

AMENDED IN SENATE JUNE 22, 2011

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
(Coauthor: Assembly Member Beth Gaines)

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~~ *provide that any person who knowingly*

provides false information in connection with an application for certification as a sex offender management professional would be subject to a civil penalty of up to \$1,500, in addition to any other remedy available to the board, and would allow any public prosecutor to bring an action for a civil penalty in the name of the people of the State of California.

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.

(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.

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

~~(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~~-no.

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:

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

4 (2) Prevent an advisory body of a state body that administers
5 the licensing of persons engaged in businesses or professions from
6 conducting a closed session to discuss matters that the advisory
7 body has found would constitute an unwarranted invasion of the
8 privacy of an individual licensee or applicant if discussed in an
9 open meeting, provided the advisory body does not include a
10 quorum of the members of the state body it advises. Those matters
11 may include review of an applicant's qualifications for licensure
12 and an inquiry specifically related to the state body's enforcement
13 program concerning an individual licensee or applicant where the
14 inquiry occurs prior to the filing of a civil, criminal, or
15 administrative disciplinary action against the licensee or applicant
16 by the state body.

17 (3) Prohibit a state body from holding a closed session to
18 deliberate on a decision to be reached in a proceeding required to
19 be conducted pursuant to Chapter 5 (commencing with Section
20 11500) or similar provisions of law.

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

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

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

35 (7) (A) Prevent a state body from holding closed sessions with
36 its negotiator prior to the purchase, sale, exchange, or lease of real
37 property by or for the state body to give instructions to its
38 negotiator regarding the price and terms of payment for the
39 purchase, sale, exchange, or lease.

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

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

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

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

12 (8) Prevent the California Postsecondary Education Commission
13 from holding closed sessions to consider matters pertaining to the
14 appointment or termination of the Director of the California
15 Postsecondary Education Commission.

16 (9) Prevent the Council for Private Postsecondary and
17 Vocational Education from holding closed sessions to consider
18 matters pertaining to the appointment or termination of the
19 Executive Director of the Council for Private Postsecondary and
20 Vocational Education.

21 (10) Prevent the Franchise Tax Board from holding closed
22 sessions for the purpose of discussion of confidential tax returns
23 or information the public disclosure of which is prohibited by law,
24 or from considering matters pertaining to the appointment or
25 removal of the Executive Officer of the Franchise Tax Board.

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

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

35 (13) Prevent the State Air Resources Board from holding closed
36 sessions when considering the proprietary specifications and
37 performance data of manufacturers.

38 (14) Prevent the State Board of Education or the Superintendent
39 of Public Instruction, or any committee advising the board or the
40 Superintendent, from holding closed sessions on those portions of

1 its review of assessment instruments pursuant to Chapter 5
 2 (commencing with Section 60600) of, or pursuant to Chapter 9
 3 (commencing with Section 60850) of, Part 33 of Division 4 of
 4 Title 2 of the Education Code during which actual test content is
 5 reviewed and discussed. The purpose of this provision is to
 6 maintain the confidentiality of the assessments under review.

7 (15) Prevent the California Integrated Waste Management Board
 8 or its auxiliary committees from holding closed sessions for the
 9 purpose of discussing confidential tax returns, discussing trade
 10 secrets or confidential or proprietary information in its possession,
 11 or discussing other data, the public disclosure of which is
 12 prohibited by law.

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

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

37 (18) (A) Prevent a state body from holding closed sessions to
 38 consider matters posing a threat or potential threat of criminal or
 39 terrorist activity against the personnel, property, buildings,
 40 facilities, or equipment, including electronic data, owned, leased,

1 or controlled by the state body, where disclosure of these
2 considerations could compromise or impede the safety or security
3 of the personnel, property, buildings, facilities, or equipment,
4 including electronic data, owned, leased, or controlled by the state
5 body.

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

10 (C) After meeting in closed session pursuant to subparagraph
11 (A), the state body shall reconvene in open session prior to
12 adjournment and report that a closed session was held pursuant to
13 subparagraph (A), the general nature of the matters considered,
14 and whether any action was taken in closed session.

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

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

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

33 (2) Nothing in this article shall be construed to prevent the
34 Public Utilities Commission from holding closed sessions to
35 deliberate on the institution of proceedings, or disciplinary actions
36 against any person or entity under the jurisdiction of the
37 commission.

