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CALIFORNIA LEGISLATURE—2005—06 REGULAR SESSION

ASSEMBLY BILL

No. 50

**Introduced by Assembly Members Leno and Cohn
(Coauthors: Assembly Members Calderon, Bass, Berg, Chan,
Chavez, Chu, Coto, Dymally, Evans, Frommer, Goldberg,
Hancock, Jerome Horton, Jones, Karnette, Klehs, Koretz,
Laird, Levine, Lieber, Liu, Matthews, Montanez, Mullin, Nava,
Negrete McLeod, Nunez, Oropeza, Parra, Pavley,
Ridley-Thomas, Ruskin, Saldana, Salinas, Torrico, Umberg,
and Wolk)**

December 6, 2004

An act to amend Sections 209, 272, 288, 311.2, 311.4, 311.9, 311.11, 626.8, 667.61, 3000, 3001, and 3005 of, and to add Sections 626.75, 3006, and 3072 to, the Penal Code, relating to crimes.

LEGISLATIVE COUNSEL'S DIGEST

AB 50, as amended, Leno. Sex offenders.

Under existing law, the punishment for a person who kidnaps an individual in order to commit robbery, rape, oral copulation, sodomy,

or sexual penetration is imprisonment for life with the possibility of parole.

This bill would add kidnapping in order to commit lewd and lascivious acts to that provision.

Under existing law, an adult who knowingly contacts or communicates with a minor who is 14 years of age or younger for the purpose of persuading, luring or transporting the minor away from the minor's home or other location without the express consent of the minor's parent or legal guardian is guilty of an infraction or misdemeanor.

This bill would, instead, make it a misdemeanor to contact or communicate with a minor who is 14 years of age or younger with the intent to commit certain specified crimes involving the minor, and would increase the punishment for that crime to a misdemeanor or felony if the person has a previous conviction for certain sex offenses.

Under existing law, the punishment for lewd and lascivious acts with a minor or upon a dependent person by a caretaker by force, violence, duress, menace or fear, is 3, 6, or 8 years.

This bill would increase that punishment to 3, 6, or 10 years.

Under existing law, a person who possesses, prepares, publishes, produces, develops, duplicates, or prints any data or image with the intent to distribute, exhibit, or exchange the data or image with a person 18 years of age or older, knowing the data or image depicts a person under 18 years of age personally engaging in or personally simulating sexual conduct is guilty of a misdemeanor.

This bill would increase the punishment for that crime to a misdemeanor or felony.

Under existing law, a person who uses a minor to assist in the distribution of child pornography is guilty of a misdemeanor upon a first offense.

This bill would increase the punishment for the first conviction of that crime to a misdemeanor or felony.

Under existing law, the first conviction for possession of child pornography is punished as a misdemeanor.

This bill would make the punishment for a first conviction either a misdemeanor or a felony ~~if the person possessed 10 or more items of child pornography.~~

Under existing law, a person who enters school grounds or remains upon any public way adjacent to a school who does not have lawful business at the school and whose presence disrupts the school or

pupils therein, is guilty of a misdemeanor if he or she has previously been asked to leave the school or otherwise has established a pattern of unauthorized activity, is guilty of a misdemeanor.

This bill would make it a misdemeanor for any person who is required to register as a sex offender who has been convicted of specified sex offenses from being present on any school property, or street, sidewalk, or public walkway adjacent to any school property, as specified.

This bill would also make it a misdemeanor for any person convicted of committing lewd or lascivious acts upon a child, continuous sexual abuse of a child, or aggravated sexual assault of a child to be present on any school property, or street, sidewalk, or public walkway adjacent to any school property, as specified.

Under existing law, the parole period for an inmate sentenced for committing lewd and lascivious acts on a child or continuous sexual abuse of a child is no more than 5 years.

This bill would increase the possible parole period for a person convicted of either of those crimes to 10 years, but would require the person to be discharged from parole after 6 years, except under certain circumstances.

Under existing law, the Department of Corrections and Rehabilitation is required to develop a plan, subject to the appropriation of funds therefor, for the implementation of relapse prevention treatment programs and services for high-risk sex offenders.

This bill would require the department to study the effects of this plan on the recidivism rates of those parolees, and to report to the Legislature thereon.

The bill would authorize the department to establish and operate a specialized sex offender treatment programs for inmates and parolees whom the department deems pose a high risk to the public of committing violent sex crimes.

Because the bill would increase penalties for some crimes and create new crimes, the bill would impose a state-mandated local program.

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

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

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

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

1 SECTION 1. This act shall be known and may be cited as the
2 Sex Offender Management and Containment Act of 2006.

3 SEC. 2. Section 209 of the Penal Code is amended to read:
4 209. (a) Any person who seizes, confines, inveigles, entices,
5 decoys, abducts, conceals, kidnaps or carries away another
6 person by any means with intent to hold or detain, or who holds
7 or detains, that person for ransom, reward or to commit extortion
8 or to exact from another person any money or valuable thing, or
9 any person who aids or abets any of those acts, is guilty of a
10 felony. Upon conviction thereof, a person shall be punished by
11 imprisonment in the state prison for life without possibility of
12 parole if a victim of any of those acts suffers death or bodily
13 harm or is intentionally confined in a manner which exposes that
14 person to a substantial likelihood of death, or shall be punished
15 by imprisonment in the state prison for life with the possibility of
16 parole if the victim does not suffer death or bodily harm.

17 (b) (1) Any person who kidnaps or carries away any
18 individual to commit robbery, rape, spousal rape, oral copulation,
19 sodomy, or any violation of Section 288 or 289, shall be
20 punished by imprisonment in the state prison for life with the
21 possibility of parole.

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

26 (c) In all cases in which probation is granted, the court shall,
27 except in unusual cases where the interests of justice would best
28 be served by a lesser penalty, require as a condition of the
29 probation that the person be confined in the county jail for 12
30 months. If the court grants probation without requiring the
31 defendant to be confined in the county jail for 12 months, it shall
32 specify its reason or reasons for imposing a lesser penalty.

33 (d) Subdivision (b) shall not be construed to supersede or
34 affect Section 667.61. A person may be charged with a violation
35 of subdivision (b) and Section 667.61. However, a person may

1 not be punished under subdivision (b) and Section 667.61 for the
2 same act that constitutes a violation of both subdivision (b) and
3 Section 667.61.

