

AMENDED IN SENATE JULY 19, 1995
AMENDED IN ASSEMBLY APRIL 25, 1995
AMENDED IN ASSEMBLY MARCH 15, 1995

CALIFORNIA LEGISLATURE—1995–96 REGULAR SESSION

ASSEMBLY BILL

No. 95

**Introduced by Assembly Members Valerie Brown, Alpert,
Bowen, Davis, Ducheny, Escutia, Friedman, Kuehl,
Martinez, Mazzoni, Kevin Murray, and Speier**
(Coauthors: Senators Costa, Hurtt, Monteith, O’Connell,
and Peace)

January 5, 1995

An act to amend Sections 207, 208, 209, 290, 667.5, 667.7, 667.71, 667.8, 667.83, 667.85, 669, 1170.1, 1203.066, and 2933.5 of, and to repeal and amend Section 667.61 of, the Penal Code, relating to crimes.

LEGISLATIVE COUNSEL’S DIGEST

AB 95, as amended, V. Brown. Crimes: kidnapping.

(1) Existing law provides that every person, who for the purpose of committing any lewd or lascivious act, hires, persuades, entices, decoys, or seduces by false promises, misrepresentations, or the like, any child under the age of 14 years to go out of this country, state, or county, or into another part of the same county, is guilty of kidnapping.

This bill would instead provide that every person who, by false promises, misrepresentations, or the like, and with the intent to either *unlawfully* deprive the parent or legal



guardian of the custody of the child or to commit a felony upon the child, ~~takes or carries away any child under the age of 14 years to go out of, or takes or carries away any child from, this country, state, or county, or into another part of the same county~~ *moves a child under the age of 14 into another part of the same county or out of the county, the state, or the country,* is guilty of kidnapping. The bill also would provide that those provisions do not apply to the taking, detaining, or concealing of a minor child by a biological parent, natural father, adoptive parent, or person who has been granted access to the minor child by a court order, unless the child is taken, detained, or concealed with the intent to commit any lewd or lascivious act. The bill would impose a state-mandated local program by expanding the scope of existing crimes.

(2) Existing law provides that any person who kidnaps another with the intent to commit rape, oral copulation, sodomy, or rape by instrument, shall be punished by imprisonment in the state prison for 5, 8, or 11 years.

This bill would delete this provision and would provide, instead, that under specified circumstances any person who kidnaps or carries away any individual with the intent to commit robbery, rape, spousal rape, sodomy, oral copulation, lewd or lascivious acts on a child under the age of 14 years, or rape by instrument shall be punished by imprisonment in the state prison for life with the possibility of parole. By expanding the scope of existing crimes, the bill would impose a state-mandated local program. The bill also would make additional conforming changes.

(3) Existing law defines a habitual sexual offender as a person who previously has been convicted of one or more specified sexual offenses and who is convicted in the present proceeding of one of those offenses.

This bill would add kidnapping with the intent to commit rape, spousal rape, oral copulation, sodomy, lewd or lascivious acts, and rape by instrument to the list of sexual offenses specified for the purpose of the definition of a habitual sexual offender.

(4) Existing law provides that any person who is convicted of any specified felony sexual offense, and who, for the purpose of committing that sexual offense, kidnapped the



victim, as specified, shall be punished by an additional 9-year term.

Existing law also provides that any person who is convicted of any specified felony sexual offense, and who, for the purpose of committing that sexual offense, kidnapped the victim, who was under the age of 14 years at the time, as specified, shall be punished by an additional 15-year term.

This bill would specify other types of kidnapping to which these provisions shall apply.

(5) Existing law provides that every person who is convicted of any specified felony, and who previously has been convicted 2 or more times, on charges separately brought and tried, and who previously has served 2 or more separate prior prison terms of any of those felonies, shall be ineligible to earn credit on his or her term of imprisonment.

This bill would add specified types of kidnapping to the list of felonies for which credit cannot be earned.

(6) Existing law requires specified sexual offenders to register with local law enforcement agencies and makes it a felony to willfully fail to register.

This bill would add specified types of kidnapping to the list of offenses that subject a person to these provisions. By expanding the scope of a crime and by imposing additional registration duties on local law enforcement agencies, the bill would impose a state-mandated local program.

(7) Existing law defines “violent felony” for purposes of sentence enhancement.

This bill would add specified types of kidnapping to, ~~and delete other specified types of kidnapping from,~~ this definition.

(8) 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, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.



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

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

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

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

1 SECTION 1. Section 207 of the Penal Code is
2 amended to read:

3 207. (a) Every person who forcibly, or by any other
4 means of instilling fear, steals or takes, or holds, detains,
5 or arrests any person in this state, and carries the person
6 into another country, state, or county, or into another part
7 of the same county, is guilty of kidnapping.

8 (b) Every person who, by false promises,
9 misrepresentations, or the like, and with the intent to
10 either *unlawfully* deprive the parent or legal guardian of
11 the custody of the child or to commit a felony upon the
12 child, ~~takes or carries away any child under the age of 14~~
13 ~~years to go out of, or takes or carries away any child from,~~
14 ~~this country, state, or county, or into another part of the~~
15 ~~same county, moves a child under the age of 14 into~~
16 *another part of the same county or out of the county, the*
17 *state, or the country,* is guilty of kidnapping.

18 (c) Every person who forcibly, or by any other means
19 of instilling fear, takes or holds, detains, or arrests any
20 person, with a design to take the person out of this state,
21 without having established a claim, according to the laws
22 of the United States, or of this state, or who hires,
23 persuades, entices, decoys, or seduces by false promises,
24 misrepresentations, or the like, any person to go out of
25 this state, or to be taken or removed therefrom, for the
26 purpose and with the intent to sell that person into
27 slavery or involuntary servitude, or otherwise to employ



1 that person for his or her own use, or to the use of another,
2 without the free will and consent of that persuaded
3 person, is guilty of kidnapping.

4 (d) Every person who, being out of this state, abducts
5 or takes by force or fraud any person contrary to the law
6 of the place where that act is committed, and brings,
7 sends, or conveys that person within the limits of this
8 state, and is afterwards found within the limits thereof, is
9 guilty of kidnapping.

10 (e) Subdivisions (a) to (d), inclusive, do not apply to
11 any of the following:

12 (1) To any person who steals, takes, entices away,
13 detains, conceals, or harbors any child under the age of 14
14 years, if that act is taken to protect the child from danger
15 of imminent harm.

16 (2) To any person acting under Section 834 or 837.

17 (3) To the taking, detaining, or concealing of a minor
18 child by a biological parent, a natural father, as specified
19 in Section 7611 of the Family Code, an adoptive parent,
20 or a person who has been granted access to the minor
21 child by a court order, unless the minor child is taken,
22 detained, or concealed with the intent to commit a
23 violation of Section 288.

24 SEC. 2. Section 208 of the Penal Code is amended to
25 read:

26 208. (a) Kidnapping is punishable by imprisonment
27 in the state prison for three, five, or eight years.

28 (b) If the person kidnapped is under 14 years of age at
29 the time of the commission of the crime, the kidnapping
30 is punishable by imprisonment in the state prison for 5, 8,
31 or 11 years. This subdivision is not applicable to the taking,
32 detaining, or concealing, of a minor child by a biological
33 parent, a natural father, as specified in Section 7611 of the
34 Family Code, an adoptive parent, or a person who has
35 been granted access to the minor child by a court order.

36 (c) In all cases in which probation is granted, the court
37 shall, except in unusual cases where the interests of justice
38 would best be served by a lesser penalty, require as a
39 condition of the probation that the person be confined in
40 the county jail for 12 months. If the court grants probation



1 without requiring the defendant to be confined in the
2 county jail for 12 months, it shall specify its reason or
3 reasons for imposing a lesser penalty.

