

AMENDED IN ASSEMBLY MAY 11, 2011

AMENDED IN ASSEMBLY MAY 9, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 813

Introduced by Assembly Member Fletcher

February 17, 2011

An act to amend Section 11126 of the Government Code, and to amend Sections 290.04, 290.09, 1203.067, 3008, 9002, and 9003 of the Penal Code, relating to sex crimes.

LEGISLATIVE COUNSEL'S DIGEST

AB 813, as amended, Fletcher. Sex offenders: punishment: parole.

(1) Existing law creates the Sex Offender Management Board, within the jurisdiction of the Department of Corrections and Rehabilitation, empowered to address any issues, concerns, and problems related to the community management of adult sex offenders, including the main objective of the board to achieve safer communities by reducing victimization. The board is required, on or before July 1, 2011, to develop and update standards for certification of sex offender management professionals.

This bill would give board members immunity from liability for their good faith conduct. The bill would require that information submitted by a person applying for certification as a sex offender management professional do so under the penalty of perjury. Because the bill would expand the scope of the crime of perjury, it would impose a state-mandated local program.

The bill would also immunize certified sex offender management professionals and other specified professionals, as provided, from civil

liability for any criminal acts committed by persons on parole, probation, or judicial commitment status who receive supervision or treatment.

(2) *Existing law requires every person who is required to register as a sex offender to be subject to assessment with the State-Authorized Risk Assessment Tool for Sex Offenders (SARATSO) and specifies that the SARATSO for adult males shall be the STATIC-99 risk assessment scale. Existing law establishes the SARATSO Review Committee, and requires the committee, on or before January 1, 2008, to determine whether the STATIC-99 should be supplemented with an actuarial instrument that measures dynamic risk factors or whether the STATIC-99 should be replaced with a different tool. Existing law requires the committee, on or before January 1, 2012, to select an actuarial instrument that measures dynamic risk factors and an actuarial instrument that measures the risk of future sexual violence.*

This bill would instead require the committee to determine whether the STATIC-99 should be supplemented with an empirically derived instrument, and would require the committee to select an empirically derived instrument that measures dynamic risk factors and an empirically derived instrument that measures risk of future violence.

~~(2)~~

(3) The Bagley-Keene Open Meeting Act requires, with specified exceptions, that all meetings of a state body be open and public and all persons be permitted to attend.

This bill would exempt the board from the Bagley-Keene Open Meeting Act for purposes of discussing matters pertaining to the application of a sex offender treatment provider for certification, including review of an applicant’s qualifications for certification. The bill would make related legislative findings and declarations.

~~(3)~~

(4) This bill would make clarifying and conforming changes.

~~(4)~~

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

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

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

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

1 SECTION 1. Section 11126 of the Government Code is
2 amended to read:

3 11126. (a) (1) Nothing in this article shall be construed to
4 prevent a state body from holding closed sessions during a regular
5 or special meeting to consider the appointment, employment,
6 evaluation of performance, or dismissal of a public employee or
7 to hear complaints or charges brought against that employee by
8 another person or employee unless the employee requests a public
9 hearing.

10 (2) As a condition to holding a closed session on the complaints
11 or charges to consider disciplinary action or to consider dismissal,
12 the employee shall be given written notice of his or her right to
13 have a public hearing, rather than a closed session, and that notice
14 shall be delivered to the employee personally or by mail at least
15 24 hours before the time for holding a regular or special meeting.
16 If notice is not given, any disciplinary or other action taken against
17 any employee at the closed session shall be null and void.

18 (3) The state body also may exclude from any public or closed
19 session, during the examination of a witness, any or all other
20 witnesses in the matter being investigated by the state body.

21 (4) Following the public hearing or closed session, the body
22 may deliberate on the decision to be reached in a closed session.

23 (b) For the purposes of this section, “employee” does not include
24 any person who is elected to, or appointed to a public office by,
25 any state body. However, officers of the California State University
26 who receive compensation for their services, other than per diem
27 and ordinary and necessary expenses, shall, when engaged in that
28 capacity, be considered employees. Furthermore, for purposes of
29 this section, the term employee includes a person exempt from
30 civil service pursuant to subdivision (e) of Section 4 of Article VII
31 of the California Constitution.

32 (c) Nothing in this article shall be construed to do any of the
33 following:

34 (1) Prevent state bodies that administer the licensing of persons
35 engaging in businesses or professions from holding closed sessions
36 to prepare, approve, grade, or administer examinations.

37 (2) Prevent an advisory body of a state body that administers
38 the licensing of persons engaged in businesses or professions from

1 conducting a closed session to discuss matters that the advisory
2 body has found would constitute an unwarranted invasion of the
3 privacy of an individual licensee or applicant if discussed in an
4 open meeting, provided the advisory body does not include a
5 quorum of the members of the state body it advises. Those matters
6 may include review of an applicant’s qualifications for licensure
7 and an inquiry specifically related to the state body’s enforcement
8 program concerning an individual licensee or applicant where the
9 inquiry occurs prior to the filing of a civil, criminal, or
10 administrative disciplinary action against the licensee or applicant
11 by the state body.

