenders:

7 (A) Section 207 committed with intent to violate Section 261,
8 286, 288, 288a, or 289.

9 (B) Section 209 committed with intent to violate Section 261,
10 286, 288, 288a, or 289.

11 (C) Paragraph (2) or (6) of subdivision (a) of Section 261.

12 (D) Section 264.1.

13 (E) Section 269.

14 (F) Subdivision (c) or (d) of Section 286.

15 (G) Subdivision (a), (b), or (c) of Section 288, provided that
16 the offense is a felony.

17 (H) Subdivision (c) or (d) of Section 288a.

18 (I) Section 288.5 or 288.7.

19 (J) Subdivision (a) or (j) of Section 289.

20 (K) Any person who has ever been adjudicated a sexually
21 violent predator as defined in Section 6600 of the Welfare and
22 Institutions Code.

23 (c) (1) On or before July 1, 2005, with respect to a person
24 who has been convicted of the commission or the attempted
25 commission of any of the offenses listed in paragraph (2), the
26 Department of Justice shall make available to the public via the
27 Internet Web site his or her name and known aliases, a
28 photograph, a physical description, including gender and race,
29 date of birth, criminal history, the community of residence and
30 ZIP Code in which the person resides or the county in which the
31 person is registered as a transient, and any other information that
32 the Department of Justice deems relevant, but not the information
33 excluded pursuant to subdivision (a). On or before July 1, 2006,
34 the Department of Justice shall determine whether any person
35 convicted of an offense listed in paragraph (2) also has one or
36 more prior or subsequent convictions of an offense listed in
37 paragraph (2) of subdivision (a) of Section 290, and, for those
38 persons, the Department of Justice shall make available to the
39 public via the Internet Web site the address at which the person
40 resides. However, the address at which the person resides shall

1 not be disclosed until a determination is made that the person is,
2 by virtue of his or her additional prior or subsequent conviction
3 of an offense listed in paragraph (2) of subdivision (a) of Section
4 290, subject to this subdivision.

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

6 (A) Section 220, except assault to commit mayhem.

7 (B) Paragraph (1), (3), or (4) of subdivision (a) of Section 261.

8 (C) Paragraph (2) of subdivision (b), or subdivision (f), (g), or
9 (i), of Section 286.

10 (D) Paragraph (2) of subdivision (b), or subdivision (f), (g), or
11 (i), of Section 288a.

12 (E) Subdivision (b), (d), (e), or (i) of Section 289.

13 (d) (1) On or before July 1, 2005, with respect to a person
14 who has been convicted of the commission or the attempted
15 commission of any of the offenses listed in, or who is described
16 in, this subdivision, the Department of Justice shall make
17 available to the public via the Internet Web site his or her name
18 and known aliases, a photograph, a physical description,
19 including gender and race, date of birth, criminal history, the
20 community of residence and ZIP Code in which the person
21 resides or the county in which the person is registered as a
22 transient, and any other information that the Department of
23 Justice deems relevant, but not the information excluded pursuant
24 to subdivision (a) or the address at which the person resides.

25 (2) This subdivision shall apply to the following offenses and
26 offenders:

27 (A) Subdivision (a) of Section 243.4, provided that the offense
28 is a felony.

29 (B) Section 266, provided that the offense is a felony.

30 (C) Section 266c, provided that the offense is a felony.

31 (D) Section 266j.

32 (E) Section 267.

33 (F) Subdivision (c) of Section 288, provided that the offense is
34 a misdemeanor.

35 (G) Section 626.83 or 647.6.

36 (H) Any person required to register pursuant to Section 290
37 based upon an out-of-state conviction, unless that person is
38 excluded from the Internet Web site pursuant to subdivision (e).
39 However, if the Department of Justice has determined that the
40 out-of-state crime, if committed or attempted in this state, would

1 have been punishable in this state as a crime described in
2 subparagraph (A) of paragraph (2) of subdivision (a) of Section
3 290, the person shall be placed on the Internet Web site as
4 provided in subdivision (b) or (c), as applicable to the crime.

5 (e) (1) If a person has been convicted of the commission or
6 the attempted commission of any of the offenses listed in this
7 subdivision, and he or she has been convicted of no other offense
8 listed in subdivision (b), (c), or (d) other than those listed in this
9 subdivision, that person may file an application with the
10 Department of Justice, on a form approved by the department, for
11 exclusion from the Internet Web site. If the department
12 determines that the person meets the requirements of this
13 subdivision, the department shall grant the exclusion and no
14 information concerning the person shall be made available via
15 the Internet Web site described in this section. He or she bears
16 the burden of proving the facts that make him or her eligible for
17 exclusion from the Internet Web site. However, a person who has
18 filed for or been granted an exclusion from the Internet Web site
19 is not relieved of his or her duty to register as a sex offender
20 pursuant to Section 290 nor from any otherwise applicable
21 provision of law.

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

23 (A) A felony violation of subdivision (a) of Section 243.4.

24 (B) Section 647.6, if the offense is a misdemeanor, and the
25 person has a risk assessment level of low or moderate low.

26 (C) (i) An offense for which the offender successfully
27 completed probation, provided that the offender submits to the
28 department a certified copy of a probation report, presentencing
29 report, report prepared pursuant to Section 288.1, or other official
30 court document that clearly demonstrates both of the following:

31 (I) The offender was the victim's parent, stepparent, sibling, or
32 grandparent.

33 (II) The crime did not involve either oral copulation or
34 penetration of the vagina or rectum of either the victim or the
35 offender by the penis of the other or by any foreign object.

36 (ii) An offense for which the offender is on probation at the
37 time of his or her application, provided that the offender submits
38 to the department a certified copy of a probation report,
39 presentencing report, report prepared pursuant to Section 288.1,

1 or other official court document that clearly demonstrates both of
2 the following:

3 (I) The offender was the victim's parent, stepparent, sibling, or
4 grandparent.

5 (II) The crime did not involve either oral copulation or
6 penetration of the vagina or rectum of either the victim or the
7 offender by the penis of the other or by any foreign object.

8 (iii) If, subsequent to his or her application, the offender
9 commits a violation of probation resulting in his or her
10 incarceration in county jail or state prison, his or her exclusion,
11 or application for exclusion, from the Internet Web site shall be
12 terminated.

13 (iv) For the purposes of this subparagraph, "successfully
14 completed probation" means that during the period of probation
15 the offender neither received additional county jail or state prison
16 time for a violation of probation nor was convicted of another
17 offense resulting in a sentence to county jail or state prison.

18 (3) If the department determines that a person who was
19 granted an exclusion under a former version of this subdivision
20 would not qualify for an exclusion under the current version of
21 this subdivision, the department shall rescind the exclusion, make
22 a reasonable effort to provide notification to the person that the
23 exclusion has been rescinded, and, no sooner than 30 days after
24 notification is attempted, make information about the offender
25 available to the public on the Internet Web site as provided in
26 this section.

27 (f) The Department of Justice shall make a reasonable effort to
28 provide notification to persons who have been convicted of the
29 commission or attempted commission of an offense specified in
30 subdivision (b), (c), or (d), that on or before July 1, 2005, the
31 department is required to make information about specified sex
32 offenders available to the public via an Internet Web site as
33 specified in this section. The Department of Justice shall also
34 make a reasonable effort to provide notice that some offenders
35 are eligible to apply for exclusion from the Internet Web site.

36 (g) (1) A designated law enforcement entity, as defined in
37 subdivision (f) of Section 290.45, may make available
38 information concerning persons who are required to register
39 pursuant to Section 290 to the public via an Internet Web site as
40 specified in paragraph (2).

(2) The law enforcement entity may make available by way of an Internet Web site the information described in subdivision (c) if it determines that the public disclosure of the information about a specific offender by way of the entity's Internet Web site is necessary to ensure the public safety based upon information available to the entity concerning that specific offender.

(3) The information that may be provided pursuant to this subdivision may include the information specified in subdivision (b) of Section 290.45. However, that offender's address may not be disclosed unless he or she is a person whose address is on the Department of Justice's Internet Web site pursuant to subdivision (b) or (c).

(h) For purposes of this section, "offense" includes the statutory predecessors of that offense, or any offense committed in another jurisdiction that, if committed or attempted to be committed in this state, would have been punishable in this state as an offense listed in subparagraph (A) of paragraph (2) of subdivision (a) of Section 290.

(i) Notwithstanding Section 6254.5 of the Government Code, disclosure of information pursuant to this section is not a waiver of exemptions under Chapter 3.5 (commencing with Section 6250) of Title 1 of Division 7 of the Government Code and does not affect other statutory restrictions on disclosure in other situations.

(j) (1) Any person who uses information disclosed pursuant to this section to commit a misdemeanor shall be subject to, in addition to any other penalty or fine imposed, a fine of not less than ten thousand dollars (\$10,000) and not more than fifty thousand dollars (\$50,000).

(2) Any person who uses information disclosed pursuant to this section to commit a felony shall be punished, in addition and consecutive to any other punishment, by a five-year term of imprisonment in the state prison.

(k) Any person who is required to register pursuant to Section 290 who enters an Internet Web site established pursuant to this section shall be punished by a fine not exceeding one thousand dollars (\$1,000), imprisonment in a county jail for a period not to exceed six months, or by both that fine and imprisonment.

(l) (1) A person is authorized to use information disclosed pursuant to this section only to protect a person at risk.

(2) Except as authorized under paragraph (1) or any other provision of law, use of any information that is disclosed pursuant to this section for purposes relating to any of the following is prohibited:

- (A) Health insurance.
- (B) Insurance.
- (C) Loans.
- (D) Credit.
- (E) Employment.
- (F) Education, scholarships, or fellowships.
- (G) Housing or accommodations.
- (H) Benefits, privileges, or services provided by any business establishment.

(3) This section shall not affect authorized access to, or use of, information pursuant to, among other provisions, Sections 11105 and 11105.3, Section 8808 of the Family Code, Sections 777.5 and 14409.2 of the Financial Code, Sections 1522.01 and 1596.871 of the Health and Safety Code, and Section 432.7 of the Labor Code.

(4) (A) Any use of information disclosed pursuant to this section for purposes other than those provided by paragraph (1) or in violation of paragraph (2) shall make the user liable for the actual damages, and any amount that may be determined by a jury or a court sitting without a jury, not exceeding three times the amount of actual damage, and not less than two hundred fifty dollars (\$250), and attorney's fees, exemplary damages, or a civil penalty not exceeding twenty-five thousand dollars (\$25,000).

(B) Whenever there is reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of misuse of the information available via an Internet Web site established pursuant to this section in violation of paragraph (2), the Attorney General, any district attorney, or city attorney, or any person aggrieved by the misuse is authorized to bring a civil action in the appropriate court requesting preventive relief, including an application for a permanent or temporary injunction, restraining order, or other order against the person or group of persons responsible for the pattern or practice of misuse. The foregoing remedies shall be independent of any other remedies or procedures that may be available to an aggrieved party under

1 other provisions of law, including Part 2 (commencing with
2 Section 43) of Division 1 of the Civil Code.

3 (m) The public notification provisions of this section are
4 applicable to every person described in this section, without
5 regard to when his or her crimes were committed or his or her
6 duty to register pursuant to Section 290 arose, and to every
7 offense described in this section, regardless of when it was
8 committed.

9 (n) On or before July 1, 2006, and every year thereafter, the
10 Department of Justice shall make a report to the Legislature
11 concerning the operation of this section.

12 (o) A designated law enforcement entity and its employees
13 shall be immune from liability for good faith conduct under this
14 section.

15 (p) The Attorney General, in collaboration with local law
16 enforcement and others knowledgeable about sex offenders, shall
17 develop strategies to assist members of the public in
18 understanding and using publicly available information about
19 registered sex offenders to further public safety. These strategies
20 may include, but are not limited to, a hotline for community
21 inquiries, neighborhood and business guidelines for how to
22 respond to information posted on this Web site, and any other
23 resource that promotes public education about these offenders.

24 ~~SEC. 21. Section 311 of the Penal Code is amended to read:~~

25 ~~311. As used in this chapter, the following definitions apply:~~

26 ~~(a) "Obscene matter" means matter, taken as a whole, that to~~
27 ~~the average person, applying contemporary statewide standards,~~
28 ~~appeals to the prurient interest, that, taken as a whole, depicts or~~
29 ~~describes sexual conduct in a patently offensive way, and that,~~
30 ~~taken as a whole, lacks serious literary, artistic, political, or~~
31 ~~scientific value.~~

32 ~~(1) If it appears from the nature of the matter or the~~
33 ~~circumstances of its dissemination, distribution, or exhibition that~~
34 ~~it is designed for clearly defined deviant sexual groups, the~~
35 ~~appeal of the matter shall be judged with reference to its intended~~
36 ~~recipient group.~~

37 ~~(2) In prosecutions under this chapter, if circumstances of~~
38 ~~production, presentation, sale, dissemination, distribution, or~~
39 ~~publicity indicate that matter is being commercially exploited by~~
40 ~~the defendant for the sake of its prurient appeal, this evidence is~~

1 probative with respect to the nature of the matter and may justify
2 the conclusion that the matter lacks serious literary, artistic,
3 political, or scientific value.

4 (3) In determining whether the matter taken as a whole lacks
5 serious literary, artistic, political, or scientific value in
6 description or representation of those matters, the fact that the
7 defendant knew that the matter depicts persons under 16 years of
8 age engaged in sexual conduct, as defined in this chapter, is a
9 factor that may be considered in making that determination.

10 (b) “Matter” means any representation of information, data, or
11 image, including any book, magazine, newspaper, or other
12 printed or written material, or any picture, drawing, photograph,
13 film, filmstrip, negative, slide, photocopy, videotape, video laser
14 disc, computer hardware, computer software, computer floppy
15 disc, data storage media, CD-ROM, or computer-generated
16 equipment, or any other computer-generated image, motion
17 picture, or other pictorial representation, or any statue or other
18 figure, or any recording, transcription, or mechanical, chemical,
19 or electrical reproduction, or any other article, equipment,
20 machine, or material. “Matter” also means live or recorded
21 telephone messages if transmitted, disseminated, or distributed as
22 part of a commercial transaction.

23 (c) “Person” means any individual, partnership, firm,
24 association, corporation, limited liability company, or other legal
25 entity.

26 (d) “Distribute” means transfer possession of, whether with or
27 without consideration.

28 (e) “Knowingly” means being aware of the character of the
29 matter or live conduct.

30 (f) “Exhibit” means show.

31 (g) “Obscene live conduct” means any physical human body
32 activity, whether performed or engaged in alone or with other
33 persons, including but not limited to singing, speaking, dancing,
34 acting, simulating, or pantomiming, taken as a whole, that to the
35 average person, applying contemporary statewide standards,
36 appeals to the prurient interest and is conduct that, taken as a
37 whole, depicts or describes sexual conduct in a patently offensive
38 way and that, taken as a whole, lacks serious literary, artistic,
39 political, or scientific value.

1 (1) ~~If it appears from the nature of the conduct or the~~
2 ~~circumstances of its production, presentation, or exhibition that it~~
3 ~~is designed for clearly defined deviant sexual groups, the appeal~~
4 ~~of the conduct shall be judged with reference to its intended~~
5 ~~recipient group.~~

6 (2) ~~In prosecutions under this chapter, if circumstances of~~
7 ~~production, presentation, advertising, or exhibition indicate that~~
8 ~~live conduct is being commercially exploited by the defendant~~
9 ~~for the sake of its prurient appeal, that evidence is probative with~~
10 ~~respect to the nature of the conduct and may justify the~~
11 ~~conclusion that the conduct lacks serious literary, artistic,~~
12 ~~political, or scientific value.~~

13 (3) ~~In determining whether the live conduct taken as a whole~~
14 ~~lacks serious literary, artistic, political, or scientific value in~~
15 ~~description or representation of those matters, the fact that the~~
16 ~~defendant knew that the live conduct depicts persons under 16~~
17 ~~years of age engaged in sexual conduct, as defined in this~~
18 ~~chapter, is a factor that may be considered in making that~~
19 ~~determination.~~

20 (h) ~~“Sexual conduct” means any of the following, whether~~
21 ~~actual or simulated:~~

22 (1) ~~Sexual intercourse, including genital-genital, oral-genital,~~
23 ~~anal-genital, or oral-anal, whether between persons of the same~~
24 ~~or opposite sex, or between humans and animals.~~

25 (2) ~~Penetration of the vagina or rectum by any object.~~

26 (3) ~~Masturbation for the purpose of sexual stimulation of the~~
27 ~~viewer.~~

28 (4) ~~Sadomasochistic abuse for the purpose of sexual~~
29 ~~stimulation of the viewer.~~

30 (5) ~~Exhibition of the genitals or the pubic or rectal area, of any~~
31 ~~person for the purpose of sexual stimulation of the viewer.~~

32 (6) ~~Defecation or urination for the purpose of sexual~~
33 ~~stimulation of the viewer.~~

34 (7) ~~Any lewd or lascivious sexual act as defined in Section~~
35 ~~288.~~

36 (i) ~~“Simulated” means any act that gives the appearance of~~
37 ~~being sexual conduct.~~

38 SEC. 22. ~~Section 311.1 of the Penal Code is amended to read:~~

39 311.1. ~~Every person who knowingly sends or causes to be~~
40 ~~sent, or brings or causes to be brought, into this state for sale or~~

1 ~~distribution, or in this state possesses, prepares, publishes,~~
2 ~~produces, develops, duplicates, or prints any obscene matter,~~
3 ~~with intent to distribute or to exhibit to, or to exchange with,~~
4 ~~others, or who offers to distribute, distributes, or exhibits to, or~~
5 ~~exchanges with, others, that matter, knowing that the matter~~
6 ~~depicts a person under 18 years of age engaged in an act of~~
7 ~~sexual conduct, shall be punished by imprisonment in the state~~
8 ~~prison.~~

9 SEC. 23. Section 311.2 of the Penal Code is amended to read:

10 311.2. (a) Every person who knowingly sends or causes to be
11 sent, or brings or causes to be brought, into this state for sale or
12 distribution, ~~or in this state possesses, prepares, publishes,~~
13 ~~produces, or prints, with intent to distribute or to exhibit to~~
14 ~~others, or who offers to distribute, distributes, or exhibits to~~
15 ~~others, any obscene matter is, for a first offense, guilty of a~~
16 ~~misdemeanor, punishable by imprisonment in a county jail and a~~
17 ~~fine of up to five thousand dollars (\$5,000). If the person has~~
18 ~~previously been convicted of any violation of this section, the~~
19 ~~person is guilty of a felony, punishable by imprisonment in the~~
20 ~~state prison and a fine of up to fifty thousand dollars (\$50,000).~~

21 (b) ~~Every person who knowingly sends or causes to be sent, or~~
22 ~~brings or causes to be brought, into this state for sale or~~
23 ~~distribution, or in this state possesses, prepares, publishes,~~
24 ~~produces, develops, duplicates, or prints any obscene matter,~~
25 ~~knowing that the matter depicts a person under 18 years of age~~
26 ~~engaged in an act of sexual conduct, with intent to distribute or to~~
27 ~~exhibit to, or to exchange with, others for commercial~~
28 ~~consideration, or who offers to distribute, distributes, or exhibits~~
29 ~~to, or exchanges with, others for commercial consideration, any~~
30 ~~obscene matter, knowing that the matter depicts a person under~~
31 ~~18 years of age engaged in an act of sexual conduct, is guilty of a~~
32 ~~felony and shall be punished by imprisonment in the state prison~~
33 ~~for two, three, or six years, or by a fine not exceeding one~~
34 ~~hundred thousand dollars (\$100,000), in the absence of a finding~~
35 ~~that the defendant would be incapable of paying such a fine, or~~
36 ~~by both that fine and imprisonment.~~

37 SEC. 24. Section 311.3 of the Penal Code is amended to read:

38 311.3. (a) A person is guilty of sexual exploitation of a child
39 if he or she knowingly develops, duplicates, prints, or exchanges

1 any matter that depicts a person under 18 years of age engaged in
2 an act of sexual conduct.