38 (e) (1) Nothing in this article shall be construed to prevent a
39 state body, based on the advice of its legal counsel, from holding
40 a closed session to confer with, or receive advice from, its legal

1 counsel regarding pending litigation when discussion in open
2 session concerning those matters would prejudice the position of
3 the state body in the litigation.

4 (2) For purposes of this article, all expressions of the
5 lawyer-client privilege other than those provided in this subdivision
6 are hereby abrogated. This subdivision is the exclusive expression
7 of the lawyer-client privilege for purposes of conducting closed
8 session meetings pursuant to this article. For purposes of this
9 subdivision, litigation shall be considered pending when any of
10 the following circumstances exist:

11 (A) An adjudicatory proceeding before a court, an administrative
12 body exercising its adjudicatory authority, a hearing officer, or an
13 arbitrator, to which the state body is a party, has been initiated
14 formally.

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

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

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

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

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

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

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

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

12 (2) Prevent the examining committee established by the State
13 Board of Forestry and Fire Protection, pursuant to Section 763 of
14 the Public Resources Code, from conducting a closed session to
15 consider disciplinary action against an individual professional
16 forester prior to the filing of an accusation against the forester
17 pursuant to Section 11503.

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

29 (4) Prevent a state body, as defined in subdivision (b) of Section
30 11121, from conducting a closed session to consider any matter
31 that properly could be considered in closed session by the state
32 body whose authority it exercises.

33 (5) Prevent a state body, as defined in subdivision (d) of Section
34 11121, from conducting a closed session to consider any matter
35 that properly could be considered in a closed session by the body
36 defined as a state body pursuant to subdivision (a) or (b) of Section
37 11121.

38 (6) Prevent a state body, as defined in subdivision (c) of Section
39 11121, from conducting a closed session to consider any matter

1 that properly could be considered in a closed session by the state
2 body it advises.

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

5 (A) When considering matters pertaining to the appointment or
6 removal of the Executive Secretary of the State Board of
7 Equalization.

8 (B) For the purpose of hearing confidential taxpayer appeals or
9 data, the public disclosure of which is prohibited by law.

10 (8) Require the State Board of Equalization to disclose any
11 action taken in closed session or documents executed in connection
12 with that action, the public disclosure of which is prohibited by
13 law pursuant to Sections 15619 and 15641 of this code and Sections
14 833, 7056, 8255, 9255, 11655, 30455, 32455, 38705, 38706, 43651,
15 45982, 46751, 50159, 55381, and 60609 of the Revenue and
16 Taxation Code.

17 (9) Prevent the California Earthquake Prediction Evaluation
18 Council, or other body appointed to advise the Secretary of
19 Emergency Management or the Governor concerning matters
20 relating to volcanic or earthquake predictions, from holding closed
21 sessions when considering the evaluation of possible predictions.

22 (g) This article does not prevent either of the following:

23 (1) The Teachers' Retirement Board or the Board of
24 Administration of the Public Employees' Retirement System from
25 holding closed sessions when considering matters pertaining to
26 the recruitment, appointment, employment, or removal of the chief
27 executive officer or when considering matters pertaining to the
28 recruitment or removal of the Chief Investment Officer of the State
29 Teachers' Retirement System or the Public Employees' Retirement
30 System.

31 (2) The Commission on Teacher Credentialing from holding
32 closed sessions when considering matters relating to the
33 recruitment, appointment, or removal of its executive director.

34 (h) This article does not prevent the Board of Administration
35 of the Public Employees' Retirement System from holding closed
36 sessions when considering matters relating to the development of
37 rates and competitive strategy for plans offered pursuant to Chapter
38 15 (commencing with Section 21660) of Part 3 of Division 5 of
39 Title 2.

1 (i) This article does not prevent the Managed Risk Medical
2 Insurance Board from holding closed sessions when considering
3 matters related to the development of rates and contracting strategy
4 for entities contracting or seeking to contract with the board,
5 entities with which the board is considering a contract, or entities
6 with which the board is considering or enters into any other
7 arrangement under which the board provides, receives, or arranges
8 services or reimbursement, pursuant to Part 6.2 (commencing with
9 Section 12693), Part 6.3 (commencing with Section 12695), Part
10 6.4 (commencing with Section 12699.50), Part 6.5 (commencing
11 with Section 12700), Part 6.6 (commencing with Section 12739.5),
12 or Part 6.7 (commencing with Section 12739.70) of Division 2 of
13 the Insurance Code.

