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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, 220, 269, 272, 288, 311.2, 311.4, 311.9, 311.11, 626.8, 667.1, 667.5, 667.51, 667.6, 667.61, 667.71, 1170.125, 1203.06, 1203.065, 1203.075, 3000, 3001, ~~and 3005 of, and 3003, 3005, and 12022.75 of~~, to add Sections 626.75, 3006, ~~and 3072 3010.05, 3072, and 13887.5~~ to, the Penal Code, *to amend Sections 6604, 6604.1, and 6605 of, and to repeal Section 6608 of, the Welfare and Institutions 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, every person who commits an assault with the intent to commit a specified crime is punishable by imprisonment in the state prison for 2, 4, or 6 years.

This bill would subject a person who commits an assault with the intent to commit a specified crime while committing a first degree burglary to imprisonment in the state prison for life with the possibility of parole.

Under existing law, any person who commits a specified act upon a child who is under 14 years of age and 10 or more years younger than the person is punishable by imprisonment in the state prison for 15 years to life.

This bill would change the requisite age difference between the person and the child from 10 years to 7 years. This bill would clarify the specified acts the commission of which would trigger the punishment. This bill would also impose consecutive sentences for multiple offenses if the offenses involved separate victims or the same victim on separate occasions, as specified.

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.

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.

Existing law, added by initiate acts that require amendments to its provisions to be approved by $\frac{2}{3}$ of the membership of both houses of the Legislature, defines “violent felony” for purposes of various provisions of the Penal Code.

This bill would clarify which offenses fall into the definition of a violent felony.

Existing law provides for an enhanced prison term of 5 years for a person convicted of committing any of several specified sex offenses if the person has a prior conviction for any several other specified sex offense. The enhanced term for a person with 2 or more previous convictions of any of the other specified sex offenses is either 10 years or 15 years to life. The enhanced term does not apply if that person has not been in custody for, or committed a felony during, at least 10 years between the instant and prior offense. Existing law requires the person to receive credits for time served or worked, to reduce his or her sentence.

This bill would expand the types of sex crimes to which these provisions apply, delete the 10 year exception, and would eliminate the possibility of the person receiving credit to reduce his or her sentence.

Under existing law, persons who are convicted of committing certain sex offenses who have previously been convicted of other sex offenses, including habitual sexual offenders, as defined, or who are convicted of certain sex offenses during the commission of another offense, are eligible for credit to reduce the minimum term imposed.

This bill would eliminate that eligibility for those persons.

Under existing law, the punishment for a conviction of certain sex offenses is 25 years to life if the offense was committed in the course of a kidnapping or burglary, the victim was tortured, or the defendant had previously been convicted of one of the specified sex offenses.

This bill would add continuous sexual abuse of a child to those sex offenses.

Under existing law, the court has the authority to order an action dismissed or to strike a prior conviction for purposes of sentencing a defendant.

This bill would prohibit a court from striking an allegation, admission, or finding of a prior conviction for, and would prohibit granting probation to, or suspending the execution or imposition of sentence for defendants who are convicted of certain sex offenses.

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.

This bill would declare legislative intent to create a period of parole for offenders found to be sexually violent predators after those offenders are released from their commitment to the Department of Mental Health in order to supervise the offenders participation in ongoing treatment programs.

Existing law establishes a 5-year period of parole for inmates serving a specified life sentence.

This bill would increase the period of parole from 5 years to 10 years.

Existing law requires the Board of Parole Hearings to discharge a person from parole after the person serves a specified period of time on parole unless the board finds good cause to retain the person on parole.

This bill would require the board to discharge a person paroled from a specified life term after 6 years.

Existing law authorizes the Department of Corrections and Rehabilitation to use Global Positioning Systems to monitor certain parolees.

This bill would appropriate \$8,000,000 from the General Fund to the Department of Corrections and Rehabilitation for the purchase of global positioning systems to monitor parolees who were convicted of violent or sexual offenses and are deemed to be at high risk to reoffend.

Existing law provides for an enhanced penalty of 3 years for any person who administers a controlled substance to another person against his or her will, for the purpose of committing a felony.

This bill would create an additional enhancement of 5 years if that felony is any of several specified sex offenses.

Existing law authorizes counties to establish Sexual Assault Felony Enforcement (SAFE) teams to reduce violent sexual assaults through proactive surveillance of habitual offenders.

This bill would appropriate \$15,000,000 from the General Fund for the funding of SAFE teams, as specified.

Under existing law, if a person is determined to be a sexually violent predator, he or she is committed to the State Department of Mental Health for 2 years for appropriate treatment and confinement. Confinement may not be extended except by court order.

This bill would change that commitment to an indeterminate term, and would require an annual report to be made about the appropriateness of conditionally releasing the person to a less restrictive environment.

Existing law establishes a procedure for a person committed as a sexually violent predator to petition a court for a conditional release or discharge.

This bill would repeal that provision and provide procedures governing when and how the person is entitled to a trial on the appropriateness of a conditional release or discharge.

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~~^{2/3}. Appropriation: ~~no~~-yes. 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

1 any person who aids or abets any of those acts, is guilty of a
2 felony. Upon conviction thereof, a person shall be punished by
3 imprisonment in the state prison for life without *the* possibility of
4 parole if a victim of any of those acts suffers death or bodily
5 harm or is intentionally confined in a manner which exposes that
6 person to a substantial likelihood of death, or shall be punished
7 by imprisonment in the state prison for life with the possibility of
8 parole if the victim does not suffer death or bodily harm.

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

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

18 (c) In all cases in which probation is granted, the court shall,
19 except in unusual cases where the interests of justice would best
20 be served by a lesser penalty, require as a condition of the
21 probation that the person be confined in the county jail for 12
22 months. If the court grants probation without requiring the
23 defendant to be confined in the county jail for 12 months, it shall
24 specify its reason or reasons for imposing a lesser penalty.

25 (d) Subdivision (b) shall not be construed to supersede or
26 affect Section 667.61. A person may be charged with a violation
27 of subdivision (b) and Section 667.61. However, a person may
28 not be punished under subdivision (b) and Section 667.61 for the
29 same act that constitutes a violation of both subdivision (b) and
30 Section 667.61.