4 SEC. 3. Section 272 of the Penal Code, as amended by
5 Chapter 461 of the Statutes of 2005, is amended to read:

6 272. (a) (1) Every person who commits any act or omits the
7 performance of any duty, which act or omission causes or tends
8 to cause or encourage any person under the age of 18 years to
9 come within the provisions of Section 300, 601, or 602 of the
10 Welfare and Institutions Code or which act or omission
11 contributes thereto, or any person who, by any act or omission, or
12 by threats, commands, or persuasion, induces or endeavors to
13 induce any person under the age of 18 years or any ward or
14 dependent child of the juvenile court to fail or refuse to conform
15 to a lawful order of the juvenile court, or to do or to perform any
16 act or to follow any course of conduct or to so live as would
17 cause or manifestly tend to cause that person to become or to
18 remain a person within the provisions of Section 300, 601, or 602
19 of the Welfare and Institutions Code, is guilty of a misdemeanor.
20 Upon conviction thereof, that person shall be punished by a fine
21 not exceeding two thousand five hundred dollars (\$2,500), or by
22 imprisonment in the county jail for not more than one year, or by
23 both fine and imprisonment in a county jail, or may be released
24 on probation for a period not exceeding five years.

25 (2) For purposes of this subdivision, a parent or legal guardian
26 to any person under the age of 18 years shall have the duty to
27 exercise reasonable care, supervision, protection, and control
28 over their minor child.

29 (b) (1) An adult stranger who is 21 years of age or older, who
30 knowingly contacts or communicates with a minor who is under
31 14 years of age, who knew or reasonably should have known that
32 the minor is under 14 years of age, with the intent to commit an
33 offense specified in Sections 207, 209, 261, 264.1, 273a, 286,
34 288, 288a, 288.2, 289, 311.1, 311.2, 311.4 or 311.11 involving
35 the minor is guilty of a misdemeanor punishable by a fine not
36 exceeding one thousand dollars (\$1,000), or by imprisonment in
37 a county jail not exceeding one year, or both a fine and
38 imprisonment.

39 (2) Any person convicted of violating this subdivision who has
40 a previous conviction for a violation of Section 288 or 288.5

1 shall be punished by imprisonment in a county jail for a period
2 not to exceed one year, or in the state prison for 16 months, or
3 two or three years.

4 (3) This subdivision shall not apply in an emergency situation.

5 (4) As used in this subdivision, the following terms apply:

6 (A) "Emergency situation" means a situation where the minor
7 is threatened with imminent bodily harm, emotional harm, or
8 psychological harm.

9 (B) "Contact" or "communication" includes, but is not limited
10 to, the use of a telephone or the Internet, as defined in Section
11 17538 of the Business and Professions Code.

12 (C) "Stranger" means a person of casual acquaintance with
13 whom no substantial relationship exists, or an individual with
14 whom a relationship has been established or promoted for the
15 primary purpose of victimization, as defined in subdivision (e) of
16 Section 6600 of the Welfare and Institutions Code.

17 (D) "Express consent" means oral or written permission that is
18 positive, direct, and unequivocal, requiring no inference or
19 implication to supply its meaning.

20 (5) This section shall not be interpreted to criminalize acts of
21 persons contacting minors within the scope and course of their
22 employment, or status as a volunteer of a recognized civic or
23 charitable organization.

24 (6) This section is intended to protect minors and to help
25 parents and legal guardians exercise reasonable care, supervision,
26 protection, and control over minor children.

27 SEC. 4. Section 288 of the Penal Code is amended to read:

28 288. (a) Any person who willfully and lewdly commits any
29 lewd or lascivious act, including any of the acts constituting other
30 crimes provided for in Part 1, upon or with the body, or any part
31 or member thereof, of a child who is under the age of 14 years,
32 with the intent of arousing, appealing to, or gratifying the lust,
33 passions, or sexual desires of that person or the child, is guilty of
34 a felony and shall be punished by imprisonment in the state
35 prison for three, six, or eight years.

36 (b) (1) Any person who commits an act described in
37 subdivision (a) by use of force, violence, duress, menace, or fear
38 of immediate and unlawful bodily injury on the victim or another
39 person, is guilty of a felony and shall be punished by
40 imprisonment in the state prison for 3, 6, or 10 years.

1 (2) Any person who is a caretaker and commits an act
2 described in subdivision (a) upon a dependent person by use of
3 force, violence, duress, menace, or fear of immediate and
4 unlawful bodily injury on the victim or another person, with the
5 intent described in subdivision (a), is guilty of a felony and shall
6 be punished by imprisonment in the state prison for 3, 6, or 10
7 years.

8 (c) (1) Any person who commits an act described in
9 subdivision (a) with the intent described in that subdivision, and
10 the victim is a child of 14 or 15 years, and that person is at least
11 10 years older than the child, is guilty of a public offense and
12 shall be punished by imprisonment in the state prison for one,
13 two, or three years, or by imprisonment in a county jail for not
14 more than one year. In determining whether the person is at least
15 10 years older than the child, the difference in age shall be
16 measured from the birth date of the person to the birth date of the
17 child.

18 (2) Any person who is a caretaker and commits an act
19 described in subdivision (a) upon a dependent person, with the
20 intent described in subdivision (a), is guilty of a public offense
21 and shall be punished by imprisonment in the state prison for
22 one, two, or three years, or by imprisonment in a county jail for
23 not more than one year.

24 (d) In any arrest or prosecution under this section or Section
25 288.5, the peace officer, district attorney, and the court shall
26 consider the needs of the child victim or dependent person and
27 shall do whatever is necessary, within existing budgetary
28 resources, and constitutionally permissible to prevent
29 psychological harm to the child victim or to prevent
30 psychological harm to the dependent person victim resulting
31 from participation in the court process.

32 (e) Upon the conviction of any person for a violation of
33 subdivision (a) or (b), the court may, in addition to any other
34 penalty or fine imposed, order the defendant to pay an additional
35 fine not to exceed ten thousand dollars (\$10,000). In setting the
36 amount of the fine, the court shall consider any relevant factors,
37 including, but not limited to, the seriousness and gravity of the
38 offense, the circumstances of its commission, whether the
39 defendant derived any economic gain as a result of the crime, and
40 the extent to which the victim suffered economic losses as a

1 result of the crime. Every fine imposed and collected under this
2 section shall be deposited in the Victim-Witness Assistance Fund
3 to be available for appropriation to fund child sexual exploitation
4 and child sexual abuse victim counseling centers and prevention
5 programs pursuant to Section 13837.

