

AMENDED IN ASSEMBLY MAY 2, 2012  
AMENDED IN ASSEMBLY APRIL 12, 2012  
AMENDED IN ASSEMBLY MARCH 29, 2012  
CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1835**

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**Introduced by Assembly Member Fletcher**  
*(Coauthor: Assembly Member Beth Gaines)*

February 22, 2012

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An act to amend Sections 290.07, ~~1203.067,~~ and 3000.08, ~~and 3008~~ of the Penal Code, relating to sex crimes.

LEGISLATIVE COUNSEL'S DIGEST

AB 1835, as amended, Fletcher. Sex offenders: probation conditions.

Existing law, the Sex Offender Registration Act, requires persons convicted of specified sex offenses to register with local authorities for life while residing, located, attending school, or working in California. Willful failure to register, as required, is a misdemeanor, or a felony, depending on the underlying offense. Existing law authorizes access to all relevant records pertaining to a registered sex offender for, among others, a probation officer authorized and trained to administer the State Authorized Risk Assessment Tool for Sex Offenders (SARATSO).

This bill would additionally authorize release of relevant records pertaining to a registered sex offender to a sex offender management professional certified by the California Sex Offender Management Board, who is authorized to administer the SARATSO but who was trained pursuant to a different provision of law.

~~Under existing law, a person who has been convicted of specified felonies related to sexual abuse, including rape and lewd or lascivious~~

acts with a child, is required to comply with specified conditions while on formal probation or intensive and specialized formal probation. These conditions include, but are not limited to, participating in an approved sex offender management program and waiving the privilege against self-incrimination and participation in polygraph examinations.

~~This bill would require compulsory participation in polygraph examinations as part of the sex offender management program, and would require the participants to answer questions truthfully, but would remove the requirement that the participant to waive his or her privilege against self-incrimination.~~

Under existing law, a person released from state prison after serving a sentence or whose sentence has been deemed served for various crimes, including a serious felony, a violent felony, or a crime where a person is classified as a High Risk Sex Offender, is subject to the jurisdiction of, and parole supervision by, the Department of Corrections and Rehabilitation.

This bill would also require a person who is released on postrelease supervision and who is subsequently reclassified as a High Risk Sex Offender, to be transferred to the jurisdiction of, and parole supervision by, the Department of Corrections and Rehabilitation.

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

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

1 SECTION 1. Section 290.07 of the Penal Code is amended to  
2 read:  
3 290.07. Notwithstanding any other provision of law, a person  
4 authorized by statute to administer the State Authorized Risk  
5 Assessment Tool for Sex Offenders (SARATSO) and trained  
6 pursuant to Section 290.06 or 290.09, and a person acting under  
7 authority from the SARATSO Review Committee as an expert to  
8 train, monitor, or review scoring by persons who administer the  
9 SARATSO pursuant to Section 290.05 or 1203 of this code or  
10 Section 706 of the Welfare and Institutions Code, shall be granted  
11 access to all relevant records pertaining to a registered sex offender,  
12 including, but not limited to, criminal histories, sex offender  
13 registration records, police reports, probation and presentencing  
14 reports, judicial records and case files, juvenile records,  
15 psychological evaluations and psychiatric hospital reports, sexually

1 violent predator treatment program reports, and records that have  
2 been sealed by the courts or the Department of Justice. Records  
3 and information obtained under this section shall not be subject to  
4 the California Public Records Act, Chapter 3.5 (commencing with  
5 Section 6250) of Division 7 of Title 1 of the Government Code.

6 ~~SEC. 2. Section 1203.067 of the Penal Code is amended to~~  
7 ~~read:~~

8 ~~1203.067. (a) Notwithstanding any other law, before probation~~  
9 ~~may be granted to a person convicted of a felony specified in~~  
10 ~~Section 261, 262, 264.1, 286, 288, 288a, 288.5, or 289, who is~~  
11 ~~eligible for probation, the court shall do all of the following:~~

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

14 ~~(2) Conduct a hearing at the time of sentencing to determine if~~  
15 ~~probation of the defendant would pose a threat to the victim. The~~  
16 ~~victim shall be notified of the hearing by the prosecuting attorney~~  
17 ~~and given an opportunity to address the court.~~

18 ~~(3) Order a psychiatrist or psychologist appointed pursuant to~~  
19 ~~Section 288.1 to include a consideration of the threat to the victim~~  
20 ~~and the defendant's potential for positive response to treatment in~~  
21 ~~making his or her report to the court. Nothing in this section shall~~  
22 ~~be construed to require the court to order an examination of the~~  
23 ~~victim.~~