3 ~~(b) Every person who violates subdivision (a) shall be~~
4 ~~punished by a fine of not more than two thousand dollars~~
5 ~~(\$2,000) or by imprisonment in a county jail for not more than~~
6 ~~one year, or by both that fine and imprisonment. If the person has~~
7 ~~been previously convicted of a violation of subdivision (a) or any~~
8 ~~section of this chapter, he or she shall be punished by~~
9 ~~imprisonment in the state prison.~~

10 ~~(c) Subdivision (a) does not apply to matter that is unsolicited~~
11 ~~and is received without knowledge or consent through a facility,~~
12 ~~system, or network over which the person or entity has no~~
13 ~~control.~~

14 SEC. 25. Section 311.4 of the Penal Code is amended to read:

15 311.4. (a) Every person who, with knowledge that a person is
16 a minor, or who, while in possession of any facts on the basis of
17 which he or she should reasonably know that the person is a
18 minor, hires, employs, or uses the minor to do or assist in doing
19 any of the acts described in Section 311.2, is, for a first offense,
20 guilty of a misdemeanor. If the person has previously been
21 convicted of any violation of this subdivision, or of a violation of
22 Section 311.11, the person is guilty of a felony and is subject to a
23 fine not exceeding fifty thousand dollars (\$50,000).

24 ~~(b) Every person who, with knowledge that a person is a minor~~
25 ~~under the age of 18 years, or who, while in possession of any~~
26 ~~facts on the basis of which he or she should reasonably know that~~
27 ~~the person is a minor under 18 years of age, knowingly promotes,~~
28 ~~employs, uses, persuades, induces, or coerces a minor under 18~~
29 ~~years of age, or any parent or guardian of a minor under 18 years~~
30 ~~of age under his or her control who knowingly permits the minor,~~
31 ~~to engage in or assist others to engage in either posing or~~
32 ~~modeling alone or with others for purposes of preparing any~~
33 ~~matter, or a live performance involving, sexual conduct by a~~
34 ~~minor under 18 years of age alone or with other persons or~~
35 ~~animals, for commercial purposes, is guilty of a felony and shall~~
36 ~~be punished by imprisonment in the state prison for three, six, or~~
37 ~~eight years.~~

38 ~~(c) Every person who, with knowledge that a person is a minor~~
39 ~~under 18 years of age, or who, while in possession of any facts~~
40 ~~on the basis of which he or she should reasonably know that the~~

1 person is a minor under 18 years of age, knowingly promotes,
2 employs, uses, persuades, induces, or coerces a minor under 18
3 years of age, or any parent or guardian of a minor under 18 years
4 of age under his or her control who knowingly permits the minor
5 to engage in or assist others to engage in either posing or
6 modeling alone or with others for purposes of preparing any
7 matter, or a live performance involving, sexual conduct by a
8 minor under 18 years of age alone or with other persons or
9 animals, is guilty of a felony, punishable by imprisonment in the
10 state prison for 2, 3, or 4 years. It is not necessary to prove
11 commercial purposes in order to establish a violation of this
12 subdivision. Prosecution under this section shall not preclude
13 prosecution under any other provision of law, including, but not
14 limited to, provisions that prohibit human trafficking.

15 (d) In every prosecution under this section involving a minor
16 under 14 years of age at the time of the offense, the age of the
17 victim shall be pled and proven for the purpose of the enhanced
18 penalty provided in Section 647.6. Failure to plead and prove that
19 the victim was under 14 years of age at the time of the offense is
20 not a bar to prosecution under this section if it is proven that the
21 victim was under 18 years of age at the time of the offense.

22 SEC. 26. Section 311.5 of the Penal Code is amended to read:

23 311.5. Every person who writes, creates, or solicits the
24 publication or distribution of advertising or other promotional
25 material, or who in any manner promotes, the sale, distribution,
26 or exhibition of matter represented or held out by him or her to
27 be obscene, is guilty of a misdemeanor, punishable by
28 imprisonment in the county jail for up to one year, a fine of up to
29 five thousand dollars (\$5,000), or both. If the person has
30 previously been convicted of any offense in this chapter, except
31 subdivision (b) of Section 311.2, or of a violation of Section
32 313.1, the person shall be punished by imprisonment in the state
33 prison.

34 SEC. 27. Section 311.7 of the Penal Code is amended to read:

35 311.7. (a) Every person who, knowingly, as a condition to a
36 sale, allocation, consignment, or delivery for resale of any paper,
37 magazine, book, periodical, publication or other merchandise,
38 requires that the purchaser or consignee receive any obscene
39 matter or who denies or threatens to deny a franchise, revokes or
40 threatens to revoke, or imposes any penalty, financial or

1 otherwise, by reason of the failure of any person to accept
2 obscene matter, or by reason of the return of that matter, is guilty
3 of a misdemeanor.

4 (b) Every person who violates this section is punishable by
5 fine of not more than one thousand dollars (\$1,000) or by
6 imprisonment in a county jail for not more than six months, or by
7 both a fine and imprisonment. For a second or subsequent
8 offense he or she shall be punished by a fine of not more than
9 two thousand dollars (\$2,000), by imprisonment in a county jail
10 for not more than one year, or by both a fine and imprisonment.
11 If the person has twice been convicted of a violation of this
12 chapter, subsequent violation of this section shall be punishable
13 as a felony.

14 SEC. 28. Section 311.8 of the Penal Code is amended to read:

15 311.8. (a) It shall be a defense in any prosecution for a
16 violation of this chapter that the act charged was committed in
17 aid of legitimate medical, scientific, or educational activities, or
18 during lawful conduct between spouses when one or both are
19 under 18 years of age, or that the matter depicts a child under 18
20 years of age if that child is legally emancipated.

21 (b) This chapter does not apply to the activities of law
22 enforcement and prosecuting agencies in the investigation and
23 prosecution of criminal offenses.

24 (c) This chapter does not apply to an employee of a
25 commercial film developer who is acting within the scope of his
26 or her employment and in accordance with the instructions of his
27 or her employer, provided that the employee has no financial
28 interest in the commercial developer by whom he or she is
29 employed.

30 (d) This chapter does not apply to matter that is unsolicited
31 and is received without knowledge or consent through a facility,
32 system or network over which the person or entity has no control.

33 (e) It does not constitute a violation of this chapter for a
34 telephone corporation, as defined by Section 234 of the Public
35 Utilities Code, to carry or transmit messages described in this
36 chapter or perform related activities in providing telephone
37 services.

38 (f) It shall be a defense in any prosecution for a violation of
39 this chapter by a person who knowingly distributed any obscene
40 matter by the use of telephones or telephone facilities to any

1 person under 18 years of age that the defendant has taken either
2 of the following measures to restrict access to the obscene matter
3 by persons under 18 years of age:

4 (1) Required the person receiving the obscene matter to use an
5 authorized access or identification code, as provided by the
6 information provider, before transmission of the obscene matter
7 begins, where the defendant has previously issued the code by
8 mailing it to the applicant therefor after taking reasonable
9 measures to ascertain that the applicant was 18 years of age or
10 older and has established a procedure to immediately cancel the
11 code of any person after receiving notice, in writing or by
12 telephone, that the code has been lost, stolen, or used by persons
13 under 18 years of age or that the code is no longer desired.

14 (2) Required payment by credit card before transmission of the
15 matter.

16 (g) Any list of applicants or recipients compiled or maintained
17 by an information access service provider for purposes of
18 compliance with subdivision (f) is confidential and shall not be
19 sold or otherwise disseminated except upon order of the court.

20 SEC. 29. Section 311.9 of the Penal Code is repealed.

21 SEC. 30. Section 311.10 of the Penal Code is amended to
22 read:

23 311.10. Any person who advertises for sale or distribution
24 any obscene matter knowing that it depicts a person under 18
25 years of age engaged in an act of sexual conduct, is guilty of a
26 felony and is punishable by imprisonment in the state prison for
27 two, three, or four years, or in a county jail not exceeding one
28 year, or by a fine not exceeding fifty thousand dollars (\$50,000),
29 or by both that fine and imprisonment.

30 SEC. 31. Section 311.11 of the Penal Code is amended to
31 read:

32 311.11. (a) Every person who knowingly possesses or
33 controls any matter, knowing that the matter depicts a person
34 under 18 years of age personally engaging in or simulating
35 sexual conduct, is guilty of a crime. The specific offenses,
36 penalties and additional definitions applicable to this section are
37 described in the following paragraphs. If the offense includes an
38 element that the child is under a specified age, it is an element of
39 the crime that the person knew the age of the child.

1 ~~(1) If the matter depicts a child under 16 years of age, the~~
2 ~~person may be charged with either a misdemeanor or felony. If~~
3 ~~the matter depicts a child under 16 years of age engaging in~~
4 ~~explicit sexual conduct, the crime is a felony.~~

5 ~~(2) If the matter depicts a child of 16 or 17 years of age, the~~
6 ~~person is guilty of a misdemeanor. If the matter depicts a child~~
7 ~~who is 16 or 17 years of age engaging in explicit sexual conduct,~~
8 ~~the crime may be charged as a misdemeanor or felony.~~

9 ~~(b) For purposes of this section, “explicit sexual conduct”~~
10 ~~means any of the following, whether actual or simulated: sexual~~
11 ~~intercourse, oral copulation, anal intercourse, anal-oral~~
12 ~~copulation, masturbation on bare skin, bestiality, sexual sadism,~~
13 ~~sexual masochism, penetration of the vagina or rectum by any~~
14 ~~object in a lewd or lascivious manner, graphic and explicit~~
15 ~~display of the genitals or pubic or rectal area of an overtly sexual~~
16 ~~character, or excretory functions performed in a lewd or~~
17 ~~lascivious manner, whether or not any of the above conduct is~~
18 ~~performed alone or between members of the same or opposite~~
19 ~~sex or between humans and animals.~~

20 ~~(c) As used in this chapter, “matter that depicts a person under~~
21 ~~18 years of age personally engaging in or personally simulating~~
22 ~~sexual conduct” is limited to visual works that depict that~~
23 ~~conduct.~~

24 ~~(d) Every person who commits a violation of subdivision (a)~~
25 ~~and who has been previously convicted of a violation of this~~
26 ~~section, of an offense described in subparagraph (A) of paragraph~~
27 ~~(2) of subdivision (a) of Section 290, any offense for which he or~~
28 ~~she was required to register pursuant to Section 290, a violation~~
29 ~~of subdivision (b) or (d) of Section 311.2, subdivision (b) or (c)~~
30 ~~of Section 311.4, or an attempt to commit any of those offenses,~~
31 ~~or any person who has been found to be a sexually violent~~
32 ~~predator pursuant to Article 4 (commencing with Section 6600)~~
33 ~~of Chapter 2 of Part 2 of Division 6 of the Welfare and~~
34 ~~Institutions Code, is guilty of a felony and shall be punished by~~
35 ~~imprisonment for two, four, or six years.~~

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

38 ~~(f) This section does not apply to drawings, figurines, statues,~~
39 ~~or any film rated by the Motion Picture Association of America,~~
40 ~~nor does it apply to live or recorded telephone messages when~~

1 transmitted, disseminated, or distributed as part of a commercial
2 transaction.

3 SEC. 32. Section 311.12 is added to the Penal Code, to read:

4 311.12. Every person who knowingly sends or causes to be
5 sent, or brings or causes to be brought, into this state for sale or
6 distribution, or distributes, exhibits, exchanges, possesses,
7 prepares, publishes, produces, develops, duplicates, or prints, any
8 matter, or has the intent to distribute, exhibit, or exchange that
9 matter with another person, is guilty of an offense as specified in
10 this section.

11 (a) If the matter depicts a child under 16 years of age engaged
12 in sexual conduct, the crime is a felony. If the matter depicts a
13 child under 16 years of age engaged in explicit sexual conduct, as
14 defined in subdivision (d) of Section 311.11, the person is
15 punishable by incarceration in the state prison for two, three, or
16 four years.

17 (b) If the matter depicts a child who is 16 or 17 years of age,
18 the crime may be charged as a misdemeanor or felony. If the
19 matter depicts a child who is 16 or 17 years of age engaged in
20 explicit sexual conduct, the crime is a felony.

21 (c) If the person convicted of a violation of this section is
22 required to register as a sex offender pursuant to Section 290,
23 regardless of the age of the victim, the person shall be punished
24 by imprisonment in the state prison for three, six, or eight years.

25 SEC. 33. Section 311.13 is added to the Penal Code, to read:

26 311.13. Any monetary assets gained from the production,
27 publication, sale, distribution, exchange, or control of any matter
28 that depicts a minor under 18 years of age that is unlawful
29 pursuant to Section 311.1, 311.2, 311.3, 311.4, 311.5, 311.10,
30 311.11, or 311.12, is subject to forfeiture, upon conviction for a
31 violation of one of those sections. Upon petition by the
32 prosecuting attorney, at any time following sentencing for a
33 violation of one of those sections, the court shall conduct a
34 hearing to determine the amount of monetary assets that are
35 subject to forfeiture. The Civil Discovery Act of 1986 (Article 3
36 (commencing with Section 2016) of Chapter 3 of Title 3 of Part
37 4 of the Code of Civil Procedure) applies to that hearing.

38 SEC. 34. Section 312.1 of the Penal Code is amended to read:

39 312.1. (a) In any prosecution for a violation of the provisions
40 of this chapter or of Chapter 7.6 (commencing with Section 313),

1 neither the prosecution nor the defense shall be required to
2 introduce expert witness testimony concerning the obscene or
3 harmful character of the matter or live conduct which is the
4 subject of the prosecution.

5 (b) Any evidence which tends to establish contemporary
6 community standards of appeal to prurient interest or of
7 customary limits of candor in the description or representation of
8 nudity, sex, or excretion, or which bears upon the question of
9 significant literary, artistic, political, educational, or scientific
10 value shall, subject to the provisions of the Evidence Code, be
11 admissible when offered by either the prosecution or by the
12 defense.

13 SEC. 31. Section 311.11 of the Penal Code is amended to
14 read:

15 311.11. (a) Every person who knowingly possesses or
16 controls any matter, knowing that the matter depicts a person
17 under 18 years of age personally engaging in or simulating
18 sexual conduct, is guilty of a crime. The specific offenses,
19 penalties and additional definitions applicable to this section are
20 described in the following paragraphs. If the offense includes an
21 element that the child is under a specified age, it is an element of
22 the crime that the person knew the age of the child.

23 (1) If the matter depicts a child under 16 years of age, the
24 person may be charged with either a misdemeanor or felony. If
25 the matter depicts a child under 16 years of age engaging in
26 explicit sexual conduct, the crime is a felony.

27 (2) If the matter depicts a child of 16 or 17 years of age, the
28 person is guilty of a misdemeanor. If the matter depicts a child
29 who is 16 or 17 years of age engaging in explicit sexual conduct,
30 the crime may be charged as a misdemeanor or felony.

31 (b) For purposes of this section, "explicit sexual conduct"
32 means any of the following, whether actual or simulated: sexual
33 intercourse, oral copulation, anal intercourse, anal-oral
34 copulation, masturbation on bare skin, bestiality, sexual sadism,
35 sexual masochism, penetration of the vagina or rectum by any
36 object in a lewd or lascivious manner, graphic and explicit
37 display of the genitals or pubic or rectal area of an overtly sexual
38 character, or excretory functions performed in a lewd or
39 lascivious manner, whether or not any of the above conduct is

1 performed alone or between members of the same or opposite
2 sex or between humans and animals.

3 (c) As used in this chapter, “matter that depicts a person under
4 18 years of age personally engaging in or personally simulating
5 sexual conduct” is limited to visual works that depict that
6 conduct.

7 (d) Every person who commits a violation of subdivision (a)
8 and who has been previously convicted of a violation of this
9 section, of an offense described in subparagraph (A) of paragraph
10 (2) of subdivision (a) of Section 290, any offense for which he or
11 she was required to register pursuant to Section 290, a violation
12 of subdivision (b) or (d) of Section 311.2, subdivision (b) or (c)
13 of Section 311.4, or an attempt to commit any of those offenses,
14 or any person who has been found to be a sexually violent
15 predator pursuant to Article 4 (commencing with Section 6600)
16 of Chapter 2 of Part 2 of Division 6 of the Welfare and
17 Institutions Code, is guilty of a felony and shall be punished by
18 imprisonment for two, four, or six years.

19 (e) It is not necessary to prove that the matter is obscene in
20 order to establish a violation of this section.

21 (f) This section does not apply to drawings, figurines, statues,
22 or any film rated by the Motion Picture Association of America;
23 nor does it apply to live or recorded telephone messages when
24 transmitted, disseminated, or distributed as part of a commercial
25 transaction.

26 SEC. 32. Section 311.12 is added to the Penal Code, to read:

27 311.12. Every person who knowingly sends or causes to be
28 sent, or brings or causes to be brought, into this state for sale or
29 distribution, or distributes, exhibits, exchanges, possesses,
30 prepares, publishes, produces, develops, duplicates, or prints, any
31 matter, or has the intent to distribute, exhibit, or exchange that
32 matter with another person, is guilty of an offense as specified in
33 this section.

34 (a) If the matter depicts a child under 16 years of age engaged
35 in sexual conduct, the crime is a felony. If the matter depicts a
36 child under 16 years of age engaged in explicit sexual conduct, as
37 defined in subdivision (d) of Section 311.11, the person is
38 punishable by incarceration in the state prison for two, three, or
39 four years.

1 (b) If the matter depicts a child who is 16 or 17 years of age,
2 the crime may be charged as a misdemeanor or felony. If the
3 matter depicts a child who is 16 or 17 years of age engaged in
4 explicit sexual conduct, the crime is a felony.

5 (c) If the person convicted of a violation of this section is
6 required to register as a sex offender pursuant to Section 290,
7 regardless of the age of the victim, the person shall be punished
8 by imprisonment in the state prison for three, six, or eight years.

9 SEC. 33. Section 311.13 is added to the Penal Code, to read:

10 311.13. Any monetary assets gained from the production,
11 publication, sale, distribution, exchange, or control of any matter
12 that depicts a minor under 18 years of age that is unlawful
13 pursuant to Section 311.1, 311.2, 311.3, 311.4, 311.5, 311.10,
14 311.11, or 311.12, is subject to forfeiture, upon conviction for a
15 violation of one of those sections. Upon petition by the
16 prosecuting attorney, at any time following sentencing for a
17 violation of one of those sections, the court shall conduct a
18 hearing to determine the amount of monetary assets that are
19 subject to forfeiture. The Civil Discovery Act of 1986 (Article 3
20 (commencing with Section 2016) of Chapter 3 of Title 3 of Part
21 4 of the Code of Civil Procedure) applies to that hearing.

22 SEC. 34. Section 312.1 of the Penal Code is amended to read:

23 312.1. (a) In any prosecution for a violation of the provisions
24 of this chapter or of Chapter 7.6 (commencing with Section 313),
25 neither the prosecution nor the defense shall be required to
26 introduce expert witness testimony concerning the obscene or
27 harmful character of the matter or live conduct which is the
28 subject of the prosecution.

29 (b) Any evidence which tends to establish contemporary
30 community standards of appeal to prurient interest or of
31 customary limits of candor in the description or representation of
32 nudity, sex, or excretion, or which bears upon the question of
33 significant literary, artistic, political, educational, or scientific
34 value shall, subject to the provisions of the Evidence Code, be
35 admissible when offered by either the prosecution or by the
36 defense.

37 SEC. 21. Chapter 7.5 (commencing with Section 311) of Title
38 9 of Part 1 of the Penal Code is repealed.

39 SEC. 22. Chapter 7.5 (commencing with Section 311) is
40 added to Title 9 of Part 1 of the Penal Code, to read:

CHAPTER 7.5. CHILD PORNOGRAPHY

311. For purposes of this chapter, the following definitions apply:

(a) “Matter” means any picture, drawing, photograph, film, filmstrip, negative, slide, photocopy, videotape, video laser disc, computer hardware, computer software, computer floppy disc, data storage media, CD-ROM, or computer-generated equipment, or any other computer-generated image, motion picture, or other pictorial representation, or any statue or other figure, or any recording, transcription, or mechanical, chemical, or electrical reproduction, or any other article, equipment, machine, or material.

(b) “Person” means any individual, partnership, firm, association, corporation, limited liability company, or other legal entity.

(c) “Distribute” means transfer possession of, whether with or without consideration.

(d) “Knowingly” means being aware of the character of the matter or live conduct.

(e) “Exhibit” means show.