12 (3) Prohibit a state body from holding a closed session to
13 deliberate on a decision to be reached in a proceeding required to
14 be conducted pursuant to Chapter 5 (commencing with Section
15 11500) or similar provisions of law.

16 (4) Grant a right to enter any correctional institution or the
17 grounds of a correctional institution where that right is not
18 otherwise granted by law, nor shall anything in this article be
19 construed to prevent a state body from holding a closed session
20 when considering and acting upon the determination of a term,
21 parole, or release of any individual or other disposition of an
22 individual case, or if public disclosure of the subjects under
23 discussion or consideration is expressly prohibited by statute.

24 (5) Prevent any closed session to consider the conferring of
25 honorary degrees, or gifts, donations, and bequests that the donor
26 or proposed donor has requested in writing to be kept confidential.

27 (6) Prevent the Alcoholic Beverage Control Appeals Board from
28 holding a closed session for the purpose of holding a deliberative
29 conference as provided in Section 11125.

30 (7) (A) Prevent a state body from holding closed sessions with
31 its negotiator prior to the purchase, sale, exchange, or lease of real
32 property by or for the state body to give instructions to its
33 negotiator regarding the price and terms of payment for the
34 purchase, sale, exchange, or lease.

35 (B) However, prior to the closed session, the state body shall
36 hold an open and public session in which it identifies the real
37 property or real properties that the negotiations may concern and
38 the person or persons with whom its negotiator may negotiate.

39 (C) For purposes of this paragraph, the negotiator may be a
40 member of the state body.

1 (D) For purposes of this paragraph, “lease” includes renewal or
2 renegotiation of a lease.

3 (E) Nothing in this paragraph shall preclude a state body from
4 holding a closed session for discussions regarding eminent domain
5 proceedings pursuant to subdivision (e).

6 (8) Prevent the California Postsecondary Education Commission
7 from holding closed sessions to consider matters pertaining to the
8 appointment or termination of the Director of the California
9 Postsecondary Education Commission.

10 (9) Prevent the Council for Private Postsecondary and
11 Vocational Education from holding closed sessions to consider
12 matters pertaining to the appointment or termination of the
13 Executive Director of the Council for Private Postsecondary and
14 Vocational Education.

15 (10) Prevent the Franchise Tax Board from holding closed
16 sessions for the purpose of discussion of confidential tax returns
17 or information the public disclosure of which is prohibited by law,
18 or from considering matters pertaining to the appointment or
19 removal of the Executive Officer of the Franchise Tax Board.

20 (11) Require the Franchise Tax Board to notice or disclose any
21 confidential tax information considered in closed sessions, or
22 documents executed in connection therewith, the public disclosure
23 of which is prohibited pursuant to Article 2 (commencing with
24 Section 19542) of Chapter 7 of Part 10.2 of Division 2 of the
25 Revenue and Taxation Code.

26 (12) Prevent the Corrections Standards Authority from holding
27 closed sessions when considering reports of crime conditions under
28 Section 6027 of the Penal Code.

29 (13) Prevent the State Air Resources Board from holding closed
30 sessions when considering the proprietary specifications and
31 performance data of manufacturers.

32 (14) Prevent the State Board of Education or the Superintendent
33 of Public Instruction, or any committee advising the board or the
34 Superintendent, from holding closed sessions on those portions of
35 its review of assessment instruments pursuant to Chapter 5
36 (commencing with Section 60600) of, or pursuant to Chapter 9
37 (commencing with Section 60850) of, Part 33 of Division 4 of
38 Title 2 of the Education Code during which actual test content is
39 reviewed and discussed. The purpose of this provision is to
40 maintain the confidentiality of the assessments under review.

1 (15) Prevent the California Integrated Waste Management Board
2 or its auxiliary committees from holding closed sessions for the
3 purpose of discussing confidential tax returns, discussing trade
4 secrets or confidential or proprietary information in its possession,
5 or discussing other data, the public disclosure of which is
6 prohibited by law.

7 (16) Prevent a state body that invests retirement, pension, or
8 endowment funds from holding closed sessions when considering
9 investment decisions. For purposes of consideration of shareholder
10 voting on corporate stocks held by the state body, closed sessions
11 for the purposes of voting may be held only with respect to election
12 of corporate directors, election of independent auditors, and other
13 financial issues that could have a material effect on the net income
14 of the corporation. For the purpose of real property investment
15 decisions that may be considered in a closed session pursuant to
16 this paragraph, a state body shall also be exempt from the
17 provisions of paragraph (7) relating to the identification of real
18 properties prior to the closed session.