31 *SEC. 3. Section 220 of the Penal Code is amended to read:*

32 *220. ~~Every~~(a) Except as provided in subdivision (b), any*
33 *person who assaults another with intent to commit mayhem, rape,*
34 *sodomy, oral copulation, or any violation of Section 264.1, 288*
35 *or 289 ~~is punishable~~ shall be punished by imprisonment in the*
36 *state prison for two, four, or six years.*

37 *(b) Any person who, in the commission of a burglary of the*
38 *first degree, as defined in subdivision (a) of Section 460, assaults*
39 *another with intent to commit rape, sodomy, oral copulation, or*
40 *any violation of Section 264.1, 288, or 289 shall be punished by*

1 *imprisonment in the state prison for life with the possibility of*
 2 *parole.*

3 *SEC. 4. Section 269 of the Penal Code is amended to read:*

4 269. (a) Any person who commits any of the following acts
 5 upon a child who is under 14 years of age and ~~10~~ 7 or more years
 6 younger than the person is guilty of aggravated sexual assault of
 7 a child:

8 (1) ~~Rape~~, in violation of paragraph (2) of subdivision (a) of
 9 Section 261.

10 (2) ~~Rape or sexual penetration, in concert~~, in violation of
 11 Section 264.1.

12 (3) Sodomy, in violation of *paragraph (2) or (3) of*
 13 *subdivision (c), subdivision (d) or Section 286,* ~~when committed~~
 14 ~~by force, violence, duress, menace, or fear of immediate and~~
 15 ~~unlawful bodily injury on the victim or another person.~~

16 (4) Oral copulation, in violation of *paragraph (2) or (3) of*
 17 *subdivision (c), or subdivision (d) of Section 288a,* ~~when~~
 18 ~~committed by force, violence, duress, menace, or fear of~~
 19 ~~immediate and unlawful bodily injury on the victim or another~~
 20 ~~person.~~

21 (5) ~~Sexual penetration~~, in violation of subdivision (a) of
 22 Section 289.

23 (b) Any person who violates this section is guilty of a felony
 24 and shall be punished by imprisonment in the state prison for 15
 25 years to life.

26 (c) *The court shall impose a consecutive sentence for each*
 27 *offense that results in a conviction under this section if the*
 28 *offenses involve separate victims or involve the same victim on*
 29 *separate occasions, as defined in subdivision (d) of Section*
 30 *667.6.*

31 ~~SEC. 3.~~

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

34 272. (a) (1) Every person who commits any act or omits the
 35 performance of any duty, which act or omission causes or tends
 36 to cause or encourage any person under the age of 18 years to
 37 come within the provisions of Section 300, 601, or 602 of the
 38 Welfare and Institutions Code or which act or omission
 39 contributes thereto, or any person who, by any act or omission, or
 40 by threats, commands, or persuasion, induces or endeavors to

1 induce any person under the age of 18 years or any ward or
2 dependent child of the juvenile court to fail or refuse to conform
3 to a lawful order of the juvenile court, or to do or to perform any
4 act or to follow any course of conduct or to so live as would
5 cause or manifestly tend to cause that person to become or to
6 remain a person within the provisions of Section 300, 601, or 602
7 of the Welfare and Institutions Code, is guilty of a misdemeanor.
8 Upon conviction thereof, that person shall be punished by a fine
9 not exceeding two thousand five hundred dollars (\$2,500), or by
10 imprisonment in the county jail for not more than one year, or by
11 both fine and imprisonment in a county jail, or may be released
12 on probation for a period not exceeding five years.

13 (2) For purposes of this subdivision, a parent or legal guardian
14 ~~to~~ of any person under ~~the age of 18 years~~ *18 years of age* shall
15 have the duty to exercise reasonable care, supervision, protection,
16 and control over their minor child.

17 (b) (1) An adult stranger who is 21 years of age or older, who
18 knowingly contacts or communicates with a minor who is under
19 14 years of age, who knew or reasonably should have known that
20 the minor is under 14 years of age, with the intent to commit an
21 offense specified in Sections 207, 209, 261, 264.1, 273a, 286,
22 288, 288a, 288.2, 289, 311.1, 311.2, 311.4, or 311.11 involving
23 the minor is guilty of a misdemeanor punishable by a fine not
24 exceeding one thousand dollars (\$1,000), or by imprisonment in
25 a county jail not exceeding one year, or both a fine and
26 imprisonment.

27 (2) Any person convicted of violating this subdivision who has
28 a previous conviction for a violation of Section 288 or 288.5
29 shall be punished by imprisonment in a county jail for a period
30 not to exceed one year, or in the state prison for 16 months, or
31 two or three years.

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

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

34 (A) "Emergency situation" means a situation where the minor
35 is threatened with imminent bodily harm, emotional harm, or
36 psychological harm.

37 (B) "Contact" or "communication" includes, but is not limited
38 to, the use of a telephone or the Internet, as defined in Section
39 17538 of the Business and Professions Code.

1 (C) “Stranger” means a person of casual acquaintance with
2 whom no substantial relationship exists, or an individual with
3 whom a relationship has been established or promoted for the
4 primary purpose of victimization, as defined in subdivision (e) of
5 Section 6600 of the Welfare and Institutions Code.

6 (D) “Express consent” means oral or written permission that is
7 positive, direct, and unequivocal, requiring no inference or
8 implication to supply its meaning.

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

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

16 ~~SEC. 4.~~

17 *SEC. 6.* Section 288 of the Penal Code is amended to read:

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

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

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

38 (c) (1) Any person who commits an act described in
39 subdivision (a) with the intent described in that subdivision, and
40 the victim is a child of 14 or 15 years, and that person is at least

1 10 years older than the child, is guilty of a public offense and
2 shall be punished by imprisonment in the state prison for one,
3 two, or three years, or by imprisonment in a county jail for not
4 more than one year. In determining whether the person is at least
5 10 years older than the child, the difference in age shall be
6 measured from the birth date of the person to the birth date of the
7 child.

8 (2) Any person who is a caretaker and commits an act
9 described in subdivision (a) upon a dependent person, with the
10 intent described in subdivision (a), is guilty of a public offense
11 and shall be punished by imprisonment in the state prison for
12 one, two, or three years, or by imprisonment in a county jail for
13 not more than one year.

14 (d) In any arrest or prosecution under this section or Section
15 288.5, the peace officer, district attorney, and the court shall
16 consider the needs of the child victim or dependent person *victim*
17 and shall do whatever is necessary, within existing budgetary
18 resources, and constitutionally permissible to prevent
19 psychological harm to the child victim or to prevent
20 psychological harm to the dependent person victim resulting
21 from participation in the court process.