(f) “Matter that depicts a person under 18 years of age personally engaging in or personally simulating sexual conduct” is limited to visual works that depict that conduct.

(g) “Sexual conduct” means any of the following, whether actual or simulated:

(1) Sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex, or between humans and animals.

(2) Penetration of the vagina or rectum by any object.

(3) Sadomasochistic abuse for the purpose of sexual stimulation of the viewer.

(4) Exhibition of the genitals or the pubic or rectal area of any person for the purpose of sexual stimulation of the viewer.

(5) Defecation or urination for the purpose of sexual stimulation of the viewer.

(6) Any lewd or lascivious sexual act, as defined in Section 288.

(7) Masturbation for the purpose of sexual stimulation of the viewer.

(h) “Explicit sexual conduct” means any of the conduct described in subparagraphs (1) through (3) of subdivision (g), masturbation on bare skin, bestiality, graphic and explicit display of the genitals or pubic or rectal area of an overtly sexual character, or excretory functions performed in a lewd or lascivious manner, whether or not any of the above conduct is performed alone or between members of the same or opposite sex or between humans and animals.

(i) “Simulated” means any act that gives the appearance of being sexual conduct.

311.1. (a) Any person who knows or reasonably should know that a person is a minor under 18 years of age, who knowingly promotes, employs, uses, persuades, induces, or coerces the minor, or any parent or guardian of a minor under his or her control who knowingly permits the minor, to engage in or assist others to engage in either posing or modeling alone or with others for purposes of preparing any matter, or a live performance involving, sexual conduct by the minor alone or with other persons or animals, for commercial purposes, is guilty of a felony and shall be punished by imprisonment in the state prison for three, six, or eight years. Where the crime does not involve commercial consideration, the defendant shall be punished in state prison for two, three, or four years. Commercial consideration may include barter or exchange.

(b) In every prosecution under this section involving a minor under 14 years of age at the time of the offense, the age of the victim shall be pled and proven for the purpose of the enhanced penalty provided in Section 647.6. Failure to plead and prove that the victim was under 14 years of age at the time of the offense is not a bar to prosecution under this section if it is proven that the victim was under 18 years of age at the time of the offense.

311.2. (a) Any person who knowingly possesses or controls any matter, personally engaging in or simulating sexual conduct, as defined in this chapter, is guilty of a crime. The specific offenses, penalties and additional definitions applicable to this section are described in the following paragraphs. It is an element of each offense described in this section that the defendant knew or should have known that the child depicted is under the age specified in the definition of each particular crime.

1 (1) If the matter depicts a child under 16 years of age, the
2 person may be charged with either a misdemeanor or felony. If
3 the matter depicts a child under 16 years of age engaging in
4 explicit sexual conduct, the crime is a felony.

5 (2) If the matter depicts a child of 16 or 17 years of age, the
6 person is guilty of a misdemeanor. If the matter depicts a child
7 who is 16 or 17 years of age engaging in explicit sexual conduct,
8 the crime may be charged as a misdemeanor or felony.

9 (b) Any person who commits a violation of subdivision (a) and
10 who has been previously convicted of a violation of this section,
11 of an offense described in subparagraph (A) of paragraph (2) of
12 subdivision (a) of Section 290, any offense for which he or she
13 was required to register pursuant to Section 290, of a violation of
14 Section 311.1, or of subdivision (b) or (d) of former Section
15 311.2, Section 311.3, subdivision (b) or (c) of former Section
16 311.4, or of an attempt to commit any of those offenses, or any
17 person who has been found to be a sexually violent predator
18 pursuant to Article 4 (commencing with Section 6600) of Chapter
19 2 of Part 2 of Division 6 of the Welfare and Institutions Code, is
20 guilty of a felony and shall be punished by imprisonment for two,
21 four, or six years.

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

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

26 311.3. Any person who knowingly sends or causes to be sent,
27 or brings or causes to be brought, into this state for sale or
28 distribution, or distributes, exhibits, exchanges, possesses,
29 prepares, publishes, produces, develops, duplicates, or prints,
30 any matter, or has the intent to distribute, exhibit, or exchange
31 that matter with another person, is guilty of an offense as
32 specified in this section. It is an element of each offense
33 described in this section that the defendant knew or should have
34 known that the child depicted is under the age specified in the
35 definition of each particular crime.

36 (a) If the matter depicts a child who is under 16 years of age
37 engaged in sexual conduct, the crime is a felony. If the matter
38 depicts a child under 16 years of age engaged in explicit sexual
39 conduct, as defined in subdivision (h) of Section 311, the person

1 is punishable by incarceration in the state prison for two, three,
2 or four years.

3 (b) If the matter depicts a child who is 16 or 17 years of age,
4 the crime may be charged as a misdemeanor or felony. If the
5 matter depicts a child who is 16 or 17 years of age engaged in
6 explicit sexual conduct, the crime is a felony.

7 (c) If the person convicted of a violation of this section is
8 required to register as a sex offender pursuant to Section 290,
9 regardless of the age of the victim, the person shall be punished
10 by imprisonment in the state prison for three, six, or eight years.

11 (d) For purposes of this section, distribution, exchange,
12 exhibition and related conduct can be accomplished by means
13 that include, but are not limited to, postal delivery, delivery or
14 shipping services, personal transport, electronic mail; the
15 Internet, as defined in paragraph (6) of subdivision (f) of Section
16 17538 of the Business and Professions Code; a commercial
17 online service; or peer to peer file sharing, or any equivalent
18 means or manner.

19 311.4. Any monetary assets gained from the production,
20 publication, sale, distribution, exchange, or control of any matter
21 that depicts a minor under 18 years of age that is unlawful
22 pursuant to this chapter is subject to forfeiture, upon conviction
23 for a violation of one of those sections. Upon petition by the
24 prosecuting attorney, at any time following sentencing for a
25 violation of one of those sections, the court shall conduct a
26 hearing to determine the amount of monetary assets that are
27 subject to forfeiture. The Civil Discovery Act of 1986 (Article 3
28 (commencing with Section 2016) of Chapter 3 of Title 3 of Part 4
29 of the Code of Civil Procedure) applies to that hearing.

30 311.5. When a conviction under this chapter becomes final,
31 the court shall order any matter that is the subject of the
32 conviction which remains in the possession or under the control
33 of the district attorney or any law enforcement agency, to be
34 destroyed, and the court shall also cause any such material in its
35 possession or under its control to be destroyed.

36 311.6. (a) It shall be a defense in any prosecution for a
37 violation of this chapter that the act charged was committed in
38 aid of legitimate medical, scientific, or educational activities, or
39 during lawful conduct between spouses when one or both are

1 under 18 years of age, or that the matter depicts a child under 18
2 years of age if that child is legally emancipated.

3 (b) This chapter does not apply to the activities of law
4 enforcement and prosecuting agencies in the investigation and
5 prosecution of criminal offenses.

6 (c) An employee of a commercial film developer, Internet
7 service provider or equivalent or similar entity who is acting
8 within the scope of his or her employment and in accordance
9 with the instructions of his or her employer, is not guilty of the
10 crime described in Section 311.3 if the employee has no financial
11 interest in the commercial developer by whom he or she is
12 employed. A person is not in possession of material described in
13 this chapter if the person held the material through acts done
14 within the scope of his or her employment and took no action to
15 exercise personal dominion and control over the material.

16 (d) Sections 311.2 and 311.3 do not do not apply to matter that
17 is unsolicited and is received without knowledge or consent
18 through a facility, system, or network over which the person or
19 entity has no control, unless the person intentionally exerts
20 dominion and control over the matter, or the person intentionally
21 commits any act described in one of those sections.

22 311.7. Any act described in any section of this chapter that is
23 committed on a separate occasion or is committed such that the
24 person had time to reflect on his or her conduct may be
25 separately charged and punished.

26 SEC. 23. Chapter 7.55 (commencing with Section 312) is
27 added to Title 9 of Part 1 of the Penal Code, to read:

28
29 *CHAPTER 7.55. OBSCENITY*
30

31 312. As used in this chapter, the following definitions apply:

32 (a) "Obscene matter" means matter, taken as a whole, that to
33 the average person, applying contemporary statewide standards,
34 appeals to the prurient interest, that, taken as a whole, depicts or
35 describes sexual conduct in a patently offensive way, and that,
36 taken as a whole, lacks serious literary, artistic, political, or
37 scientific value.

38 (1) If it appears from the nature of the matter or the
39 circumstances of its dissemination, distribution, or exhibition
40 that it is designed for clearly defined deviant sexual groups, the

1 *appeal of the matter shall be judged with reference to its*
2 *intended recipient group.*

3 *(2) In prosecutions under this chapter, if circumstances of*
4 *production, presentation, sale, dissemination, distribution, or*
5 *publicity indicate that matter is being commercially exploited by*
6 *the defendant for the sake of its prurient appeal, this evidence is*
7 *probative with respect to the nature of the matter and may justify*
8 *the conclusion that the matter lacks serious literary, artistic,*
9 *political, or scientific value.*

10 *(3) In determining whether the matter taken as a whole lacks*
11 *serious literary, artistic, political, or scientific value in*
12 *description or representation of those matters, the fact that the*
13 *defendant knew that the matter depicts persons under 16 years of*
14 *age engaged in sexual conduct, as defined in this chapter, is a*
15 *factor that may be considered in making that determination.*

16 *(b) “Matter” means any representation of information, data,*
17 *or image, including any book, magazine, newspaper, or other*
18 *printed or written material, or any picture, drawing, photograph,*
19 *film, filmstrip, negative, slide, photocopy, videotape, video laser*
20 *disc, computer hardware, computer software, computer floppy*
21 *disc, data storage media, CD-ROM, or computer-generated*
22 *equipment, or any other computer-generated image, motion*
23 *picture, or other pictorial representation, or any statue or other*
24 *figure, or any recording, transcription, or mechanical, chemical,*
25 *or electrical reproduction, or any other article, equipment,*
26 *machine, or material. “Matter” also means live or recorded*
27 *telephone messages if transmitted, disseminated, or distributed*
28 *as part of a commercial transaction.*

29 *(c) “Person” means any individual, partnership, firm,*
30 *association, corporation, limited liability company, or other*
31 *legal entity.*

32 *(d) “Distribute” means transfer possession of, whether with or*
33 *without consideration.*

34 *(e) “Knowingly” means being aware of the character of the*
35 *matter or live conduct.*

36 *(f) “Exhibit” means show.*

37 *(g) “Obscene live conduct” means any physical human body*
38 *activity, whether performed or engaged in alone or with other*
39 *persons, including but not limited to singing, speaking, dancing,*
40 *acting, simulating, or pantomiming, taken as a whole, that to the*

average person, applying contemporary statewide standards, appeals to the prurient interest and is conduct that, taken as a whole, depicts or describes sexual conduct in a patently offensive way and that, taken as a whole, lacks serious literary, artistic, political, or scientific value.

(1) If it appears from the nature of the conduct or the circumstances of its production, presentation, or exhibition that it is designed for clearly defined deviant sexual groups, the appeal of the conduct shall be judged with reference to its intended recipient group.

(2) In prosecutions under this chapter, if circumstances of production, presentation, advertising, or exhibition indicate that live conduct is being commercially exploited by the defendant for the sake of its prurient appeal, that evidence is probative with respect to the nature of the conduct and may justify the conclusion that the conduct lacks serious literary, artistic, political, or scientific value.

(3) In determining whether the live conduct taken as a whole lacks serious literary, artistic, political, or scientific value in description or representation of those matters, the fact that the defendant knew that the live conduct depicts persons under 16 years of age engaged in sexual conduct, as defined in this chapter, is a factor that may be considered in making that determination.

(h) “Sexual conduct” means any of the following, whether actual or simulated:

(1) Sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex, or between humans and animals.

(2) Penetration of the vagina or rectum by any object.

(3) Masturbation for the purpose of sexual stimulation of the viewer.

(4) Sadomasochistic abuse for the purpose of sexual stimulation of the viewer.

(5) Exhibition of the genitals or the pubic or rectal area, of any person for the purpose of sexual stimulation of the viewer.

(6) Defecation or urination for the purpose of sexual stimulation of the viewer.

(7) Any lewd or lascivious sexual act as defined in Section 288.

1 (i) “Simulated” means any act that gives the appearance of
2 being sexual conduct.

3 312.1. (a) Any person who knowingly sends or causes to be
4 sent, or brings or causes to be brought, into this state for sale or
5 distribution, or in this state possesses, prepares, publishes,
6 produces, or prints, with intent to distribute or to exhibit to
7 others, or who offers to distribute, distributes, or exhibits to
8 others, any obscene matter is, for a first offense, guilty of a
9 misdemeanor, punishable by imprisonment in a county jail and a
10 fine of up to five thousand dollars (\$5,000). If the person has
11 previously been convicted of any violation of this section, or of a
12 crime in Chapter 7.5 (commencing with Section 311) the person
13 is guilty of a felony, punishable by imprisonment in the state
14 prison and a fine of up to fifty thousand dollars (\$50,000).

15 (b) Any person who, with knowledge that a person is a minor,
16 or who, while in possession of any facts on the basis of which he
17 or she should reasonably know that the person is a minor, hires,
18 employs, or uses the minor to do or assist in doing any of the
19 described in subdivision (a) is guilty of a felony.

20 312.2. Any person who advertises for sale or distribution any
21 obscene matter knowing that it depicts a person under 18 years
22 of age engaged in an act of sexual conduct, is guilty of a felony
23 and is punishable by imprisonment in the state prison for two,
24 three, or four years, or in a county jail not exceeding one year,
25 or by a fine not exceeding fifty thousand dollars (\$50,000), or by
26 both that fine and imprisonment.

27 312.3. Any person who writes, creates, or solicits the
28 publication or distribution of advertising or other promotional
29 material, or who in any manner promotes, the sale, distribution,
30 or exhibition of matter represented or held out by him or her to
31 be obscene, is guilty of a misdemeanor, punishable by
32 imprisonment in the county jail for up to one year, a fine of up to
33 five thousand dollars (\$5,000), or both. If the person has
34 previously been convicted of any offense in this chapter, or of a
35 violation of Section 313.1, the person shall be punished by
36 imprisonment in the state prison.

37 312.4. (a) Any person who, knowingly, as a condition to a
38 sale, allocation, consignment, or delivery for resale of any paper,
39 magazine, book, periodical, publication or other merchandise,
40 requires that the purchaser or consignee receive any obscene

1 matter, or who denies or threatens to deny a franchise, revokes
2 or threatens to revoke, or imposes any penalty, financial or
3 otherwise, by reason of the failure of any person to accept
4 obscene matter, or by reason of the return of that matter, is guilty
5 of a misdemeanor.

6 (b) Any person who violates this section is punishable by fine
7 of not more than one thousand dollars (\$1,000) or by
8 imprisonment in a county jail for not more than six months, or by
9 both a fine and imprisonment. For a second or subsequent
10 offense he or she shall be punished by a fine of not more than two
11 thousand dollars (\$2,000), by imprisonment in a county jail for
12 not more than one year, or by both a fine and imprisonment. If
13 the person has twice been convicted of a violation of this chapter,
14 subsequent violation of this section shall be punishable as a
15 felony.

16 (c) It shall be a defense in any prosecution for a violation of
17 this chapter by a person who knowingly distributed any obscene
18 matter by the use of telephones or telephone facilities to any
19 person under 18 years of age that the defendant has taken either
20 of the following measures to restrict access to the obscene matter
21 by persons under 18 years of age:

22 (1) Required the person receiving the obscene matter to use an
23 authorized access or identification code, as provided by the
24 information provider, before transmission of the obscene matter
25 begins, where the defendant has previously issued the code by
26 mailing it to the applicant therefor after taking reasonable
27 measures to ascertain that the applicant was 18 years of age or
28 older and has established a procedure to immediately cancel the
29 code of any person after receiving notice, in writing or by
30 telephone, that the code has been lost, stolen, or used by persons
31 under 18 years of age or that the code is no longer desired.

32 (2) Required payment by credit card before transmission of
33 the matter.

34 (d) Any list of applicants or recipients compiled or maintained
35 by an information-access service provider for purposes of
36 compliance with subdivision (c) is confidential and shall not be
37 sold or otherwise disseminated except upon order of the court.

38 312.5. (a) In any prosecution for a violation of the provisions
39 of this chapter or of Chapter 7.6 (commencing with Section 313),
40 neither the prosecution nor the defense shall be required to

1 introduce expert witness testimony concerning the obscene or
2 harmful character of the matter or live conduct that is the subject
3 of the prosecution.

4 (b) Any evidence that tends to establish contemporary
5 community standards of appeal to prurient interest or of
6 customary limits of candor in the description or representation of
7 nudity, sex, or excretion, or which bears upon the question of
8 significant literary, artistic, political, educational, or scientific
9 value shall, subject to the provisions of the Evidence Code, be
10 admissible when offered by either the prosecution or by the
11 defense.

12 312.6. When a conviction under this chapter becomes final,
13 the court shall order any matter that is the subject of the
14 conviction which remains in the possession or under the control
15 of the district attorney or any law enforcement agency, to be
16 destroyed, and the court shall also cause any such material in its
17 possession or under its control to be destroyed.

18 SEC. 23.5. Chapter 7.6 (commencing with Section 313) of
19 Title 9 of Part 1 of the Penal Code is repealed.

20 SEC. 24. Chapter 7.6 (commencing with Section 313) is
21 added to Title 9 of Part 1 of the Penal Code, to read:

22
23 *CHAPTER 7.6. HARMFUL MATTER*
24

25 313. As used in this chapter:

26 (a) "Harmful matter" means matter, taken as a whole, which
27 to the average person, applying contemporary statewide
28 standards, appeals to the prurient interest, and is matter which,
29 taken as a whole, depicts or describes in a patently offensive way
30 sexual conduct and which, taken as a whole, lacks serious
31 literary, artistic, political, or scientific value for minors.

32 (1) When it appears from the nature of the matter or the
33 circumstances of its dissemination, distribution or exhibition that
34 it is designed for clearly defined deviant sexual groups, the
35 appeal of the matter shall be judged with reference to its
36 intended recipient group.

37 (2) In prosecutions under this chapter, where circumstances of
38 production, presentation, sale, dissemination, distribution, or
39 publicity indicate that matter is being commercially exploited by
40 the defendant for the sake of its prurient appeal, that evidence is

1 *probative with respect to the nature of the matter and can justify*
2 *the conclusion that the matter lacks serious literary, artistic,*
3 *political, or scientific value for minors.*

4 (b) “Matter” means any book, magazine, newspaper, video
5 recording, or other printed or written material or any picture,
6 drawing, photograph, motion picture, or other pictorial
7 representation or any statue or other figure, or any recording,
8 transcription, or mechanical, chemical, or electrical
9 reproduction or any other articles, equipment, machines, or
10 materials. “Matter” also includes live or recorded telephone
11 messages when transmitted, disseminated, or distributed as part
12 of a commercial transaction.

13 (c) “Person” means any individual, partnership, firm,
14 association, corporation, limited liability company, or other
15 legal entity.

16 (d) “Distribute” means to transfer possession of, whether with
17 or without consideration.

18 (e) “Knowingly” means being aware of the character of the
19 matter.

20 (f) “Exhibit” means to show.

21 (g) “Minor” means any natural person under 18 years of age.

22 313.1. (a) (1) Any person who, with knowledge that a person
23 is a minor, or who fails to exercise reasonable care in
24 ascertaining the true age of a minor, knowingly sells, rents,
25 distributes, sends, causes to be sent, exhibits, or offers to
26 distribute or exhibit by any means, including, but not limited to,
27 live or recorded telephone messages, any harmful matter to the
28 minor shall be punished as specified in Section 313.5.

29 (2) It does not constitute a violation of this section for a
30 telephone corporation, as defined by Section 234 of the Public
31 Utilities Code, to carry or transmit messages described in this
32 chapter or to perform related activities in providing telephone
33 services.

34 (b) Any person who misrepresents himself or herself to be the
35 parent or guardian of a minor and thereby causes the minor to
36 be admitted to an exhibition of any harmful matter shall be
37 punished as specified in Section 313.5.