19 (17) Prevent a state body, or boards, commissions,
20 administrative officers, or other representatives that may properly
21 be designated by law or by a state body, from holding closed
22 sessions with its representatives in discharging its responsibilities
23 under Chapter 10 (commencing with Section 3500), Chapter 10.3
24 (commencing with Section 3512), Chapter 10.5 (commencing with
25 Section 3525), or Chapter 10.7 (commencing with Section 3540)
26 of Division 4 of Title 1 as the sessions relate to salaries, salary
27 schedules, or compensation paid in the form of fringe benefits.
28 For the purposes enumerated in the preceding sentence, a state
29 body may also meet with a state conciliator who has intervened
30 in the proceedings.

31 (18) (A) Prevent a state body from holding closed sessions to
32 consider matters posing a threat or potential threat of criminal or
33 terrorist activity against the personnel, property, buildings,
34 facilities, or equipment, including electronic data, owned, leased,
35 or controlled by the state body, where disclosure of these
36 considerations could compromise or impede the safety or security
37 of the personnel, property, buildings, facilities, or equipment,
38 including electronic data, owned, leased, or controlled by the state
39 body.

1 (B) Notwithstanding any other provision of law, a state body,
2 at any regular or special meeting, may meet in a closed session
3 pursuant to subparagraph (A) upon a two-thirds vote of the
4 members present at the meeting.

5 (C) After meeting in closed session pursuant to subparagraph
6 (A), the state body shall reconvene in open session prior to
7 adjournment and report that a closed session was held pursuant to
8 subparagraph (A), the general nature of the matters considered,
9 and whether any action was taken in closed session.

10 (D) After meeting in closed session pursuant to subparagraph
11 (A), the state body shall submit to the Legislative Analyst written
12 notification stating that it held this closed session, the general
13 reason or reasons for the closed session, the general nature of the
14 matters considered, and whether any action was taken in closed
15 session. The Legislative Analyst shall retain for no less than four
16 years any written notification received from a state body pursuant
17 to this subparagraph.

18 (19) Prevent the California Sex Offender Management Board
19 from holding a closed session for the purpose of discussing matters
20 pertaining to the application of a sex offender treatment provider
21 for certification pursuant to Sections 290.09 and 9003 of the Penal
22 Code. Those matters may include review of an applicant's
23 qualifications for certification.

24 (d) (1) Notwithstanding any other provision of law, any meeting
25 of the Public Utilities Commission at which the rates of entities
26 under the commission's jurisdiction are changed shall be open and
27 public.

28 (2) Nothing in this article shall be construed to prevent the
29 Public Utilities Commission from holding closed sessions to
30 deliberate on the institution of proceedings, or disciplinary actions
31 against any person or entity under the jurisdiction of the
32 commission.

33 (e) (1) Nothing in this article shall be construed to prevent a
34 state body, based on the advice of its legal counsel, from holding
35 a closed session to confer with, or receive advice from, its legal
36 counsel regarding pending litigation when discussion in open
37 session concerning those matters would prejudice the position of
38 the state body in the litigation.

39 (2) For purposes of this article, all expressions of the
40 lawyer-client privilege other than those provided in this subdivision

1 are hereby abrogated. This subdivision is the exclusive expression
2 of the lawyer-client privilege for purposes of conducting closed
3 session meetings pursuant to this article. For purposes of this
4 subdivision, litigation shall be considered pending when any of
5 the following circumstances exist:

6 (A) An adjudicatory proceeding before a court, an administrative
7 body exercising its adjudicatory authority, a hearing officer, or an
8 arbitrator, to which the state body is a party, has been initiated
9 formally.

10 (B) (i) A point has been reached where, in the opinion of the
11 state body on the advice of its legal counsel, based on existing
12 facts and circumstances, there is a significant exposure to litigation
13 against the state body.

14 (ii) Based on existing facts and circumstances, the state body
15 is meeting only to decide whether a closed session is authorized
16 pursuant to clause (i).

17 (C) (i) Based on existing facts and circumstances, the state
18 body has decided to initiate or is deciding whether to initiate
19 litigation.

20 (ii) The legal counsel of the state body shall prepare and submit
21 to it a memorandum stating the specific reasons and legal authority
22 for the closed session. If the closed session is pursuant to paragraph
23 (1), the memorandum shall include the title of the litigation. If the
24 closed session is pursuant to subparagraph (A) or (B), the
25 memorandum shall include the existing facts and circumstances
26 on which it is based. The legal counsel shall submit the
27 memorandum to the state body prior to the closed session, if
28 feasible, and in any case no later than one week after the closed
29 session. The memorandum shall be exempt from disclosure
30 pursuant to Section 6254.25.

31 (iii) For purposes of this subdivision, “litigation” includes any
32 adjudicatory proceeding, including eminent domain, before a court,
33 administrative body exercising its adjudicatory authority, hearing
34 officer, or arbitrator.