22 (e) Upon the conviction of any person for a violation of
23 subdivision (a) or (b), the court may, in addition to any other
24 penalty or fine imposed, order the defendant to pay an additional
25 fine not to exceed ten thousand dollars (\$10,000). In setting the
26 amount of the fine, the court shall consider any relevant factors,
27 including, but not limited to, the seriousness and gravity of the
28 offense, the circumstances of its commission, whether the
29 defendant derived any economic gain as a result of the crime, and
30 the extent to which the victim suffered economic losses as a
31 result of the crime. Every fine imposed and collected under this
32 section shall be deposited in the Victim-Witness Assistance Fund
33 to be available for appropriation to fund child sexual exploitation
34 and child sexual abuse victim counseling centers and prevention
35 programs pursuant to Section 13837.

36 If the court orders a fine imposed pursuant to this subdivision,
37 the actual administrative cost of collecting that fine, not to
38 exceed 2 percent of the total amount paid, may be paid into the
39 general fund of the county treasury for the use and benefit of the
40 county.

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

3 (1) “Caretaker” means an owner, operator, administrator,
4 employee, independent contractor, agent, or volunteer of any of
5 the following public or private facilities when the facilities
6 provide care for elder or dependent persons:

7 (A) Twenty-four-hour health facilities, as defined in Sections
8 1250, 1250.2, and 1250.3 of the Health and Safety Code.

9 (B) Clinics.

10 (C) Home health agencies.

11 (D) Adult day health care centers.

12 (E) Secondary schools that serve dependent persons and
13 postsecondary educational institutions that serve dependent
14 persons or elders.

15 (F) Sheltered workshops.

16 (G) Camps.

17 (H) Community care facilities, as defined by Section 1402 of
18 the Health and Safety Code, and residential care facilities for the
19 elderly, as defined in Section 1569.2 of the Health and Safety
20 Code.

21 (I) Respite care facilities.

22 (J) Foster homes.

23 (K) Regional centers for persons with developmental
24 disabilities.

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

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

29 (N) Board and care facilities.

30 (O) Any other protective or public assistance agency that
31 provides health services or social services to elder or dependent
32 persons, including, but not limited to, in-home supportive
33 services, as defined in Section 14005.14 of the Welfare and
34 Institutions Code.

35 (P) Private residences.

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

39 (A) Bathing.

40 (B) Dressing.

- 1 (C) Grooming.
- 2 (D) Medication storage.
- 3 (E) Medical dispensation.
- 4 (F) Money management.

5 (3) “Dependent person” means any person who has a physical
6 or mental impairment that substantially restricts his or her ability
7 to carry out normal activities or to protect his or her rights,
8 including, but not limited to, persons who have physical or
9 developmental disabilities or whose physical or mental abilities
10 have significantly diminished because of age. “Dependent
11 person” includes any person who is admitted as an inpatient to a
12 24-hour health facility, as defined in Sections 1250, 1250.2, and
13 1250.3 of the Health and Safety Code.

14 (g) Paragraph (2) of subdivision (b) and paragraph (2) of
15 subdivision (c) apply to the owners, operators, administrators,
16 employees, independent contractors, agents, or volunteers
17 working at these public or private facilities and only to the extent
18 that the individuals personally commit, conspire, aid, abet, or
19 facilitate any act prohibited by paragraph (2) of subdivision (b)
20 and paragraph (2) of subdivision (c).

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

25 ~~SEC. 5.~~

26 *SEC. 7.* Section 311.2 of the Penal Code is amended to read:

27 311.2. (a) Every person who knowingly sends or causes to be
28 sent, or brings or causes to be brought, into this state for sale or
29 distribution, or in this state possesses, prepares, publishes,
30 produces, or prints, with intent to distribute or to exhibit to
31 others, or who offers to distribute, distributes, or exhibits to
32 others, any obscene matter is, for a first offense, guilty of a
33 misdemeanor. If the person has previously been convicted of any
34 violation of this section, the court may, in addition to the
35 punishment authorized in Section 311.9, impose a fine not
36 exceeding fifty thousand dollars (\$50,000).

37 (b) Every person who knowingly sends or causes to be sent, or
38 brings or causes to be brought, into this state for sale or
39 distribution, or in this state possesses, prepares, publishes,
40 produces, develops, duplicates, or prints any representation of

1 information, data, or image, including, but not limited to, any
2 film, filmstrip, photograph, negative, slide, photocopy, videotape,
3 video laser disc, computer hardware, computer software,
4 computer floppy disc, data storage media, CD-ROM, or
5 computer-generated equipment or any other computer-generated
6 image that contains or incorporates in any manner, any film or
7 filmstrip, with intent to distribute or to exhibit to, or to exchange
8 with, others for commercial consideration, or who offers to
9 distribute, distributes, or exhibits to, or exchanges with, others
10 for commercial consideration, any obscene matter, knowing that
11 the matter depicts a person under the age of 18 years personally
12 engaging in or personally simulating sexual conduct, as defined
13 in Section 311.4, is guilty of a felony and shall be punished by
14 imprisonment in the state prison for two, three, or six years, or by
15 a fine not exceeding one hundred thousand dollars (\$100,000), in
16 the absence of a finding that the defendant would be incapable of
17 paying such a fine, or by both that fine and imprisonment.

18 (c) Every person who knowingly sends or causes to be sent, or
19 brings or causes to be brought, into this state for sale or
20 distribution, or in this state possesses, prepares, publishes,
21 produces, develops, duplicates, or prints any representation of
22 information, data, or image, including, but not limited to, any
23 film, filmstrip, photograph, negative, slide, photocopy, videotape,
24 video laser disc, computer hardware, computer software,
25 computer floppy disc, data storage media, CD-ROM, or
26 computer-generated equipment or any other computer-generated
27 image that contains or incorporates in any manner, any film or
28 filmstrip, with intent to distribute or exhibit to, or to exchange
29 with, a person 18 years of age or older, or who offers to
30 distribute, distributes, or exhibits to, or exchanges with, a person
31 18 years of age or older any matter, knowing that the matter
32 depicts a person under the age of 18 years personally engaging in
33 or personally simulating sexual conduct, as defined in Section
34 311.4, shall be punished by imprisonment in the county jail for
35 up to one year, or by a fine not exceeding two thousand dollars
36 (\$2,000), or by both that fine and imprisonment, or by
37 imprisonment in the state prison. It is not necessary to prove
38 commercial consideration or that the matter is obscene in order to
39 establish a violation of this subdivision. If a person has been

1 previously convicted of a violation of this subdivision, he or she
2 is guilty of a felony.