4 SEC. 3. Section 209 of the Penal Code is amended to
5 read:

6 209. (a) Any person who seizes, confines, inveigles,
7 entices, decoys, abducts, conceals, kidnaps or carries
8 away another person by any means whatsoever with
9 intent to hold or detain, or who holds or detains, that
10 person for ransom, reward or to commit extortion or to
11 exact from another person any money or valuable thing,
12 or any person who aids or abets any such act, is guilty of
13 a felony, and upon conviction thereof, shall be punished
14 by imprisonment in the state prison for life without
15 possibility of parole in cases in which any person
16 subjected to any such act suffers death or bodily harm, or
17 is intentionally confined in a manner which exposes the
18 person to a substantial likelihood of death, or shall be
19 punished by imprisonment in the state prison for life with
20 the possibility of parole in cases where no person suffers
21 death or bodily harm.

22 (b) (1) Any person who kidnaps or carries away any
23 individual with the intent to commit robbery, rape,
24 spousal rape, oral copulation, sodomy, lewd or lascivious
25 acts on a child under 14 years of age in violation of Section
26 288, or rape by instrument in violation of Section 289, shall
27 be punished by imprisonment in the state prison for life
28 with the possibility of parole.

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

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



1 county jail for 12 months, it shall specify its reason or
2 reasons for imposing a lesser penalty.

3 (d) Subdivision (b) shall not be construed to
4 supersede or affect Section 667.61. A person may be
5 charged with a violation of subdivision (b) and Section
6 667.61. However, a person may not be punished under
7 subdivision (b) and Section 667.61 for the same act that
8 constitutes a violation of both subdivision (b) and Section
9 667.61.

10 SEC. 4. Section 290 of the Penal Code is amended to
11 read:

12 290. (a) (1) Every person described in paragraph
13 (2), for the rest of his or her life while residing in
14 California, shall be required to register with the chief of
15 police of the city in which he or she is domiciled, or the
16 sheriff of the county if he or she is domiciled in an
17 unincorporated area, and, additionally, with the chief of
18 police of a campus of the University of California or the
19 California State University if he or she is domiciled upon
20 the campus or in any of its facilities, within 14 days of
21 coming into any county, city, or city and county in which
22 he or she temporarily resides or is domiciled for that
23 length of time. The person shall be required annually
24 thereafter, within 10 days of his or her birthday, to update
25 his or her registration with the entities described in this
26 paragraph, including, verifying his or her address on a
27 form as may be required by the Department of Justice.

28 (2) The following persons shall be required to register
29 pursuant to paragraph (1):

30 (A) Any person who, since July 1, 1944, has been or is
31 hereafter convicted in any court in this state or in any
32 federal or military court of a violation of Section 207 or 209
33 committed with intent to violate Section 261, 286, 288,
34 288a, or 289, Section 220, except assault to commit
35 mayhem, or Section 243.4, paragraph (1), (2), (3), (4), or
36 (6) of subdivision (a) of Section 261 or paragraph (1) of
37 subdivision (a) of Section 262 involving the use of force
38 or violence for which the person is sentenced to the state
39 prison, Section 264.1, 266, 266c, 266j, 267, 285, 286, 288,
40 288a, 288.5, or 289, subdivision (b), (c), or (d) of Section



1 311.2, Section 311.3, 311.4, 311.10, 311.11, or 647.6 or
 2 former Section 647a, subdivision (d) of Section 647, or
 3 subdivision 1 or 2 of Section 314, or of any offense
 4 involving lewd and lascivious conduct under Section 272,
 5 or of any felony violation of Section 288.2; or any person
 6 who since that date has been or is hereafter convicted of
 7 the attempt to commit any of the above-mentioned
 8 offenses.

9 (B) Any person who, since July 1, 1944, has been or
 10 hereafter is released, discharged, or paroled from a penal
 11 institution where he or she was confined because of the
 12 commission or attempted commission of one of the
 13 offenses described in subparagraph (A).

14 (C) Any person who, since July 1, 1944, has been or
 15 hereafter is determined to be a mentally disordered sex
 16 offender under Article 1 (commencing with Section
 17 6300) of Chapter 2 of Part 2 of Division 6 of the Welfare
 18 and Institutions Code.

19 (D) Any person who, since July 1, 1944, has been, or is
 20 hereafter convicted in any other court, including any
 21 federal or military court, of any offense which, if
 22 committed or attempted in this state, would have been
 23 punishable as one or more of the offenses described in
 24 subparagraph (A).

25 (E) Any person ordered by any court to register
 26 pursuant to this section for any offense not included
 27 specifically in this section if the court finds at the time of
 28 conviction that the person committed the offense as a
 29 result of sexual compulsion or for purposes of sexual
 30 gratification. The court shall state on the record the
 31 reasons for its findings and the reasons for requiring
 32 registration.

33 (b) Any person who, after August 1, 1950, is released,
 34 discharged, or paroled from a jail, state or federal prison,
 35 school, road camp, or other institution where he or she
 36 was confined because of the commission or attempted
 37 commission of one of the offenses specified in subdivision
 38 (a) or is released from a state hospital to which he or she
 39 was committed as a mentally disordered sex offender
 40 under Article 1 (commencing with Section 6300) of



1 Chapter 2 of Part 2 of Division 6 of the Welfare and
2 Institutions Code, shall, prior to discharge, parole, or
3 release, be informed of his or her duty to register under
4 this section by the official in charge of the place of
5 confinement or hospital, and the official shall require the
6 person to read and sign any form that may be required by
7 the Department of Justice, stating that the duty of the
8 person to register under this section has been explained
9 to the person. The official in charge of the place of
10 confinement or hospital shall obtain the address where
11 the person expects to reside upon his or her discharge,
12 parole, or release and shall report the address to the
13 Department of Justice. The official in charge of the place
14 of confinement or hospital shall give one copy of the form
15 to the person and shall send one copy to the Department
16 of Justice and one copy to the appropriate law
17 enforcement agency or agencies having jurisdiction over
18 the place the person expects to reside upon discharge,
19 parole, or release. If the conviction which makes the
20 person subject to this section is a felony conviction, the
21 official in charge shall, not later than 45 days prior to the
22 scheduled release of the person, send one copy to the
23 appropriate law enforcement agency or agencies having
24 local jurisdiction where the person expects to reside upon
25 discharge, parole, or release; one copy to the prosecuting
26 agency which prosecuted the person; and one copy to the
27 Department of Justice. The official in charge of the place
28 of confinement shall retain one copy. All forms shall, if the
29 conviction which makes the person subject to this section
30 is a felony conviction, be transmitted within those times
31 in order to be received by the local law enforcement
32 agency or agencies and prosecuting agency 30 days prior
33 to the discharge, parole, or release of the person.

34 (c) Any person who, after August 1, 1950, is convicted
35 in this state of the commission or attempted commission
36 of any of the offenses specified in subdivision (a) and who
37 is released on probation or discharged upon payment of
38 a fine shall, prior to release or discharge, be informed of
39 the duty to register under this section by the court in
40 which the person has been convicted, and the court shall



1 require the person to read and sign any form that may be
2 required by the Department of Justice, stating that the
3 duty of the person to register under this section has been
4 explained to him or her. The court shall obtain the address
5 where the person expects to reside upon release or
6 discharge and shall report within three days the address
7 to the Department of Justice. The court shall give one
8 copy of the form to the person, send one copy to the
9 Department of Justice, and forward one copy to the
10 appropriate law enforcement agency or agencies having
11 local jurisdiction where the person expects to reside upon
12 his or her discharge, parole, or release.

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

22 (2) Any person who, on or after January 1, 1995, is
23 discharged or paroled from a facility in another state that
24 is equivalent to the Department of the Youth Authority,
25 to the custody of which he or she was committed because
26 of an offense which, if committed or attempted in this
27 state, would have been punishable as one or more of the
28 offenses described in paragraphs (3) and (4), shall be
29 subject to registration under the procedures of this
30 section.

31 (3) The following offenses shall apply for the purpose
32 of this subdivision:

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

36 (B) Any offense defined in Section 288 or 288.5,
37 paragraph (1) of subdivision (b) of, or subdivision (c) or
38 (d) of, Section 286, paragraph (1) of subdivision (b) of,
39 or subdivision (c) or (d) of, Section 288a, paragraph (2)



1 of subdivision (a) of Section 261, or subdivision (a) of
2 Section 289.