6 If the court orders a fine imposed pursuant to this subdivision,
7 the actual administrative cost of collecting that fine, not to
8 exceed 2 percent of the total amount paid, may be paid into the
9 general fund of the county treasury for the use and benefit of the
10 county.

11 (f) For purposes of paragraph (2) of subdivision (b) and
12 paragraph (2) of subdivision (c), the following definitions apply:

13 (1) "Caretaker" means an owner, operator, administrator,
14 employee, independent contractor, agent, or volunteer of any of
15 the following public or private facilities when the facilities
16 provide care for elder or dependent persons:

17 (A) Twenty-four hour health facilities, as defined in Sections
18 1250, 1250.2, and 1250.3 of the Health and Safety Code.

19 (B) Clinics.

20 (C) Home health agencies.

21 (D) Adult day health care centers.

22 (E) Secondary schools that serve dependent persons and
23 postsecondary educational institutions that serve dependent
24 persons or elders.

25 (F) Sheltered workshops.

26 (G) Camps.

27 (H) Community care facilities, as defined by Section 1402 of
28 the Health and Safety Code, and residential care facilities for the
29 elderly, as defined in Section 1569.2 of the Health and Safety
30 Code.

31 (I) Respite care facilities.

32 (J) Foster homes.

33 (K) Regional centers for persons with developmental
34 disabilities.

35 (L) A home health agency licensed in accordance with
36 Chapter 8 (commencing with Section 1725) of Division 2 of the
37 Health and Safety Code.

38 (M) An agency that supplies in-home supportive services.

39 (N) Board and care facilities.

1 (O) Any other protective or public assistance agency that
2 provides health services or social services to elder or dependent
3 persons, including, but not limited to, in-home supportive
4 services, as defined in Section 14005.14 of the Welfare and
5 Institutions Code.

6 (P) Private residences.

7 (2) “Board and care facilities” means licensed or unlicensed
8 facilities that provide assistance with one or more of the
9 following activities:

10 (A) Bathing.

11 (B) Dressing.

12 (C) Grooming.

13 (D) Medication storage.

14 (E) Medical dispensation.

15 (F) Money management.

16 (3) “Dependent person” means any person who has a physical
17 or mental impairment that substantially restricts his or her ability
18 to carry out normal activities or to protect his or her rights,
19 including, but not limited to, persons who have physical or
20 developmental disabilities or whose physical or mental abilities
21 have significantly diminished because of age. “Dependent
22 person” includes any person who is admitted as an inpatient to a
23 24-hour health facility, as defined in Sections 1250, 1250.2, and
24 1250.3 of the Health and Safety Code.

25 (g) Paragraph (2) of subdivision (b) and paragraph (2) of
26 subdivision (c) apply to the owners, operators, administrators,
27 employees, independent contractors, agents, or volunteers
28 working at these public or private facilities and only to the extent
29 that the individuals personally commit, conspire, aid, abet, or
30 facilitate any act prohibited by paragraph (2) of subdivision (b)
31 and paragraph (2) of subdivision (c).

32 (h) Paragraph (2) of subdivision (b) and paragraph (2) of
33 subdivision (c) do not apply to a caretaker who is a spouse of, or
34 who is in an equivalent domestic relationship with, the dependent
35 person under care.

36 SEC. 5. Section 311.2 of the Penal Code is amended to read:

37 311.2. (a) Every person who knowingly sends or causes to be
38 sent, or brings or causes to be brought, into this state for sale or
39 distribution, or in this state possesses, prepares, publishes,
40 produces, or prints, with intent to distribute or to exhibit to

1 others, or who offers to distribute, distributes, or exhibits to
2 others, any obscene matter is for a first offense, guilty of a
3 misdemeanor. If the person has previously been convicted of any
4 violation of this section, the court may, in addition to the
5 punishment authorized in Section 311.9, impose a fine not
6 exceeding fifty thousand dollars (\$50,000).

7 (b) Every person who knowingly sends or causes to be sent, or
8 brings or causes to be brought, into this state for sale or
9 distribution, or in this state possesses, prepares, publishes,
10 produces, develops, duplicates, or prints any representation of
11 information, data, or image, including, but not limited to, any
12 film, filmstrip, photograph, negative, slide, photocopy, videotape,
13 video laser disc, computer hardware, computer software,
14 computer floppy disc, data storage media, CD-ROM, or
15 computer-generated equipment or any other computer-generated
16 image that contains or incorporates in any manner, any film or
17 filmstrip, with intent to distribute or to exhibit to, or to exchange
18 with, others for commercial consideration, or who offers to
19 distribute, distributes, or exhibits to, or exchanges with, others
20 for commercial consideration, any obscene matter, knowing that
21 the matter depicts a person under the age of 18 years personally
22 engaging in or personally simulating sexual conduct, as defined
23 in Section 311.4, is guilty of a felony and shall be punished by
24 imprisonment in the state prison for two, three, or six years, or by
25 a fine not exceeding one hundred thousand dollars (\$100,000), in
26 the absence of a finding that the defendant would be incapable of
27 paying such a fine, or by both that fine and imprisonment.

28 (c) Every person who knowingly sends or causes to be sent, or
29 brings or causes to be brought, into this state for sale or
30 distribution, or in this state possesses, prepares, publishes,
31 produces, develops, duplicates, or prints any representation of
32 information, data, or image, including, but not limited to, any
33 film, filmstrip, photograph, negative, slide, photocopy, videotape,
34 video laser disc, computer hardware, computer software,
35 computer floppy disc, data storage media, CD-ROM, or
36 computer-generated equipment or any other computer-generated
37 image that contains or incorporates in any manner, any film or
38 filmstrip, with intent to distribute or exhibit to, or to exchange
39 with, a person 18 years of age or older, or who offers to
40 distribute, distributes, or exhibits to, or exchanges with, a person

1 18 years of age or older any matter, knowing that the matter
2 depicts a person under the age of 18 years personally engaging in
3 or personally simulating sexual conduct, as defined in Section
4 311.4, shall be punished by imprisonment in the county jail for
5 up to one year, or by a fine not exceeding two thousand dollars
6 (\$2,000), or by both that fine and imprisonment, or by
7 imprisonment in the state prison. It is not necessary to prove
8 commercial consideration or that the matter is obscene in order to
9 establish a violation of this subdivision. If a person has been
10 previously convicted of a violation of this subdivision, he or she
11 is guilty of a felony.