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

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

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

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

25 (4) To the extent that the session would address the development
26 of rates, contracting strategy, underwriting, or competitive strategy,
27 pursuant to the powers granted to the board in Chapter 4
28 (commencing with Section 11770) of Part 3 of Division 2 of the
29 Insurance Code, when discussion in open session concerning those
30 matters would prejudice the position of the State Compensation
31 Insurance Fund.

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

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

39 290.04. (a) (1) The sex offender risk assessment tools
40 authorized by this section for use with selected populations shall

1 be known, with respect to each population, as the State-Authorized
2 Risk Assessment Tool for Sex Offenders (SARATSO). If a
3 SARATSO has not been selected for a given population pursuant
4 to this section, no duty to administer the SARATSO elsewhere in
5 this code shall apply with respect to that population. Every person
6 required to register as a sex offender shall be subject to assessment
7 with the SARATSO as set forth in this section and elsewhere in
8 this code.

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

23 (b) (1) Commencing January 1, 2007, the SARATSO for adult
24 males required to register as sex offenders shall be the STATIC-99
25 risk assessment scale, which shall be the SARATSO static tool for
26 adult males.

27 (2) The SARATSO Review Committee shall determine whether
28 the STATIC-99 should be supplemented with an empirically
29 derived instrument that measures dynamic risk factors or whether
30 the STATIC-99 should be replaced as the SARATSO with a
31 different risk assessment tool. The SARATSO Review Committee
32 shall select an empirically derived instrument that measures
33 dynamic risk factors and an empirically derived instrument that
34 measures risk of future violence. The selected instruments shall
35 be the SARATSO dynamic tool for adult males and the SARATSO
36 future violence tool for adult males. If the committee unanimously
37 agrees on changes to be made to a designated SARATSO, it shall
38 advise the Governor and the Legislature of the changes, and the
39 Department of Corrections and Rehabilitation shall post the
40 decision on its Internet Web site. Sixty days after the decision is

1 posted, the selected tool shall become the SARATSO for adult
2 males.

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

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

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

30 (f) The committee shall periodically evaluate the SARATSO
31 static, dynamic, and risk of future violence tools for each specified
32 population. If the committee unanimously agrees on a change to
33 the SARATSO for any population, it shall advise the Governor
34 and the Legislature of the selected tool, and the Department of
35 Corrections and Rehabilitation shall post the decision on its Internet
36 Web site. Sixty days after the decision is posted, the selected tool
37 shall become the SARATSO for that population.

38 (g) The committee shall perform other functions consistent with
39 the provisions of this act or as may be otherwise required by law,
40 including, but not limited to, defining tiers of risk based on the

1 SARATSO. The committee shall be immune from liability for
2 good faith conduct under this act.

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

4 290.09. On or before July 2012, the SARATSO dynamic tool
5 and the SARATSO future violence tool, as set forth in Section
6 290.04, shall be administered as follows:

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

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

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

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

1 (c) The certified sex offender management professional shall
2 communicate with the offender’s probation officer or parole agent
3 on a regular basis, but at least once a month, about the offender’s
4 progress in the program and dynamic risk assessment issues, and
5 shall share pertinent information with the certified polygraph
6 examiner as required.

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

19 SEC. 4. Section 1203.067 of the Penal Code is amended to
20 read:

21 1203.067. (a) Notwithstanding any other law, before probation
22 may be granted to any person convicted of a felony specified in
23 Section 261, 262, 264.1, 286, 288, 288a, 288.5, or 289, who is
24 eligible for probation, the court shall do all of the following:

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

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

31 (3) Order any psychiatrist or psychologist appointed pursuant
32 to Section 288.1 to include a consideration of the threat to the
33 victim and the defendant’s potential for positive response to
34 treatment in making his or her report to the court. Nothing in this
35 section shall be construed to require the court to order an
36 examination of the victim.

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

1 (1) Persons placed on formal probation prior to July 1, 2012,
2 shall participate in an approved sex offender management program,
3 following the standards developed pursuant to Section 9003, for
4 a period of not less than one year or the remaining term of
5 probation if it is less than one year. The length of the period in the
6 program is to be determined by the certified sex offender
7 management professional in consultation with the probation officer
8 and as approved by the court.