24 ~~(b) On or after July 1, 2012, the terms of probation for persons~~  
25 ~~placed on formal probation for an offense that requires registration~~  
26 ~~pursuant to Sections 290 to 290.023, inclusive, shall include all of~~  
27 ~~the following:~~

28 ~~(1) Persons placed on formal probation prior to July 1, 2012,~~  
29 ~~shall participate in an approved sex offender management program,~~  
30 ~~following the standards developed pursuant to Section 9003, for~~  
31 ~~a period of not less than one year or the remaining term of~~  
32 ~~probation if it is less than one year. The length of the period in the~~  
33 ~~program is to be determined by the certified sex offender~~  
34 ~~management professional in consultation with the probation officer~~  
35 ~~and as approved by the court.~~

36 ~~(2) Persons placed on formal probation on or after July 1, 2012,~~  
37 ~~shall successfully complete a sex offender management program,~~  
38 ~~following the standards developed pursuant to Section 9003, as a~~  
39 ~~condition of release from probation. The length of the period in~~  
40 ~~the program shall be not less than one year, up to the entire period~~

1 of probation, as determined by the certified sex offender  
2 management professional in consultation with the probation officer  
3 and as approved by the court.

4 (3) ~~Compelled participation in polygraph examinations, in which  
5 the person shall answer questions truthfully and which shall be  
6 part of the sex offender management program.~~

7 (4) ~~Waiver of psychotherapist-patient privilege to enable  
8 communication between the sex offender management professional  
9 and supervising probation officer, pursuant to Section 290.09.~~

10 (e) ~~A defendant ordered to be placed in an approved sex offender  
11 management program pursuant to subdivision (b) shall be  
12 responsible for paying the expense of his or her participation in  
13 the program as determined by the court. The court shall take into  
14 consideration the ability of the defendant to pay, and no defendant  
15 shall be denied probation because of his or her inability to pay.~~

16 ~~SEC. 3.~~

17 *SEC. 2.* Section 3000.08 of the Penal Code, as amended by  
18 Section 17 of Chapter 12 of the First Extraordinary Session of the  
19 Statutes of 2011, is amended to read:

20 3000.08. (a) A person released from state prison on or after  
21 October 1, 2011, after serving a prison term or, whose sentence  
22 has been deemed served pursuant to Section 2900.5, for any of the  
23 following crimes shall be subject to the jurisdiction of, and parole  
24 supervision by, the Department of Corrections and Rehabilitation:

25 (1) A serious felony as described in subdivision (c) of Section  
26 1192.7.

27 (2) A violent felony as described in subdivision (c) of Section  
28 667.5.

29 (3) A crime for which the person was sentenced pursuant to  
30 paragraph (2) of subdivision (e) of Section 667 or paragraph (2)  
31 of subdivision (c) of Section 1170.12.

32 (4) A crime where the person eligible for release from prison  
33 is classified as a High Risk Sex Offender.

34 (5) A crime where the person is required, as a condition of  
35 parole, to undergo treatment by the Department of Mental Health  
36 pursuant to Section 2962.

37 (b) Notwithstanding any other provision of law, all other  
38 offenders released from prison shall be placed on postrelease  
39 supervision pursuant to Title 2.05 (commencing with Section  
40 3450).

1 (c) Notwithstanding subdivision (a), any of the following  
2 persons released from state prison shall be subject to the  
3 jurisdiction of, and parole supervision by, the Department of  
4 Corrections and Rehabilitation for a period of parole up to three  
5 years or the parole term the person was subject to at the time of  
6 the commission of the offense, whichever is greater:

7 (1) The person is required to register as a sex offender pursuant  
8 to Chapter 5.5 (commencing with Section 290) of Title 9 of Part  
9 1, and was subject to a period of parole exceeding three years at  
10 the time he or she committed a felony for which they were  
11 convicted and subsequently sentenced to state prison.

12 (2) The person was subject to parole for life pursuant to Section  
13 3000.1 at the time of the commission of the offense that resulted  
14 in a conviction and state prison sentence.

15 (d) Except as described in subdivision (c), a person who is  
16 convicted of a felony that requires community supervision and  
17 who still has a period of state parole to serve shall discharge from  
18 state parole at the time of release to community supervision.