38 (c) (1) Any person who knowingly displays, sells, or offers to
39 sell in any coin-operated or slug-operated vending machine or
40 mechanically or electronically controlled vending machine that

1 is located in a public place, other than a public place from which
2 minors are excluded, any harmful matter displaying to the public
3 view photographs or pictorial representations of the commission
4 of any of the following acts shall be punished as specified in
5 Section 313.5: sodomy, oral copulation, sexual intercourse,
6 masturbation, bestiality, or a photograph of an exposed penis in
7 an erect and turgid state.

8 (2) Any person who knowingly displays, sells, or offers to sell
9 in any coin-operated vending machine that is not supervised by
10 an adult and that is located in a public place, other than a public
11 place from which minors are excluded, any harmful matter, as
12 defined in subdivision (a) of Section 313, shall be punished as
13 specified in Section 313.5.

14 (d) Nothing in this section invalidates or prohibits the
15 adoption of an ordinance by a city, county, or city and county
16 that restricts the display of material that is harmful to minors, as
17 defined in this chapter, in a public place, other than a public
18 place from which minors are excluded, by requiring the
19 placement of devices commonly known as blinder racks in front
20 of the material, so that the lower two-thirds of the material is not
21 exposed to view.

22 (e) Any person who sells or rents video recordings of harmful
23 matter shall create an area within his or her business
24 establishment for the placement of video recordings of harmful
25 matter and for any material that advertises the sale or rental of
26 these video recordings. This area shall be labeled "adults only."
27 The failure to create and label the area is an infraction,
28 punishable by a fine not to exceed one hundred dollars (\$100).
29 The failure to place a video recording or advertisement,
30 regardless of its content, in this area shall not constitute an
31 infraction. Any person who sells or distributes video recordings
32 of harmful matter to others for resale purposes shall inform the
33 purchaser of the requirements of this section. This subdivision
34 shall not apply to public libraries, as defined in Section 18710 of
35 the Education Code.

36 (f) Any person who rents a video recording and alters the
37 video recording by adding harmful material, and who then
38 returns the video recording to a video rental store, shall be guilty
39 of a misdemeanor. It shall be a defense in any prosecution for a
40 violation of this subdivision that the video rental store failed to

1 *post a sign, reasonably visible to all customers, delineating the*
2 *provisions of this subdivision.*

3 *(g) It shall be a defense in any prosecution for a violation of*
4 *subdivision (a) by a person who knowingly distributed any*
5 *harmful matter by the use of telephones or telephone facilities to*
6 *any person under 18 years of age that the defendant has taken*
7 *either of the following measures to restrict access to the harmful*
8 *matter by persons under 18 years of age:*

9 *(1) Required the person receiving the harmful matter to use an*
10 *authorized access or identification code, as provided by the*
11 *information provider, before transmission of the harmful matter*
12 *begins, where the defendant previously has issued the code by*
13 *mailing it to the applicant after taking reasonable measures to*
14 *ascertain that the applicant was 18 years of age or older and has*
15 *established a procedure to immediately cancel the code of any*
16 *person after receiving notice, in writing or by telephone, that the*
17 *code has been lost, stolen, or used by persons under 18 years of*
18 *age or that the code is no longer desired.*

19 *(2) Required payment by credit card before transmission of*
20 *the matter.*

21 *(h) It shall be a defense in any prosecution for a violation of*
22 *paragraph (2) of subdivision (c) that the defendant has taken*
23 *either of the following measures to restrict access to the harmful*
24 *matter by persons under 18 years of age:*

25 *(1) Required the person receiving the harmful matter to use an*
26 *authorized access or identification card to the vending machine*
27 *after taking reasonable measures to ascertain that the applicant*
28 *was 18 years of age or older and has established a procedure to*
29 *immediately cancel the card of any person after receiving notice,*
30 *in writing or by telephone, that the code has been lost, stolen, or*
31 *used by persons under 18 years of age or that the card is no*
32 *longer desired.*

33 *(2) Required the person receiving the harmful matter to use a*
34 *token in order to utilize the vending machine after taking*
35 *reasonable measures to ascertain that the person was 18 years of*
36 *age or older.*

37 *(i) Any list of applicants or recipients compiled or maintained*
38 *by an information-access service provider for purposes of*
39 *compliance with paragraph (1) of subdivision (g) is confidential*

1 and shall not be sold or otherwise disseminated except upon
2 order of the court.

3 313.2. (a) Nothing in this chapter shall prohibit any parent
4 or guardian from distributing any harmful matter to his or her
5 child or ward or permitting his or her child or ward to attend an
6 exhibition of any harmful matter if the child or ward is
7 accompanied by him or her.

8 (b) Nothing in this chapter shall prohibit any person from
9 exhibiting any harmful matter to any of the following:

10 (1) A minor who is accompanied by his or her parent or
11 guardian.

12 (2) A minor who is accompanied by an adult who represents
13 himself or herself to be the parent or guardian of the minor and
14 whom the person, by the exercise of reasonable care, does not
15 have reason to know is not the parent or guardian of the minor.

16 313.3. It shall be a defense in any prosecution for a violation
17 of this chapter that the act charged was committed in aid of
18 legitimate scientific or educational purposes.

19 313.4. When a conviction under this chapter becomes final,
20 the court shall order any matter that is the subject of the
21 conviction which remains in the possession or under the control
22 of the district attorney or any law enforcement agency, to be
23 destroyed, and the court shall also cause any such material in its
24 possession or under its control to be destroyed.

25 313.5. Any person who violates Section 313.1, other than
26 subdivision (e), is punishable by fine of not more than two
27 thousand dollars (\$2,000), by imprisonment in the county jail for
28 not more than one year, or by both that fine and imprisonment.
29 However, if the person has been previously convicted of a
30 violation of Section 313.1, other than subdivision (e), or of any
31 section of Chapter 7.5 (commencing with Section 311), the
32 person shall be punished by imprisonment in the state prison.

33 SEC. 25. Chapter 7.65 (commencing with Section 313.5) is
34 added to Title 9 of Part 1 of the Penal Code, to read:

35
36 *CHAPTER 7.65. GENERAL PROVISIONS RELATED TO*
37 *PROHIBITED MATERIAL*
38

39 313.5. If any phrase, clause, sentence, section or provision of
40 Chapters 7.5 (commencing with Section 311), Chapter 7.55

(commencing with Section 312), or Chapter 7.6 (commencing with Section 313) or application thereof to any person or circumstance is held invalid, that invalidity shall not affect any other phrase, clause, sentence, section, provision or application of this chapter, which can be given effect without the invalid phrase, clause, sentence, section, provision or application and to this end the provisions of this chapter are declared to be severable.

313.6. (a) It does not constitute a violation of the crimes defined in the aforementioned chapters for a person or entity solely to provide access or connection to or from a facility, system, or network over which that person or entity has no control, including related capabilities that are incidental to providing access or connection. This subdivision does not apply to an individual or entity that is owned or controlled by, or a conspirator with, an entity actively involved in the creation, editing, or knowing distribution of communications that violate this chapter.

(b) An employer is not liable under the aforementioned chapters for the actions of an employee or agent unless the employee's or agent's conduct is within the scope of his or her employment or agency and the employer has knowledge of, authorizes, or ratifies the employee's or agent's conduct.

(c) It is a defense to prosecution under the aforementioned chapters and in any civil action that may be instituted based on a violation of any of those chapters that a person has taken reasonable, effective, and appropriate actions in good faith to restrict or prevent the transmission of, or access to, a communication specified in that chapter.

313.7. Nothing in the aforementioned chapters shall be construed to apply to interstate services or to any other activities or actions for which states are prohibited from imposing liability pursuant to paragraph (4) of subsection (g) of Section 223 of Title 47 of the United States Code.

~~SEC. 35.~~

SEC. 26. Section 626.8 of the Penal Code is amended to read:

626.8. (a) Any person who comes into any school building or upon any school ground, or street, sidewalk, or public way adjacent thereto, without lawful business thereon, and whose presence or acts interfere with the peaceful conduct of the

1 activities of the school or disrupt the school or its pupils or
2 school activities, unless the person is a parent or guardian of a
3 child attending that school, or is a student at the school or has
4 prior written permission for the entry from the chief
5 administrative officer of that school, is guilty of a misdemeanor
6 if he or she does any of the following:

7 (1) Remains there after being asked to leave by the chief
8 administrative official of that school or his or her designated
9 representative, or by a person employed as a member of a
10 security or police department of a school district pursuant to
11 Section 39670 of the Education Code, or a city police officer, or
12 sheriff or deputy sheriff, or a Department of the California
13 Highway Patrol peace officer.

14 (2) Reenters or comes upon that place within seven days of
15 being asked to leave by a person specified in paragraph (1).

16 (3) Has otherwise established a continued pattern of
17 unauthorized entry.

18 This section shall not be utilized to impinge upon the lawful
19 exercise of constitutionally protected rights of freedom of speech
20 or assembly.

21 (b) Punishment for violation of this section shall be as follows:

22 (1) Upon a first conviction by a fine of not exceeding five
23 hundred dollars (\$500), by imprisonment in the county jail for a
24 period of not more than six months, or by both the fine and
25 imprisonment.

26 (2) If the defendant has been previously convicted once of a
27 violation of any offense defined in this chapter or Section 415.5,
28 by imprisonment in the county jail for a period of not less than 10
29 days or more than six months, or by both imprisonment and a
30 fine of not exceeding five hundred dollars (\$500), and shall not
31 be released on probation, parole, or any other basis until he or
32 she has served not less than 10 days.

33 (3) If the defendant has been previously convicted two or more
34 times of a violation of any offense defined in this chapter or
35 Section 415.5, by imprisonment in the county jail for a period of
36 not less than 90 days or more than six months, or by both
37 imprisonment and a fine of not exceeding five hundred dollars
38 (\$500), and shall not be released on probation, parole, or any
39 other basis until he or she has served not less than 90 days.

40 (c) As used in this section, the following definitions apply:

1 (1) “Lawful business” means a reason for being present upon
2 school property which is not otherwise prohibited by statute, by
3 ordinance, or by any regulation adopted pursuant to statute or
4 ordinance.

5 (2) “Continued pattern of unauthorized entry” means that on at
6 least two prior occasions in the same school year the defendant
7 came into any school building or upon any school ground, or
8 street, sidewalk, or public way adjacent thereto, without lawful
9 business thereon, and his or her presence or acts interfered with
10 the peaceful conduct of the activities of the school or disrupted
11 the school or its pupils or school activities, and the defendant was
12 asked to leave by a person specified in paragraph (1) of
13 subdivision (a).

14 (3) “School” means any preschool or school having any of
15 grades kindergarten through 12.

16 (d) When a person is directed to leave pursuant to paragraph
17 (1) of subdivision (a), the person directing him or her to leave
18 shall inform the person that if he or she reenters the place within
19 seven days he or she will be guilty of a crime.

20 ~~SEC. 36:~~

21 *SEC. 27.* Section 626.83 is added to the Penal Code, to read:

22 626.83. (a) Any person who has been convicted of a crime
23 listed in subparagraph (A) of paragraph (2) of subdivision (a) of
24 Section 290, who comes into any school building or upon any
25 school ground, without lawful business thereon or written
26 permission from the chief administrative official of that school,
27 or who loiters about any street, sidewalk, or public way adjacent
28 to any school building, school grounds, public playground, or
29 other youth recreational facility where minors are present without
30 lawful business thereon, is guilty of a misdemeanor.

31 (b) Any person who has been convicted of a crime listed in
32 subparagraph (A) of paragraph (2) of subdivision (a) of Section
33 290 where the victim was an elderly or dependent person, as
34 defined in Section 288, who comes onto any property where
35 elderly or dependent persons reside without lawful business
36 thereon or written permission from the director of the facility, is
37 guilty of a misdemeanor.

38 (c) Punishment for violation of this section shall be as follows:

39 (1) Upon a first conviction by a fine of not exceeding five
40 hundred dollars (\$500), by imprisonment in a county jail for a

1 period of not more than six months, or by both the fine and
2 imprisonment.

3 (2) If the defendant has been previously convicted once of a
4 violation of this section, by imprisonment in a county jail for a
5 period of not less than 10 days or more than six months, or by
6 both imprisonment and a fine of not exceeding five hundred
7 dollars (\$500), and shall not be released on probation, parole, or
8 any other basis until he or she has served not less than 10 days.

9 (3) If the defendant has been previously convicted two or more
10 times of a violation of this section, by imprisonment in a county
11 jail for a period of not less than 90 days or more than six months,
12 or by both imprisonment and a fine of not exceeding five
13 hundred dollars (\$500), and shall not be released on probation,
14 parole, or any other basis until he or she has served not less than
15 90 days.

16 (d) Local jurisdictions shall post signs at all relevant locations
17 informing the public of the provisions of this section.

18 ~~SEC. 37.~~

19 *SEC. 28.* Section 647.6 of the Penal Code is amended to read:

20 647.6. (a) (1) Every person who annoys or molests any child
21 under 18 years of age shall be punished by a fine not exceeding
22 five thousand dollars (\$5,000), by imprisonment in a county jail
23 not exceeding one year, or by both the fine and imprisonment.

24 (2) Every person who, motivated by an unnatural or abnormal
25 sexual interest in children, engages in conduct with an adult
26 whom he or she believes to be a child under 18 years of age,
27 which conduct, if directed toward a child under 18 years of age,
28 would be a violation of this section, shall be punished by a fine
29 not exceeding five thousand dollars (\$5,000), by imprisonment in
30 a county jail for up to one year, or by both that fine and
31 imprisonment.

32 (b) Every person who violates this section after having
33 entered, without consent, an inhabited dwelling house, or trailer
34 coach as defined in Section 635 of the Vehicle Code, or the
35 inhabited portion of any other building, shall be punished by
36 imprisonment in the state prison, or in a county jail not exceeding
37 one year, and by a fine not exceeding five thousand dollars
38 (\$5,000).

1 (c) (1) Every person who violates this section shall be
2 punished upon the second and each subsequent conviction by
3 imprisonment in the state prison.

4 (2) Every person who violates this section after a previous
5 felony conviction under Section 261, 264.1, 269, 285, 286, 288a,
6 288.5, or 289, any of which involved a minor under 16 years of
7 age, or a previous felony conviction under this section, a
8 conviction under Section 288, or a felony conviction under
9 Section 311.4 involving a minor under 14 years of age shall be
10 punished by imprisonment in the state prison for two, four, or six
11 years.

12 (d) (1) In any case in which a person is convicted of violating
13 this section and probation is granted, the court shall require
14 counseling as a condition of probation, unless the court makes a
15 written statement in the court record, that counseling would be
16 inappropriate or ineffective.

17 (2) In any case in which a person is convicted of violating this
18 section, and as a condition of probation, the court prohibits the
19 defendant from having contact with the victim, the court order
20 prohibiting contact shall not be modified except upon the request
21 of the victim and a finding by the court that the modification is in
22 the best interest of the victim. As used in this paragraph, “contact
23 with the victim” includes all physical contact, being in the
24 presence of the victim, communication by any means, any
25 communication by a third party acting on behalf of the defendant,
26 and any gifts.

27 (e) Nothing in this section prohibits prosecution under any
28 other provision of law.

29 ~~SEC. 38.~~

30 *SEC. 29.* Section 667.1 of the Penal Code is amended to read:

31 667.1. Notwithstanding subdivision (h) of Section 667, for all
32 offenses committed on or after the effective date of this act, all
33 references to existing statutes in subdivisions (c) to (g), inclusive,
34 of Section 667, are to those statutes as they existed on the
35 effective date of this act, including amendments made to those
36 statutes by the act enacted during the 2005–06 Regular Session
37 that amended this section.

38 ~~SEC. 39.~~

39 *SEC. 30.* Section 667.5 of the Penal Code is amended to read:

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

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

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

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

(1) Murder or voluntary manslaughter.

(2) Mayhem.

(3) Rape, as defined in paragraph (2) or (6) of subdivision (a) of Section 261 or paragraph (1) or (4) of subdivision (a) of Section 262.

(4) Sodomy, as defined in subdivision (c) or (d) of Section 286.

(5) Oral copulation, as defined in subdivision (c) or (d) of Section 288a.

~~(6) Lewd or lascivious acts~~—A *lewd or lascivious act*, as defined in subdivision (a) or (b) of Section 288.

(7) Any felony punishable by death or imprisonment in the state prison for life.

(8) Any felony in which the defendant inflicts great bodily injury on any person other than an accomplice which has been charged and proved as provided for in Section 12022.7, 12022.8, or 12022.9 on or after July 1, 1977, or as specified prior to July

1 1, 1977, in Sections 213, 264, and 461, or any felony in which
2 the defendant uses a firearm which use has been charged and
3 proved as provided in *subdivision (a) of Section 12022.3, or*
4 *Section 12022.5 or 12022.55.*

5 (9) Any robbery.

6 (10) Arson, in violation of subdivision (a) or (b) of Section
7 451.

8 (11) Sexual penetration, as defined in subdivision (a) or (j) of
9 Section 289.

10 (12) Attempted murder.

11 (13) A violation of Section 12308, 12309, or 12310.

12 (14) Kidnapping.

13 (15) Assault with the intent to commit a specified felony, in
14 violation of Section 220.

15 (16) Continuous sexual abuse of a child, in violation of
16 Section 288.5.

17 (17) Carjacking, as defined in subdivision (a) of Section 215.

18 (18) Rape, spousal rape, or sexual penetration, in concert, in
19 violation of Section 264.1.

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

22 (20) Threats to victims or witnesses, as defined in Section
23 136.1, which would constitute a felony violation of Section
24 186.22 of the Penal Code.

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

29 (22) Any violation of Section 12022.53.

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

31 The Legislature finds and declares that these specified crimes
32 merit special consideration when imposing a sentence to display
33 society's condemnation for these extraordinary crimes of
34 violence against the person.

35 (d) For the purposes of this section, the defendant shall be
36 deemed to remain in prison custody for an offense until the
37 official discharge from custody or until release on parole,
38 whichever first occurs, including any time during which the
39 defendant remains subject to reimprisonment for escape from
40 custody or is reimprisoned on revocation of parole. The

1 additional penalties provided for prior prison terms shall not be
2 imposed unless they are charged and admitted or found true in
3 the action for the new offense.

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

7 (f) A prior conviction of a felony shall include a conviction in
8 another jurisdiction for an offense which, if committed in
9 California, is punishable by imprisonment in the state prison if
10 the defendant served one year or more in prison for the offense in
11 the other jurisdiction. A prior conviction of a particular felony
12 shall include a conviction in another jurisdiction for an offense
13 which includes all of the elements of the particular felony as
14 defined under California law if the defendant served one year or
15 more in prison for the offense in the other jurisdiction.

16 (g) A prior separate prison term for the purposes of this
17 section shall mean a continuous completed period of prison
18 incarceration imposed for the particular offense alone or in
19 combination with concurrent or consecutive sentences for other
20 crimes, including any reimprisonment on revocation of parole
21 which is not accompanied by a new commitment to prison, and
22 including any reimprisonment after an escape from incarceration.

23 (h) Serving a prison term includes any confinement time in
24 any state prison or federal penal institution as punishment for
25 commission of an offense, including confinement in a hospital or
26 other institution or facility credited as service of prison time in
27 the jurisdiction of the confinement.

28 (i) For the purposes of this section, a commitment to the State
29 Department of Mental Health as a mentally disordered sex
30 offender following a conviction of a felony, which commitment
31 exceeds one year in duration, shall be deemed a prior prison
32 term.

33 (j) For the purposes of this section, when a person subject to
34 the custody, control, and discipline of the Secretary of the
35 Department of Corrections and Rehabilitation is incarcerated at a
36 facility operated by the Division of Juvenile Facilities, that
37 incarceration shall be deemed to be a term served in state prison.

38 (k) Notwithstanding subdivisions (d) and (g) or any other
39 provision of law, where one of the new offenses is committed
40 while the defendant is temporarily removed from prison pursuant

1 to Section 2690 or while the defendant is transferred to a
2 community facility pursuant to Section 3416, 6253, or 6263, or
3 while the defendant is on furlough pursuant to Section 6254, the
4 defendant shall be subject to the full enhancements provided for
5 in this section.

6 This subdivision shall not apply when a full, separate, and
7 consecutive term is imposed pursuant to any other provision of
8 law.

9 ~~SEC. 40.~~

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

12 667.51. (a) Any person who is convicted of violating Section
13 288 or 288.5 shall receive a five-year enhancement for a prior
14 conviction of an offense specified in subdivision (b).