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

22 (e) Subdivisions (a) to (d), inclusive, do not apply to the
23 activities of law enforcement and prosecuting agencies in the
24 investigation and prosecution of criminal offenses, to legitimate
25 medical, scientific, or educational activities, or to lawful conduct
26 between spouses.

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

30 (g) It does not constitute a violation of this section for a
31 telephone corporation, as defined by Section 234 of the Public
32 Utilities Code, to carry or transmit messages described in this
33 chapter or to perform related activities in providing telephone
34 services.

35 ~~SEC. 6.~~

36 *SEC. 8.* Section 311.4 of the Penal Code is amended to read:

37 311.4. (a) Every person who, with knowledge that a person is
38 a minor, or who, while in possession of any facts on the basis of
39 which he or she should reasonably know that the person is a
40 minor, hires, employs, or uses the minor to do or assist in doing

1 any of the acts described in Section 311.2, for a first offense,
2 shall be punished by imprisonment in the county jail for up to
3 one year, or by a fine not exceeding one thousand dollars
4 (\$1,000), or by both that fine and imprisonment, or by
5 imprisonment in the state prison. If the person has previously
6 been convicted of any violation of this section, the court may, in
7 addition to the punishment authorized in Section 311.9, impose a
8 fine not exceeding fifty thousand dollars (\$50,000).

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

29 (c) Every person who, with knowledge that a person is a minor
30 under the age of 18 years, or who, while in possession of any
31 facts on the basis of which he or she should reasonably know that
32 the person is a minor under the age of 18 years, knowingly
33 promotes, employs, uses, persuades, induces, or coerces a minor
34 under the age of 18 years, or any parent or *legal* guardian of a
35 minor under the age of 18 years under his or her control who
36 knowingly permits the minor, to engage in or assist others to
37 engage in either posing or modeling alone or with others for
38 purposes of preparing any representation of information, data, or
39 image, including, but not limited to, any film, filmstrip,
40 photograph, negative, slide, photocopy, videotape, video laser

1 disc, computer hardware, computer software, computer floppy
2 disc, data storage media, CD-ROM, or computer-generated
3 equipment or any other computer-generated image that contains
4 or incorporates in any manner, any film, filmstrip, or a live
5 performance involving, sexual conduct by a minor under the age
6 of 18 years alone or with other persons or animals, is guilty of a
7 felony. It is not necessary to prove commercial purposes in order
8 to establish a violation of this subdivision.

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

22 (2) As used in subdivisions (b) and (c), “matter” means any
23 film, filmstrip, photograph, negative, slide, photocopy, videotape,
24 video laser disc, computer hardware, computer software,
25 computer floppy disc, or any other computer-related equipment
26 or computer-generated image that contains or incorporates in any
27 manner, any film, filmstrip, photograph, negative, slide,
28 photocopy, videotape, or video laser disc.

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

32 (f) In every prosecution under this section involving a minor
33 under the age of 14 years at the time of the offense, the age of the
34 victim shall be pled and proven for the purpose of the enhanced
35 penalty provided in Section 647.6. Failure to plead and prove that
36 the victim was under the age of 14 years at the time of the
37 offense is not a bar to prosecution under this section if it is
38 proven that the victim was under the age of 18 years at the time
39 of the offense.

1 ~~SEC. 7.~~

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

3 311.9. (a) Every person who violates Section 311.2 or 311.5,
4 except subdivision (b) of Section 311.2, is punishable by fine of
5 not more than one thousand dollars (\$1,000) plus five dollars
6 (\$5) for each additional unit of material coming within the
7 provisions of this chapter, which is involved in the offense, not to
8 exceed ten thousand dollars (\$10,000), or by imprisonment in the
9 county jail for not more than six months plus one day for each
10 additional unit of material coming within the provisions of this
11 chapter, and which is involved in the offense, such basic
12 maximum and additional days not to exceed 360 days in the
13 county jail, or by both such fine and imprisonment. If the person
14 has previously been convicted of any offense in this chapter, or
15 of a violation of Section 313.1, a violation of Section 311.2 or
16 311.5, except subdivision (b) of Section 311.2, is punishable as a
17 felony.

18 (b) Every person who violates Section 311.4 is punishable by
19 fine of not more than two thousand dollars (\$2,000) or by
20 imprisonment in the county jail for not more than one year, or by
21 both such fine and imprisonment, or by imprisonment in the state
22 prison. If the person has been previously convicted of a violation
23 of former Section 311.3 or Section 311.4 he is punishable by
24 imprisonment in the state prison.

25 (c) Every person who violates Section 311.7 is punishable by
26 fine of not more than one thousand dollars (\$1,000) or by
27 imprisonment in the county jail for not more than six months, or
28 by both such fine and imprisonment. For a second and
29 subsequent offense he shall be punished by a fine of not more
30 than two thousand dollars (\$2,000), or by imprisonment in the
31 county jail for not more than one year, or by both that fine and
32 imprisonment. If the person has been twice convicted of a
33 violation of this chapter, a violation of Section 311.7 is
34 punishable as a felony.

35 ~~SEC. 8.~~

36 *SEC. 10.* Section 311.11 of the Penal Code is amended to
37 read:

38 311.11. (a) Every person who knowingly possesses or
39 controls any matter, representation of information, data, or
40 image, including, but not limited to, any film, filmstrip,

1 photograph, negative, slide, photocopy, videotape, video laser
2 disc, computer hardware, computer software, computer floppy
3 disc, data storage media, CD-ROM, or computer-generated
4 equipment or any other computer-generated image that contains
5 or incorporates in any manner, any film or filmstrip, the
6 production of which involves the use of a person under the age of
7 18 years, knowing that the matter depicts a person under the age
8 of 18 years personally engaging in or simulating sexual conduct,
9 as defined in subdivision (d) of Section 311.4, is guilty of a
10 public offense and shall be punished by imprisonment in the
11 county jail for up to one year, or by imprisonment in the state
12 prison, or by a fine not exceeding two thousand five hundred
13 dollars (\$2,500), or by both the fine and imprisonment.

14 (b) If a person has been previously convicted of a violation of
15 this section, or of a violation of subdivision (b) of Section 311.2,
16 or subdivision (b) of Section 311.4, he or she is guilty of a felony
17 and shall be punished by imprisonment for two, four, or six
18 years.