19 (e) If, after release from prison, a person on postrelease  
20 supervision pursuant to Title 2.05 (commencing with Section 3450)  
21 is reclassified as a High Risk Sex Offender, the person shall be  
22 transferred to the jurisdiction of, and parole supervision by, the  
23 Department of Corrections and Rehabilitation. The person shall  
24 be granted credit toward his or her period of parole supervision  
25 for any time spent on the postrelease supervision prior to the  
26 reclassification and transfer of supervision.

27 (f) This section shall be operative only until July 1, 2013, and  
28 as of January 1, 2014, is repealed, unless a later enacted statute,  
29 that is enacted before January 1, 2014, deletes or extends that date.

30 ~~SEC. 4.~~

31 *SEC. 3.* Section 3000.08 of the Penal Code, as amended by  
32 Section 18 of Chapter 12 of the First Extraordinary Session of the  
33 Statutes of 2011, is amended to read:

34 3000.08. (a) Persons released from state prison prior to or on  
35 or after July 1, 2013, after serving a prison term or, whose sentence  
36 has been deemed served pursuant to Section 2900.5, for any of the  
37 following crimes shall be subject to parole supervision by the  
38 Department of Corrections and Rehabilitation and the jurisdiction  
39 of the court in the county where the parolee is released or resides

1 for the purpose of hearing petitions to revoke parole and impose  
2 a term of custody:

3 (1) A serious felony as described in subdivision (c) of Section  
4 1192.7.

5 (2) A violent felony as described in subdivision (c) of Section  
6 667.5.

7 (3) A crime for which the person was sentenced pursuant to  
8 paragraph (2) of subdivision (e) of Section 667 or paragraph (2)  
9 of subdivision (c) of Section 1170.12.

10 (4) A crime where the person eligible for release from prison  
11 is classified as a High Risk Sex Offender.

12 (5) A crime where the person is required, as a condition of  
13 parole, to undergo treatment by the Department of Mental Health  
14 pursuant to Section 2962.

15 (b) Notwithstanding any other provision of law, all other  
16 offenders released from prison shall be placed on postrelease  
17 supervision pursuant to Title 2.05 (commencing with Section  
18 3450).

19 (c) At any time during the period of parole of a person subject  
20 to this section, if a parole agent or peace officer has probable cause  
21 to believe that the parolee is violating a term or condition of his  
22 or her parole, the agent or officer may, without warrant or other  
23 process and at any time until the final disposition of the case, arrest  
24 the person and bring him or her before the parole authority, or the  
25 parole authority may, in its discretion, issue a warrant for that  
26 person's arrest.

27 (d) Upon review of the alleged violation and a finding of good  
28 cause that the parolee has committed a violation of law or violated  
29 his or her conditions of parole, the parole authority may impose  
30 additional and appropriate conditions of supervision, including  
31 rehabilitation and treatment services and appropriate incentives  
32 for compliance, and impose immediate, structured, and intermediate  
33 sanctions for parole violations, including flash incarceration in a  
34 county jail. Periods of "flash incarceration," as defined in  
35 subdivision (e) are encouraged as one method of punishment for  
36 violations of a parolee's conditions of parole. Nothing in this  
37 section is intended to preclude referrals to a reentry court pursuant  
38 to Section 3015.

39 (e) "Flash incarceration" is a period of detention in county jail  
40 due to a violation of a parolee's conditions of parole. The length

1 of the detention period can range between one and 10 consecutive  
2 days. Shorter, but if necessary more frequent, periods of detention  
3 for violations of a parolee's conditions of parole shall appropriately  
4 punish a parolee while preventing the disruption in a work or home  
5 establishment that typically arises from longer periods of detention.

6 (f) If the supervising parole agency has determined, following  
7 application of its assessment processes, that intermediate sanctions  
8 up to and including flash incarceration are not appropriate, the  
9 supervising agency shall petition the revocation hearing officer  
10 appointed pursuant to Section 71622.5 of the Government Code  
11 in the county in which the parolee is being supervised to revoke  
12 parole. At any point during the process initiated pursuant to this  
13 section, a parolee may waive, in writing, his or her right to counsel,  
14 admit the parole violation, waive a court hearing, and accept the  
15 proposed parole modification. The petition shall include a written  
16 report that contains additional information regarding the petition,  
17 including the relevant terms and conditions of parole, the  
18 circumstances of the alleged underlying violation, the history and  
19 background of the parolee, and any recommendations. The Judicial  
20 Council shall adopt forms and rules of court to establish uniform  
21 statewide procedures to implement this subdivision, including the  
22 minimum contents of supervision agency reports. Upon a finding  
23 that the person has violated the conditions of parole, the revocation  
24 hearing officer shall have authority to do any of the following:

25 (1) Return the person to parole supervision with modifications  
26 of conditions, if appropriate, including a period of incarceration  
27 in county jail.