15 (b) Section 261, 262, 264.1, 269, 285, 286, 288, 288a, 288.5,
16 or 289, or any offense committed in another jurisdiction that
17 includes all of the elements of any of the offenses specified in
18 this subdivision.

19 (c) A violation of Section 288 or 288.5 by a person who has
20 been previously convicted two or more times of an offense
21 specified in subdivision (b) shall be punished by imprisonment in
22 the state prison for 15 years to life.

23 ~~SEC. 41.~~

24 *SEC. 32.* Section 667.6 of the Penal Code is amended to read:

25 667.6. (a) Any person who is convicted of an offense
26 specified in subdivision (e) and who has been convicted
27 previously of any of those offenses shall receive a five-year
28 enhancement for each of those prior convictions. ~~In addition to~~
29 ~~the five-year enhancement imposed under this subdivision, the~~
30 ~~court also may impose a fine not to exceed twenty thousand~~
31 ~~dollars (\$20,000) for anyone sentenced under these provisions.~~
32 ~~The fine imposed and collected pursuant to this subdivision shall~~
33 ~~be deposited in the Victim-Witness Assistance Fund to be~~
34 ~~available for appropriation to fund child sexual exploitation and~~
35 ~~child sexual abuse victim counseling centers and prevention~~
36 ~~programs established pursuant to Section 13837.~~

37 (b) Any person who is convicted of an offense specified in
38 subdivision (e) and who has served two or more prior prison
39 terms as defined in Section 667.5 for any of those offenses, shall
40 receive a 10-year enhancement for each of those prior terms. ~~In~~

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

10 (c) In lieu of the term provided in Section 1170.1, a full,
11 separate, and consecutive term may be imposed for each
12 violation of an offense specified in subdivision (e) if the crimes
13 involved the same victim on the same occasion. A term may be
14 imposed consecutively pursuant to this subdivision if a person is
15 convicted of at least one offense specified in subdivision (e). If
16 the term is imposed consecutively pursuant to this subdivision, it
17 shall be served consecutively to any other term of imprisonment,
18 and shall commence from the time the person otherwise would
19 have been released from imprisonment. The term shall not be
20 included in any determination pursuant to Section 1170.1. Any
21 other term imposed subsequent to that term shall not be merged
22 therein but shall commence at the time the person otherwise
23 would have been released from prison.

24 (d) A full, separate, and consecutive term shall be imposed for
25 each violation of an offense specified in subdivision (e) if the
26 crimes involve separate victims or involve the same victim on
27 separate occasions.

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

38 The term shall be served consecutively to any other term of
39 imprisonment and shall commence from the time the person
40 otherwise would have been released from imprisonment. The

term shall not be included in any determination pursuant to Section 1170.1. Any other term imposed subsequent to that term shall not be merged therein but shall commence at the time the person otherwise would have been released from prison.

(e) This section applies to the following offenses:

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

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

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

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

(5) A lewd or lascivious act, in violation of subdivision (b) of Section 288.

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

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

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

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

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

(f) *If (1) In addition to any enhancement imposed pursuant to subdivision (a) or (b), the court may also impose a fine not to exceed twenty thousand dollars (\$20,000) for anyone sentenced under those provisions. The fine imposed and collected pursuant to this subdivision shall be deposited in the Victim-Witness Assistance Fund to be available for appropriation to fund child sexual exploitation and child sexual abuse victim counseling centers and prevention programs established pursuant to Section 13837.*

(2) *If the court orders a fine to be imposed pursuant to this section subdivision, the actual administrative cost of collecting that fine, not to exceed 2 percent of the total amount paid, may be*

1 paid into the general fund of the county treasury for the use and
2 benefit of the county.

3 ~~SEC. 42.~~

4 SEC. 33. Section 667.61 of the Penal Code is amended to
5 read:

6 667.61. (a) ~~A~~Any person who is convicted of an offense
7 specified in subdivision (c) under one or more of the
8 circumstances specified in subdivision (d) or under two or more
9 of the circumstances specified in subdivision (e) shall be
10 punished by imprisonment in the state prison for 25 years to life.

11 (b) Except as provided in subdivision (a), ~~a~~any person who is
12 convicted of an offense specified in subdivision (c) under one of
13 the circumstances specified in subdivision (e) shall be punished
14 by imprisonment in the state prison for 15 years to life.

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

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

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

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

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

24 (5) Sexual penetration, in violation of subdivision (a) of
25 Section 289.

26 (6) Sodomy, in violation of paragraph (2) or (3) of subdivision
27 (c), or subdivision (d), of Section 286.

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

30 (8) Oral copulation or sexual penetration by a perpetrator who
31 is an adult and the victim is 10 years of age or younger.

32 (9) A lewd or lascivious act, in violation of subdivision (a) of
33 Section 288.

34 (10) Continuous sexual abuse of a child, in violation of
35 Section 288.5.

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

38 (1) The defendant has been previously convicted of an offense
39 specified in subdivision (c), including an offense committed in

1 another jurisdiction that includes all of the elements of an offense
2 specified in subdivision (c).

3 (2) The defendant kidnapped the victim of the present offense
4 and the movement of the victim substantially increased the risk
5 of harm to the victim over and above that level of risk necessarily
6 inherent in the underlying offense in subdivision (c).

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

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

14 (5) The defendant committed the present offense in violation
15 of Section 264.1, subdivision (d) of Section 286, or subdivision
16 (d) of Section 288a, and, in the commission of that offense, any
17 person committed any act described in paragraph (2), (3), or (4)
18 of this subdivision.

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

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

24 (2) Except as provided in paragraph (4) of subdivision (d), the
25 defendant committed the present offense during the commission
26 ~~of a burglary, as defined in subdivision (a) of Section 460, or~~
27 ~~during the commission of a burglary of a building, including any~~
28 ~~commercial establishment, which was then closed to the public,~~
29 ~~of a burglary~~, in violation of Section 459.

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

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

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

1 (6) The defendant engaged in the tying or binding of the
2 victim or another person in the commission of the present
3 offense.

4 (7) The defendant administered a controlled substance to the
5 victim in the commission of the present offense in violation of
6 Section 12022.75.

7 (8) The defendant committed the present offense in violation
8 of Section 264.1, subdivision (d) of Section 286, or subdivision
9 (d) of Section 288a, and, in the commission of that offense, any
10 person committed any act described in paragraph (1), (2), (3),
11 (4), (6), or (7) of this subdivision.

12 (9) The victim of an oral copulation was a child 10 years of age
13 or younger who was made to orally copulate the adult.

14 (10) The victim of sexual penetration was a child 10 years of
15 age or younger and the adult penetrated or caused the penetration
16 of the vagina or rectum of the child.

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

34 ~~(g) The term specified in subdivision (a) or (b) shall be~~
35 ~~imposed on the defendant once for any offense or offenses~~
36 ~~committed against a single victim during a single occasion. If~~
37 ~~there are multiple victims during a single occasion, the term~~
38 ~~specified in subdivision (a) or (b) shall be imposed on the~~
39 ~~defendant once for each separate victim. Terms for other offenses~~
40 ~~committed during a single occasion shall be imposed as~~

1 ~~authorized under any other law, including Section 667.6, if~~
2 ~~applicable.~~

3 *(g) Notwithstanding Section 1385 or any other provision of*
4 *law, the court shall not strike any allegation, admission, or*
5 *finding of any of the circumstances specified in subdivision (d) or*
6 *(e) for any person who is subject to punishment under this*
7 *section.*

8 *(h) Notwithstanding any other provision of law, probation*
9 *shall not be granted to, nor shall the execution or imposition of*
10 *sentence be suspended for, any person who is subject to*
11 *punishment under this section.*

12 *(i) For any offense specified in paragraph (1) to (7), inclusive,*
13 *of subdivision (c), the court shall impose a consecutive sentence*
14 *for each offense that results in a conviction under this section if*
15 *the crimes involve separate victims or involve the same victim on*
16 *separate occasions, as defined in subdivision (d) of Section*
17 *667.6.*

18 *(j) The penalties provided in this section shall apply only if the*
19 *existence of any circumstance specified in subdivision (d) or (e)*
20 *is alleged in the accusatory pleading pursuant to this section and*
21 *either admitted by the defendant in open court or found to be true*
22 *by the trier of fact.*

23 ~~SEC. 43.~~

24 SEC. 34. Section 667.71 of the Penal Code is amended to
25 read:

26 667.71. (a) For the purpose of this section, a habitual sexual
27 offender is a person who has been previously convicted of one or
28 more of the offenses specified in subdivision (c) and who is
29 convicted in the present proceeding of one of those offenses.

30 (b) A habitual sexual offender shall be punished by
31 imprisonment in the state prison for 25 years to life.

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

33 (1) Rape, in violation of paragraph (2) or (6) of subdivision (a)
34 of Section 261.

35 (2) Spousal rape, in violation of paragraph (1) or (4) of
36 subdivision (a) of Section 262.

37 (3) Rape, spousal rape, or sexual penetration, in concert, in
38 violation of Section 264.1.

39 (4) ~~Lewd~~ A lewd or lascivious act, in violation of subdivision
40 (a) or (b) of Section 288.

1 (5) Sexual penetration, in violation of subdivision (a) or (j) of
2 Section 289.

3 (6) Continuous sexual abuse of a child, in violation of Section
4 288.5.

5 (7) Sodomy, in violation of subdivision (c) or (d) of Section
6 286.

7 (8) Oral copulation, in violation of subdivision (c) or (d) of
8 Section 288a.

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

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

12 (11) Kidnapping in violation of subdivision (b) of Section 209
13 with the intent to commit a specified sexual offense.

14 (12) Aggravated sexual assault of a child, in violation of
15 Section 269.

16 (13) An offense committed in another jurisdiction that
17 includes all of the elements of an offense specified in this
18 subdivision.

19 (d) 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 (e) This section shall apply only if the defendant's status as a
24 habitual sexual offender is alleged in the accusatory pleading,
25 and either admitted by the defendant in open court, or found to be
26 true by the trier of fact.

27 ~~SEC. 44.~~

28 *SEC. 35.* Section 800 of the Penal Code is amended to read:

29 800. (a) Except as provided in Section 799, prosecution for
30 an offense punishable by imprisonment in the state prison for
31 eight years or more shall be commenced within six years after
32 commission of the offense.

33 (b) Notwithstanding subdivision (a), prosecution for a
34 violation of subdivision (b) of Section 311.4 shall commence
35 within 10 years of the date of production of the pornographic
36 material.

37 ~~SEC. 45.~~

38 *SEC. 36.* Section 1170.125 of the Penal Code is amended to
39 read:

1 1170.125. Notwithstanding Section 2 of Proposition 184, as
2 adopted at the November 8, 1994, general election, for all
3 offenses committed on or after the effective date of this act, all
4 references to existing statutes in Section 1170.12 are to those
5 statutes as they existed on the effective date of this act, including
6 amendments made to those statutes by the act enacted during the
7 2005–06 Regular Session that amended this section.

8 ~~SEC. 46.~~

9 *SEC. 37.* Section 1192.7 of the Penal Code is amended to
10 read:

11 1192.7. (a) (1) It is the intent of the Legislature that district
12 attorneys prosecute violent sex crimes under statutes that provide
13 sentencing under a “one strike,” “three strikes” or habitual sex
14 offender statute instead of engaging in plea bargaining over those
15 offenses.

16 (2) Plea bargaining in any case in which the indictment or
17 information charges any serious felony, any felony in which it is
18 alleged that a firearm was personally used by the defendant, or
19 any offense of driving while under the influence of alcohol,
20 drugs, narcotics, or any other intoxicating substance, or any
21 combination thereof, is prohibited, unless there is insufficient
22 evidence to prove the people’s case, or testimony of a material
23 witness cannot be obtained, or a reduction or dismissal would not
24 result in a substantial change in sentence.

25 (3) If the indictment or information charges the defendant with
26 a violent sex crime, as listed in subdivision (c) of Section 667.61,
27 that could be prosecuted under Sections 269, 288.7, subdivisions
28 (b) through (i) of Section 667, Section 667.61, or 667.71, plea
29 bargaining is prohibited unless there is insufficient evidence to
30 prove the people’s case, or testimony of a material witness
31 cannot be obtained, or a reduction or dismissal would not result
32 in a substantial change in sentence. At the time of presenting the
33 agreement to the court, the district attorney shall state on the
34 record why a sentence under one of those sections was not
35 sought.

36 (b) As used in this section “plea bargaining” means any
37 bargaining, negotiation, or discussion between a criminal
38 defendant, or his or her counsel, and a prosecuting attorney or
39 judge, whereby the defendant agrees to plead guilty or nolo
40 contendere, in exchange for any promises, commitments,

1 concessions, assurances, or consideration by the prosecuting
2 attorney or judge relating to any charge against the defendant or
3 to the sentencing of the defendant.

4 (c) As used in this section, “serious felony” means any of the
5 following:

6 (1) Murder or voluntary manslaughter; (2) mayhem; (3) rape;
7 (4) sodomy by force, violence, duress, menace, threat of great
8 bodily injury, or fear of immediate and unlawful bodily injury on
9 the victim or another person; (5) oral copulation by force,
10 violence, duress, menace, threat of great bodily injury, or fear of
11 immediate and unlawful bodily injury on the victim or another
12 person; (6) lewd or lascivious act on a child under 14 years of
13 age; (7) any felony punishable by death or imprisonment in the
14 state prison for life; (8) any felony in which the defendant
15 personally inflicts great bodily injury on any person, other than
16 an accomplice, or any felony in which the defendant personally
17 uses a firearm; (9) attempted murder; (10) assault with intent to
18 commit rape or robbery; (11) assault with a deadly weapon or
19 instrument on a peace officer; (12) assault by a life prisoner on a
20 noninmate; (13) assault with a deadly weapon by an inmate; (14)
21 arson; (15) exploding a destructive device or any explosive with
22 intent to injure; (16) exploding a destructive device or any
23 explosive causing bodily injury, great bodily injury, or mayhem;
24 (17) exploding a destructive device or any explosive with intent
25 to murder; (18) any burglary of the first degree; (19) robbery or
26 bank robbery; (20) kidnapping; (21) holding of a hostage by a
27 person confined in a state prison; (22) attempt to commit a felony
28 punishable by death or imprisonment in the state prison for life;
29 (23) any felony in which the defendant personally used a
30 dangerous or deadly weapon; (24) selling, furnishing,
31 administering, giving, or offering to sell, furnish, administer, or
32 give to a minor any heroin, cocaine, phencyclidine (PCP), or any
33 methamphetamine-related drug, as described in paragraph (2) of
34 subdivision (d) of Section 11055 of the Health and Safety Code,
35 or any of the precursors of methamphetamines, as described in
36 subparagraph (A) of paragraph (1) of subdivision (f) of Section
37 11055 or subdivision (a) of Section 11100 of the Health and
38 Safety Code; (25) any violation of subdivision (a) of Section 289
39 where the act is accomplished against the victim’s will by force,
40 violence, duress, menace, or fear of immediate and unlawful

1 bodily injury on the victim or another person; (26) grand theft
2 involving a firearm; (27) carjacking; (28) any felony offense,
3 which would also constitute a felony violation of Section 186.22;
4 (29) assault with the intent to commit mayhem, rape, sodomy, or
5 oral copulation, in violation of Section 220; (30) throwing acid or
6 flammable substances, in violation of Section 244; (31) assault
7 with a deadly weapon, firearm, machinegun, assault weapon, or
8 semiautomatic firearm or assault on a peace officer or firefighter,
9 in violation of Section 245; (32) assault with a deadly weapon
10 against a public transit employee, custodial officer, or school
11 employee, in violation of Sections 245.2, 245.3, or 245.5; (33)
12 discharge of a firearm at an inhabited dwelling, vehicle, or
13 aircraft, in violation of Section 246; (34) commission of rape or
14 sexual penetration in concert with another person, in violation of
15 Section 264.1; (35) continuous sexual abuse of a child, in
16 violation of Section 288.5; (36) shooting from a vehicle, in
17 violation of subdivision (c) or (d) of Section 12034; (37)
18 intimidation of victims or witnesses, in violation of Section
19 136.1; (38) criminal threats, in violation of Section 422; (39) any
20 attempt to commit a crime listed in this subdivision other than an
21 assault; (40) any violation of Section 12022.53; (41) a violation
22 of subdivision (b) or (c) of Section 11418; and (42) any
23 conspiracy to commit an offense described in this subdivision.

24 (d) As used in this section, “bank robbery” means to take or
25 attempt to take, by force or violence, or by intimidation from the
26 person or presence of another any property or money or any other
27 thing of value belonging to, or in the care, custody, control,
28 management, or possession of, any bank, credit union, or any
29 savings and loan association.

30 As used in this subdivision, the following terms have the
31 following meanings:

32 (1) “Bank” means any member of the Federal Reserve System,
33 and any bank, banking association, trust company, savings bank,
34 or other banking institution organized or operating under the laws
35 of the United States, and any bank the deposits of which are
36 insured by the Federal Deposit Insurance Corporation.

37 (2) “Savings and loan association” means any federal savings
38 and loan association and any “insured institution” as defined in
39 Section 401 of the National Housing Act, as amended, and any

1 federal credit union as defined in Section 2 of the Federal Credit
2 Union Act.

3 (3) “Credit union” means any federal credit union and any
4 state-chartered credit union the accounts of which are insured by
5 the Administrator of the National Credit Union administration.

6 (e) The provisions of this section shall not be amended by the
7 Legislature except by statute passed in each house by rollcall
8 vote entered in the journal, two-thirds of the membership
9 concurring, or by a statute that becomes effective only when
10 approved by the electors.

11 ~~SEC. 47.~~

12 *SEC. 38.* Section 1202.8 of the Penal Code is amended to
13 read:

14 1202.8. (a) Persons placed on probation by a court shall be
15 under the supervision of the county probation officer who shall
16 determine both the level and type of supervision consistent with
17 the court-ordered conditions of probation. Each county shall
18 designate certain probation officers to monitor registered sex
19 offenders, as specified in subdivision (b) of Section 290.08.
20 Those probationers shall be subject to active and intense
21 supervision by that designated officer.

22 (b) Within 30 days of a court making an order to provide
23 restitution to a victim or to the Restitution Fund, the probation
24 officer shall establish an account into which any restitution
25 payments that are not deposited into the Restitution Fund shall be
26 deposited.

27 ~~SEC. 48.~~

28 *SEC. 39.* Section 1203 of the Penal Code is amended to read:

29 1203. (a) As used in this code, “probation” means the
30 suspension of the imposition or execution of a sentence and the
31 order of conditional and revocable release in the community
32 under the supervision of a probation officer. As used in this code,
33 “conditional sentence” means the suspension of the imposition or
34 execution of a sentence and the order of revocable release in the
35 community subject to conditions established by the court without
36 the supervision of a probation officer. It is the intent of the
37 Legislature that both conditional sentence and probation are
38 authorized whenever probation is authorized in any code as a
39 sentencing option for infractions or misdemeanors.

(b) (1) Except as provided in subdivision (j), if a person is convicted of a felony and is eligible for probation, before judgment is pronounced, the court shall immediately refer the matter to a probation officer to investigate and report to the court, at a specified time, upon the circumstances surrounding the crime and the prior history and record of the person, which may be considered either in aggravation or mitigation of the punishment.

(2) (A) The probation officer shall immediately investigate and make a written report to the court of his or her findings and recommendations, including his or her recommendations as to the granting or denying of probation and the conditions of probation, if granted.

(B) Pursuant to Section 828 of the Welfare and Institutions Code, the probation officer shall include in his or her report any information gathered by a law enforcement agency relating to the taking of the defendant into custody as a minor, which shall be considered for purposes of determining whether adjudications of commissions of crimes as a juvenile warrant a finding that there are circumstances in aggravation pursuant to Section 1170 or to deny probation.

~~(C) If the person is convicted of a felony specified in subparagraph (A) of paragraph (2) of subdivision (a) of Section 290, the probation officer shall administer the STATIC-99, as set forth in Section 290.06, in order to determine the person's risk of reoffending.~~

(C) If the person was convicted of an offense that requires him or her to register as a sex offender pursuant to Section 290, the probation officer's report shall include the results of the State-Authorized Risk Assessment Tool for Sex Offenders (SARATSO) administered pursuant to Sections 290.04 to 290.06, inclusive, if applicable.