35 (iv) Disclosure of a memorandum required under this
36 subdivision shall not be deemed as a waiver of the lawyer-client
37 privilege, as provided for under Article 3 (commencing with
38 Section 950) of Chapter 4 of Division 8 of the Evidence Code.

39 (f) In addition to subdivisions (a), (b), and (c), nothing in this
40 article shall be construed to do any of the following:

1 (1) Prevent a state body operating under a joint powers
2 agreement for insurance pooling from holding a closed session to
3 discuss a claim for the payment of tort liability or public liability
4 losses incurred by the state body or any member agency under the
5 joint powers agreement.

6 (2) Prevent the examining committee established by the State
7 Board of Forestry and Fire Protection, pursuant to Section 763 of
8 the Public Resources Code, from conducting a closed session to
9 consider disciplinary action against an individual professional
10 forester prior to the filing of an accusation against the forester
11 pursuant to Section 11503.

12 (3) Prevent the enforcement advisory committee established by
13 the California Board of Accountancy pursuant to Section 5020 of
14 the Business and Professions Code from conducting a closed
15 session to consider disciplinary action against an individual
16 accountant prior to the filing of an accusation against the
17 accountant pursuant to Section 11503. Nothing in this article shall
18 be construed to prevent the qualifications examining committee
19 established by the California Board of Accountancy pursuant to
20 Section 5023 of the Business and Professions Code from
21 conducting a closed hearing to interview an individual applicant
22 or accountant regarding the applicant's qualifications.

23 (4) Prevent a state body, as defined in subdivision (b) of Section
24 11121, from conducting a closed session to consider any matter
25 that properly could be considered in closed session by the state
26 body whose authority it exercises.

27 (5) Prevent a state body, as defined in subdivision (d) of Section
28 11121, from conducting a closed session to consider any matter
29 that properly could be considered in a closed session by the body
30 defined as a state body pursuant to subdivision (a) or (b) of Section
31 11121.

32 (6) Prevent a state body, as defined in subdivision (c) of Section
33 11121, from conducting a closed session to consider any matter
34 that properly could be considered in a closed session by the state
35 body it advises.

36 (7) Prevent the State Board of Equalization from holding closed
37 sessions for either of the following:

38 (A) When considering matters pertaining to the appointment or
39 removal of the Executive Secretary of the State Board of
40 Equalization.

- 1 (B) For the purpose of hearing confidential taxpayer appeals or
2 data, the public disclosure of which is prohibited by law.
- 3 (8) Require the State Board of Equalization to disclose any
4 action taken in closed session or documents executed in connection
5 with that action, the public disclosure of which is prohibited by
6 law pursuant to Sections 15619 and 15641 of this code and Sections
7 833, 7056, 8255, 9255, 11655, 30455, 32455, 38705, 38706, 43651,
8 45982, 46751, 50159, 55381, and 60609 of the Revenue and
9 Taxation Code.
- 10 (9) Prevent the California Earthquake Prediction Evaluation
11 Council, or other body appointed to advise the Secretary of
12 Emergency Management or the Governor concerning matters
13 relating to volcanic or earthquake predictions, from holding closed
14 sessions when considering the evaluation of possible predictions.
- 15 (g) This article does not prevent either of the following:
- 16 (1) The Teachers' Retirement Board or the Board of
17 Administration of the Public Employees' Retirement System from
18 holding closed sessions when considering matters pertaining to
19 the recruitment, appointment, employment, or removal of the chief
20 executive officer or when considering matters pertaining to the
21 recruitment or removal of the Chief Investment Officer of the State
22 Teachers' Retirement System or the Public Employees' Retirement
23 System.
- 24 (2) The Commission on Teacher Credentialing from holding
25 closed sessions when considering matters relating to the
26 recruitment, appointment, or removal of its executive director.
- 27 (h) This article does not prevent the Board of Administration
28 of the Public Employees' Retirement System from holding closed
29 sessions when considering matters relating to the development of
30 rates and competitive strategy for plans offered pursuant to Chapter
31 15 (commencing with Section 21660) of Part 3 of Division 5 of
32 Title 2.
- 33 (i) This article does not prevent the Managed Risk Medical
34 Insurance Board from holding closed sessions when considering
35 matters related to the development of rates and contracting strategy
36 for entities contracting or seeking to contract with the board,
37 entities with which the board is considering a contract, or entities
38 with which the board is considering or enters into any other
39 arrangement under which the board provides, receives, or arranges
40 services or reimbursement, pursuant to Part 6.2 (commencing with

1 Section 12693), Part 6.3 (commencing with Section 12695), Part
2 6.4 (commencing with Section 12699.50), Part 6.5 (commencing
3 with Section 12700), Part 6.6 (commencing with Section 12739.5),
4 or Part 6.7 (commencing with Section 12739.70) of Division 2 of
5 the Insurance Code.