3 (C) Any offense under Section 264.1 involving rape in
4 concert with force or fear of bodily injury or penetration
5 by any foreign object in concert with force or fear of
6 bodily injury.

7 (D) A violation of Section 207 or 209 committed with
8 intent to violate Section 261, 286, 288, 288a, or 289.

9 (4) Any person who is discharged or paroled from the
10 Department of the Youth Authority to the custody of
11 which he or she was committed after having been
12 adjudicated a ward of the court pursuant to Section 602
13 of the Welfare and Institutions Code because of the
14 commission or attempted commission of the offense set
15 forth in Section 647.6, occurring on or after January 1,
16 1988, shall be subject to registration under the procedures
17 of this section.

18 (5) Prior to discharge or parole from the Department
19 of the Youth Authority, any person who is subject to
20 registration shall be informed of the duty to register
21 under the procedures set forth in this section.
22 Department of the Youth Authority officials shall
23 transmit the required forms and information to the
24 Department of Justice.

25 (6) All records specifically relating to the registration
26 in the custody of the Department of Justice, law
27 enforcement agencies, and other agencies or public
28 officials shall be destroyed when the person who is
29 required to register or has his or her records sealed under
30 the procedures set forth in Section 781 of the Welfare and
31 Institutions Code. This subdivision shall not be construed
32 as requiring the destruction of other criminal offender or
33 juvenile records relating to the case which are
34 maintained by the Department of Justice, law
35 enforcement agencies, the juvenile court, or other
36 agencies and public officials unless ordered by a court
37 under Section 781 of the Welfare and Institutions Code.

38 (e) (1) The registration shall consist of the following:



1 (A) A statement in writing signed by the person,
2 giving information as may be required by the
3 Department of Justice.

4 (B) The fingerprints and photograph of the person.

5 (C) The license plate number of any vehicle owned by
6 or registered in the name of the person.

7 (2) Within three days thereafter, the registering law
8 enforcement agency or agencies shall forward the
9 statement, fingerprints, photograph, and vehicle license
10 plate number, if any, to the Department of Justice.

11 (f) If any person who is required to register pursuant
12 to this section changes his or her residence address, the
13 person shall inform, in writing within 10 days, the law
14 enforcement agency or agencies with whom he or she last
15 registered of the new address. The law enforcement
16 agency or agencies shall, within three days after receipt
17 of this information, forward it to the Department of
18 Justice. The Department of Justice shall forward
19 appropriate registration data to the law enforcement
20 agency or agencies having local jurisdiction of the new
21 place of residence.

22 (g) (1) Any person who is required to register under
23 this section based on a misdemeanor conviction who
24 willfully violates this section is guilty of a misdemeanor
25 punishable by imprisonment in a county jail not
26 exceeding one year.

27 (2) Notwithstanding paragraph (1), any person who
28 has been convicted of assault with intent to commit rape,
29 oral copulation, or sodomy under Section 220, any
30 violation of Section 264.1 or 289 under Section 220, any
31 violation of Section 261, any offense defined in paragraph
32 (1) of subdivision (a) of Section 262 involving the use of
33 force or violence for which the person is sentenced to
34 state prison, any violation of Section 264.1, 286, 288, 288a,
35 288.5, or 289, or any violation of Section 207 or 209
36 committed with intent to violate Section 261, 286, 288,
37 288a, or 289, and who is required to register under this
38 section who willfully violates this section is guilty of a
39 felony punishable by imprisonment in the state prison for
40 16 months, or two or three years.



1 (3) Any person required to register under this section
2 based on a felony conviction who willfully violates this
3 section or who has a prior conviction for the offense of
4 failing to register under this section and who
5 subsequently and willfully commits that offense is, upon
6 each subsequent conviction, guilty of a felony and shall be
7 punished by imprisonment in the state prison for 16
8 months or two or three years.

9 A person punished pursuant to this paragraph or
10 paragraph (2) shall be sentenced to serve a term of not
11 less than 90 days nor more than one year in a county jail.
12 In no event does the court have the power to absolve a
13 person who willfully violates this section from the
14 obligation of spending at least 90 days of confinement in
15 a county jail and of completing probation of at least one
16 year.

17 If the person has been sentenced to a term of
18 imprisonment in the state prison, the penalty described
19 in this paragraph shall apply whether or not the person
20 has been released on parole or has been discharged from
21 parole.

22 (4) If, after discharge from parole, the person is
23 convicted of a felony as specified in this subdivision, he or
24 she shall be required to complete parole of at least one
25 year, in addition to any other punishment imposed under
26 this subdivision. A person convicted of a felony as
27 specified in this subdivision may be granted probation
28 only in the unusual case where the interests of justice
29 would best be served. When probation is granted under
30 this paragraph, the court shall specify on the record and
31 shall enter into the minutes the circumstances indicating
32 that the interests of justice would best be served by the
33 disposition.

34 (h) Whenever any person is released on parole or
35 probation and is required to register under this section
36 but fails to do so within the time prescribed, the parole
37 authority, the Youthful Offender Parole Board, or the
38 court, as the case may be, shall order the parole or
39 probation of the person revoked. For purposes of this



1 subdivision, “parole authority” has the same meaning as
2 described in Section 3000.

3 (i) Except as provided in Section 290.4, the statements,
4 photographs, and fingerprints required by this section
5 shall not be open to inspection by the public or by any
6 person other than a regularly employed peace officer or
7 other law enforcement officer.

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

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

26 (l) Every person who, prior to January 1, 1985, is
27 required to register under this section, shall be notified
28 whenever he or she next reregisters of the reduction of
29 the registration period from 30 to 14 days. This notice shall
30 be provided in writing by the registering agency or
31 agencies. Failure to receive this notification shall be a
32 defense against the penalties prescribed by subdivision
33 (g) if the person did register within 30 days.

34 SEC. 5. Section 667.5 of the Penal Code is amended to
35 read:

36 667.5. Enhancement of prison terms for new offenses
37 because of prior prison terms shall be imposed as follows:

38 (a) Where one of the new offenses is one of the violent
39 felonies specified in subdivision (c), in addition and
40 consecutive to any other prison terms therefor, the court



1 shall impose a three-year term for each prior separate
2 prison term served by the defendant where the prior
3 offense was one of the violent felonies specified in
4 subdivision (c). However, no additional term shall be
5 imposed under this subdivision for any prison term
6 served prior to a period of 10 years in which the defendant
7 remained free of both prison custody and the commission
8 of an offense which results in a felony conviction.

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

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

21 (1) Murder or voluntary manslaughter.

22 (2) Mayhem.

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

26 (4) Sodomy by force, violence, duress, menace, or fear
27 of immediate and unlawful bodily injury on the victim or
28 another person.

29 (5) Oral copulation by force, violence, duress, menace,
30 or fear of immediate and unlawful bodily injury on the
31 victim or another person.

32 (6) Lewd acts on a child under the age of 14 years as
33 defined in Section 288.

34 (7) Any felony punishable by death or imprisonment
35 ~~in the state prison for life, whether with or without the~~
36 ~~possibility of parole.~~ *in the state prison for life.*

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



1 specified prior to July 1, 1977, in Sections 213, 264, and 461,
2 or any felony in which the defendant uses a firearm which
3 use has been charged and proved as provided in Section
4 12022.5 or 12022.55.

5 (9) Any robbery perpetrated in an inhabited dwelling
6 house, vessel, as defined in Section 21 of the Harbors and
7 Navigation Code, which is inhabited and designed for
8 habitation, an inhabited floating home as defined in
9 subdivision (d) of Section 18075.55 of the Health and
10 Safety Code, an inhabited trailer coach, as defined in the
11 Vehicle Code, or in the inhabited portion of any other
12 building, wherein it is charged and proved that the
13 defendant personally used a deadly or dangerous
14 weapon, as provided in subdivision (b) of Section 12022,
15 in the commission of that robbery.

16 (10) Arson, in violation of subdivision (a) of Section
17 451.

18 (11) The offense defined in subdivision (a) of Section
19 289 where the act is accomplished against the victim's will
20 by force, violence, duress, menace, or fear of immediate
21 and unlawful bodily injury on the victim or another
22 person.