(D) The probation officer shall also include in the report his or her recommendation of both of the following:

(i) The amount the defendant should be required to pay as a restitution fine pursuant to subdivision (b) of Section 1202.4.

(ii) Whether the court shall require, as a condition of probation, restitution to the victim or to the Restitution Fund and the amount thereof.

(E) The report shall be made available to the court and the prosecuting and defense attorneys at least five days, or upon

1 request of the defendant or prosecuting attorney nine days, prior
2 to the time fixed by the court for the hearing and determination
3 of the report, and shall be filed with the clerk of the court as a
4 record in the case at the time of the hearing. The time within
5 which the report shall be made available and filed may be waived
6 by written stipulation of the prosecuting and defense attorneys
7 that is filed with the court or an oral stipulation in open court that
8 is made and entered upon the minutes of the court.

9 (3) At a time fixed by the court, the court shall hear and
10 determine the application, if one has been made, or, in any case,
11 the suitability of probation in the particular case. At the hearing,
12 the court shall consider any report of the probation officer,
13 including the results of the ~~STATIC-99 assessment~~ *SARATSO, if*
14 *applicable*, and shall make a statement that it has considered the
15 report, which shall be filed with the clerk of the court as a record
16 in the case. If the court determines that there are circumstances in
17 mitigation of the punishment prescribed by law or that the ends
18 of justice would be served by granting probation to the person, it
19 may place the person on probation. If probation is denied, the
20 clerk of the court shall immediately send a copy of the report to
21 the Department of Corrections and Rehabilitation at the prison or
22 other institution to which the person is delivered.

23 (4) The preparation of the report or the consideration of the
24 report by the court may be waived only by a written stipulation
25 of the prosecuting and defense attorneys that is filed with the
26 court or an oral stipulation in open court that is made and entered
27 upon the minutes of the court, except that there shall be no
28 waiver unless the court consents thereto. However, if the
29 defendant is ultimately sentenced and committed to the state
30 prison, a probation report shall be completed pursuant to Section
31 1203c.

32 (c) If a defendant is not represented by an attorney, the court
33 shall order the probation officer who makes the probation report
34 to discuss its contents with the defendant.

35 (d) If a person is convicted of a misdemeanor, the court may
36 either refer the matter to the probation officer for an investigation
37 and a report or summarily pronounce a conditional sentence. ~~If~~
38 ~~the crime requires the person to register as a sex offender~~
39 ~~pursuant to Section 290, the probation officer shall administer the~~
40 ~~STATIC-99, as set forth in Section 290.06, in order to determine~~

~~the person's risk of reoffending~~ If the person was convicted of an offense that requires him or her to register as a sex offender pursuant to Section 290, the court shall refer the matter to the probation officer for the purpose of obtaining a report on the results of the State-Authorized Risk Assessment Tool for Sex Offenders administered pursuant to Sections 290.04 to 290.06, inclusive, if applicable, which the court shall consider. If the case is not referred to the probation officer, in sentencing the person, the court may consider any information concerning the person that could have been included in a probation report. The court shall inform the person of the information to be considered and permit him or her to answer or controvert the information. For this purpose, upon the request of the person, the court shall grant a continuance before the judgment is pronounced.

(e) Except in unusual cases where the interests of justice would best be served if the person is granted probation, probation shall not be granted to any of the following persons:

(1) Unless the person had a lawful right to carry a deadly weapon, other than a firearm, at the time of the perpetration of the crime or his or her arrest, any person who has been convicted of arson, robbery, carjacking, burglary, burglary with explosives, rape with force or violence, torture, aggravated mayhem, murder, attempt to commit murder, trainwrecking, kidnapping, escape from the state prison, or a conspiracy to commit one or more of those crimes and who was armed with the weapon at either of those times.

(2) Any person who used, or attempted to use, a deadly weapon upon a human being in connection with the perpetration of the crime of which he or she has been convicted.

(3) Any person who willfully inflicted great bodily injury or torture in the perpetration of the crime of which he or she has been convicted.

(4) Any person who has been previously convicted twice in this state of a felony or in any other place of a public offense which, if committed in this state, would have been punishable as a felony.

(5) Unless the person has never been previously convicted once in this state of a felony or in any other place of a public offense which, if committed in this state, would have been punishable as a felony, any person who has been convicted of

1 burglary with explosives, rape with force or violence, torture,
2 aggravated mayhem, murder, attempt to commit murder,
3 trainwrecking, extortion, kidnapping, escape from the state
4 prison, a violation of Section 286, 288, 288a, or 288.5, or a
5 conspiracy to commit one or more of those crimes.

6 (6) Any person who has been previously convicted once in this
7 state of a felony or in any other place of a public offense which,
8 if committed in this state, would have been punishable as a
9 felony, if he or she committed any of the following acts:

10 (A) Unless the person had a lawful right to carry a deadly
11 weapon at the time of the perpetration of the previous crime or
12 his or her arrest for the previous crime, he or she was armed with
13 a weapon at either of those times.

14 (B) The person used, or attempted to use, a deadly weapon
15 upon a human being in connection with the perpetration of the
16 previous crime.

17 (C) The person willfully inflicted great bodily injury or torture
18 in the perpetration of the previous crime.

19 (7) Any public official or peace officer of this state or any city,
20 county, or other political subdivision who, in the discharge of the
21 duties of his or her public office or employment, accepted or
22 gave or offered to accept or give any bribe, embezzled public
23 money, or was guilty of extortion.

24 (8) Any person who knowingly furnishes or gives away
25 phencyclidine.

26 (9) Any person who intentionally inflicted great bodily injury
27 in the commission of arson under subdivision (a) of Section 451
28 or who intentionally set fire to, burned, or caused the burning of,
29 an inhabited structure or inhabited property in violation of
30 subdivision (b) of Section 451.

31 (10) Any person who, in the commission of a felony, inflicts
32 great bodily injury or causes the death of a human being by the
33 discharge of a firearm from or at an occupied motor vehicle
34 proceeding on a public street or highway.

35 (11) Any person who possesses a short-barreled rifle or a
36 short-barreled shotgun under Section 12020, a machinegun under
37 Section 12220, or a silencer under Section 12520.

38 (12) Any person who is convicted of violating Section 8101 of
39 the Welfare and Institutions Code.

1 (13) Any person who is described in paragraph (2) or (3) of
2 subdivision (g) of Section 12072.

3 (f) When probation is granted in a case which comes within
4 subdivision (e), the court shall specify on the record and shall
5 enter on the minutes the circumstances indicating that the
6 interests of justice would best be served by that disposition.

7 (g) If a person is not eligible for probation, the judge shall
8 refer the matter to the probation officer for an investigation of the
9 facts relevant to determination of the amount of a restitution fine
10 pursuant to subdivision (b) of Section 1202.4 in all cases where
11 the determination is applicable. The judge, in his or her
12 discretion, may direct the probation officer to investigate all facts
13 relevant to the sentencing of the person. Upon that referral, the
14 probation officer shall immediately investigate the circumstances
15 surrounding the crime and the prior record and history of the
16 person and make a written report to the court of his or her
17 findings. The findings shall include a recommendation of the
18 amount of the restitution fine as provided in subdivision (b) of
19 Section 1202.4.

20 (h) If a defendant is convicted of a felony and a probation
21 report is prepared pursuant to subdivision (b) or (g), the
22 probation officer may obtain and include in the report a statement
23 of the comments of the victim concerning the offense. The court
24 may direct the probation officer not to obtain a statement if the
25 victim has in fact testified at any of the court proceedings
26 concerning the offense.

27 (i) No probationer shall be released to enter another state
28 unless his or her case has been referred to the Administrator of
29 the Interstate Probation and Parole Compacts, pursuant to the
30 Uniform Act for Out-of-State Probationer or Parolee Supervision
31 (Article 3 (commencing with Section 11175) of Chapter 2 of
32 Title 1 of Part 4) and the probationer has reimbursed the county
33 that has jurisdiction over his or her probation case the reasonable
34 costs of processing his or her request for interstate compact
35 supervision. The amount and method of reimbursement shall be
36 in accordance with Section 1203.1b.

37 (j) In any court where a county financial evaluation officer is
38 available, in addition to referring the matter to the probation
39 officer, the court may order the defendant to appear before the
40 county financial evaluation officer for a financial evaluation of

1 the defendant's ability to pay restitution, in which case the
2 county financial evaluation officer shall report his or her findings
3 regarding restitution and other court-related costs to the
4 probation officer on the question of the defendant's ability to pay
5 those costs.

6 Any order made pursuant to this subdivision may be enforced
7 as a violation of the terms and conditions of probation upon
8 willful failure to pay and at the discretion of the court, may be
9 enforced in the same manner as a judgment in a civil action, if
10 any balance remains unpaid at the end of the defendant's
11 probationary period.

12 (k) Probation shall not be granted to, nor shall the execution
13 of, or imposition of sentence be suspended for, any person who is
14 convicted of a violent felony, as defined in subdivision (c) of
15 Section 667.5, or a serious felony, as defined in subdivision (c)
16 of Section 1192.7, and who was on probation for a felony offense
17 at the time of the commission of the new felony offense.

18 ~~(l) Each probation department shall develop control and~~
19 ~~containment programming, in conjunction with the Department~~
20 ~~of Corrections and Rehabilitation, for persons who are designated~~
21 ~~at a moderate-high or high level of risk based on the STATIC-99,~~
22 ~~and shall require participation in appropriate programming of~~
23 ~~those persons as a condition of probation.~~

24 ~~SEC. 49.~~

25 *SEC. 40.* Section 1203c of the Penal Code is amended to
26 read:

27 1203c. (a) (1) Notwithstanding any other provisions of law,
28 whenever a person is committed to an institution under the
29 jurisdiction of the Department of Corrections and Rehabilitation,
30 whether probation has been applied for or not, or granted and
31 revoked, it shall be the duty of the probation officer of the county
32 from which the person is committed to send to the Department of
33 Corrections and Rehabilitation a report of the circumstances
34 surrounding the offense and the prior record and history of the
35 defendant, as may be required by the Secretary of the Department
36 of Corrections and Rehabilitation.

37 (2) If the person is being committed to the jurisdiction of the
38 department for a conviction of an offense ~~listed in subparagraph~~
39 ~~(A) of paragraph (2) of subdivision (a) of Section 290,~~ the
40 probation officer shall perform a risk assessment of the person

1 ~~using the STATIC-99 assessment tool, as set forth in Section~~
2 ~~290.06: that requires him or her to register as a sex offender~~
3 ~~pursuant to Section 290, the probation officer shall include in the~~
4 ~~report the results of the State-Authorized Risk Assessment Tool~~
5 ~~for Sex Offenders (SARATSO) administered pursuant to Sections~~
6 ~~290.4 to 290.06, inclusive, if applicable.~~

7 (b) These reports shall accompany the commitment papers.
8 The reports shall be prepared in the form prescribed by the
9 administrator following consultation with the Corrections
10 Standards Authority, except that if the defendant is ineligible for
11 probation, a report of the circumstances surrounding the offense
12 and the prior record and history of the defendant, prepared by the
13 probation officer on request of the court and filed with the court
14 before sentence, shall be deemed to meet the requirements of
15 paragraph (1) of subdivision (a).

16 (c) In order to allow the probation officer an opportunity to
17 interview, for the purpose of preparation of these reports, the
18 defendant shall be held in the county jail for 48 hours, excluding
19 Saturdays, Sundays and holidays, subsequent to imposition of
20 sentence and prior to delivery to the custody of the Secretary of
21 the Department of Corrections and Rehabilitation, unless the
22 probation officer has indicated the need for a different period of
23 time.

24 SEC. 41. Section 1203e is added to the Penal Code, to read:
25 1203e. (a) Commencing June 1, 2010, the probation
26 department shall compile a Facts of Offense Sheet for every
27 person convicted of an offense that requires him or her to
28 register as a sex offender pursuant to Section 290 who is referred
29 to the department pursuant to Section 1203. The Facts of Offense
30 Sheet shall contain the following information concerning the
31 offender: name; CII number; criminal history, including all
32 arrests and convictions for any registerable sex offenses or any
33 violent offense; circumstances of the offense for which
34 registration is required, including, but not limited to, weapons
35 used and victim pattern; and results of the State-Authorized Risk
36 Assessment Tool for Sex Offenders (SARATSO), as set forth in
37 Section 290.04, if required. The Facts of Offense Sheet shall be
38 included in the probation officer's report.

1 (b) The defendant may move the court to correct the Facts of
2 Offense Sheet. Any corrections to that sheet shall be made
3 consistent with procedures set forth in Section 1204.

4 (c) The probation officer shall send a copy of the Facts of
5 Offense Sheet to the Department of Justice Sex Offender
6 Tracking Program within 30 days of the person's sex offense
7 conviction, and it shall be made part of the registered sex
8 offender's file maintained by the Sex Offender Tracking
9 Program. The Facts of Offense Sheet shall thereafter be made
10 available to law enforcement by the Department of Justice, which
11 shall post it with the offender's record on the Department of
12 Justice Internet Web site maintained pursuant to Section 290.46,
13 and shall be accessible only to law enforcement.

14 (b) If the registered sex offender is sentenced to a period of
15 incarceration, at either the state prison or a county jail, the Facts
16 of Offense Sheet shall be sent by the Department of Corrections
17 and Rehabilitation or the county sheriff to the registering law
18 enforcement agency in the jurisdiction where the registered sex
19 offender will be paroled or will live on release, within three days
20 of the person's release. If the registered sex offender is
21 committed to the Department of Mental Health, the Facts of
22 Offense Sheet shall be sent by the Department of Mental Health
23 to the registering law enforcement agency in the jurisdiction
24 where the person will live on release, within three days of
25 release.

26 SEC. 42. Section 1203f is added to the Penal Code, to read:

27 1203f. Every probation department shall ensure that all
28 probationers under active supervision who are deemed to pose a
29 high risk to the public of committing sex crimes, as determined
30 by the State-Authorized Risk Assessment Tool for Sex Offenders,
31 as set forth in Sections 290.04 to 290.06, inclusive, are placed on
32 an intensive and specialized probation supervision caseload and
33 are required to report frequently to designated probation
34 officers. The probation department may place any other
35 probationer convicted of an offense that requires him or her to
36 register as a sex offender who is on active supervision to be
37 placed on an intensive and specialized caseload and require him
38 or her to report frequently to designated probation officers.

~~SEC. 50.~~

SEC. 43. Section 1203.06 of the Penal Code is amended to read:

1203.06. (a) Notwithstanding any other provision of law, probation shall not be granted to, nor shall the execution or imposition of sentence be suspended for, any of the following persons:

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

(A) Murder.

(B) Robbery, in violation of Section 211.

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

(D) A lewd or lascivious act, in violation of Section 288.

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

(F) Rape, in violation of Section 261, 262, or 264.1.

(G) Assault with intent to commit a specified sexual offense, in violation of Section 220.

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

(I) Carjacking, in violation of Section 215.

(J) Aggravated mayhem, in violation of Section 205.

(K) Torture, in violation of Section 206.

(L) Continuous sexual abuse of a child, in violation of Section 288.5.

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

(N) Sodomy, in violation of Section 286.

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

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

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

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

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

(b) (1) The existence of any fact that would make a person ineligible for probation under subdivision (a) shall be alleged in

1 the accusatory pleading, and either admitted by the defendant in
2 open court, or found to be true by the trier of fact.

3 (2) As used in subdivision (a), “used a firearm” means to
4 display a firearm in a menacing manner, to intentionally fire it, to
5 intentionally strike or hit a human being with it, or to use it in
6 any manner that qualifies under Section 12022.5.

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

10 ~~SEC. 51.~~

11 *SEC. 44.* Section 1203.065 of the Penal Code is amended to
12 read:

13 1203.065. (a) Notwithstanding any other provision of law,
14 probation shall not be granted to, nor shall the execution or
15 imposition of sentence be suspended for, any person who is
16 convicted of violating paragraph (2) or (6) of subdivision (a) of
17 Section 261, Section 264.1, 266h, 266i, 266j, or 269, or
18 paragraph (2) or (3) of subdivision (c), or subdivision (d), of
19 Section 286 or 288a, or subdivision (a) of Section 289, or
20 subdivision (c) of Section 311.4.

21 (b) (1) Except in unusual cases where the interests of justice
22 would best be served if the person is granted probation, probation
23 shall not be granted to any person who is convicted of violating
24 paragraph (7) of subdivision (a) of Section 261, subdivision (k)
25 of Section 286, subdivision (k) of Section 288a, *subdivision (g)*
26 *of Section 289*, or Section 220 for assault with intent to commit a
27 specified sexual offense.

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

32 ~~SEC. 52.~~

33 *SEC. 45.* Section 1203.075 of the Penal Code is amended to
34 read:

35 1203.075. (a) Notwithstanding any other provision of law,
36 probation shall not be granted to, nor shall the execution or
37 imposition of sentence be suspended for, *nor shall a finding*
38 *bringing the defendant within this section be stricken pursuant to*
39 *Section 1385 for*, any person who personally inflicts great bodily
40 injury, as defined in Section 12022.7, on the person of another in

1 the commission or attempted commission of any of the following
2 crimes:

- 3 (1) Murder.
- 4 (2) Robbery, in violation of Section 211.
- 5 (3) Kidnapping, in violation of Section 207, 209, or 209.5.
- 6 (4) A lewd or lascivious act, in violation of Section 288.
- 7 (5) Burglary of the first degree, as defined in Section 460.
- 8 (6) Rape, in violation of Section 261, 262, or 264.1.
- 9 (7) Assault with intent to commit a specified sexual offense, in
10 violation of Section 220.
- 11 (8) Escape, in violation of Section 4530 or 4532.
- 12 (9) Sexual penetration, in violation of ~~subdivision (a) of~~
13 ~~Section 289 or of Section 264.1.~~
- 14 (10) Sodomy, in violation of Section 286.
- 15 (11) Oral copulation, in violation of Section 288a.
- 16 (12) Carjacking, in violation of Section 215.
- 17 (13) Continuous sexual abuse of a child, in violation of
18 Section 288.5.
- 19 (14) Aggravated sexual assault of a child, in violation of
20 Section 269.

21 (b) The existence of any fact that would make a person
22 ineligible for probation under subdivision (a) shall be alleged in
23 the accusatory pleading, and either admitted by the defendant in
24 open court, or found to be true by the trier of fact.

25 ~~SEC. 53.~~

26 *SEC. 46.* Section 3000 of the Penal Code is amended to read:

27 3000. (a) (1) The Legislature finds and declares that the
28 period immediately following incarceration is critical to
29 successful reintegration of the offender into society and to
30 positive citizenship. It is in the interest of public safety for the
31 state to provide for the supervision of and surveillance of
32 parolees, including the judicious use of revocation actions, and to
33 provide educational, vocational, family and personal counseling
34 necessary to assist parolees in the transition between
35 imprisonment and discharge. A sentence pursuant to Section
36 1168 or 1170 shall include a period of parole, unless waived, as
37 provided in this section.

38 (2) The Legislature finds and declares that it is not the intent
39 of this section to diminish resources allocated to the Department
40 of Corrections and Rehabilitation for parole functions for which

1 the department is responsible. It is also not the intent of this
2 section to diminish the resources allocated to the Board of Parole
3 Hearings to execute its duties with respect to parole functions for
4 which the board is responsible.

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

9 (4) For any person being evaluated as a sexually violent
10 predator pursuant to Article 4 (commencing with Section 6600)
11 of Chapter 2 of Part 2 of Division 6 of the Welfare and
12 Institutions Code, parole shall toll from evaluation through the
13 period of commitment, if any. The period during which parole is
14 tolled shall include the filing of a petition for commitment,
15 hearing on probable cause, trial proceedings and actual
16 commitment. Parole shall be tolled through any subsequent
17 evaluation and commitment proceedings and actual commitment.
18 Time spent on conditional release under court monitoring shall
19 be included in the period of parole.