6 (j) Nothing in this article shall be construed to prevent the board
7 of the State Compensation Insurance Fund from holding closed
8 sessions in the following:

9 (1) When considering matters related to claims pursuant to
10 Chapter 1 (commencing with Section 3200) of Division 4 of the
11 Labor Code, to the extent that confidential medical information
12 or other individually identifiable information would be disclosed.

13 (2) To the extent that matters related to audits and investigations
14 that have not been completed would be disclosed.

15 (3) To the extent that an internal audit containing proprietary
16 information would be disclosed.

17 (4) To the extent that the session would address the development
18 of rates, contracting strategy, underwriting, or competitive strategy,
19 pursuant to the powers granted to the board in Chapter 4
20 (commencing with Section 11770) of Part 3 of Division 2 of the
21 Insurance Code, when discussion in open session concerning those
22 matters would prejudice the position of the State Compensation
23 Insurance Fund.

24 (k) The State Compensation Insurance Fund shall comply with
25 the procedures specified in Section 11125.4 of the Government
26 Code with respect to any closed session or meeting authorized by
27 subdivision (j), and in addition shall provide an opportunity for a
28 member of the public to be heard on the issue of the
29 appropriateness of closing the meeting or session.

30 *SEC. 2. Section 290.04 of the Penal Code is amended to read:*

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

1 (2) A representative of the Department of Corrections and
 2 Rehabilitation, in consultation with a representative of the State
 3 Department of Mental Health and a representative of the Attorney
 4 General’s office, shall comprise the SARATSO Review
 5 Committee. The purpose of the committee, which shall be staffed
 6 by the Department of Corrections and Rehabilitation, shall be to
 7 ensure that the SARATSO reflects the most reliable, objective and
 8 well-established protocols for predicting sex offender risk of
 9 recidivism, has been scientifically validated and cross validated,
 10 and is, or is reasonably likely to be, widely accepted by the courts.
 11 The committee shall consult with experts in the fields of risk
 12 assessment and the use of actuarial instruments in predicting sex
 13 offender risk, sex offending, sex offender treatment, mental health,
 14 and law, as it deems appropriate.

15 (b) (1) Commencing January 1, 2007, the SARATSO for adult
 16 males required to register as sex offenders shall be the STATIC-99
 17 risk assessment scale, which shall be the SARATSO static tool for
 18 adult males.

19 (2) ~~On or before January 1, 2008, the~~ The SARATSO Review
 20 Committee shall determine whether the STATIC-99 should be
 21 supplemented with an ~~actuarial~~ *empirically derived* instrument
 22 that measures dynamic risk factors or whether the STATIC-99
 23 should be replaced as the SARATSO with a different risk
 24 assessment tool. ~~On or before January 1, 2012, the~~ The SARATSO
 25 Review Committee shall select an ~~actuarial~~ *empirically derived*
 26 instrument that measures dynamic risk factors and an ~~actuarial~~
 27 *empirically derived* instrument that measures risk of future ~~sexual~~
 28 violence. The selected instruments shall be the SARATSO dynamic
 29 tool for adult males and the SARATSO future violence tool for
 30 adult males. If the committee unanimously agrees on changes to
 31 be made to a designated SARATSO, it shall advise the Governor
 32 and the Legislature of the changes, and the Department of
 33 Corrections and Rehabilitation shall post the decision on its Internet
 34 Web site. Sixty days after the decision is posted, the selected tool
 35 shall become the SARATSO for adult males.

36 (c) On or before July 1, 2007, the SARATSO Review Committee
 37 shall research risk assessment tools for adult females required to
 38 register as sex offenders. If the committee unanimously agrees on
 39 an appropriate risk assessment tool to be used to assess this
 40 population, it shall advise the Governor and the Legislature of the

1 selected tool, and the State Department of Mental Health shall post
2 the decision on its Internet Web site. Sixty days after the decision
3 is posted, the selected tool shall become the SARATSO for adult
4 females.

5 (d) On or before July 1, 2007, the SARATSO Review
6 Committee shall research risk assessment tools for male juveniles
7 required to register as sex offenders. If the committee unanimously
8 agrees on an appropriate risk assessment tool to be used to assess
9 this population, it shall advise the Governor and the Legislature
10 of the selected tool, and the State Department of Mental Health
11 shall post the decision on its Internet Web site. Sixty days after
12 the decision is posted, the selected tool shall become the
13 SARATSO for male juveniles.

14 (e) On or before July 1, 2007, the SARATSO Review Committee
15 shall research risk assessment tools for female juveniles required
16 to register as sex offenders. If the committee unanimously agrees
17 on an appropriate risk assessment tool to be used to assess this
18 population, it shall advise the Governor and the Legislature of the
19 selected tool, and the State Department of Mental Health shall post
20 the decision on its Internet Web site. Sixty days after the decision
21 is posted, the selected tool shall become the SARATSO for female
22 juveniles.