12 (d) Every person who knowingly sends or causes to be sent, or
13 brings or causes to be brought, into this state for sale or
14 distribution, or in this state possesses, prepares, publishes,
15 produces, develops, duplicates, or prints any representation of
16 information, data, or image, including, but not limited to, any
17 film, filmstrip, photograph, negative, slide, photocopy, videotape,
18 video laser disc, computer hardware, computer software,
19 computer floppy disc, data storage media, CD-ROM, or
20 computer-generated equipment or any other computer-generated
21 image that contains or incorporates in any manner, any film or
22 filmstrip, with intent to distribute or exhibit to, or to exchange
23 with, a person under 18 years of age, or who offers to distribute,
24 distributes, or exhibits to, or exchanges with, a person under 18
25 years of age any matter, knowing that the matter depicts a person
26 under the age of 18 years personally engaging in or personally
27 simulating sexual conduct, as defined in Section 311.4, is guilty
28 of a felony. It is not necessary to prove commercial consideration
29 or that the matter is obscene in order to establish a violation of
30 this subdivision.

31 (e) Subdivisions (a) to (d), inclusive, do not apply to the
32 activities of law enforcement and prosecuting agencies in the
33 investigation and prosecution of criminal offenses, to legitimate
34 medical, scientific, or educational activities, or to lawful conduct
35 between spouses.

36 (f) This section does not apply to matter that depicts a legally
37 emancipated child under the age of 18 years or to lawful conduct
38 between spouses when one or both are under the age of 18 years.

39 (g) It does not constitute a violation of this section for a
40 telephone corporation, as defined by Section 234 of the Public

1 Utilities Code, to carry or transmit messages described in this
2 chapter or to perform related activities in providing telephone
3 services.

4 SEC. 6. Section 311.4 of the Penal Code is amended to read:

5 311.4. (a) Every person who, with knowledge that a person is
6 a minor, or who, while in possession of any facts on the basis of
7 which he or she should reasonably know that the person is a
8 minor, hires, employs, or uses the minor to do or assist in doing
9 any of the acts described in Section 311.2, for a first offense,
10 shall be punished by imprisonment in the county jail for up to
11 one year, or by a fine not exceeding one thousand dollars
12 (\$1,000), or by both that fine and imprisonment, or by
13 imprisonment in the state prison. If the person has previously
14 been convicted of any violation of this section, the court may, in
15 addition to the punishment authorized in Section 311.9, impose a
16 fine not exceeding fifty thousand dollars (\$50,000).

17 (b) Every person who, with knowledge that a person is a minor
18 under the age of 18 years, or who, while in possession of any
19 facts on the basis of which he or she should reasonably know that
20 the person is a minor under the age of 18 years, knowingly
21 promotes, employs, uses, persuades, induces, or coerces a minor
22 under the age of 18 years, or any parent or guardian of a minor
23 under the age of 18 years under his or her control who knowingly
24 permits the minor, to engage in or assist others to engage in
25 either posing or modeling alone or with others for purposes of
26 preparing any representation of information, data, or image,
27 including, but not limited to, any film, filmstrip, photograph,
28 negative, slide, photocopy, videotape, video laser disc, computer
29 hardware, computer software, computer floppy disc, data storage
30 media, CD-ROM, or computer-generated equipment or any other
31 computer-generated image that contains or incorporates in any
32 manner, any film, filmstrip, or a live performance involving,
33 sexual conduct by a minor under the age of 18 years alone or
34 with other persons or animals, for commercial purposes, is guilty
35 of a felony and shall be punished by imprisonment in the state
36 prison for three, six, or eight years.

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

1 promotes, employs, uses, persuades, induces, or coerces a minor
2 under the age of 18 years, or any parent or guardian of a minor
3 under the age of 18 years under his or her control who knowingly
4 permits the minor, to engage in or assist others to engage in
5 either posing or modeling alone or with others for purposes of
6 preparing any representation of information, data, or image,
7 including, but not limited to, any film, filmstrip, photograph,
8 negative, slide, photocopy, videotape, video laser disc, computer
9 hardware, computer software, computer floppy disc, data storage
10 media, CD-ROM, or computer-generated equipment or any other
11 computer-generated image that contains or incorporates in any
12 manner, any film, filmstrip, or a live performance involving,
13 sexual conduct by a minor under the age of 18 years alone or
14 with other persons or animals, is guilty of a felony. It is not
15 necessary to prove commercial purposes in order to establish a
16 violation of this subdivision.

17 (d) (1) As used in subdivisions (b) and (c), “sexual conduct”
18 means any of the following, whether actual or simulated: sexual
19 intercourse, oral copulation, anal intercourse, anal oral
20 copulation, masturbation, bestiality, sexual sadism, sexual
21 masochism, penetration of the vagina or rectum by any object in
22 a lewd or lascivious manner, exhibition of the genitals or pubic
23 or rectal area for the purpose of sexual stimulation of the viewer,
24 any lewd or lascivious sexual act as defined in Section 288, or
25 excretory functions performed in a lewd or lascivious manner,
26 whether or not any of the above conduct is performed alone or
27 between members of the same or opposite sex or between
28 humans and animals. An act is simulated when it gives the
29 appearance of being sexual conduct.

30 (2) As used in subdivisions (b) and (c), “matter” means any
31 film, filmstrip, photograph, negative, slide, photocopy, videotape,
32 video laser disc, computer hardware, computer software,
33 computer floppy disc, or any other computer-related equipment
34 or computer-generated image that contains or incorporates in any
35 manner, any film, filmstrip, photograph, negative, slide,
36 photocopy, videotape, or video laser disc.

37 (e) This section does not apply to a legally emancipated minor
38 or to lawful conduct between spouses if one or both are under the
39 age of 18.