23 (12) Attempted murder.

24 (13) A violation of Section 12308.

25 ~~(14) Kidnapping, in violation of Section 207.~~

26 ~~(15)~~

27 *(14) Kidnapping, in violation of subdivision (b) of*
28 *Section 207.*

29 *(15) Kidnapping, as punished in subdivision (b) of*
30 *Section 208.*

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

33 ~~(16)~~

34 (17) Carjacking, as defined in subdivision (a) of
35 Section 215, if it is charged and proved that the defendant
36 personally used a dangerous or deadly weapon as
37 provided in subdivision (b) of Section 12022 in the
38 commission of the carjacking.

39 *(18) Kidnapping, in violation of Section 207, if it is*
40 *charged and proved that the defendant personally used*



1 *a dangerous or deadly weapon as provided in subdivision*
2 *(b) of Section 12022 in the commission of the kidnapping.*

3 The Legislature finds and declares that these specified
4 crimes merit special consideration when imposing a
5 sentence to display society's condemnation for these
6 extraordinary crimes of violence against the person.

7 (d) For the purposes of this section, the defendant
8 shall be deemed to remain in prison custody for an offense
9 until the official discharge from custody or until release
10 on parole, whichever first occurs, including any time
11 during which the defendant remains subject to
12 reimprisonment for escape from custody or is
13 reimprisoned on revocation of parole. The additional
14 penalties provided for prior prison terms shall not be
15 imposed unless they are charged and admitted or found
16 true in the action for the new offense.

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

21 (f) A prior conviction of a felony shall include a
22 conviction in another jurisdiction for an offense which, if
23 committed in California, is punishable by imprisonment
24 in the state prison if the defendant served one year or
25 more in prison for the offense in the other jurisdiction. A
26 prior conviction of a particular felony shall include a
27 conviction in another jurisdiction for an offense which
28 includes all of the elements of the particular felony as
29 defined under California law if the defendant served one
30 year or more in prison for the offense in the other
31 jurisdiction.

32 (g) A prior separate prison term for the purposes of
33 this section shall mean a continuous completed period of
34 prison incarceration imposed for the particular offense
35 alone or in combination with concurrent or consecutive
36 sentences for other crimes, including any
37 reimprisonment on revocation of parole which is not
38 accompanied by a new commitment to prison, and
39 including any reimprisonment after an escape from
40 incarceration.



1 (h) Serving a prison term includes any confinement
2 time in any state prison or federal penal institution as
3 punishment for commission of an offense, including
4 confinement in a hospital or other institution or facility
5 credited as service of prison time in the jurisdiction of the
6 confinement.

7 (i) For the purposes of this section, a commitment to
8 the State Department of Mental Health as a mentally
9 disordered sex offender following a conviction of a felony,
10 which commitment exceeds one year in duration, shall be
11 deemed a prior prison term.

12 (j) For the purposes of this section, when a person
13 subject to the custody, control, and discipline of the
14 Director of Corrections is incarcerated at a facility
15 operated by the Department of the Youth Authority, that
16 incarceration shall be deemed to be a term served in state
17 prison.

18 (k) Notwithstanding subdivisions (d) and (g) or any
19 other provision of law, where one of the new offenses is
20 committed while the defendant is temporarily removed
21 from prison pursuant to Section 2690 or while the
22 defendant is transferred to a community facility pursuant
23 to Section 3416, 6253, or 6263, or while the defendant is on
24 furlough pursuant to Section 6254, the defendant shall be
25 subject to the full enhancements provided for in this
26 section.

27 This subdivision shall not apply when a full, separate,
28 and consecutive term is imposed pursuant to any other
29 provision of law.

30 SEC. 6. Section 667.61 of the Penal Code, as added by
31 Section 1 of Chapter 447 of the Statutes of 1994, is
32 repealed.

33 SEC. 7. Section 667.61 of the Penal Code, as added by
34 Section 1 of Chapter 14 of the Statutes of 1994, First
35 Extraordinary Session, is amended to read:

36 667.61. (a) A person who is convicted of an offense
37 specified in subdivision (c) under one or more of the
38 circumstances specified in subdivision (d) or under two
39 or more of the circumstances specified in subdivision (e)
40 shall be punished by imprisonment in the state prison for



1 life and shall not be eligible for release on parole for 25
2 years except as provided in subdivision (j).

3 (b) Except as provided in subdivision (a), a person
4 who is convicted of an offense specified in subdivision (c)
5 under one of the circumstances specified in subdivision
6 (e) shall be punished by imprisonment in the state prison
7 for life and shall not be eligible for release on parole for
8 15 years except as provided in subdivision (j).

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

11 (1) A violation of paragraph (2) of subdivision (a) of
12 Section 261.

13 (2) A violation of paragraph (1) of subdivision (a) of
14 Section 262.

15 (3) A violation of Section 264.1.

16 (4) A violation of subdivision (b) of Section 288.

17 (5) A violation of subdivision (a) of Section 289.

18 (6) Sodomy or oral copulation in violation of Section
19 286 or 288a by force, violence, duress, menace, or fear of
20 immediate and unlawful bodily injury on the victim or
21 another person.

22 (7) A violation of subdivision (a) of Section 288, unless
23 the defendant qualifies for probation under subdivision
24 (c) of Section 1203.066.

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

27 (1) The defendant has been previously convicted of an
28 offense specified in subdivision (c), including an offense
29 committed in another jurisdiction that includes all of the
30 elements of an offense specified in subdivision (c).

31 (2) The defendant kidnapped the victim of the
32 present offense and the movement of the victim
33 substantially increased the risk of harm to the victim over
34 and above that level of risk necessarily inherent in the
35 underlying offense in subdivision (c).

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

39 (4) The defendant committed the present offense
40 during the commission of a burglary, as defined in



1 subdivision (a) of Section 460, with intent to commit an
2 offense specified in subdivision (c).

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

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

8 (2) Except as provided in paragraph (4) of subdivision
9 (d), the defendant committed the present offense during
10 the commission of a burglary, as defined in subdivision
11 (a) of Section 460, or during the commission of a burglary
12 of a building, including any commercial establishment,
13 which was then closed to the public, in violation of Section
14 459.

15 (3) The defendant personally inflicted great bodily
16 injury on the victim or another person in the commission
17 of the present offense in violation of Section 12022.7 or
18 12022.8.

19 (4) The defendant personally used a dangerous or
20 deadly weapon or firearm in the commission of the
21 present offense in violation of Section 12022, 12022.3, or
22 12022.5.

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

26 (6) The defendant engaged in the tying or binding of
27 the victim or another person in the commission of the
28 present offense.

29 (7) The defendant administered a controlled
30 substance to the victim by force, violence, or fear in the
31 commission of the present offense in violation of Section
32 12022.75.

33 (f) If only the minimum number of circumstances
34 specified in subdivision (d) or (e) which are required for
35 the punishment provided in subdivision (a) or (b) to
36 apply have been pled and proved, that circumstance or
37 those circumstances shall be used as the basis for imposing
38 the term provided in subdivision (a) or (b) rather than
39 being used to impose the punishment authorized under
40 any other law, unless another law provides for a greater



1 penalty. However, if any additional circumstance or
2 circumstances specified in subdivision (d) or (e) have
3 been pled and proved, the minimum number of
4 circumstances shall be used as the basis for imposing the
5 term provided in subdivision (a), and any other
6 additional circumstance or circumstances shall be used to
7 impose any punishment or enhancement authorized
8 under any other law. Notwithstanding any other law, the
9 court shall not strike any of the circumstances specified
10 in subdivision (d) or (e).

11 (g) The term specified in subdivision (a) or (b) shall
12 be imposed on the defendant once for any offense or
13 offenses committed against a single victim during a single
14 occasion. If there are multiple victims during a single
15 occasion, the term specified in subdivision (a) or (b) shall
16 be imposed on the defendant once for each separate
17 victim. Terms for other offenses committed during a
18 single occasion shall be imposed as authorized under any
19 other law, including Section 667.6, if applicable.