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

23 (1) At the expiration of a term of imprisonment of one year
24 and one day, or a term of imprisonment imposed pursuant to
25 Section 1170 or at the expiration of a term reduced pursuant to
26 Section 2931 or 2933, if applicable, the inmate shall be released
27 on parole for a period not exceeding three years, unless the
28 parole authority, for good cause, waives parole and discharges
29 the inmate from the custody of the department. However, ~~any~~
30 ~~inmate sentenced for an offense specified in paragraph (11) of~~
31 ~~subdivision (c) of Section 667.5 shall be released on parole for a~~
32 ~~period not exceeding five years, and an inmate sentenced for an~~
33 offense specified in paragraph (3), (4), (5), (6), (15), (16), (11), or
34 (18) of subdivision (c) of Section 667.5 shall be released on
35 parole for a period not exceeding 10 years.

36 (2) In the case of any inmate sentenced under Section 1168,
37 the period of parole shall not exceed five years in the case of an
38 inmate imprisoned for any offense other than first or second
39 degree murder for which the inmate has received a life sentence,
40 and shall not exceed three years in the case of any other inmate,

unless in either case the parole authority for good cause waives parole and discharges the inmate from custody of the department. This subdivision shall also be applicable to inmates who committed crimes prior to July 1, 1977, to the extent specified in Section 1170.2.

(3) *Notwithstanding paragraphs (1) and (2), in the case of any offense for which the inmate has received a life sentence pursuant to subdivision (b) of Section 209, Section 269, 288.7, 667.51, 667.61, or 667.71, the period of parole shall be 10 years.*

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

~~(4)~~

(5) Upon successful completion of parole, or at the end of the maximum statutory period of parole specified for the inmate under paragraph (1) ~~or (2)~~, (2), or (3), whichever is earlier, the inmate shall be discharged from custody. The date of the maximum statutory period of parole under this subdivision and paragraphs (1) ~~and (2)~~, (2), or (3), shall be computed from the date of initial parole and shall be a period chronologically determined. Time during which parole is suspended because the prisoner has absconded or has been returned to custody as a parole violator shall not be credited toward any period of parole unless the prisoner is found not guilty of the parole violation. However, ~~except the period of parole is subject to the following:~~

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

(B) *Except as provided in Section 3064, an inmate subject to five years on parole may not be retained under parole supervision or in custody for a period longer than seven years from the date of his or her initial parole. Except*

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

~~(5)~~

(6) The Department of Corrections and Rehabilitation shall meet with each inmate at least 30 days prior to his or her good

1 time release date and shall provide, under guidelines specified by
2 the parole authority, the conditions of parole and the length of
3 parole up to the maximum period of time provided by law. The
4 inmate has the right to reconsideration of the length and
5 conditions of parole by the parole authority. The department or
6 the board may impose as a condition of parole that an inmate
7 make payments on the inmate's outstanding restitution fines or
8 orders imposed pursuant to subdivision (a) or (c) of Section
9 13967 of the Government Code, as operative prior to September
10 28, 1994, or subdivision (b) or (f) of Section 1202.4.

11 (6)

12 (7) For purposes of this chapter, the Board of Parole Hearings
13 shall be considered the parole authority.

14 (7)

15 (8) The sole authority to issue warrants for the return to actual
16 custody of any inmate released on parole rests with the board,
17 except for any escaped inmate or any inmate released prior to his
18 or her scheduled release date who is returned to custody, in
19 which case Section 3060 shall apply.

20 (8)

21 (9) It is the intent of the Legislature that efforts be made with
22 respect to persons who are subject to Section 290 who are on
23 parole to engage them in treatment.

24 ~~SEC. 54.~~

25 *SEC. 47.* Section 3001 of the Penal Code is amended to read:

26 3001. (a) (1) Notwithstanding any other provision of law,
27 when any person referred to in paragraph (1) of subdivision (b)
28 of Section 3000 who was not imprisoned for committing a
29 violent felony, as defined in subdivision (c) of Section 667.5, has
30 been released on parole from the state prison, and has been on
31 parole continuously for one year since release from confinement,
32 within 30 days, that person shall be discharged from parole,
33 unless the Department of Corrections and Rehabilitation
34 recommends to the Board of Parole Hearings that the person be
35 retained on parole and the board, for good cause, determines that
36 the person will be retained.

37 (2) Notwithstanding any other provision of law, when any
38 person referred to in paragraph (1) of subdivision (b) of Section
39 3000 who was imprisoned for committing a violent felony, as
40 defined in subdivision (c) of Section 667.5, has been released on

1 parole from the state prison for a period not exceeding three
 2 years and has been on parole continuously for two years since
 3 ~~release from confinement, has been released on parole from the~~
 4 ~~state prison for a period not exceeding five years and has been on~~
 5 ~~parole continuously for three years since release from~~ *release*
 6 *from* confinement, or has been released on parole from the state
 7 prison for a period not exceeding 10 years and has been on parole
 8 continuously for six years since release from confinement, the
 9 department shall discharge, within 30 days, that person from
 10 parole, unless the department recommends to the board that the
 11 person be retained on parole and the board, for good cause,
 12 determines that the person will be retained. The board shall make
 13 a written record of its determination and the department shall
 14 transmit a copy thereof to the parolee.

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

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

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

37 ~~(d)~~

38 (e) The amendments to this section made during the ~~1987-88~~
 39 ~~2005-06~~ Regular Session of the Legislature shall only be applied
 40 prospectively and shall not extend the parole period for any

1 person whose eligibility for discharge from parole was fixed as
2 of the effective date of those amendments.

3 ~~SEC. 55.~~

4 *SEC. 48.* Section 3005 of the Penal Code is amended to read:

5 3005. (a) The Department of Corrections and Rehabilitation
6 shall ensure that all parolees under active supervision ~~and who~~
7 *are* deemed to pose a *high* risk to the public of committing sex
8 crimes, as determined by the ~~STATIC-99 assessment tool~~, shall
9 *be State-Authorized Risk Assessment Tool for Sex Offenders, as*
10 *set forth in Section 290.04 to 290.06, inclusive, are placed on an*
11 *intensive and specialized parole supervision caseload; and shall*
12 *be* are required to report frequently to designated parole officers.
13 *The department may place any other parolee convicted of an*
14 *offense that requires him or her to register as a sex offender*
15 *pursuant to Section 290 who is on active supervision on an*
16 *intensive and specialized caseload and require him or her to*
17 *report frequently to designated parole officers.*

18 (b) The department shall develop and, at the discretion of the
19 secretary, and subject to an appropriation of the necessary funds,
20 may implement a plan for the implementation of relapse
21 prevention treatment programs, and the provision of other
22 services deemed necessary by the department, in conjunction
23 with intensive and specialized parole supervision, to reduce the
24 recidivism of sex offenders.

25 (c) The department shall develop control and containment
26 programming for sex offenders who have been assessed pursuant
27 to Section 5040 and shall require participation in appropriate
28 programming as a condition of parole.

29 ~~SEC. 56. Chapter 1.5 (commencing with Section 5040) is~~
30 ~~added to Title 7 of Part 3 of the Penal Code, to read:~~

31
32 ~~CHAPTER 1.5. RISK ASSESSMENT OF SEX OFFENDERS~~
33

34 ~~5040. (a) The Department of Corrections and Rehabilitation~~
35 ~~shall use the STATIC-99 assessment tool to perform a risk~~
36 ~~assessment on all male inmates who are convicted of a sex~~
37 ~~offense listed in subparagraph (A) of paragraph (2) of~~
38 ~~subdivision (a) of Section 290, upon commitment to the~~
39 ~~department. For those inmates already in the custody of the~~
40 ~~department, the assessment shall be performed prior to being~~

1 released on parole. The assessment shall be performed as
2 prescribed in Chapter 5.5 (commencing with Section 290) of
3 Title 9 of Part 2.

4 (b) ~~Inmates who were assessed using the STATIC-99 prior to~~
5 ~~being committed to the department shall not be required to be~~
6 ~~reassessed.~~

7 (c) ~~Inmates who have a risk assessment of moderate-high or~~
8 ~~high risk for committing a sex offense, according to the~~
9 ~~STATIC-99,~~

10 SEC. 49. Section 5040 is added to the Penal Code, to read:

11 5040. (a) Inmates who are deemed to pose a high risk to the
12 public of committing sex crimes, as determined by the
13 State-Authorized Risk Assessment Tool for sex Offenders,
14 pursuant to Section 290.04 to 290.06, inclusive, shall participate
15 in sex offender control and containment programming while
16 incarcerated and while on parole, as developed and specified by
17 the department. The programming shall be based on current,
18 evidence-based correctional standards and proven to reduce the
19 risk of reoffending.

20 (d)

21 (b) Notwithstanding any other provision of law, inmates who
22 are sentenced to a life term shall not be eligible to earn any
23 credits pursuant to Article 2.5 (commencing with Section 2930)
24 of Chapter 7 of Title 1.

25 (e)

26 (c) Notwithstanding subdivision (c), an inmate serving a life
27 term may be excluded from sex offender programming until he
28 or she receives a parole date and is within five years of that date,
29 unless the department determines that the programming for that
30 inmate is necessary for the public safety.

31 (f)

32 (d) Notwithstanding subdivision (d), inmates who are
33 condemned to death or sentenced to life without the possibility of
34 parole are ineligible to participate in sex offender programming.

35 SEC. 57.

36 SEC. 50. Section 12022.75 of the Penal Code is amended to
37 read:

38 12022.75. (a) ~~Any~~ Except as provided in subdivision (b), any
39 person who, for the purpose of committing a felony, administers
40 by injection, inhalation, ingestion, or any other means, any

1 controlled substance listed in Section 11054, 11055, 11056,
2 11057, or 11058 of the Health and Safety Code, against the
3 victim's will by means of force, violence, or fear of immediate
4 and unlawful bodily injury to the victim or another person, shall,
5 in addition and consecutive to the penalty provided for the felony
6 or attempted felony of which he or she has been convicted, be
7 punished by an additional term of three years.

8 (b) (1) Any person who, in the commission or attempted
9 commission of any offense specified in paragraph (2),
10 administers any controlled substance listed in Section 11054,
11 11055, 11056, 11057, or 11058 of the Health and Safety Code to
12 the victim shall be punished by an additional and consecutive
13 term of imprisonment in the state prison for five years.

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

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

17 (B) Sodomy, in violation of subdivision (f) or (i) of Section
18 286.

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

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

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

24 ~~SEC. 58. Section 13105 is added to the Penal Code, to read:~~

25 ~~13105. A state or local law enforcement agency shall not~~
26 ~~destroy any records relating to a person who is required to~~
27 ~~register as a sex offender pursuant to Section 290, for a period of~~
28 ~~75 years after final disposition of the case.~~

29 SEC. 59. Section 13887 of the Penal Code is amended to
30 read:

31 13887. Any county may establish and implement a sexual
32 assault felony enforcement (SAFE) team program pursuant to the
33 provisions of this chapter.

34 ~~SEC. 60.~~

35 SEC. 51. Section 13887.1 of the Penal Code is amended to
36 read:

37 13887.1. (a) The mission of this program shall be to reduce
38 violent sexual assault offenses in the county through proactive
39 surveillance and arrest of habitual sexual offenders, as defined in

1 Section 667.71, and strict enforcement of registration
2 requirements for sex offenders pursuant to Section 290.

3 (b) The proactive surveillance and arrest authorized by this
4 chapter shall be conducted within the limits of existing statutory
5 and constitutional law.

6 (c) The mission of this program shall also be to provide
7 community education regarding the purposes of Chapter 5.5
8 (commencing with Section 290) of Title 9 of Part 2. The goal of
9 community education is to do all of the following:

10 (1) Provide information to the public about ways to protect
11 themselves and families from sexual assault.

12 (2) Emphasize the importance of using the knowledge of the
13 presence of registered sex offenders in the community to enhance
14 public safety.

15 (3) Explain that harassment or vigilantism against registrants
16 may cause them to disappear and attempt to live without
17 supervision, or to register as transients, which would defeat the
18 purpose of sex offender registration.

19 ~~SEC. 61.~~

20 *SEC. 52.* Section 13887.5 is added to the Penal Code, to read:
21 13887.5. The Corrections Standards Authority shall establish
22 standards by which grants are awarded on a competitive basis to
23 counties for SAFE teams. The grants shall be awarded to
24 innovative teams designed to promote the purposes of this
25 chapter.

26 ~~SEC. 62.~~

27 *SEC. 53.* Section 6600 of the Welfare and Institutions Code is
28 amended to read:

29 6600. As used in this article, the following terms have the
30 following meanings:

31 (a) (1) “Sexually violent predator” means a person who has
32 been convicted of a sexually violent offense against two or more
33 victims and who has a diagnosed mental disorder that makes the
34 person a danger to the health and safety of others in that it is
35 likely that he or she will engage in sexually violent criminal
36 behavior.

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

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

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

4 (C) A prior conviction in another jurisdiction for an offense
5 that includes all of the elements of an offense described in
6 subdivision (b).

7 (D) A conviction for an offense under a predecessor statute
8 that includes all of the elements of an offense described in
9 subdivision (b).

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

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

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

16 (H) A prior conviction for an offense described in subdivision
17 (b) for which the person was committed to the Department of
18 Corrections and Rehabilitation, Division of Juvenile Facilities,
19 pursuant to Section 1731.5.

20 (I) A prior conviction for an offense described in subdivision
21 (b) that resulted in an indeterminate prison sentence.

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

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

(b) “Sexually violent offense” means the following acts when committed by force, violence, duress, menace, fear of immediate and unlawful bodily injury on the victim or another person, or threatening to retaliate in the future against the victim or any other person, and that are committed on, before, or after the effective date of this article and result in a conviction or a finding of not guilty by reason of insanity, as defined in subdivision (a): a felony violation of Section 261, 262, 264.1, 269, 286, 288, 288a, 288.5, or 289 of the Penal Code, or any felony violation of Section 207, 209, or 220 of the Penal Code, committed with the intent to commit a violation of Section 261, 262, 264.1, 269, 286, 288, 288a, or 289 of the Penal Code.

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

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

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

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

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

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

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

1 (3) The juvenile was adjudged a ward of the juvenile court
2 within the meaning of Section 602 because of the person's
3 commission of the offense giving rise to the juvenile court
4 adjudication.

5 (4) The juvenile was committed to the Department of
6 Corrections and Rehabilitation, Division of Juvenile Facilities for
7 the sexually violent offense.

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

14 ~~SEC. 63.~~

15 *SEC. 54.* Section 6601 of the Welfare and Institutions Code is
16 amended to read:

17 6601. (a) (1) Whenever the Secretary of the Department of
18 Corrections and Rehabilitation determines that an individual who
19 is in custody under the jurisdiction of that department, and who is
20 either serving a determinate prison sentence or whose parole has
21 been revoked, may be a sexually violent predator, the secretary
22 shall, at least six months prior to that individual's scheduled date
23 for release from prison, refer the person for evaluation in
24 accordance with this section. However, if the inmate was
25 received by the department with less than nine months of his or
26 her sentence to serve, or if the inmate's release date is modified
27 by judicial or administrative action, the director may refer the
28 person for evaluation in accordance with this section at a date
29 that is less than six months prior to the inmate's scheduled
30 release date.

31 (2) A petition may be filed under this section if the individual
32 was in custody pursuant to his or her determinate prison term,
33 parole revocation term, or a hold placed pursuant to Section
34 6601.3, at the time the petition is filed. A petition shall not be
35 dismissed on the basis of a later judicial or administrative
36 determination that the individual's custody was unlawful, if the
37 unlawful custody was the result of a good faith mistake of fact or
38 law. This paragraph shall apply to any petition filed on or after
39 January 1, 1996.

(b) The person shall be screened by the Department of Corrections and Rehabilitation and the Board of Parole Hearings based on whether the person has committed a sexually violent predatory offense and on a review of the person's social, criminal, and institutional history. This screening shall be conducted in accordance with a structured screening instrument developed and updated by the State Department of Mental Health in consultation with the Department of Corrections and Rehabilitation. If as a result of this screening it is determined that the person is likely to be a sexually violent predator, the Department of Corrections and Rehabilitation shall refer the person to the State Department of Mental Health for a full evaluation of whether the person meets the criteria in Section 6600.

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

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

(e) If one of the professionals performing the evaluation pursuant to subdivision (d) does not concur that the person meets the criteria specified in subdivision (d), but the other professional

1 concludes that the person meets those criteria, the Director of
2 Mental Health shall arrange for further examination of the person
3 by two independent professionals selected in accordance with
4 subdivision (g).

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

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

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

35 (i) If the county's designated counsel concurs with the
36 recommendation, a petition for commitment shall be filed in the
37 superior court of the county in which the person was convicted of
38 the offense for which he or she was committed to the jurisdiction
39 of the Department of Corrections and Rehabilitation. The petition
40 shall be filed, and the proceedings shall be handled, by either the

1 district attorney or the county counsel of that county. The county
2 board of supervisors shall designate either the district attorney or
3 the county counsel to assume responsibility for proceedings
4 under this article.

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

7 (k) If the person is otherwise subject to parole, a finding or
8 placement made pursuant to this article shall toll the term of
9 parole pursuant to Article 1 (commencing with Section 3000) of
10 Chapter 8 of Title 1 of Part 3 of the Penal Code. The tolling of
11 parole shall occur in accordance with paragraph (4) of
12 subdivision (a) of Section 3000 of the Penal Code.

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

18 ~~SEC. 64.~~

19 *SEC. 55.* Section 6604 of the Welfare and Institutions Code is
20 amended to read:

21 6604. The court or jury shall determine whether, beyond a
22 reasonable doubt, the person is a sexually violent predator. If the
23 court or jury is not satisfied beyond a reasonable doubt that the
24 person is a sexually violent predator, the court shall direct that
25 the person be released at the conclusion of the term for which he
26 or she was initially sentenced, or that the person be
27 unconditionally released at the end of parole, whichever is
28 applicable. If the court or jury determines that the person is a
29 sexually violent predator, the person shall be committed for an
30 indeterminate term to the custody of the State Department of
31 Mental Health for appropriate treatment and confinement in a
32 secure facility designated by the Director of Mental Health. Time
33 spent on conditional release shall not count toward the term of
34 commitment, unless the person is placed in a locked facility by
35 the conditional release program, in which case the time in a
36 locked facility shall count toward the term of commitment. The
37 facility shall be located on the grounds of an institution under the
38 jurisdiction of the Department of Corrections and Rehabilitation.

39 ~~SEC. 64.5. Section 6604 of the Welfare and Institutions Code~~
40 ~~is amended to read:~~

~~6604. The court or jury shall determine whether, beyond a reasonable doubt, the person is a sexually violent predator. If the court or jury is not satisfied beyond a reasonable doubt that the person is a sexually violent predator, the court shall direct that the person be released at the conclusion of the term for which he or she was initially sentenced, or that the person be unconditionally released at the end of parole, whichever is applicable. If the court or jury determines that the person is a sexually violent predator, the person shall be committed for five years to the custody of the State Department of Mental Health for appropriate treatment and confinement in a secure facility designated by the Director of Mental Health, and the person shall not be kept in actual custody longer than five years unless a subsequent extended commitment is obtained from the court incident to the filing of a petition for extended commitment under this article or unless the term of commitment changes pursuant to subdivision (e) of Section 6605. Time spent on conditional release shall not count toward the five-year term of commitment, unless the person is placed in a locked facility by the conditional release program, in which case the time in a locked facility shall count toward the five-year term of commitment. The facility shall be located on the grounds of an institution under the jurisdiction of the Department of Corrections and Rehabilitation.~~

~~SEC. 65.~~

SEC. 56. Section 6604.1 of the Welfare and Institutions Code is amended to read:

6604.1. (a) The indeterminate term of commitment provided for in Section 6604 shall commence on the date upon which the court issues the initial order of commitment pursuant to that section.

(b) The person shall be evaluated by two practicing psychologists or psychiatrists, or by one practicing psychologist and one practicing psychiatrist, designated by the State Department of Mental Health. The provisions of subdivisions (c) to (i), inclusive, of Section 6601 shall apply to evaluations performed pursuant to a trial conducted pursuant to subdivision (f) of Section 6605. The rights, requirements, and procedures set forth in Section 6603 shall apply to all commitment proceedings.