28 (2) Revoke parole and order the person to confinement in the  
29 county jail.

30 (3) Refer the person to a reentry court pursuant to Section 3015  
31 or other evidence-based program in the court's discretion.

32 (g) Confinement pursuant to paragraphs (1) and (2) of  
33 subdivision (f) shall not exceed a period of 180 days in the county  
34 jail.

35 (h) Notwithstanding any other provision of law, in any case  
36 where Section 3000.1 applies to a person who is on parole and  
37 there is good cause to believe that the person has committed a  
38 violation of law or violated his or her conditions of parole, and  
39 there is imposed a period of imprisonment of longer than 30 days,  
40 that person shall be remanded to the custody of the Department of

1 Corrections and Rehabilitation and the jurisdiction of the Board  
2 of Parole Hearings for the purpose of future parole consideration.

3 (i) Notwithstanding subdivision (a), any of the following persons  
4 released from state prison shall be subject to the jurisdiction of,  
5 and parole supervision by, the Department of Corrections and  
6 Rehabilitation for a period of parole up to three years or the parole  
7 term the person was subject to at the time of the commission of  
8 the offense, whichever is greater:

9 (1) The person is required to register as a sex offender pursuant  
10 to Chapter 5.5 (commencing with Section 290) of Title 9 of Part  
11 1, and was subject to a period of parole exceeding three years at  
12 the time he or she committed a felony for which they were  
13 convicted and subsequently sentenced to state prison.

14 (2) The person was subject to parole for life pursuant to Section  
15 3000.1 at the time of the commission of the offense that resulted  
16 in a conviction and state prison sentence.

17 (j) Parolees subject to this section who are being held for a  
18 parole violation in a county jail on July 1, 2013, shall be subject  
19 to the jurisdiction of the Board of Parole Hearings.

20 (k) Except as described in subdivision (c), a person who is  
21 convicted of a felony that requires community supervision and  
22 who still has a period of state parole to serve shall discharge from  
23 state parole at the time of release to community supervision.

24 (l) If, after release from prison, a person on postrelease  
25 supervision pursuant to Title 2.05 (commencing with Section 3450)  
26 is reclassified as a High Risk Sex Offender, the person shall be  
27 transferred to the jurisdiction of, and parole supervision by, the  
28 Department of Corrections and Rehabilitation. The person shall  
29 be granted credit toward his or her period of parole supervision  
30 for any time spent on the postrelease supervision prior to the  
31 reclassification and transfer of supervision.

32 (m) This section shall become operative on July 1, 2013.

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

34 ~~3008. (a) The Department of Corrections and Rehabilitation~~  
35 ~~shall ensure that all parolees under active supervision who are~~  
36 ~~deemed to pose a high risk to the public of committing sex crimes,~~  
37 ~~as determined by the State-Authorized Risk Assessment Tool for~~  
38 ~~Sex Offenders (SARATSO), as set forth in Sections 290.04 to~~  
39 ~~290.06, inclusive, are placed on intensive and specialized parole~~  
40 ~~supervision and are required to report frequently to designated~~

1 ~~parole officers. The department may place any other parolee~~  
2 ~~convicted of an offense that requires him or her to register as a sex~~  
3 ~~offender pursuant to Section 290 who is on active supervision on~~  
4 ~~intensive and specialized supervision and require him or her to~~  
5 ~~report frequently to designated parole officers.~~

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

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

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

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

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

37 ~~(3) Compelled participation in polygraph examinations, in which~~  
38 ~~the person shall answer questions truthfully and which shall be~~  
39 ~~part of the sex offender management program.~~

1     ~~(4) Waiver of psychotherapist-patient privilege to enable~~  
2     ~~communication between the sex offender management professional~~  
3     ~~and supervising parole officer, pursuant to Section 290.09.~~  
4     ~~(e) A defendant ordered to be placed in an approved sex offender~~  
5     ~~management treatment program pursuant to subdivision (d) shall~~  
6     ~~be responsible for paying the expense of his or her participation~~  
7     ~~in the program. The department shall take into consideration the~~  
8     ~~ability of the defendant to pay, and no defendant shall be denied~~  
9     ~~discharge onto parole because of his or her inability to pay.~~

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