23 (f) The committee shall periodically evaluate the SARATSO
24 static, dynamic, and risk of future violence tools for each specified
25 population. If the committee unanimously agrees on a change to
26 the SARATSO for any population, it shall advise the Governor
27 and the Legislature of the selected tool, and the Department of
28 Corrections and Rehabilitation shall post the decision on its Internet
29 Web site. Sixty days after the decision is posted, the selected tool
30 shall become the SARATSO for that population.

31 (g) The committee shall perform other functions consistent with
32 the provisions of this act or as may be otherwise required by law,
33 including, but not limited to, defining tiers of risk based on the
34 SARATSO. The committee shall be immune from liability for
35 good faith conduct under this act.

36 ~~SEC. 2.~~

37 *SEC. 3.* Section 290.09 of the Penal Code is amended to read:

38 290.09. On or before July 2012, the SARATSO dynamic tool
39 and the SARATSO future violence tool, as set forth in Section
40 290.04, shall be administered as follows:

1 (a) (1) Every sex offender required to register pursuant to
2 Sections 290 to 290.023, inclusive, shall, while on parole or formal
3 probation, participate in an approved sex offender management
4 program, pursuant to Sections 1203.067 and 3008.

5 (2) The sex offender management program shall meet the
6 certification requirements developed by the California Sex Offender
7 Management Board pursuant to Section 9003. Probation
8 departments and the Department of Corrections and Rehabilitation
9 shall not employ or contract with, and shall not allow a sex offender
10 to employ or contract with, any individual or entity to provide sex
11 offender evaluation or treatment services pursuant to this section
12 unless the sex offender evaluation or treatment services to be
13 provided by the individual or entity conforms with the standards
14 developed pursuant to Section 9003.

15 (b) (1) The sex offender management professionals certified
16 by the California Sex Offender Management Board in accordance
17 with Section 9003 who provide sex offender management programs
18 for any probation department or the Department of Corrections
19 and Rehabilitation shall assess each registered sex offender on
20 formal probation or parole using the SARATSO dynamic tool,
21 when a dynamic risk factor changes, and shall do a final dynamic
22 assessment within six months of the offender's release from
23 supervision. The management professional shall also assess the
24 sex offenders in the program with the SARATSO future violence
25 tool.

26 (2) The certified sex offender management professional shall,
27 as soon as possible but not later than 30 days after the assessment,
28 provide the person's score on the SARATSO dynamic tool and
29 the future violence tool to the person's parole agent or probation
30 officer. Within five working days of receipt of the score, the parole
31 or probation officer shall send the score to the Department of
32 Justice, and the score shall be accessible to law enforcement
33 through the Department of Justice's Internet Web site for the
34 California Sex and Arson Registry (CSAR).

35 (c) The certified sex offender management professional shall
36 communicate with the offender's probation officer or parole agent
37 on a regular basis, but at least once a month, about the offender's
38 progress in the program and dynamic risk assessment issues, and
39 shall share pertinent information with the certified polygraph
40 examiner as required.

1 (d) The SARATSO Training Committee shall provide annual
2 training on the SARATSO dynamic tool and the SARATSO future
3 violence tool. Certified sex offender management professionals
4 shall attend this training once to obtain authorization to perform
5 the assessments, and thereafter attend training updates as required
6 by the SARATSO Training Committee. If a sex offender
7 management professional is certified pursuant to Section 9003 to
8 conduct an approved sex offender management program prior to
9 attending SARATSO training on the dynamic and violent risk
10 assessment tools, he or she shall present to the SARATSO Training
11 Committee proof of training on these tools from a risk assessment
12 expert approved by the SARATSO Training Committee.

13 ~~SEC. 3.~~

14 *SEC. 4.* Section 1203.067 of the Penal Code is amended to
15 read:

16 1203.067. (a) Notwithstanding any other law, before probation
17 may be granted to any person convicted of a felony specified in
18 Section 261, 262, 264.1, 286, 288, 288a, 288.5, or 289, who is
19 eligible for probation, the court shall do all of the following:

20 (1) Order the defendant evaluated pursuant to Section 1203.03,
21 or similar evaluation by the county probation department.

22 (2) Conduct a hearing at the time of sentencing to determine if
23 probation of the defendant would pose a threat to the victim. The
24 victim shall be notified of the hearing by the prosecuting attorney
25 and given an opportunity to address the court.

26 (3) Order any psychiatrist or psychologist appointed pursuant
27 to Section 288.1 to include a consideration of the threat to the
28 victim and the defendant's potential for positive response to
29 treatment in making his or her report to the court. Nothing in this
30 section shall be construed to require the court to order an
31 examination of the victim.