1 ~~SEC. 65.5.— Section 6604.1 of the Welfare and Institutions~~
2 ~~Code is amended to read:~~

3 ~~6604.1. (a) The five-year term of commitment provided for~~
4 ~~in Section 6604 shall commence on the date upon which the~~
5 ~~court issues the initial order of commitment pursuant to that~~
6 ~~section. The initial five-year term shall not be reduced by any~~
7 ~~time spent in a secure facility prior to the order of commitment.~~
8 ~~For any subsequent extended commitments, the term of~~
9 ~~commitment shall be for two years commencing from the date of~~
10 ~~the termination of the previous commitment.~~

11 ~~(b) The person shall be evaluated by two practicing~~
12 ~~psychologists or psychiatrists, or by one practicing psychologist~~
13 ~~and one practicing psychiatrist, designated by the State~~
14 ~~Department of Mental Health. The provisions of subdivisions (c)~~
15 ~~to (i), inclusive, of Section 6601 shall apply to evaluations~~
16 ~~performed for purposes of extended commitments. The rights,~~
17 ~~requirements, and procedures set forth in Section 6603 shall~~
18 ~~apply to extended commitment proceedings.~~

19 ~~SEC. 66.— Section 6605 of the Welfare and Institutions Code is~~
20 ~~amended to read:~~

21 ~~6605. (a) A person found to be a sexually violent predator~~
22 ~~and committed to the custody of the State Department of Mental~~
23 ~~Health shall have a current examination of his or her mental~~
24 ~~condition made at least once every year. The annual examination~~
25 ~~shall include consideration of whether the committed person~~
26 ~~currently meets the definition of a sexually violent predator and~~
27 ~~whether conditional release to a less restrictive alternative or an~~
28 ~~unconditional release is in the best interest of the person, and~~
29 ~~conditions can be imposed that would adequately protect the~~
30 ~~community. The Department of Mental Health shall file a report~~
31 ~~of this examination with the court that committed the person~~
32 ~~under this section. The report shall be in the form of a declaration~~
33 ~~and shall be prepared by a professionally qualified person. A~~
34 ~~copy of the report shall be served on the prosecuting agency~~
35 ~~involved in the initial commitment and upon the committed~~
36 ~~person. The person may retain, or if he or she is indigent and so~~
37 ~~requests, the court may appoint, a qualified expert or professional~~
38 ~~person to examine him or her, and the expert or professional~~
39 ~~person shall have access to all records concerning the person.~~

~~(b) (1) The director, within 30 days of the filing of the report, shall review and consider the annual report. The person may submit any report prepared by a retained or appointed expert and the director shall also consider that report. Notice of review by the director shall be filed in the court. If upon that review, the director determines that the person's condition has so changed that either: (A) The person no longer meets the definition of a sexually violent predator; or (B) conditional release to a less restrictive alternative is in the best interest of the person and conditions can be imposed that adequately protect the community, the secretary shall authorize the person to petition the court for conditional release to a less restrictive alternative or unconditional discharge. The director may request the court to set a show cause hearing, or the court may set a show cause hearing on its own motion. At that hearing, the state may decline to state a prima facie case or may submit on the evidence in the annual report. The petition shall be filed with the court and served upon the prosecuting agency responsible for the initial commitment. The court, upon receipt of the petition for conditional release to a less restrictive alternative or unconditional discharge, shall order a hearing within forty-five days.~~

~~(2) Nothing contained in this chapter shall prohibit the person from otherwise petitioning the court for conditional release to a less restrictive alternative or unconditional discharge without the director's approval. The director shall provide the committed person with an annual written notice of the person's right to petition the court for conditional release to a less restrictive alternative or unconditional discharge over the secretary's objection. The notice shall contain a waiver of rights. The director shall file the notice and waiver form and the annual report with the court. If the person does not affirmatively waive the right to petition, the court shall set a show cause hearing to determine whether probable cause exists to warrant a hearing on whether the person's condition has so changed that: (A) He or she no longer meets the definition of a sexually violent predator; or (B) conditional release to a proposed less restrictive alternative would be in the best interest of the person and conditions can be imposed that would adequately protect the community.~~

~~(c) The committed person shall have a right to have an attorney represent him or her at the show cause hearing, which~~

1 may be conducted solely on the basis of affidavits or
2 declarations, but the person is not entitled to be present at the
3 show cause hearing. At the show cause hearing, the prosecuting
4 attorney shall present prima facie evidence establishing that the
5 committed person continues to meet the definition of a sexually
6 violent predator and that a less restrictive alternative is not in the
7 best interest of the person and conditions cannot be imposed that
8 adequately protect the community. In making this showing, the
9 state may rely exclusively upon the annual report prepared
10 pursuant to subdivision (a). The committed person may present
11 responsive affidavits or declarations to which the state may reply.

12 (d) If the court at the show cause hearing determines that
13 either: (1) The state has failed to present prima facie evidence
14 that the committed person continues to meet the definition of a
15 sexually violent predator and that no proposed less restrictive
16 alternative is in the best interest of the person and conditions
17 cannot be imposed that would adequately protect the community;
18 or (2) probable cause exists to believe that the person's condition
19 has so changed that: (A) The person no longer meets the
20 definition of a sexually violent predator; or (B) release to a
21 proposed less restrictive alternative would be in the best interest
22 of the person and conditions can be imposed that would
23 adequately protect the community, then the court shall set a trial
24 on either or both issues.

25 (e) If the court has not previously considered the issue of
26 release to a less restrictive alternative, either through a trial on
27 the merits or through the procedures set forth in subdivision (d),
28 the court shall consider whether release to a less restrictive
29 alternative would be in the best interests of the person and
30 conditions can be imposed that would adequately protect the
31 community, without considering whether the person's condition
32 has changed.

33 (f) At the trial resulting from a finding by the court under
34 subdivision (d), the committed person shall be entitled to be
35 present and to the benefit of all constitutional protections that
36 were afforded to the person at the initial commitment proceeding.
37 The prosecuting agency shall represent the state and shall have a
38 right to a jury trial and to have the committed person evaluated
39 by experts chosen by the state. The committed person shall also
40 have the right to a jury trial and the right to have experts evaluate

1 him or her on his or her behalf and the court shall appoint an
2 expert if the person is indigent and requests an appointment.

3 (g) If the issue at the hearing is whether the person should be
4 unconditionally discharged, the burden of proof shall be upon the
5 state to prove beyond a reasonable doubt that the committed
6 person's condition remains such that the person continues to
7 meet the definition of a sexually violent predator. Evidence of the
8 prior commitment trial and disposition is admissible.

9 (h) If the issue at the hearing is whether the person should be
10 conditionally released to a less restrictive alternative, the burden
11 of proof at the hearing shall be upon the state to prove beyond a
12 reasonable doubt that conditional release to any proposed less
13 restrictive alternative either: (1) Is not in the best interest of the
14 committed person; or (2) does not include conditions that would
15 adequately protect the community. Evidence of the prior
16 commitment trial and disposition is admissible.

17 (i) Probable cause exists to believe that a person's condition
18 has "so changed," under paragraph (2) of subdivision (d), only
19 when evidence exists, since the person's last commitment trial
20 proceeding, of a substantial change in the person's physical or
21 mental condition such that the person either no longer meets the
22 definition of a sexually violent predator, or that a conditional
23 release to a less restrictive alternative is in the person's best
24 interest and conditions can be imposed to adequately protect the
25 community.

26 (j) A new trial proceeding under subdivision (f) may be
27 ordered or held only when there is current evidence from a
28 licensed professional of one of the following and the evidence
29 presents a change in condition since the person's last
30 commitment trial proceeding:

31 (1) An identified physiological change to the person, such as
32 paralysis, stroke, or dementia, that renders the committed person
33 unable to commit a sexually violent act and this change is
34 permanent.

35 (2) A change in the person's mental condition brought about
36 through positive response to continuing participation in treatment
37 which indicates that the person meets the standard for conditional
38 release to a less restrictive alternative or that the person would be
39 safe to be at large if unconditionally released from commitment.

1 ~~(k) For purposes of this section, a change in a single~~
2 ~~demographic factor, without more, does not establish probable~~
3 ~~cause for a new trial proceeding under subdivision (f). As used in~~
4 ~~this section, a single demographic factor includes, but is not~~
5 ~~limited to, a change in the chronological age, marital status, or~~
6 ~~gender of the committed person.~~

7 ~~(l) The jurisdiction of the court over a person civilly~~
8 ~~committed pursuant to this chapter continues until such time as~~
9 ~~the person is unconditionally discharged.~~

10 ~~(m) Before the court may enter an order directing conditional~~
11 ~~release to a less restrictive alternative, it must find all of the~~
12 ~~following:~~

13 ~~(1) The person will be treated by a treatment provider who is~~
14 ~~qualified to provide that treatment in this state.~~

15 ~~(2) The treatment provider has presented a specific course of~~
16 ~~treatment and has agreed to assume responsibility for that~~
17 ~~treatment and will report progress to the court on a regular basis,~~
18 ~~and will report violations immediately to the court, the~~
19 ~~prosecutor, the supervising community corrections officer, and~~
20 ~~the superintendent of the special commitment center.~~

21 ~~(3) Housing exists that is sufficiently secure to protect the~~
22 ~~community, and the person or agency providing housing to the~~
23 ~~conditionally released person has agreed in writing to accept the~~
24 ~~person, to provide the level of security required by the court, and~~
25 ~~immediately to report to the court, the prosecutor, the community~~
26 ~~program director, the department, and the superintendent of the~~
27 ~~special commitment center if the person leaves the housing to~~
28 ~~which he or she has been assigned without authorization.~~

29 ~~(4) The person is willing to comply with the treatment~~
30 ~~provider and all requirements imposed by the treatment provider~~
31 ~~and by the court.~~

32 ~~(5) The person is willing to comply with supervision~~
33 ~~requirements imposed by the Department of Mental Health, or~~
34 ~~the Department of Corrections and Rehabilitation at the direction~~
35 ~~of the Department of Mental Health.~~

36 ~~(n) Upon the conclusion of the evidence in a hearing held~~
37 ~~pursuant to subdivisions (d) through (h), or through summary~~
38 ~~judgment proceedings prior to such a hearing, if the court finds~~
39 ~~that there is no legally sufficient evidentiary basis for a~~
40 ~~reasonable jury to find that the conditions set forth in subdivision~~

1 (d) have been met, the court shall grant a motion by the state for
2 a judgment as a matter of law on the issue of conditional release
3 to a less restrictive alternative.

4 (e) ~~Whenever the issue of conditional release to a less~~
5 ~~restrictive alternative is submitted to the jury, the court shall~~
6 ~~instruct the jury to return a verdict in substantially the following~~
7 ~~form:~~

8 Has the state proved beyond a reasonable doubt that either:

9 (1) ~~The proposed less restrictive alternative is not in the best~~
10 ~~interests of respondent.~~

11 (2) ~~Does not include conditions that would adequately protect the~~
12 ~~community? Answer:~~

13 Yes or No.

14 (p) ~~If the court or jury determines that conditional release to a~~
15 ~~less restrictive alternative is in the best interest of the person and~~
16 ~~includes conditions that would adequately protect the~~
17 ~~community, and the court determines that the minimum~~
18 ~~conditions set forth in subdivision (m) are met, the court shall~~
19 ~~enter judgment and direct a conditional release.~~

20 (q) ~~The court shall impose any additional conditions necessary~~
21 ~~to ensure compliance with treatment and to protect the~~
22 ~~community. If the court finds that conditions do not exist that~~
23 ~~will both ensure the person's compliance with treatment and~~
24 ~~protect the community, then the person shall be remanded to the~~
25 ~~custody of the Department of Mental Health for control, care,~~
26 ~~and treatment in a secure facility.~~

27 (r) ~~If the service provider designated by the court to provide~~
28 ~~inpatient or outpatient treatment or to monitor or supervise any~~
29 ~~other terms and conditions of a person's placement in a less~~
30 ~~restrictive alternative is other than the Department of Mental~~
31 ~~Health, or the Department of Corrections and Rehabilitation at~~
32 ~~the direction of the Department of Mental Health then the service~~
33 ~~provider so designated must agree in writing to provide that~~
34 ~~treatment, monitoring, or supervision in accord with this section.~~
35 ~~Any person providing or agreeing to provide treatment,~~
36 ~~monitoring, or supervision services pursuant to this chapter may~~
37 ~~be compelled to testify and any privilege with regard to such~~
38 ~~person's testimony is deemed waived.~~

39 (s) ~~Prior to authorizing any release to a less restrictive~~
40 ~~alternative, the court shall impose those conditions upon the~~

1 person as are necessary to ensure the safety of the community.
2 The court shall order the Department of Mental Health to
3 investigate the less restrictive alternative and recommend any
4 additional conditions to the court. These conditions shall include,
5 but are not limited to, the following: Specification of residence,
6 prohibition of contact with potential or past victims, prohibition
7 of alcohol and other drug use, participation in a specific course of
8 inpatient or outpatient treatment that may include monitoring by
9 the use of polygraph and plethysmograph, a requirement that the
10 person remain within the state unless the person receives prior
11 authorization by the court, and any other conditions that the court
12 determines are in the best interest of the person or others. A copy
13 of the conditions of release shall be given to the person and to
14 any designated service providers.

15 (t) Any service provider designated to provide inpatient or
16 outpatient treatment shall monthly, or as otherwise directed by
17 the court, submit to the court, to the Department of Mental
18 Health facility from which the person was released, to the
19 prosecutor of the county in which the person was found to be a
20 sexually violent predator, and to the supervising community
21 corrections officer, a report stating whether the person is
22 complying with the terms and conditions of the conditional
23 release to a less restrictive alternative.

24 (u) Each person released to a less restrictive alternative shall
25 have his or her case reviewed by the court that released him or
26 her no later than one year after that release and annually
27 thereafter until the person is unconditionally discharged. Review
28 may occur in a shorter time or more frequently, if the court, in its
29 discretion on its own motion, or on motion of the person, the
30 secretary, or the prosecuting attorney so determines. The sole
31 question to be determined by the court is whether the person shall
32 continue to be conditionally released to a less restrictive
33 alternative. The court in making its determination shall be aided
34 by the annual reports filed pursuant to subdivision (a) of this
35 section and the opinions of the secretary and other experts or
36 professional persons.

37 (v) Before placing a committed person in a state-operated
38 forensic conditional release program, the community program
39 director designated by the State Department of Mental Health
40 shall submit a written recommendation to the court stating which

~~forensic conditional release program is most appropriate for supervising and treating the committed person. If the court does not accept the community program director's recommendation, the court shall specify the reason or reasons for its order on the record. The procedures described in Sections 1605 to 1610, inclusive, of the Penal Code shall apply to the person placed in the forensic conditional release program.~~

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

~~(x) If the court rules against the committed person at the trial for unconditional release from commitment, the court may place the committed person on outpatient status in accordance with the procedures described in Title 15 (commencing with Section 1600) of Part 2 of the Penal Code and this section.~~

~~SEC. 67. Section 6608 of the Welfare and Institutions Code is repealed.~~

~~SEC. 68. If it is finally determined that the indeterminate term set forth in Sections 64 and 65 is unconstitutional, those sections shall not be operative, and Sections 64.5 and 65.5 shall be operative.~~

~~SEC. 57. Section 6605 of the Welfare and Institutions Code is amended to read:~~

~~6605. (a) A person found to be a sexually violent predator and committed to the custody of the State Department of Mental Health shall have a current examination of his or her mental condition made at least once every year. The person may retain, or if he or she is indigent and so requests, the court may appoint, a qualified expert or professional person to examine him or her, and the expert or professional person shall have access to all records concerning the person.~~

~~(b) The director shall provide the committed person with an annual written notice of his or her right to petition the court for conditional release under Section 6608. The notice shall contain a waiver of rights. The director shall forward the notice and~~

waiver form to the court with the annual report. If the person does not affirmatively waive his or her right to petition the court for conditional release, the court shall set a show cause hearing to determine whether facts exist that warrant a hearing on whether the person's condition has so changed that he or she would not be a danger to the health and safety of others if discharged. The committed person shall have the right to be present and to have an attorney represent him or her at the show cause hearing.

(c) If the court at the show cause hearing determines that probable cause exists to believe that the committed person's 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 engage in sexually violent criminal behavior if discharged, then the court shall set a hearing on the issue.

(d) At the hearing, the committed person shall have the right to be present and shall be entitled to the benefit of all constitutional protections that were afforded to him or her at the initial commitment proceeding. The attorney designated by the county pursuant to subdivision (i) of Section 6601 shall represent the state and shall have the right to demand a jury trial and to have the committed person evaluated by experts chosen by the state. The committed person also shall have the right to demand a jury trial and to have experts evaluate him or her on his or her behalf. The court shall appoint an expert if the person is indigent and requests an appointment. The burden of proof at the hearing shall be on the state to prove beyond a reasonable doubt that the committed person's diagnosed mental disorder remains such that he or she is a danger to the health and safety of others and is likely to engage in sexually violent criminal behavior if discharged. *The committed person's failure to engage in treatment shall be considered evidence that his or her condition has not changed, for purposes of any court proceeding held pursuant to this section, and a jury shall be so instructed. Completion of treatment programs shall be a condition of release.*

(e) If the court or jury rules against the committed person at the hearing conducted pursuant to subdivision (d), the term of commitment of the person shall run for a period of two years from the date of this ruling. If the court or jury rules for the

1 committed person, he or she shall be unconditionally released
2 and unconditionally discharged.

3 (f) In the event that the State Department of Mental Health has
4 reason to believe that a person committed to it as a sexually
5 violent predator is no longer a sexually violent predator, it shall
6 seek judicial review of the person's commitment pursuant to the
7 procedures set forth in Section 7250 in the superior court from
8 which the commitment was made. If the superior court
9 determines that the person is no longer a sexually violent
10 predator, he or she shall be unconditionally released and
11 unconditionally discharged.

12 ~~SEC. 69.~~

13 SEC. 58. (a) The sum of four hundred ninety-five thousand
14 dollars (\$495,000) is hereby appropriated from the General Fund
15 to the Office of Emergency Services, Division of Criminal
16 Justice Programs for child abuse and abduction programs that
17 provide prevention education to children in schools, and parents,
18 teachers, and service providers. The objective of the programs
19 shall be to increase awareness of the problem of child abduction,
20 and basic knowledge of how children can help to protect
21 themselves from being abducted. The programs may include a
22 media component to build awareness of the problem within
23 communities.

24 (b) The sum of six million dollars (\$6,000,000) is hereby
25 appropriated from the General Fund to the Corrections Standards
26 Authority for grants to counties for SAFE teams, pursuant to
27 Section 13887.5 of the Penal Code.

28 ~~SEC. 70—~~

29 SEC. 59. *The Legislature finds and declares that the changes*
30 *to the law proposed by this act and the changes proposed by*
31 *Jessica's Law, a proposed initiative statute, would both impose*
32 *costs on the state. If both measures are enacted, the impact on*
33 *the state's General Fund would be substantial due to both*
34 *one-time and ongoing costs, costs that would be incurred to serve*
35 *the same primary purpose of preventing sex offenses.*
36 *Accordingly, this act shall be inoperative if the initiative measure*
37 *commonly known as "Jessica's Law" is enacted by the voters at*
38 *the November 7, 2006 general election.*

39 SEC. 60. No reimbursement is required by this act pursuant to
40 Section 6 of Article XIII B of the California Constitution for

1 certain costs that may be incurred by a local agency or school
2 district because, in that regard, this act creates a new crime or
3 infraction, eliminates a crime or infraction, or changes the
4 penalty for a crime or infraction, within the meaning of Section
5 17556 of the Government Code, or changes the definition of a
6 crime within the meaning of Section 6 of Article XIII B of the
7 California Constitution.

8 However, if the Commission on State Mandates determines
9 that this act contains other costs mandated by the state,
10 reimbursement to local agencies and school districts for those
11 costs shall be made pursuant to Part 7 (commencing with Section
12 17500) of Division 4 of Title 2 of the Government Code.

13 ~~SEC. 71.~~

14 *SEC. 61.* This act is an urgency statute necessary for the
15 immediate preservation of the public peace, health, or safety
16 within the meaning of Article IV of the Constitution and shall go
17 into immediate effect. The facts constituting the necessity are:

18 In order to protect the health and safety of the children of
19 California, it is necessary that this act take effect immediately.

20
21
22 **CORRECTIONS:**

23 **Text-Pages 71 and 132.**
24