20 (h) Probation shall not be granted to, nor shall the
21 execution or imposition of sentence be suspended for, any
22 person who is subject to punishment under this section
23 for any offense specified in paragraphs (1) to (6),
24 inclusive, of subdivision (c).

25 (i) For the penalties provided in this section to apply,
26 the existence of any fact required under subdivision (d)
27 or (e) shall be alleged in the accusatory pleading and
28 either admitted by the defendant in open court or found
29 to be true by the trier of fact.

30 (j) Article 2.5 (commencing with Section 2930) of
31 Chapter 7 of Title 1 of Part 3 shall apply to reduce the
32 minimum term of 25 years in the state prison imposed
33 pursuant to subdivision (a) or 15 years in the state prison
34 imposed pursuant to subdivision (b). However, in no case
35 shall the minimum term of 25 or 15 years be reduced by
36 more than 15 percent for credits granted pursuant to
37 Section 2933, 4019, or any other law providing for conduct
38 credit reduction. In no case shall any person who is
39 punished under this section be released on parole prior to



1 serving at least 85 percent of the minimum term of 25 or
2 15 years in the state prison.

3 SEC. 8. Section 667.7 of the Penal Code is amended to
4 read:

5 667.7. (a) Any person convicted of a felony in which
6 the person inflicted great bodily injury as provided in
7 Section 12022.7, or personally used force which was likely
8 to produce great bodily injury, who has served two or
9 more prior separate prison terms as defined in Section
10 667.5 for the crime of murder; attempted murder;
11 voluntary manslaughter; mayhem; rape by force,
12 violence, or fear of immediate and unlawful bodily injury
13 on the victim or another person; oral copulation by force,
14 violence, duress, menace, or fear of immediate and
15 unlawful bodily injury on the victim or another person;
16 sodomy by force, violence, duress, menace, or fear of
17 immediate and unlawful bodily injury on the victim or
18 another person; lewd acts on a child under the age of 14
19 years by use of force, violence, duress, menace, or fear of
20 immediate and unlawful bodily injury on the victim or
21 another person; a violation of subdivision (a) of Section
22 289 where the act is accomplished against the victim's will
23 by means of force, violence, duress, menace, or fear of
24 immediate and unlawful bodily injury on the victim or
25 another person; kidnapping as punished in former
26 subdivision (d) of Section 208, or for ransom, extortion, or
27 robbery; robbery involving the use of force or a deadly
28 weapon; assault with intent to commit murder; assault
29 with a deadly weapon; carjacking involving the use of a
30 deadly weapon; assault with intent to commit murder;
31 assault with a deadly weapon; assault with a force likely
32 to produce great bodily injury; assault with intent to
33 commit rape, sodomy, oral copulation, penetration of a
34 vaginal or anal opening in violation of Section 289, or lewd
35 and lascivious acts on a child; arson of a structure; escape
36 or attempted escape by an inmate with force or violence
37 in violation of subdivision (a) of Section 4530, or of Section
38 4532; exploding a device with intent to murder in
39 violation of Section 12308; exploding a destructive device
40 which causes bodily injury in violation of Section 12309,



1 or mayhem or great bodily injury in violation of Section
2 12310; exploding a destructive device with intent to
3 injure, intimidate, or terrify, in violation of Section
4 12303.3; any felony in which the person inflicted great
5 bodily injury as provided in Section 12022.7; or any felony
6 punishable by death or life imprisonment with or without
7 the possibility of parole is a habitual offender and shall be
8 punished as follows:

9 (1) A person who served two prior separate prison
10 terms shall be punished by imprisonment in the state
11 prison for life and shall not be eligible for release on
12 parole for 20 years, or the term determined by the court
13 pursuant to Section 1170 for the underlying conviction,
14 including any enhancement applicable under Chapter
15 4.5 (commencing with Section 1170) of Title 7 of Part 2,
16 or any period prescribed by Section 190 or 3046,
17 whichever is greatest. Article 2.5 (commencing with
18 Section 2930) of Chapter 7 of Title 1 of Part 3 shall apply
19 to reduce any minimum term in a state prison imposed
20 pursuant to this section, but the person shall not
21 otherwise be released on parole prior to that time.

22 (2) Any person convicted of a felony specified in this
23 subdivision who has served three or more prior separate
24 prison terms, as defined in Section 667.5, for the crimes
25 specified in subdivision (a) of this section shall be
26 punished by imprisonment in the state prison for life
27 without the possibility of parole.

28 (b) This section shall not prevent the imposition of the
29 punishment of death or imprisonment for life without the
30 possibility of parole. No prior prison term shall be used for
31 this determination which was served prior to a period of
32 10 years in which the person remained free of both prison
33 custody and the commission of an offense which results
34 in a felony conviction. As used in this section, a
35 commitment to the Department of the Youth Authority
36 after conviction for a felony shall constitute a prior prison
37 term. The term imposed under this section shall be
38 imposed only if the prior prison terms are alleged under
39 this section in the accusatory pleading, and either
40 admitted by the defendant in open court, or found to be



1 true by the jury trying the issue of guilt or by the court
2 where guilt is established by a plea of guilty or nolo
3 contendere or by a trial by the court sitting without a jury.

4 SEC. 9. Section 667.71 of the Penal Code is amended
5 to read:

6 667.71. (a) For the purpose of this section, a habitual
7 sexual offender is a person who previously has been
8 convicted of one or more of the offenses listed in
9 subdivision (d) and who is convicted in the present
10 proceeding of one of those offenses.

11 (b) A habitual sexual offender is punishable by
12 imprisonment in the state prison for 25 years to life.
13 Article 2.5 (commencing with Section 2930) of Chapter
14 7 of Title 1 of Part 3 shall apply to reduce any minimum
15 term of 25 years in the state prison imposed pursuant to
16 this section. However, in no case shall the minimum term
17 of 25 years be reduced by more than 15 percent for credits
18 granted pursuant to Section 2933, 4019, or any other law
19 providing for conduct credit reduction. In no case shall
20 any person who is punished under this section be released
21 on parole prior to serving at least 85 percent of the
22 minimum term of 25 years in the state prison.

23 (c) At the request of the prosecutor and in lieu of the
24 punishment specified in subdivision (b), the court shall
25 order that the defendant be punished pursuant to Section
26 667.6, 667.61, 667.7, or 1170.1, if applicable.

27 (d) This section shall apply to persons found guilty of
28 violating paragraph (2) of subdivision (a) of Section 261,
29 paragraph (1) of subdivision (a) of Section 262, Section
30 264.1, subdivision (a) or (b) of Section 288, subdivision
31 (a) of Section 289, or of committing sodomy or oral
32 copulation in violation of Section 286 or 288a by force,
33 violence, duress, menace, or fear of immediate and
34 unlawful bodily injury on the victim or another person, or
35 found guilty of kidnapping, as punished in former
36 subdivision (d) of Section 208, kidnapping in violation of
37 Section 209 with the intent to commit rape, spousal rape,
38 oral copulation, sodomy, lewd or lascivious acts on a child
39 under 14 years of age in violation of Section 288, or rape
40 by instrument in violation of Section 289, or an offense



1 committed in another jurisdiction that has all the
2 elements of an offense specified in this subdivision, or
3 found subject to the enhancement set forth in Section
4 667.8.

5 (e) This section shall apply only if the defendant's
6 status as a habitual sexual offender is alleged in the
7 information, and either admitted by the defendant in
8 open court, or found to be true by the jury trying the issue
9 of guilt or by the court where guilt is established by a plea
10 of guilty or nolo contendere or by trial by court sitting
11 without a jury.

12 SEC. 10. Section 667.8 of the Penal Code is amended
13 to read:

14 667.8. (a) Except as provided in subdivision (b), any
15 person who is convicted of a felony violation of Section
16 261, 262, 264.1, 286, 288a, or 289 and who, for the purpose
17 of committing that sexual offense, kidnapped the victim
18 in violation of Section 207 or 209, shall be punished by an
19 additional term of nine years.