32 (b) On or after July 1, 2012, the terms of probation for persons
33 placed on formal probation for an offense that requires registration
34 pursuant to Sections 290 to 290.023, inclusive, shall include all of
35 the following:

36 (1) Persons placed on formal probation prior to July 1, 2012,
37 shall participate in an approved sex offender management program,
38 following the standards developed pursuant to Section 9003, for
39 a period of not less than one year or the remaining term of
40 probation if it is less than one year. The length of the period in the

1 program is to be determined by the certified sex offender
2 management professional in consultation with the probation officer
3 and as approved by the court.

4 (2) Persons placed on formal probation on or after July 1, 2012,
5 shall successfully complete a sex offender management program,
6 following the standards developed pursuant to Section 9003, as a
7 condition of release from probation. The length of the period in
8 the program shall be not less than one year, up to the entire period
9 of probation, as determined by the certified sex offender
10 management professional in consultation with the probation officer
11 and as approved by the court.

12 (3) Waiver of any privilege against self-incrimination and
13 participation in polygraph examinations, which shall be part of the
14 sex offender management program.

15 (4) Waiver of any psychotherapist-patient privilege to enable
16 communication between the sex offender management professional
17 and supervising probation officer, pursuant to Section 290.09.

18 (c) Any defendant ordered to be placed in an approved sex
19 offender management program pursuant to subdivision (b) shall
20 be responsible for paying the expense of his or her participation
21 in the program as determined by the court. The court shall take
22 into consideration the ability of the defendant to pay, and no
23 defendant shall be denied probation because of his or her inability
24 to pay.

25 ~~SEC. 4.~~

26 *SEC. 5.* Section 3008 of the Penal Code is amended to read:

27 3008. (a) The Department of Corrections and Rehabilitation
28 shall ensure that all parolees under active supervision who are
29 deemed to pose a high risk to the public of committing sex crimes,
30 as determined by the State-Authorized Risk Assessment Tool for
31 Sex Offenders (SARATSO), as set forth in Sections 290.04 to
32 290.06, inclusive, are placed on intensive and specialized parole
33 supervision and are required to report frequently to designated
34 parole officers. The department may place any other parolee
35 convicted of an offense that requires him or her to register as a sex
36 offender pursuant to Section 290 who is on active supervision on
37 intensive and specialized supervision and require him or her to
38 report frequently to designated parole officers.

39 (b) The department shall develop and, at the discretion of the
40 secretary, and subject to an appropriation of the necessary funds,

1 may implement a plan for the implementation of relapse prevention
2 treatment programs, and the provision of other services deemed
3 necessary by the department, in conjunction with intensive and
4 specialized parole supervision, to reduce the recidivism of sex
5 offenders.

6 (c) The department shall develop control and containment
7 programming for sex offenders who have been deemed to pose a
8 high risk to the public of committing a sex crime, as determined
9 by the SARATSO, and shall require participation in appropriate
10 programming as a condition of parole.

11 (d) On or after July 1, 2012, the parole conditions of a person
12 released on parole for an offense that requires registration pursuant
13 to Sections 290 to 290.023, inclusive, shall include all of the
14 following:

15 (1) Persons placed on parole prior to July 1, 2012, shall
16 participate in an approved sex offender management program,
17 following the standards developed pursuant to Section 9003, for
18 a period of not less than one year or the remaining term of parole
19 if it is less than one year. The length of the period in the program
20 is to be determined by the certified sex offender management
21 professional in consultation with the parole officer and as approved
22 by the court.

23 (2) Persons placed on parole on or after July 1, 2012, shall
24 successfully complete a sex offender management program,
25 following the standards developed pursuant to Section 9003, as a
26 condition of parole. The length of the period in the program shall
27 be not less than one year, up to the entire period of parole, as
28 determined by the certified sex offender management professional
29 in consultation with the parole officer and as approved by the court.

30 (3) Waiver of any privilege against self-incrimination and
31 participation in polygraph examinations, which shall be part of the
32 sex offender management program.

33 (4) Waiver of any psychotherapist-patient privilege to enable
34 communication between the sex offender management professional
35 and supervising parole officer, pursuant to Section 290.09.

36 (e) Any defendant ordered to be placed in an approved sex
37 offender management treatment program pursuant to subdivision
38 (d) shall be responsible for paying the expense of his or her
39 participation in the program. The department shall take into
40 consideration the ability of the defendant to pay, and no defendant

1 shall be denied discharge onto parole because of his or her inability
2 to pay.

3 ~~SEC. 5.~~

4 *SEC. 6.* Section 9002 of the Penal Code is amended to read:

5 9002. (a) The board shall address any issues, concerns, and
6 problems related to the community management of adult sex
7 offenders. The main objective of the board, which shall be used
8 to guide the board in prioritizing resources and use of time, is to
9 achieve safer communities by reducing victimization.