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

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

26 ~~SEC. 9:~~

27 *SEC. 11.* Section 626.75 is added to the Penal Code, to read:

28 626.75. (a) It is unlawful for any person who is required to
29 register pursuant to Section 290, who has been convicted of a
30 violation of Section 220, 261, 266, 267, 272, or 289, or of
31 subdivision (c), (d), or (f) of Section 286, or of subdivision (c),
32 (d), or (f) of Section 288a, or of an attempt to commit a violation
33 of any of those sections, to knowingly be present in any school
34 building, or upon any school ground, or street, sidewalk, or
35 public walkway adjacent to, or on real property comprising any
36 public or private elementary, vocational, junior high, or high
37 school during hours that the school is open for classes or
38 school-related programs, unless that person is a parent or *legal*
39 guardian of a child attending that school, or is a student at the
40 school or has prior written permission for entry from the chief

1 administrative officer of that school. A violation of this provision
2 shall be punishable as a misdemeanor.

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

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

21 ~~SEC. 10.~~

22 *SEC. 12.* Section 626.8 of the Penal Code is amended to read:

23 626.8. (a) Any person who comes into any school building or
24 upon any school ground, or street, sidewalk, or public way
25 adjacent thereto, without lawful business thereon, and whose
26 presence or acts interfere with the peaceful conduct of the
27 activities of the school or disrupt the school or its pupils or
28 school activities, is guilty of a misdemeanor if he or she does any
29 of the following:

30 (1) Remains there after being asked to leave by the chief
31 administrative official of that school or his or her designated
32 representative, or by a person employed as a member of a
33 security or police department of a school district pursuant to
34 Section 39670 of the Education Code, or a city police officer, or
35 sheriff or deputy sheriff, or a Department of the California
36 Highway Patrol peace officer.

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

39 (3) Has otherwise established a continued pattern of
40 unauthorized entry.

1 This section shall not be used to impinge upon the lawful
2 exercise of constitutionally protected rights of freedom of speech
3 or assembly.

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

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

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

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

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

24 (1) "Lawful business" means a reason for being present upon
25 school property which is not otherwise prohibited by statute, by
26 ordinance, or by any regulation adopted pursuant to statute or
27 ordinance.

28 (2) "Continued pattern of unauthorized entry" means that on at
29 least two prior occasions in the same school year the defendant
30 came into any school building or upon any school ground, or
31 street, sidewalk, or public way adjacent thereto, without lawful
32 business thereon, and his or her presence or acts interfered with
33 the peaceful conduct of the activities of the school or disrupted
34 the school or its pupils or school activities, and the defendant was
35 asked to leave by a person specified in paragraph (1) of
36 subdivision (a).

37 (3) "School" means any preschool or school having any of
38 grades kindergarten through 12.

39 (d) When a person is directed to leave pursuant to paragraph
40 (1) of subdivision (a), the person directing him or her to leave

1 shall inform the person that if he or she reenters the place within
2 seven days he or she will be guilty of a crime.

3 *SEC. 13. Section 667.1 of the Penal Code is amended to*
4 *read:*

5 667.1. Notwithstanding subdivision (h) of Section 667, for all
6 offenses committed on or after the effective date of this act, all
7 references to existing statutes in subdivisions (c) to (g), inclusive,
8 of Section 667, are to those statutes as they existed on the
9 effective date of this act, including amendments made to those
10 statutes by ~~this act~~ *the act enacted during the 2005–06 Regular*
11 *Session that amended this section.*

12 *SEC. 14. Section 667.5 of the Penal Code is amended to*
13 *read:*

14 667.5. Enhancement of prison terms for new offenses because
15 of prior prison terms shall be imposed as follows:

16 (a) Where one of the new offenses is one of the violent
17 felonies specified in subdivision (c), in addition to and
18 consecutive to any other prison terms therefor, the court shall
19 impose a three-year term for each prior separate prison term
20 served by the defendant where the prior offense was one of the
21 violent felonies specified in subdivision (c). However, no
22 additional term shall be imposed under this subdivision for any
23 prison term served prior to a period of 10 years in which the
24 defendant remained free of both prison custody and the
25 commission of an offense which results in a felony conviction.

26 (b) Except where subdivision (a) applies, where the new
27 offense is any felony for which a prison sentence is imposed, in
28 addition and consecutive to any other prison terms therefor, the
29 court shall impose a one-year term for each prior separate prison
30 term served for any felony; provided that no additional term shall
31 be imposed under this subdivision for any prison term served
32 prior to a period of five years in which the defendant remained
33 free of both prison custody and the commission of an offense
34 which results in a felony conviction.

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

- 37 (1) Murder or voluntary manslaughter.
38 (2) Mayhem.

- 1 (3) Rape as defined in paragraph (2) or (6) of subdivision (a)
2 of Section 261 or paragraph (1) or (4) of subdivision (a) of
3 Section 262.
- 4 (4) ~~Sodomy by force, violence, duress, menace, or fear of~~
5 ~~immediate and unlawful bodily injury on the victim or another~~
6 ~~person as defined in subdivision (c) or (d) of Section 286.~~
- 7 (5) ~~Oral copulation by force, violence, duress, menace, or fear~~
8 ~~of immediate and unlawful bodily injury on the victim or another~~
9 ~~person, as defined in subdivision (c) or (d) of Section 288a.~~
- 10 (6) ~~Lewd acts on a child under the age of 14 years or~~
11 ~~lascivious acts, as defined in subdivision (a) or (b) of Section~~
12 ~~288.~~
- 13 (7) Any felony punishable by death or imprisonment in the
14 state prison for life.
- 15 (8) Any felony in which the defendant inflicts great bodily
16 injury on any person other than an accomplice which has been
17 charged and proved as provided for in Section 12022.7 or
18 12022.9 on or after July 1, 1977, or as specified prior to July 1,
19 1977, in Sections 213, 264, and 461, or any felony in which the
20 defendant uses a firearm which use has been charged and proved
21 as provided in Section 12022.5 or 12022.55.
- 22 (9) Any robbery.
- 23 (10) Arson, in violation of subdivision (a) or (b) of Section
24 451.
- 25 (11) ~~The offense Sexual penetration, as defined in subdivision~~
26 ~~(a) or (j) of Section 289 where the act is accomplished against~~
27 ~~the victim's will by force, violence, duress, menace, or fear of~~
28 ~~immediate and unlawful bodily injury on the victim or another~~
29 ~~person.~~
- 30 (12) Attempted murder.
- 31 (13) A violation of Section 12308, 12309, or 12310.
- 32 (14) Kidnapping.
- 33 (15) Assault with the intent to commit ~~mayhem, rape, sodomy,~~
34 ~~or oral copulation a specified felony, in violation of Section 220.~~
- 35 (16) Continuous sexual abuse of a child, in violation of
36 Section 288.5.
- 37 (17) Carjacking, as defined in subdivision (a) of Section 215.
- 38 (18) ~~A Rape, spousal rape, or sexual penetration, in concert,~~
39 ~~in violation of Section 264.1.~~

1 (19) Extortion, as defined in Section 518, which would
2 constitute a felony violation of Section 186.22 of the Penal Code.