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

9 SEC. 7. Section 311.9 of the Penal Code is amended to read:

10 311.9. (a) Every person who violates Section 311.2 or 311.5,
11 except subdivision (b) of Section 311.2, is punishable by fine of
12 not more than one thousand dollars (\$1,000) plus five dollars
13 (\$5) for each additional unit of material coming within the
14 provisions of this chapter, which is involved in the offense, not to
15 exceed ten thousand dollars (\$10,000), or by imprisonment in the
16 county jail for not more than six months plus one day for each
17 additional unit of material coming within the provisions of this
18 chapter, and which is involved in the offense, such basic
19 maximum and additional days not to exceed 360 days in the
20 county jail, or by both such fine and imprisonment. If the person
21 has previously been convicted of any offense in this chapter, or
22 of a violation of Section 313.1, a violation of Section 311.2 or
23 311.5, except subdivision (b) of Section 311.2, is punishable as a
24 felony.

25 (b) Every person who violates Section 311.4 is punishable by
26 fine of not more than two thousand dollars (\$2,000) or by
27 imprisonment in the county jail for not more than one year, or by
28 both such fine and imprisonment, or by imprisonment in the state
29 prison. If the person has been previously convicted of a violation
30 of former Section 311.3 or Section 311.4 he is punishable by
31 imprisonment in the state prison.

32 (c) Every person who violates Section 311.7 is punishable by
33 fine of not more than one thousand dollars (\$1,000) or by
34 imprisonment in the county jail for not more than six months, or
35 by both such fine and imprisonment. For a second and
36 subsequent offense he shall be punished by a fine of not more
37 than two thousand dollars (\$2,000), or by imprisonment in the
38 county jail for not more than one year, or by both that fine and
39 imprisonment. If the person has been twice convicted of a

1 violation of this chapter, a violation of Section 311.7 is
2 punishable as a felony.

3 SEC. 8. Section 311.11 of the Penal Code is amended to read:

4 311.11. (a) Every person who knowingly possesses or
5 controls any matter, representation of information, data, or
6 image, including, but not limited to, any film, filmstrip,
7 photograph, negative, slide, photocopy, videotape, video laser
8 disc, computer hardware, computer software, computer floppy
9 disc, data storage media, CD-ROM, or computer-generated
10 equipment or any other computer-generated image that contains
11 or incorporates in any manner, any film or filmstrip, the
12 production of which involves the use of a person under the age of
13 18 years, knowing that the matter depicts a person under the age
14 of 18 years personally engaging in or simulating sexual conduct,
15 as defined in subdivision (d) of Section 311.4, is guilty of a
16 public offense and shall be punished by imprisonment in the
17 county jail for up to one year, *or by imprisonment in the state*
18 *prison*, or by a fine not exceeding two thousand five hundred
19 dollars (\$2,500), or by both the fine and imprisonment. ~~If a~~
20 ~~person possesses 10 or more items or visual images that are~~
21 ~~prohibited by this section, he or she shall be punished by~~
22 ~~imprisonment in the county jail for up to one year, or in the state~~
23 ~~prison.~~

24 (b) If a person has been previously convicted of a violation of
25 this section, or of a violation of subdivision (b) of Section 311.2,
26 or subdivision (b) of Section 311.4, he or she is guilty of a felony
27 and shall be punished by imprisonment for two, four, or six
28 years.

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

31 (d) This section does not apply to drawings, figurines, statues,
32 or any film rated by the Motion Picture Association of America,
33 nor does it apply to live or recorded telephone messages when
34 transmitted, disseminated, or distributed as part of a commercial
35 transaction.

36 SEC. 9. Section 626.75 is added to the Penal Code, to read:

37 626.75. (a) It is unlawful for any person who is required to
38 register pursuant to Section 290, who has been convicted of a
39 violation of Section 220, 261, 266, 267, 272, or 289, or of
40 subdivision (c), (d), or (f) of Section 286, or of subdivision (c),

1 (d), or (f) of Section 288a, or of an attempt to commit a violation
2 of any of those sections, to knowingly be present in any school
3 building, or upon any school ground, or street, sidewalk, or
4 public walkway adjacent to, or on real property comprising any
5 public or private elementary, vocational, junior high, or high
6 school during hours that the school is open for classes or
7 school-related programs, unless that person is a parent or
8 guardian of a child attending that school, or is a student at the
9 school or has prior written permission for entry from the chief
10 administrative officer of that school. A violation of this provision
11 shall be punishable as a misdemeanor.

12 (b) It is unlawful for any person who is required to register
13 pursuant to Section 290, who has been convicted of a violation of
14 Section 288, 288.5, or 269 or of attempting to commit a violation
15 of any of those sections, to be knowingly present in any school
16 building, or upon any school ground, or street, sidewalk, or
17 public walkway adjacent to, or on real property comprising any
18 public or private elementary, vocational, junior high, or high
19 school during hours that the school is open for classes or
20 school-related programs, unless that person is a parent or
21 guardian of a child attending that school, or is a student at the
22 school or has prior written permission for entry from the chief
23 administrative officer of the school. A violation of this provision
24 shall be punished by imprisonment in the county jail not to
25 exceed one year, by a fine not to exceed one thousand dollars
26 (\$1,000), or by both a fine and imprisonment.

27 (c) Nothing in this section shall be construed to infringe upon
28 the constitutional right of such a person to be present in a school
29 building that is used as a polling place for the purpose of voting.

30 SEC. 10. Section 626.8 of the Penal Code is amended to read:

31 626.8. (a) Any person who comes into any school building or
32 upon any school ground, or street, sidewalk, or public way
33 adjacent thereto, without lawful business thereon, and whose
34 presence or acts interfere with the peaceful conduct of the
35 activities of the school or disrupt the school or its pupils or
36 school activities, is guilty of a misdemeanor if he or she does any
37 of the following:

38 (1) Remains there after being asked to leave by the chief
39 administrative official of that school or his or her designated
40 representative, or by a person employed as a member of a

1 security or police department of a school district pursuant to
2 Section 39670 of the Education Code, or a city police officer, or
3 sheriff or deputy sheriff, or a Department of the California
4 Highway Patrol peace officer.

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

7 (3) Has otherwise established a continued pattern of
8 unauthorized entry.

9 This section shall not be used to impinge upon the lawful
10 exercise of constitutionally protected rights of freedom of speech
11 or assembly.

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

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

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

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

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

32 (1) "Lawful business" means a reason for being present upon
33 school property which is not otherwise prohibited by statute, by
34 ordinance, or by any regulation adopted pursuant to statute or
35 ordinance.