20 (b) Any person who is convicted of a felony violation
21 of subdivision (c) of Section 286, Section 288, or
22 subdivision (c) of Section 288a and who, for the purpose
23 of committing that sexual offense, kidnapped the victim,
24 who was under the age of 14 years at the time of the
25 offense, in violation of Section 207 or 209, shall be
26 punished by an additional term of 15 years. This
27 subdivision is not applicable to conduct proscribed by
28 Section 277, 278, or 278.5.

29 (c) The following shall govern the imposition of an
30 enhancement pursuant to this section:

31 (1) Only one enhancement shall be imposed for a
32 victim per incident.

33 (2) If there are two or more victims, one enhancement
34 can be imposed for each victim per incident.

35 (3) The enhancement may be in addition to the
36 punishment for either, but not both, of the following:

37 (A) A violation of Section 207 or 209.

38 (B) A violation of the sexual offenses enumerated in
39 this section.



1 SEC. 11. Section 667.83 of the Penal Code is amended
2 to read:

3 667.83. (a) When a person is convicted of a felony
4 violation of Section 207, 209, 261, 264.1, 273a, 273d, 286,
5 288a, or 289 committed against a child under the age of 18
6 years or a violation of Section 288 committed against a
7 child of the age designated in that statute, where the
8 offense was committed as part of a ceremony, rite, or any
9 similar observance, the person shall be punished by an
10 additional term of three years in addition and consecutive
11 to that violation.

12 (b) For purposes of this section, a “ceremony, rite, or
13 any similar observance” shall mean any of the following:

14 (1) Actual or simulated torture, mutilation, or sacrifice
15 of any mammal.

16 (2) Forced ingestion, or external application of human
17 or animal urine, feces, flesh, blood, or bones.

18 (3) Placement of a living child into a coffin, open
19 grave, or other confined area containing animal remains
20 or a human corpse or remains.

21 (c) This section shall not apply to:

22 (1) Lawful agricultural, animal husbandry, food
23 preparation, or wild game hunting and fishing practices
24 and specifically the branding or identification of
25 livestock.

26 (2) The lawful medical practice of circumcision or any
27 ceremony related thereto.

28 (3) Any state or federally approved, licensed, or
29 funded research project.

30 (d) The enhancement charged in violation of
31 subdivision (a) shall be proven by the testimony of two
32 witnesses, or of one witness and corroborating
33 circumstances.

34 (e) The following provisions govern the imposition of
35 this enhancement:

36 (1) Only one enhancement shall be imposed per
37 victim per incident.

38 (2) If there are two or more victims, one enhancement
39 may be imposed per victim per incident.



1 (f) The Department of Justice shall submit to the
2 Legislature on or before January 1, 1998, a report
3 compiling data from the Department of Justice form 8715
4 containing information relating to this section that has
5 been reported into the Department of Justice automated
6 criminal history system and is available on the
7 longitudinal file.

8 (g) Persons responsible for the completion of the
9 Department of Justice form 8715 shall submit the form to
10 the Attorney General in a timely manner. In addition,
11 those persons shall record all cases in which
12 enhancements are charged under this section and the
13 disposition of those cases.

14 (h) This section shall not be construed to infringe in
15 any way upon the rights and practices of legitimate
16 religions.

17 (i) This section shall remain in effect only until
18 January 1, 1999, and as of that date is repealed unless a
19 later enacted statute, that is enacted before January 1,
20 1999, deletes or extends that date.

21 SEC. 12. Section 667.85 of the Penal Code is amended
22 to read:

23 667.85. Any person who is convicted of a violation of
24 Section 207 or 209 and who kidnapped or carried away
25 any child under the age of 14 years with the intent to
26 permanently deprive the parent or legal guardian
27 custody of that child shall be punished by imprisonment
28 in the state prison for an additional five years.

29 SEC. 13. Section 669 of the Penal Code is amended to
30 read:

31 669. When any person is convicted of two or more
32 crimes, whether in the same proceeding or court or in
33 different proceedings or courts, and whether by
34 judgment rendered by the same judge or by different
35 judges, the second or other subsequent judgment upon
36 which sentence is ordered to be executed shall direct
37 whether the terms of imprisonment or any of them to
38 which he or she is sentenced shall run concurrently or
39 consecutively. Life sentences, whether with or without
40 the possibility of parole, may be imposed to run



1 consecutively with one another or with any other term of
2 imprisonment for a felony conviction. Whenever a
3 person is committed to prison on a life sentence which is
4 ordered to run consecutive to any determinate term of
5 imprisonment imposed pursuant to Section 1170, 1170.1,
6 667, 667.5, 667.6, 12022, 12022.2, 12022.4, 12022.5, 12022.55,
7 12022.6, 12022.7, 12022.75, 12022.9, or any other law that
8 prescribes a determinate term, the determinate term of
9 imprisonment shall be served first and no part thereof
10 shall be credited toward the person's eligibility for parole
11 as calculated pursuant to Section 3046 or pursuant to any
12 other section of law that establishes a minimum period of
13 confinement under the life sentence before eligibility for
14 parole.

15 In the event that the court at the time of pronouncing
16 the second or other judgment upon that person had no
17 knowledge of a prior existing judgment or judgments, or
18 having knowledge, fails to determine how the terms of
19 imprisonment shall run in relation to each other, then,
20 upon that failure to determine, or upon that prior
21 judgment or judgments being brought to the attention of
22 the court at any time prior to the expiration of 60 days
23 from and after the actual commencement of
24 imprisonment upon the second or other subsequent
25 judgments, the court shall, in the absence of the
26 defendant and within 60 days of the notice, determine
27 how the term of imprisonment upon the second or other
28 subsequent judgment shall run with reference to the
29 prior incompleated term or terms of imprisonment. Upon
30 the failure of the court to determine how the terms of
31 imprisonment on the second or subsequent judgment
32 shall run, the term of imprisonment on the second or
33 subsequent judgment shall run concurrently.

34 The Department of Corrections shall advise the court
35 pronouncing the second or other subsequent judgment of
36 the existence of all prior judgments against the
37 defendant, the terms of imprisonment upon which have
38 not been completely served.

39 SEC. 14. Section 1170.1 of the Penal Code is amended
40 to read:



1 1170.1. (a) Except as provided in subdivision (c) and
2 subject to Section 654, when any person is convicted of
3 two or more felonies, whether in the same proceeding or
4 court or in different proceedings or courts, and whether
5 by judgment rendered by the same or by a different
6 court, and a consecutive term of imprisonment is
7 imposed under Sections 669 and 1170, the aggregate term
8 of imprisonment for all these convictions shall be the sum
9 of the principal term, the subordinate term, and any
10 additional term imposed pursuant to Section 667, 667.5,
11 667.6, or 12022.1, and pursuant to Section 11370.2 of the
12 Health and Safety Code. The principal term shall consist
13 of the greatest term of imprisonment imposed by the
14 court for any of the crimes, including any enhancements
15 imposed pursuant to subdivision (c) of Section 186.10 or
16 Section 667.15, 667.8, 667.83, 667.85, 12022, 12022.2,
17 12022.3, 12022.4, 12022.5, 12022.55, 12022.6, 12022.7,
18 12022.75, 12022.8, or 12022.9 of this code, and an
19 enhancement imposed pursuant to Section 11370.4 or
20 11379.8 of the Health and Safety Code. The subordinate
21 term for each consecutive offense which is not a “violent
22 felony” as defined in subdivision (c) of Section 667.5 shall
23 consist of one-third of the middle term of imprisonment
24 prescribed for each other felony conviction for an offense
25 that is not a violent felony for which a consecutive term
26 of imprisonment is imposed, and shall exclude any
27 enhancements. In no case shall the total of subordinate
28 terms for these consecutive offenses which are not
29 “violent felonies” as defined in subdivision (c) of Section
30 667.5 exceed five years. The subordinate term for each
31 consecutive offense which is a “violent felony” as defined
32 in subdivision (c) of Section 667.5, including those
33 offenses described in paragraph (8), (9), ~~or (16)~~ (17), or
34 (18) of subdivision (c) of Section 667.5, shall consist of
35 one-third of the middle term of imprisonment prescribed
36 for each other felony conviction for an offense that is a
37 violent felony for which a consecutive term of
38 imprisonment is imposed, and shall include one-third of
39 any enhancements imposed pursuant to Section 667.15,



1 667.8, 667.83, 667.85, 12022, 12022.2, 12022.4, 12022.5,
2 12022.55, 12022.7, 12022.75, or 12022.9.