3 (20) Threats to victims or witnesses, as defined in Section
4 136.1, which would constitute a felony violation of Section
5 186.22 of the Penal Code.

6 (21) Any burglary of the first degree, as defined in subdivision
7 (a) of Section 460, wherein it is charged and proved that another
8 person, other than an accomplice, was present in the residence
9 during the commission of the burglary.

10 (22) Any violation of Section 12022.53.

11 (23) A violation of subdivision (b) or (c) of Section 11418.

12 The Legislature finds and declares that these specified crimes
13 merit special consideration when imposing a sentence to display
14 society's condemnation for these extraordinary crimes of
15 violence against the person.

16 (d) For the purposes of this section, the defendant shall be
17 deemed to remain in prison custody for an offense until the
18 official discharge from custody or until release on parole,
19 whichever first occurs, including any time during which the
20 defendant remains subject to reimprisonment for escape from
21 custody or is reimprisoned on revocation of parole. The
22 additional penalties provided for prior prison terms shall not be
23 imposed unless they are charged and admitted or found true in
24 the action for the new offense.

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

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

37 (g) A prior separate prison term for the purposes of this
38 section shall mean a continuous completed period of prison
39 incarceration imposed for the particular offense alone or in
40 combination with concurrent or consecutive sentences for other

1 crimes, including any reimprisonment on revocation of parole
2 which is not accompanied by a new commitment to prison, and
3 including any reimprisonment after an escape from incarceration.

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

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

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

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

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

31 *SEC. 15. Section 667.51 of the Penal Code is amended to*
32 *read:*

33 667.51. (a) Any person who is ~~found guilty~~ *convicted* of
34 violating Section 288 *or 288.5* shall receive a five-year
35 enhancement for a prior conviction of an offense listed in
36 subdivision (b), ~~provided that no additional term shall be~~
37 ~~imposed under this subdivision for any prison term served prior~~
38 ~~to a period of 10 years in which the defendant remained free of~~
39 ~~both prison custody and the commission of an offense that results~~
40 ~~in a felony conviction.~~

1 (b) Section 261, 262, 264.1, 269, 285, 286, 288, 288a, 288.5,
2 or 289, or any offense committed in another jurisdiction that
3 includes all of the elements of any of the offenses ~~set forth~~
4 *specified* in this subdivision.

5 ~~(e) Section 261, 264.1, 286, 288, 288a, 288.5, or 289, or any~~
6 ~~offense committed in another jurisdiction that includes all of the~~
7 ~~elements of any of the offenses set forth in this subdivision.~~

8 ~~(d)~~

9 (c) A violation of Section 288 *or* 288.5 by a person who has
10 been previously convicted two or more times of an offense ~~listed~~
11 ~~specified~~ in subdivision (e) ~~is punishable as a felony~~ (b) *shall be*
12 *punished* by imprisonment in the state prison for 15 years to life.
13 ~~However, if the two or more prior convictions were for violations~~
14 ~~of Section 288, this subdivision is applicable only if the current~~
15 ~~violation or at least one of the prior convictions is for an offense~~
16 ~~other than a violation of subdivision (a) of Section 288. For~~
17 ~~purposes of this subdivision, a prior conviction is required to~~
18 ~~have been for charges brought and tried separately. The~~
19 ~~provisions of Article 2.5 (commencing with Section 2930) of~~
20 ~~Chapter 7 of Title 1 of Part 3 shall apply to reduce any minimum~~
21 ~~term in a state prison imposed pursuant to this section, but that~~
22 ~~person shall not otherwise be released on parole prior to that~~
23 ~~time.~~

24 *SEC. 16. Section 667.6 of the Penal Code is amended to*
25 *read:*

26 667.6. (a) Any person who is ~~found guilty of violating~~
27 ~~paragraph (2), (3), (6), or (7) of subdivision (a) of Section 261,~~
28 ~~paragraph (1), (4), or (5) of subdivision (a) of Section 262,~~
29 ~~Section 264.1, subdivision (b) of Section 288, Section 288.5 or~~
30 ~~subdivision (a) of Section 289, of committing sodomy in~~
31 ~~violation of subdivision (k) of Section 286, of committing oral~~
32 ~~copulation in violation of subdivision (k) of Section 288a, or of~~
33 ~~committing sodomy or oral copulation in violation of Section 286~~
34 ~~or 288a by force, violence, duress, menace, or fear of immediate~~
35 ~~and unlawful bodily injury on the victim or another person~~
36 ~~convicted of an offense specified in subdivision (e) and who has~~
37 ~~been convicted previously of any of those offenses shall receive~~
38 ~~a five-year enhancement for each of those prior convictions~~
39 ~~provided that no enhancement shall be imposed under this~~
40 ~~subdivision for any conviction occurring prior to a period of 10~~

1 years in which the person remained free of both prison custody
2 and the commission of an offense which results in a felony
3 conviction. In addition to the five-year enhancement imposed
4 under this subdivision, the court also may impose a fine not to
5 exceed twenty thousand dollars (\$20,000) for anyone sentenced
6 under these provisions. The fine imposed and collected pursuant
7 to this subdivision shall be deposited in the Victim-Witness
8 Assistance Fund to be available for appropriation to fund child
9 sexual exploitation and child sexual abuse victim counseling
10 centers and prevention programs established pursuant to Section
11 13837.