36 (2) "Continued pattern of unauthorized entry" means that on at
37 least two prior occasions in the same school year the defendant
38 came into any school building or upon any school ground, or
39 street, sidewalk, or public way adjacent thereto, without lawful
40 business thereon, and his or her presence or acts interfered with

1 the peaceful conduct of the activities of the school or disrupted
 2 the school or its pupils or school activities, and the defendant was
 3 asked to leave by a person specified in paragraph (1) of
 4 subdivision (a).

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

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

11 SEC. 11. Section 667.61 of the Penal Code is amended to
 12 read:

13 667.61. (a) A person who is convicted of an offense specified
 14 in subdivision (c) under one or more of the circumstances
 15 specified in subdivision (d) or under two or more of the
 16 circumstances specified in subdivision (e) shall be punished by
 17 imprisonment in the state prison for life and shall not be eligible
 18 for release on parole for 25 years except as provided in
 19 subdivision (j).

20 (b) Except as provided in subdivision (a), a person who is
 21 convicted of an offense specified in subdivision (c) under one of
 22 the circumstances specified in subdivision (e) shall be punished
 23 by imprisonment in the state prison for life and shall not be
 24 eligible for release on parole for 15 years except as provided in
 25 subdivision (j).

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

27 (1) A violation of paragraph (2) of subdivision (a) of Section
 28 261.

29 (2) A violation of paragraph (1) of subdivision (a) of Section
 30 262.

31 (3) A violation of Section 264.1.

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

33 (5) A violation of subdivision (a) of Section 288.5.

34 (6) A violation of subdivision (a) of Section 289.

35 (7) Sodomy or oral copulation in violation of Section 286 or
 36 288a by force, violence, duress, menace, or fear of immediate
 37 and unlawful bodily injury on the victim or another person.

38 (8) A violation of subdivision (a) of Section 288, unless the
 39 defendant qualifies for probation under subdivision (c) of Section
 40 1203.066.

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

3 (1) The defendant has been previously convicted of an offense
4 specified in subdivision (c), including an offense committed in
5 another jurisdiction that includes all of the elements of an offense
6 specified in subdivision (c).

7 (2) The defendant kidnapped the victim of the present offense
8 and the movement of the victim substantially increased the risk
9 of harm to the victim over and above that level of risk necessarily
10 inherent in the underlying offense in subdivision (c).

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

14 (4) The defendant committed the present offense during the
15 commission of a burglary, as defined in subdivision (a) of
16 Section 460, with intent to commit an offense specified in
17 subdivision (c).

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

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

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

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

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

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

38 (6) The defendant engaged in the tying or binding of the
39 victim or another person in the commission of the present
40 offense.

1 (7) The defendant administered a controlled substance to the
2 victim by force, violence, or fear in the commission of the
3 present offense in violation of Section 12022.75.

4 (f) If only the minimum number of circumstances specified in
5 subdivision (d) or (e) which are required for the punishment
6 provided in subdivision (a) or (b) to apply have been pled and
7 proved, that circumstance or those circumstances shall be used as
8 the basis for imposing the term provided in subdivision (a) or (b)
9 rather than being used to impose the punishment authorized
10 under any other law, unless another law provides for a greater
11 penalty. However, if any additional circumstance or
12 circumstances specified in subdivision (d) or (e) have been pled
13 and proved, the minimum number of circumstances shall be used
14 as the basis for imposing the term provided in subdivision (a),
15 and any other additional circumstance or circumstances shall be
16 used to impose any punishment or enhancement authorized under
17 any other law. Notwithstanding any other law, the court shall not
18 strike any of the circumstances specified in subdivision (d) or (e).

19 (g) The term specified in subdivision (a) or (b) shall be
20 imposed on the defendant once for any offense or offenses
21 committed against a single victim during a single occasion. If
22 there are multiple victims during a single occasion, the term
23 specified in subdivision (a) or (b) shall be imposed on the
24 defendant once for each separate victim. Terms for other offenses
25 committed during a single occasion shall be imposed as
26 authorized under any other law, including Section 667.6, if
27 applicable.

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

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

36 (j) Article 2.5 (commencing with Section 2930) of Chapter 7
37 of Title 1 of Part 3 shall apply to reduce the minimum term of 25
38 years in the state prison imposed pursuant to subdivision (a) or
39 15 years in the state prison imposed pursuant to subdivision (b).
40 However, in no case shall the minimum term of 25 or 15 years be

1 reduced by more than 15 percent for credits granted pursuant to
2 Section 2933, 4019, or any other law providing for conduct credit
3 reduction. In no case shall any person who is punished under this
4 section be released on parole prior to serving at least 85 percent
5 of the minimum term of 25 or 15 years in the state prison.

6 SEC. 12. Section 3000 of the Penal Code is amended to read:

7 3000. (a) (1) The Legislature finds and declares that the
8 period immediately following incarceration is critical to
9 successful reintegration of the offender into society and to
10 positive citizenship. It is in the interest of public safety for the
11 state to provide for the supervision of and surveillance of
12 parolees, including the judicious use of revocation actions, and to
13 provide educational, vocational, family and personal counseling
14 necessary to assist parolees in the transition between
15 imprisonment and discharge. A sentence pursuant to Section
16 1168 or 1170 shall include a period of parole, unless waived, as
17 provided in this section.

18 (2) The Legislature finds and declares that it is not the intent
19 of this section to diminish resources allocated to the Department
20 of Corrections and Rehabilitation for parole functions for which
21 the department is responsible. It is also not the intent of this
22 section to diminish the resources allocated to the Board of Parole
23 Hearings to execute its duties with respect to parole functions for
24 which the board is responsible.

25 (3) The Legislature finds and declares that diligent effort must
26 be made to ensure that parolees are held accountable for their
27 criminal behavior, including, but not limited to, the satisfaction
28 of restitution fines and orders.

29 (4) Any finding made pursuant to Article 4 (commencing with
30 Section 6600) of Chapter 2 of Part 2 of Division 6 of the Welfare
31 and Institutions Code, that a person is a sexually violent predator
32 shall not toll, discharge, or otherwise affect that person's period
33 of parole.