3 (b) (1) When a consecutive term of imprisonment is
4 imposed under Sections 669 and 1170 for two or more
5 convictions for kidnapping, as defined in Section 207,
6 involving separate victims or the same victim on separate
7 occasions, the aggregate term shall be calculated as
8 provided in subdivision (a), except that the subordinate
9 term for each subsequent kidnapping conviction shall
10 consist of the middle term for each kidnapping conviction
11 for which a consecutive term of imprisonment is imposed
12 and shall include one-third of any enhancements imposed
13 pursuant to Section 667.8, 667.83, 667.85, 12022, 12022.2,
14 12022.4, 12022.5, 12022.55, 12022.7, 12022.75, or 12022.9.
15 The five-year limitation on the total of subordinate terms
16 provided in subdivision (a) shall not apply to subordinate
17 terms for second and subsequent convictions of
18 kidnapping, as defined in Section 207, involving separate
19 victims or the same victim on separate occasions.

20 (2) As used in this subdivision, “separate occasion”
21 means the defendant committed a second violation of
22 Section 207 involving the same victim after at least 24
23 hours elapsed following his or her release of the victim.

24 (c) In the case of any person convicted of one or more
25 felonies committed while the person is confined in a state
26 prison, or is subject to reimprisonment for escape from
27 custody and the law either requires the terms to be served
28 consecutively or the court imposes consecutive terms, the
29 term of imprisonment for all the convictions which the
30 person is required to serve consecutively shall commence
31 from the time the person would otherwise have been
32 released from prison. If the new offenses are consecutive
33 with each other, the principal and subordinate terms shall
34 be calculated as provided in subdivision (a), except that
35 the total of subordinate terms may exceed five years. This
36 subdivision shall be applicable in cases of convictions of
37 more than one offense in different proceedings, and
38 convictions of more than one offense in the same or
39 different proceedings.



1 (d) When the court imposes a prison sentence for a
2 felony pursuant to Section 1170, the court shall also
3 impose the additional terms provided in subdivision (c)
4 of Section 186.10 and Sections 667, 667.15, 667.5, 667.8,
5 667.83, 667.85, 12022, 12022.1, 12022.2, 12022.4, 12022.5,
6 12022.55, 12022.6, 12022.7, 12022.75, and 12022.9 of this
7 code, and the additional terms provided in Section
8 11370.2, 11370.4, or 11379.8 of the Health and Safety Code,
9 unless the additional punishment therefor is stricken
10 pursuant to subdivision (h). The court shall also impose
11 any other additional term which the court determines in
12 its discretion or as required by law shall run consecutive
13 to the term imposed under Section 1170. In considering
14 the imposition of the additional term, the court shall
15 apply the sentencing rules of the Judicial Council.

16 (e) When two or more enhancements under Sections
17 12022, 12022.4, 12022.5, 12022.55, 12022.7, and 12022.9 may
18 be imposed for any single offense, only the greatest
19 enhancement shall apply. However, in cases of lewd or
20 lascivious acts upon or with a child under the age of 14
21 years accomplished by means of force or fear, as
22 described in Section 288, kidnapping, as defined in
23 Section 207, sexual battery, as defined in Section 243.4,
24 spousal rape, as defined in Section 262, penetration of a
25 genital or anal opening by a foreign object, as defined in
26 Section 289, oral copulation, sodomy, robbery, carjacking,
27 rape or burglary, or attempted lewd or lascivious acts
28 upon or with a child under the age of 14 years
29 accomplished by means of force or fear, kidnapping,
30 sexual battery, spousal rape, penetration of a genital or
31 anal opening by a foreign object, oral copulation, sodomy,
32 robbery, carjacking, rape, murder, or burglary the court
33 may impose both (1) one enhancement for weapons as
34 provided in either Section 12022, 12022.4, or subdivision
35 (a) of, or paragraph (2) of subdivision (b) of, Section
36 12022.5 and (2) one enhancement for great bodily injury
37 as provided in either Section 12022.7 or 12022.9.

38 (f) The enhancements provided in subdivision (c) of
39 Section 186.10 and Sections 667, 667.15, 667.5, 667.6, 667.8,
40 667.83, 667.85, 12022, 12022.1, 12022.2, 12022.3, 12022.4,



1 12022.5, 12022.55, 12022.6, 12022.7, 12022.75, 12022.8, and
2 12022.9 of this code, and in Section 11370.2, 11370.4, or
3 11379.8 of the Health and Safety Code, shall be pleaded
4 and proven as provided by law.

5 (g) (1) The term of imprisonment shall not exceed
6 twice the number of years imposed by the trial court as
7 the base term pursuant to subdivision (b) of Section 1170,
8 unless the defendant stands convicted of a “violent
9 felony” as defined in subdivision (c) of Section 667.5, or
10 a consecutive sentence is being imposed pursuant to
11 subdivision (b) or (c) of this section, or an enhancement
12 is imposed pursuant to subdivision (c) of Section 186.10
13 or Section 667, 667.15, 667.5, 667.8, 667.83, 667.85, 12022,
14 12022.2, 12022.4, 12022.5, 12022.55, 12022.6, 12022.7,
15 12022.75, or 12022.9 of this code, or an enhancement is
16 being imposed pursuant to Section 11370.2, 11370.4, or
17 11379.8 of the Health and Safety Code, or the defendant
18 stands convicted of felony escape from an institution in
19 which he or she is lawfully confined.

20 (2) The term of imprisonment shall not exceed twice
21 the number of years imposed by the trial court as the base
22 term pursuant to subdivision (b) of Section 1170 unless an
23 enhancement is imposed pursuant to Section 12022.1 and
24 both the primary and secondary offenses specified in
25 Section 12022.1 are serious felonies as specified in
26 subdivision (c) of Section 1192.7.

27 (h) Notwithstanding any other law, the court may
28 strike the additional punishment for the enhancements
29 provided in subdivision (c) of Section 186.10 and Sections
30 667.15, 667.5, 667.8, 667.83, 667.85, 12022, 12022.1, 12022.2,
31 12022.4, 12022.6, 12022.7, 12022.75, and 12022.9 of this
32 code, or the enhancements provided in Section 11370.2,
33 11370.4, or 11379.8 of the Health and Safety Code, if it
34 determines that there are circumstances in mitigation of
35 the additional punishment and states on the record its
36 reasons for striking the additional punishment.

37 (i) For any violation of paragraph (2), (3), or (6) of
38 subdivision (a) of Section 261, paragraph (1) or (4) of
39 subdivision (a) of Section 262, Section 264.1, subdivision
40 (b) of Section 288, subdivision (a) of Section 289, or



1 sodomy or oral copulation by force, violence, duress,
2 menace, or fear of immediate and unlawful bodily injury
3 on the victim or another person as provided in Section 286
4 or 288a, the number of enhancements which may be
5 imposed shall not be limited, regardless of whether the
6 enhancements are pursuant to this or some other section
7 of law. Each of the enhancements shall be a full and
8 separately served enhancement and shall not be merged
9 with any term or with any other enhancement.

10 SEC. 15. Section 1203.066 of the Penal Code is
11 amended to read:

12 1203.066. (a) Notwithstanding Section 1203 or any
13 other law, probation shall not be granted to, nor shall the
14 execution or imposition of sentence be suspended for, nor
15 shall a finding bringing the defendant within the
16 provisions of this section be stricken pursuant to Section
17 1385 for, any of the following persons:

18 (1) A person who is convicted of violating Section 288
19 or 288.5 when the act is committed by the use of force,
20 violence, duress, menace, or fear of immediate and
21 unlawful bodily injury on the victim or another person.

22 (2) A person who caused bodily injury on the child
23 victim in committing a violation of Section 288 or 288.5.