12 (b) Any person *who is* convicted of an offense specified in
13 subdivision ~~(a) (e)~~ and who has served two or more prior prison
14 terms as defined in Section 667.5 for any offense specified in
15 subdivision ~~(a)~~; *of those offenses* shall receive a 10-year
16 enhancement for each of those prior terms ~~provided that no~~
17 ~~additional enhancement shall be imposed under this subdivision~~
18 ~~for any prison term served prior to a period of 10 years in which~~
19 ~~the person remained free of both prison custody and the~~
20 ~~commission of an offense which results in a felony conviction. In~~
21 ~~addition to the 10-year enhancement imposed under this~~
22 ~~subdivision, the court also may impose a fine not to exceed~~
23 ~~twenty thousand dollars (\$20,000) for any person sentenced~~
24 ~~under this subdivision. The fine imposed and collected pursuant~~
25 ~~to this subdivision shall be deposited in the Victim-Witness~~
26 ~~Assistance Fund to be available for appropriation to fund child~~
27 ~~sexual exploitation and child sexual abuse victim counseling~~
28 ~~centers and prevention programs established pursuant to Section~~
29 ~~13837.~~

30 (c) In lieu of the term provided in Section 1170.1, a full,
31 separate, and consecutive term may be imposed for each
32 violation of Section 220, other than an assault with intent to
33 commit mayhem, provided that the person has been convicted
34 previously of violating Section 220 for an offense other than an
35 assault with intent to commit mayhem, paragraph (2), (3), (6), or
36 (7) of subdivision (a) of Section 261, paragraph (1), (4), or (5) of
37 subdivision (a) of Section 262, Section 264.1, subdivision (b) of
38 Section 288, Section 288.5 or subdivision (a) of Section 289, of
39 committing sodomy in violation of subdivision (k) of Section
40 286, of committing oral copulation in violation of subdivision (k)

1 of Section 288a, or of committing sodomy or oral copulation in
2 violation of Section 286 or 288a by force, violence, duress,
3 menace, or fear of immediate and unlawful bodily injury on the
4 victim or another person whether or not the crimes were
5 committed during a single transaction *and offense specified in*
6 *subdivision (e) if the crimes involved the same victim on the same*
7 *occasion. A term may be imposed consecutively pursuant to this*
8 *subdivision if a person is convicted of at least on offense*
9 *specified in subdivision (e).* If the term is imposed consecutively
10 pursuant to this subdivision, it shall be served consecutively to
11 any other term of imprisonment, and shall commence from the
12 time the person otherwise would have been released from
13 imprisonment. The term shall not be included in any
14 determination pursuant to Section 1170.1. Any other term
15 imposed subsequent to that term shall not be merged therein but
16 shall commence at the time the person otherwise would have
17 been released from prison.

18 (d) A full, separate, and consecutive term shall be ~~served~~
19 *imposed* for each violation of ~~Section 220, other than an assault~~
20 ~~with intent to commit mayhem, provided that the person has been~~
21 ~~convicted previously of violating Section 220 for an offense~~
22 ~~other than an assault with intent to commit mayhem, paragraph~~
23 ~~(2), (3), (6), or (7) of subdivision (a) of Section 261, paragraph~~
24 ~~(1), (4), or (5) of subdivision (a) of Section 262, Section 264.1,~~
25 ~~subdivision (b) of Section 288, subdivision (a) of Section 289, of~~
26 ~~committing sodomy in violation of subdivision (k) of Section~~
27 ~~286, of committing oral copulation in violation of subdivision (k)~~
28 ~~of Section 288a, or of committing sodomy or oral copulation in~~
29 ~~violation of Section 286 or 288a by force, violence, duress,~~
30 ~~menace, or fear of immediate and unlawful bodily injury on the~~
31 ~~victim or another person~~ *an offense specified in subdivision (e)* if
32 the crimes involve separate victims or involve the same victim on
33 separate occasions.

34 In determining whether crimes against a single victim were
35 committed on separate occasions under this subdivision, the court
36 shall consider whether, between the commission of one sex crime
37 and another, the defendant had a reasonable opportunity to reflect
38 upon his or her actions and nevertheless resumed sexually
39 assaultive behavior. Neither the duration of time between crimes,
40 nor whether or not the defendant lost or abandoned his or her

1 opportunity to attack, shall be, in and of itself, determinative on
2 the issue of whether the crimes in question occurred on separate
3 occasions.

4 The term shall be served consecutively to any other term of
5 imprisonment and shall commence from the time the person
6 otherwise would have been released from imprisonment. The
7 term shall not be included in any determination pursuant to
8 Section 1170.1. Any other term imposed subsequent to that term
9 shall not be merged therein but shall commence at the time the
10 person otherwise would have been released from prison.

11 *(e) This section shall apply to the following offenses:*

12 *(1) Rape, in violation of paragraph (2), (3), (6), or (7) of*
13 *subdivision (a) of Section 261.*

14 *(2) Spousal rape, in violation of paragraph (1), (4), or (5) of*
15 *subdivision (a) of Section 262.*

16 *(3) Rape, spousal rape, or sexual penetration, in concert, in*
17 *violation of Section 264.1.*

18 *(4) Sodomy, in violation of paragraph (2) or (3) of subdivision*
19 *(c), or subdivision (d) or (k), of Section 286.*

20 *(5) Lewd or lascivious act, in violation of subdivision (b) of*
21 *Section 288.*

22 *(6) Continuous sexual abuse of a child, in violation of Section*
23 *288.5.*

24 *(7) Oral copulation, in violation of paragraph (2) or (3) of*
25 *subdivision (c), or subdivision (d) or (k), of Section 288a.*

26 *(8) Sexual penetration, in violation of subdivision (a) of (g) or*
27 *Section 289.*

28 *(9) As a present offense under subdivision (c) or (d), assault*
29 *with intent to commit a specified sexual offense, in violation of*
30 *Section 220.*

31 *(10) As a prior conviction under subdivision (a) or (b), an*
32 *offense committed in another jurisdiction that includes all of the*
33 *elements of an offense specified in this subdivision.*

34 *(f) In addition to any enhancement imposed pursuant to*
35 *subdivision (a) or (b), the court may impose a fine not to exceed*
36 *twenty thousand dollars (\$20,000). The fine imposed and*
37 *collected pursuant to this subdivision shall be deposited in the*
38 *Victim-Witness Assistance Fund to be available for*
39 *appropriation to fund child sexual exploitation and child sexual*

1 *abuse victim counseling centers and prevention programs*
 2 *established pursuant to Section 13837.*

3 (e)

4 (g) If the court orders a fine to be imposed pursuant to
 5 ~~subdivision (a) or (b) this section~~, the actual administrative cost
 6 of collecting that fine, not to exceed 2 percent of the total amount
 7 paid, may be paid into the general fund of the county treasury for
 8 the use and benefit of the county.

9 ~~SEC. 11.~~

10 *SEC. 17.* Section 667.61 of the Penal Code is amended to
 11 read:

12 667.61. (a) ~~Any~~ person who is convicted of an offense
 13 specified in subdivision (c) under one or more of the
 14 circumstances specified in subdivision (d) or under two or more
 15 of the circumstances specified in subdivision (e) shall be
 16 punished by imprisonment in the state prison for life and shall
 17 not be eligible for release on parole for 25 years except as
 18 provided in subdivision (j). *25 years to life.*

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

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

26 (1) ~~Rape~~, in violation of paragraph (2) or (6) of subdivision
 27 (a) of Section 261.