34 (b) Notwithstanding any provision to the contrary in Article 3
35 (commencing with Section 3040) of this chapter, the following
36 shall apply:

37 (1) (A) At the expiration of a term of imprisonment of one
38 year and one day, or a term of imprisonment imposed pursuant to
39 Section 1170 or at the expiration of a term reduced pursuant to
40 Section 2931 or 2933, if applicable, the inmate shall be released

1 on parole for a period not exceeding three years, except that any
2 inmate sentenced for an offense specified in paragraph (3), (4),
3 (5), (11), or (18) of subdivision (c) of Section 667.5 shall be
4 released on parole for a period not exceeding five years, unless in
5 either case the parole authority for good cause waives parole and
6 discharges the inmate from the custody of the department.

7 (B) Notwithstanding subparagraph (A), any inmate sentenced
8 for an offense specified in paragraph (6) or (16) of subdivision
9 (c) of Section 667.5 shall be released on parole for a period not
10 exceeding 10 years, unless the parole authority for good cause
11 waives parole and discharges the inmate from the custody of the
12 department.

13 (2) For an inmate sentenced under Section 1168, the period of
14 parole shall not exceed five years in the case of an inmate
15 imprisoned for any offense other than first or second degree
16 murder for which the inmate has received a life sentence, and
17 shall not exceed three years in the case of any other inmate,
18 unless in either case the parole authority for good cause waives
19 parole and discharges the inmate from custody of the department.
20 This subdivision shall also be applicable to inmates who
21 committed crimes prior to July 1, 1977, to the extent specified in
22 Section 1170.2.

23 (3) Notwithstanding paragraphs (1) and (2), for an offense for
24 which the inmate has received a life sentence pursuant to Section
25 667.61 or 667.71, the period of parole shall be five years. Upon
26 the request of the Department of Corrections and Rehabilitation,
27 and on the grounds that the paroled inmate may pose a
28 substantial danger to public safety, the Board of Parole Hearings
29 shall conduct a hearing to determine if the parolee shall be
30 subject to a single additional five-year period of parole. The
31 board shall conduct the hearing pursuant to the procedures and
32 standards governing parole revocation. The request for parole
33 extension shall be made no less than 180 days prior to the
34 expiration of the initial five-year period of parole.

35 (4) The parole authority shall consider the request of any
36 inmate regarding the length of his or her parole and the
37 conditions thereof.

38 (5) Upon successful completion of parole, or at the end of the
39 maximum statutory period of parole specified for the inmate
40 under paragraph (1), (2), or (3), as the case may be, whichever is

1 earlier, the inmate shall be discharged from custody. The date of
2 the maximum statutory period of parole under this subdivision
3 and paragraphs (1), (2), and (3) shall be computed from the date
4 of initial parole or from the date of extension of parole pursuant
5 to paragraph (3) and shall be a period chronologically
6 determined. Time during which parole is suspended because the
7 inmate has absconded or has been returned to custody as a parole
8 violator shall not be credited toward any period of parole unless
9 the inmate is found not guilty of the parole violation. However,
10 except as provided in Section 3064, an inmate subject to three
11 years on parole shall not be retained under parole supervision or
12 in custody for a period longer than four years from the date of his
13 or her initial parole, and, except as provided in Section 3064, an
14 inmate subject to five years on parole shall not be retained under
15 parole supervision or in custody for a period longer than seven
16 years from the date of his or her initial parole or from the date of
17 extension of parole pursuant to paragraph (3).

18 (6) The Department of Corrections and Rehabilitation shall
19 meet with each inmate at least 30 days prior to his or her good
20 time release date and shall provide, under guidelines specified by
21 the parole authority, the conditions of parole and the length of
22 parole up to the maximum period of time provided by law. The
23 inmate has the right to reconsideration of the length of parole and
24 conditions thereof by the parole authority. The department or the
25 Board of Parole Hearings may impose as a condition of parole
26 that an inmate make payments on the inmate's outstanding
27 restitution fines or orders imposed pursuant to subdivision (a) or
28 (c) of Section 13967 of the Government Code, as operative prior
29 to September 28, 1994, or subdivision (b) or (f) of Section
30 1202.4.

31 (7) For purposes of this chapter, the Board of Parole Hearings
32 shall be considered the parole authority.

33 (8) The sole authority to issue warrants for the return to actual
34 custody of any state prisoner released on parole rests with the
35 Board of Parole Hearings, except for any escaped state inmate or
36 any state inmate released prior to his or her scheduled release
37 date who should be returned to custody, and Section 3060 shall
38 apply.

39 (9) It is the intent of the Legislature that efforts be made with
40 respect to persons who are subject to subparagraph (C) of

1 paragraph (1) of subdivision (a) of Section 290 who are on parole
2 to engage them in treatment.

3 SEC. 13. Section 3001 of the Penal Code is amended to read:

4 3001. (a) Notwithstanding any other provision of law, when
5 any person referred to in paragraph (1) of subdivision (b) of
6 Section 3000 who was not imprisoned for committing a violent
7 felony, as defined in subdivision (c) of Section 667.5, has been
8 released on parole from the state prison, and has been on parole
9 continuously for one year since release from confinement, within
10 30 days, that person shall be discharged from parole, unless the
11 Department of Corrections and Rehabilitation recommends to the
12 Board of Parole Hearings that the person be retained on parole
13 and the board, for good cause, determines that the person will be
14 retained. Notwithstanding any other provision of law, when any
15 person referred to in paragraph (1) of subdivision (b) of Section
16 3000 who was imprisoned for committing a violent felony, as
17 defined in subdivision (c) of Section 667.5, has been released on
18 parole from the state prison for a period not exceeding three
19 years and has been on parole continuously for two years since
20 release from confinement, or has been released on parole from
21 the state prison for a period not exceeding five years and has
22 been on parole continuously for three years since release from
23 confinement, the department shall discharge, within 30 days, that
24 person from parole, unless the department recommends to the
25 board that the person be retained on parole and the board, for
26 good cause, determines that the person will be retained. The
27 board shall make a written record of its determination and the
28 department shall transmit a copy thereof to the parolee.

29 (b) Notwithstanding any other provision of law, when any
30 person referred to in paragraph (2) or (3) of subdivision (b) of
31 Section 3000 has been released on parole from the state prison,
32 and has been on parole continuously for three years since release
33 from confinement or since extension of parole, the board shall
34 discharge, within 30 days, the person from parole, unless the
35 board, for good cause, determines that the person will be retained
36 on parole. The board shall make a written record of its
37 determination and the department shall transmit a copy thereof to
38 the parolee.