24 (3) A person who is convicted of a violation of Section
25 288 or 288.5 and who was a stranger to the child victim or
26 befriended the child victim for the purpose of
27 committing an act in violation of Section 288 or 288.5,
28 unless the defendant honestly and reasonably believed
29 the victim was 14 years of age or older.

30 (4) A person who used a weapon during the
31 commission of a violation of Section 288 or 288.5.

32 (5) A person who is convicted of committing a
33 violation of Section 288 or 288.5 and who has been
34 previously convicted of a violation of Section 261, 262,
35 264.1, 266, 266c, 267, 285, 286, 288, 288.5, 288a, or 289, or of
36 assaulting another person with intent to commit a crime
37 specified in this paragraph in violation of Section 220, or
38 who has been previously convicted in another state of an
39 offense which, if committed or attempted in this state,



1 would constitute an offense enumerated in this
2 paragraph.

3 (6) A person who violated Section 288 or 288.5 while
4 kidnapping the child victim in violation of Section 207,
5 209, or 209.5.

6 (7) A person who is convicted of committing a
7 violation of Section 288 or 288.5 against more than one
8 victim.

9 (8) A person who, in violating Section 288 or 288.5, has
10 substantial sexual conduct with a victim who is under 14
11 years of age.

12 (9) A person who, in violating Section 288 or 288.5,
13 used obscene matter, as defined in Section 311, or matter,
14 as defined in Section 311, depicting sexual conduct, as
15 defined in Section 311.3.

16 (b) “Substantial sexual conduct” means penetration of
17 the vagina or rectum of either the victim or the offender
18 by the penis of the other or by any foreign object, oral
19 copulation, or masturbation of either the victim or the
20 offender.

21 (c) Paragraphs (7), (8), and (9) of subdivision (a) shall
22 not apply when the court makes all of the following
23 findings:

24 (1) The defendant is the victim’s natural parent,
25 adoptive parent, stepparent, relative, or is a member of
26 the victim’s household who has lived in the victim’s
27 household.

28 (2) A grant of probation to the defendant is in the best
29 interest of the child.

30 (3) Rehabilitation of the defendant is feasible, the
31 defendant is amenable to undergoing treatment, and the
32 defendant is placed in a recognized treatment program
33 designed to deal with child molestation immediately after
34 the grant of probation or the suspension of execution or
35 imposition of sentence.

36 (4) The defendant is removed from the household of
37 the victim until the court determines that the best
38 interests of the victim would be served by returning the
39 defendant to the household of the victim.



1 (5) There is no threat of physical harm to the child
2 victim if probation is granted. The court upon making its
3 findings pursuant to this subdivision is not precluded
4 from sentencing the defendant to jail or prison, but
5 retains the discretion not to do so. The court shall state its
6 reasons on the record for whatever sentence it imposes on
7 the defendant.

8 The court shall order the psychiatrist or psychologist
9 who is appointed pursuant to Section 288.1 to include a
10 consideration of the factors specified in paragraphs (2),
11 (3), and (4) in making his or her report to the court.

12 (d) The existence of any fact that would make a person
13 ineligible for probation under subdivision (a) shall be
14 alleged in the accusatory pleading and either admitted by
15 the defendant in open court or found to be true by the
16 jury trying the issue of guilt or by the court where guilt
17 is established by plea of guilty or nolo contendere or by
18 trial by the court sitting without a jury.

19 SEC. 16. Section 2933.5 of the Penal Code is amended
20 to read:

21 2933.5. (a) (1) Notwithstanding any other law,
22 every person who is convicted of any felony offense listed
23 in paragraph (2), and who previously has been convicted
24 two or more times, on charges separately brought and
25 tried, and who previously has served two or more
26 separate prior prison terms, as defined in subdivision (g)
27 of Section 667.5, of any offense or offenses listed in
28 paragraph (2), shall be ineligible to earn credit on his or
29 her term of imprisonment pursuant to this chapter.

30 (2) As used in this subdivision, "felony offense"
31 includes any of the following:

32 (A) Murder, as defined in Sections 187 and 189.

33 (B) Voluntary manslaughter, as defined in subdivision
34 (a) of Section 192.

35 (C) Mayhem, as defined in Section 203.

36 (D) Aggravated mayhem, as defined in Section 205.

37 (E) Kidnapping, as defined in Section 207, 209, or
38 209.5.

39 (F) Assault with vitriol, corrosive acid, or caustic
40 chemical of any nature, as described in Section 244.



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

4 (H) Sodomy by means of force, violence, duress,
5 menace or fear of immediate and unlawful bodily injury
6 on the victim or another person, as described in
7 subdivision (c) of Section 286.

8 (I) Sodomy while voluntarily acting in concert, as
9 described in subdivision (d) of Section 286.

10 (J) Lewd or lascivious acts on a child under the age of
11 14 years, as described in subdivision (b) of Section 288.

12 (K) Oral copulation by means of force, violence,
13 duress, menace, or fear of immediate and unlawful bodily
14 injury on the victim or another person, as described in
15 subdivision (c) of Section 288a.

16 (L) Continuous sexual abuse of a child, as described in
17 Section 288.5.

18 (M) Penetration by foreign object, as described in
19 subdivision (a) of Section 289.

20 (N) Exploding a destructive device or explosive with
21 intent to injure, as described in Section 12303.3, with
22 intent to murder, as described in Section 12308, or
23 resulting in great bodily injury or mayhem, as described
24 in Section 12309.

25 (O) Any felony in which the defendant personally
26 inflicted great bodily injury, as provided in Section
27 12022.7.

28 (b) A prior conviction of an offense listed in
29 subdivision (a) shall include a conviction in another
30 jurisdiction for an offense which includes all of the
31 elements of the particular felony as defined under
32 California law.

33 (c) This section shall apply whenever the present
34 felony is committed on or after the effective date of this
35 section, regardless of the date of commission of the prior
36 offense or offenses resulting in credit-earning
37 ineligibility.

38 (d) This section shall be in addition to, and shall not
39 preclude the imposition of, any applicable sentence
40 enhancement terms, or probation ineligibility and



1 habitual offender provisions authorized under any other
2 section.

3 SEC. 17. It is the intent of the Legislature in enacting
4 ~~this act to do both of the following:~~

5 ~~(a) Apply the two-prong test set forth in *People v. this*
6 *act to apply the two-prong test set forth in *People v.**
7 *Daniels*, 71 Cal. 2d 1119, to violations of subdivision (b) of
8 Section 209 of the Penal Code, as amended by this act,
9 pursuant to the decision of the California Supreme Court
10 in *People v. Rayford*, 9 Cal. 4th 1.~~

11 ~~(b) Approve the decision of the California Court of
12 Appeals in *People v. Magpuso*, 23 Cal. App. 4th 112, to the
13 extent that decision states or implies that subdivision (b)
14 of Section 208 of the Penal Code provides an enhanced
15 penalty for a violation of Section 207 of the Penal Code
16 and is not a distinct substantive crime.~~

17 SEC. 18. No reimbursement is required by this act
18 pursuant to Section 6 of Article XIII B of the California
19 Constitution for certain costs that may be incurred by a
20 local agency or school district because in that regard this
21 act creates a new crime or infraction, eliminates a crime
22 or infraction, or changes the penalty for a crime or
23 infraction, within the meaning of Section 17556 of the
24 Government Code, or changes the definition of a crime
25 within the meaning of Section 6 of Article XIII B of the
26 California Constitution.

27 However, notwithstanding Section 17610 of the
28 Government Code, if the Commission on State Mandates
29 determines that this act contains other costs mandated by
30 the state, reimbursement to local agencies and school
31 districts for those costs shall be made pursuant to Part 7
32 (commencing with Section 17500) of Division 4 of Title
33 2 of the Government Code. If the statewide cost of the
34 claim for reimbursement does not exceed one million
35 dollars (\$1,000,000), reimbursement shall be made from
36 the State Mandates Claims Fund.

37 Notwithstanding Section 17580 of the Government
38 Code, unless otherwise specified, the provisions of this act



1 shall become operative on the same date that the act
2 takes effect pursuant to the California Constitution.

O