10 (b) The board shall conduct public hearings, as it deems
11 necessary, to provide opportunities for gathering information and
12 receiving input regarding the work of the board from concerned
13 stakeholders and the public.

14 (c) The members of the board shall be immune from liability
15 for good faith conduct under this chapter.

16 ~~SEC. 6.~~

17 *SEC. 7.* Section 9003 of the Penal Code is amended to read:

18 9003. (a) On or before July 1, 2011, the board shall develop
19 and update standards for certification of sex offender management
20 professionals. All those professionals who provide sex offender
21 management programs and risk assessments, pursuant to Section
22 290.09, shall be certified by the board according to these standards.
23 The standards shall be published on the board's Internet Web site.
24 Professionals may apply to the board for certification on or after
25 August 1, 2011.

26 (1) (A) The board shall submit to the Department of Justice
27 fingerprint images and related information required by the
28 Department of Justice of all sex offender management applicants,
29 as defined by subdivision (a), for the purposes of obtaining
30 information as to the existence and content of a record of state or
31 federal convictions and state or federal arrests and also information
32 as to the existence and content of a record of state arrests or federal
33 arrests for which the Department of Justice establishes that the
34 person is free on bail or on his or her own recognizance pending
35 trial or appeal.

36 (B) When received, the Department of Justice shall forward to
37 the Federal Bureau of Investigation requests for federal summary
38 criminal history information received pursuant to this section. The
39 Department of Justice shall review the information returned from

1 the Federal Bureau of Investigation and compile and disseminate
2 a response to the board.

3 (C) The Department of Justice shall provide a state and federal
4 response to the board pursuant to paragraph (1) of subdivision (I)
5 of Section 11105.

6 (D) The board shall request from the Department of Justice
7 subsequent arrest notification service, as provided pursuant to
8 Section 11105.2, for persons described in subdivision (a).

9 (2) The board shall require any person who applies for
10 certification under this section to submit information relevant to
11 the applicant's fitness to provide sex offender management
12 services. That information shall be submitted under the penalty of
13 perjury by the person applying for certification.

14 (3) The board shall assess a fee to the applicant not to exceed
15 one hundred eighty dollars (\$180) per application. The board shall
16 pay a fee to the Department of Justice sufficient to cover the cost
17 of processing the criminal background request specified in this
18 section.

19 (b) On or before July 1, 2011, the board shall develop and update
20 standards for certification of sex offender management programs,
21 which shall include treatment, as specified, and dynamic and future
22 violence risk assessments pursuant to Section 290.09. The standards
23 shall be published on the board's Internet Web site. All those
24 programs shall include polygraph examinations by a certified
25 polygraph examiner, which shall be conducted as needed during
26 the period that the offender is in the sex offender management
27 program. Only certified sex offender management professionals
28 whose programs meet the standards set by the board are eligible
29 to provide sex offender management programs pursuant to Section
30 290.09.

31 (c) Certified sex offender management professionals, who
32 provide sex offender management programs and risk assessments
33 pursuant to Section 290.09, shall not be held civilly liable for any
34 criminal acts committed by the persons on parole, probation, or
35 judicial commitment status who receive supervision or treatment.
36 This waiver of liability shall apply to certified sex offender
37 management professionals, administrators of the programs provided
38 by those professionals, and to agencies or persons under contract
39 to those professionals who provide screening, clinical evaluation,
40 risk assessment, supervision, or treatment to sex offender parolees,

1 probationers, or persons on conditional release pursuant to Article
2 4 (commencing with Section 6600) of Chapter 2 of Part 2 of
3 Division 6 of the Welfare and Institutions Code.

4 (d) On or before July 1, 2011, the board shall develop and update
5 standards for certification of polygraph examiners. The standards
6 shall be published on the board’s Internet Web site.

7 ~~SEC. 7.~~

8 *SEC. 8.* The Legislature finds and declares that Section 1 of
9 this act imposes a limitation on the public’s right of access to
10 meetings of public bodies within the meaning of Section 3 of
11 Article I of the California Constitution. Pursuant to that
12 constitutional provision, the Legislature makes the following
13 finding to demonstrate the interest protected by this limitation and
14 the need for protecting that interest: The Legislature finds and
15 declares that in order to protect the privacy of individuals applying
16 for certification as sex offender treatment providers, it is necessary
17 to exempt those individuals’ names from disclosure.

18 ~~SEC. 8.~~

19 *SEC. 9.* No reimbursement is required by this act pursuant to
20 Section 6 of Article XIII B of the California Constitution because
21 the only costs that may be incurred by a local agency or school
22 district will be incurred because this act creates a new crime or
23 infraction, eliminates a crime or infraction, or changes the penalty
24 for a crime or infraction, within the meaning of Section 17556 of
25 the Government Code, or changes the definition of a crime within
26 the meaning of Section 6 of Article XIII B of the California
27 Constitution.