39 (c) Notwithstanding any other provision of law, when any
40 person referred to in subparagraph (B) of paragraph (1) of

1 subdivision (b) of Section 3000 has been released on parole from
2 the state prison, and has been on parole continuously for six
3 years since release from confinement, the board shall discharge,
4 within 30 days, the person from parole, unless the board, for
5 good cause, determines that the person will be retained on parole.
6 The board shall make a written record of its determination and
7 the department shall transmit a copy thereof to the parolee.

8 (d) In the event of a retention on parole, the parolee shall be
9 entitled to a review by the parole authority each year thereafter
10 until the maximum statutory period of parole has expired.

11 (e) The amendments to this section made during the 1987–88
12 Regular Session of the Legislature shall only be applied
13 prospectively and shall not extend the parole period for any
14 person whose eligibility for discharge from parole was fixed as
15 of the effective date of those amendments.

16 SEC. 14. Section 3005 of the Penal Code, as amended by
17 Chapter 55 of the Statutes of 2005, is amended to read:

18 3005. (a) The Department of Corrections and Rehabilitation,
19 to the maximum extent practicable and feasible, and subject to
20 legislative appropriation of necessary funds, shall ensure that all
21 parolees under active supervision and deemed to pose a high risk
22 to the public of committing violent sex crimes shall be placed on
23 an intensive and specialized parole supervision caseload.

24 (b) The department shall develop and, at the discretion of the
25 director and subject to an appropriation of the necessary funds,
26 may implement a plan for the implementation of relapse
27 prevention treatment programs and the provision of other
28 services deemed necessary by the department, in conjunction
29 with intensive and specialized parole supervision, to reduce the
30 recidivism of high-risk sex offenders.

31 (c) The department shall study the effects of the specialized
32 supervision caseload and of any plan implemented pursuant to
33 this section on recidivism rates of parolees. The study should pay
34 particular attention to the effectiveness of different treatment
35 models. The study shall be a two-year analysis completed by
36 January 1, 2009, with an initial report to the Legislature on or
37 before January 1, 2010, and a final report on or before January 1,
38 2012.

39 SEC. 15. Section 3006 is added to the Penal Code, to read:

1 3006. (a) The Department of Corrections and Rehabilitation,
2 subject to the legislative appropriation of the necessary funds,
3 may establish and operate, after January 1, 2007, a specialized
4 sex offender treatment program for parolees the department
5 deems to pose a high risk to the public of committing violent sex
6 crimes.

7 (b) (1) The program shall be based upon a relapse prevention
8 model, targeted primarily for the same offenders receiving more
9 intensive and specialized supervision under Section 3005, and
10 shall include referral to specialized services such as substance
11 abuse treatment, for offenders needing those specialized services.

12 (2) Parole agents may conduct group counseling sessions as
13 part of the program.

14 (3) The department may include other appropriate offenders in
15 the treatment program if doing so facilitates the effectiveness of
16 the treatment program.

17 (c) Except as otherwise required under Section 645, the
18 department may provide medication treatments for selected
19 offenders as determined by medical protocols and only on a
20 voluntary basis and with the offender's informed consent.

21 (d) The program shall be established with the assistance and
22 supervision of the staff of the department primarily by obtaining
23 the services of specially trained sex offender treatment providers.

24 SEC. 16. Section 3072 is added to the Penal Code, to read:

25 3072. (a) The Department of Corrections and Rehabilitation,
26 subject to the legislative appropriation of the necessary funds,
27 may establish and operate, after January 1, 2007, a specialized
28 sex offender treatment pilot program for inmates the department
29 deems to pose a high risk to the public of committing violent sex
30 crimes.

31 (b) (1) The program shall be based upon the relapse
32 prevention model and shall include referral to specialized
33 services, such as substance abuse treatment, for offenders
34 needing those specialized services.

35 (2) Except as otherwise required under Section 645, the
36 department may provide medication treatments for selected
37 offenders as determined by medical protocols and only on a
38 voluntary basis and with the offender's informed consent.

39 (c) (1) The program shall be targeted primarily at adult sex
40 offenders who meet the following conditions:

1 (A) The offender is within two years of being released on
2 parole.

3 (B) The offender has been clinically assessed.

4 (C) A review of the offender's criminal history indicates that
5 the offender poses a high risk of committing new sex offenses
6 upon his or her release on parole.

7 (D) The offender, based on his or her clinical assessment, may
8 be amenable to treatment.

9 (2) The department may include other appropriate offenders in
10 the treatment program if doing so facilitates the effectiveness of
11 the treatment program.

12 (d) The program under this section shall be established with
13 the assistance and supervision of the staff of the department
14 primarily by obtaining the services of specially trained sex
15 offender treatment provider, as best determined by the secretary
16 of the department and the Director of the Department of Mental
17 Health.

18 (e) (1) The program under this section, upon full
19 implementation, shall provide for the treatment of 500 adult sex
20 offenders at any given time.

21 (2) To the maximum extent that is practical and feasible,
22 offenders participating in the pilot program shall be held in a
23 separate portion of a prison facility segregated from any non-sex
24 offenders held at the same prison, and treatment in the pilot
25 program shall be provided in program space segregated to the
26 maximum extent that is practical and feasible from program
27 space for any non-sex offenders held at the same prison.

28 (f) (1) The Department of Mental Health, by January 1, 2012,
29 shall provide a report evaluating the pilot program to the fiscal
30 and public safety policy committees of both houses of the
31 Legislature, and to the Joint Legislative Budget Committee.

32 (2) The report shall initially evaluate if the program under this
33 section is operating effectively, is having a positive clinical effect
34 on participating sex offenders, and is cost effective for the state.

35 (3) In conducting its evaluation, the Department of Mental
36 Health shall consider the effects of treatment of offenders while
37 in prison and while subsequently on parole.

38 (4) The Department of Mental Health shall advise the
39 Legislature as to whether the program should be continued past
40 its expiration date, expanded, or concluded.

1 SEC. 17. No reimbursement is required by this act pursuant
2 to Section 6 of Article XIII B of the California Constitution
3 because the only costs that may be incurred by a local agency or
4 school district will be incurred because this act creates a new
5 crime or infraction, eliminates a crime or infraction, or changes
6 the penalty for a crime or infraction, within the meaning of
7 Section 17556 of the Government Code, or changes the
8 definition of a crime within the meaning of Section 6 of Article
9 XIII B of the California Constitution.

O