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

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

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

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

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

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

1 intensive and specialized supervision and require him or her to
2 report frequently to designated parole officers.

3 (b) The department shall develop and, at the discretion of the
4 secretary, and subject to an appropriation of the necessary funds,
5 may implement a plan for the implementation of relapse prevention
6 treatment programs, and the provision of other services deemed
7 necessary by the department, in conjunction with intensive and
8 specialized parole supervision, to reduce the recidivism of sex
9 offenders.

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

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

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

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

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

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

1 (e) Any defendant ordered to be placed in an approved sex
2 offender management treatment program pursuant to subdivision
3 (d) shall be responsible for paying the expense of his or her
4 participation in the program. The department shall take into
5 consideration the ability of the defendant to pay, and no defendant
6 shall be denied discharge onto parole because of his or her inability
7 to pay.

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

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

14 (b) The board shall conduct public hearings, as it deems
15 necessary, to provide opportunities for gathering information and
16 receiving input regarding the work of the board from concerned
17 stakeholders and the public.

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

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

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

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

39 (B) When received, the Department of Justice shall forward to
40 the Federal Bureau of Investigation requests for federal summary

1 criminal history information received pursuant to this section. The
2 Department of Justice shall review the information returned from
3 the Federal Bureau of Investigation and compile and disseminate
4 a response to the board.

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

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

11 (2) The board shall require any person who applies for
12 certification under this section to submit information relevant to
13 the applicant's fitness to provide sex offender management
14 ~~services. That information shall be submitted under the penalty of~~
15 ~~perjury by the person applying for certification.~~ *services. Any*
16 *person who knowingly provides false information under this*
17 *paragraph shall be subject to a civil penalty in an amount up to*
18 *one thousand five hundred dollars (\$1,500), in addition to any*
19 *other remedies available to the board. An action for a civil penalty*
20 *under this provision may be brought by any public prosecutor in*
21 *the name of the people of the State of California.*

22 (3) The board shall assess a fee to the applicant not to exceed
23 one hundred eighty dollars (\$180) per application. The board shall
24 pay a fee to the Department of Justice sufficient to cover the cost
25 of processing the criminal background request specified in this
26 section.

27 (b) On or before July 1, 2011, the board shall develop and update
28 standards for certification of sex offender management programs,
29 which shall include treatment, as specified, and dynamic and future
30 violence risk assessments pursuant to Section 290.09. The standards
31 shall be published on the board's Internet Web site. All those
32 programs shall include polygraph examinations by a certified
33 polygraph examiner, which shall be conducted as needed during
34 the period that the offender is in the sex offender management
35 program. Only certified sex offender management professionals
36 whose programs meet the standards set by the board are eligible
37 to provide sex offender management programs pursuant to Section
38 290.09.

39 (c) Certified sex offender management professionals, who
40 provide sex offender management programs and risk assessments

1 pursuant to Section 290.09, shall not be held civilly liable for any
2 criminal acts committed by the persons on parole, probation, or
3 judicial commitment status who receive supervision or treatment.
4 This waiver of liability shall apply to certified sex offender
5 management professionals, administrators of the programs provided
6 by those professionals, and to agencies or persons under contract
7 to those professionals who provide screening, clinical evaluation,
8 risk assessment, supervision, or treatment to sex offender parolees,
9 probationers, or persons on conditional release pursuant to Article
10 4 (commencing with Section 6600) of Chapter 2 of Part 2 of
11 Division 6 of the Welfare and Institutions Code.

12 (d) On or before July 1, 2011, the board shall develop and update
13 standards for certification of polygraph examiners. The standards
14 shall be published on the board's Internet Web site.

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

25 ~~SEC. 9. No reimbursement is required by this act pursuant to~~
26 ~~Section 6 of Article XIII B of the California Constitution because~~
27 ~~the only costs that may be incurred by a local agency or school~~
28 ~~district will be incurred because this act creates a new crime or~~
29 ~~infraction, eliminates a crime or infraction, or changes the penalty~~
30 ~~for a crime or infraction, within the meaning of Section 17556 of~~
31 ~~the Government Code, or changes the definition of a crime within~~
32 ~~the meaning of Section 6 of Article XIII B of the California~~
33 ~~Constitution.~~