28 (2) ~~Spousal rape~~, in violation of paragraph (1) or (4) of
 29 subdivision (a) of Section 262.

30 (3) ~~Rape, spousal rape, or sexual penetration, in concert~~, in
 31 violation of Section 264.1.

32 (4) ~~A lewd or lascivious act~~, in violation of subdivision (b) of
 33 Section 288.

34 (5) ~~Continuous sexual abuse of a child~~, in violation of
 35 subdivision (a) of Section 288.5.

36 (6) ~~Sexual penetration~~, in violation of subdivision (a) of
 37 Section 289.

38 (7) ~~Sodomy or oral copulation~~ in violation of *paragraph (2) or*
 39 *(3) of subdivision (c) of Section 286 or 288a by force, violence,*

1 ~~duress, menace, or fear of immediate and unlawful bodily injury~~
2 ~~on the victim or another person.~~

3 (8) ~~A lewd or lascivious act, in violation of subdivision (a) of~~
4 ~~Section 288, unless the defendant qualifies for probation under~~
5 ~~subdivision (e) of Section 1203.066.~~

6 (9) *Oral copulation in violation of paragraph (3) of*
7 *subdivision (c) or subdivision (d) of Section 288a.*

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

10 (1) The defendant has been previously convicted of an offense
11 specified in subdivision (c), including an offense committed in
12 another jurisdiction that includes all of the elements of an offense
13 specified in subdivision (c).

14 (2) The defendant kidnapped the victim of the present offense
15 and the movement of the victim substantially increased the risk
16 of harm to the victim over and above that level of risk necessarily
17 inherent in the underlying offense in subdivision (c).

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

21 (4) The defendant committed the present offense during the
22 commission of a burglary *of the first degree*, as defined in
23 subdivision (a) of Section 460, with intent to commit an offense
24 specified in subdivision (c).

25 (5) *The defendant committed the present offense in violation of*
26 *Section 264.1, subdivision (d) of Section 286, or subdivision (d)*
27 *of Section 288a, and, in the commission of that offense, any*
28 *person committed any act described in paragraph (2), (3), or (4)*
29 *of this subdivision.*

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

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

35 (2) Except as provided in paragraph (4) of subdivision (d), the
36 defendant committed the present offense during the commission
37 of a burglary, ~~as defined in subdivision (a) of Section 460, or~~
38 ~~during the commission of a burglary of a building, including any~~
39 ~~commercial establishment, which was then closed to the public,~~
40 in violation of Section 459.

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

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

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

10 (6) The defendant engaged in the tying or binding of the
11 victim or another person in the commission of the present
12 offense.

13 (7) The defendant administered a controlled substance to the
14 victim ~~by force, violence, or fear~~ in the commission of the
15 present offense in violation of Section 12022.75.

16 (8) *The defendant committed the present offense in violation of*
17 *Section 264.1, subdivision (d) of Section 286, or subdivision (d)*
18 *of Section 288a, and, in the commission of that offense, any*
19 *person committed any act described in paragraph (1), (2), (3),*
20 *(4), (6), or (7) of this subdivision.*

21 (f) If only the minimum number of circumstances specified in
22 subdivision (d) or (e) ~~which~~ *that* are required for the punishment
23 provided in subdivision (a) or (b) to apply have been pled and
24 proved, that circumstance or those circumstances shall be used as
25 the basis for imposing the term provided in subdivision (a) or (b),
26 *whichever is greater*, rather than being used to impose the
27 punishment authorized under any other *provision of law*, unless
28 another *provision of law* provides for a greater penalty *or the*
29 *punishment under another provision of law may be imposed in*
30 *addition to the punishment provided by this section*. However, if
31 any additional circumstance or circumstances specified in
32 subdivision (d) or (e) have been pled and proved, the minimum
33 number of circumstances shall be used as the basis for imposing
34 the term provided in subdivision (a), and any other additional
35 circumstance or circumstances shall be used to impose any
36 punishment or enhancement authorized under any other *provision*
37 *of law*. ~~Notwithstanding any other law, the court shall not strike~~
38 ~~any of the circumstances specified in subdivision (d) or (e).~~

39 (g) ~~The term specified in subdivision (a) or (b) shall be~~
40 ~~imposed on the defendant once for any offense or offenses~~

1 committed against a single victim during a single occasion. If
2 there are multiple victims during a single occasion, the term
3 specified in subdivision (a) or (b) shall be imposed on the
4 defendant once for each separate victim. Terms for other offenses
5 committed during a single occasion shall be imposed as
6 authorized under any other law, including Section 667.6, if
7 applicable.

8 *(g) Notwithstanding Section 1385 or any other provision of*
9 *law, the court shall not strike any allegation, admission, or*
10 *finding of any of the circumstances specified in subdivision (d) or*
11 *(e) for any person who is subject to punishment under this*
12 *section.*

13 ~~(h) Probation~~ *Notwithstanding any other provision of law,*
14 *probation shall not be granted to, nor shall the execution or*
15 *imposition of sentence be suspended for, any person who is*
16 *subject to punishment under this section for any offense specified*
17 *in paragraphs (1) to (6), inclusive, of subdivision (c).*

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

22 ~~(j) Article 2.5 (commencing with Section 2930) of Chapter 7~~
23 ~~of Title 1 of Part 3 shall apply to reduce the minimum term of 25~~
24 ~~years in the state prison imposed pursuant to subdivision (a) or~~
25 ~~15 years in the state prison imposed pursuant to subdivision (b).~~
26 ~~However, in no case shall the minimum term of 25 or 15 years be~~
27 ~~reduced by more than 15 percent for credits granted pursuant to~~
28 ~~Section 2933, 4019, or any other law providing for conduct credit~~
29 ~~reduction. In no case shall any person who is punished under this~~
30 ~~section be released on parole prior to serving at least 85 percent~~
31 ~~of the minimum term of 25 or 15 years in the state prison.~~

32 *(i) For any offense specified in paragraphs (1) to (7),*
33 *inclusive, of subdivision (c), the court shall impose a consecutive*
34 *sentence for each offense that results in a conviction under this*
35 *section if the crimes involve separate victims or involve the same*
36 *victim on separate occasions as defined in subdivision (d) of*
37 *Section 667.6.*

38 *(j) The penalties provided in this section shall apply only if the*
39 *existence of any circumstance specified in subdivision (d) or (e)*
40 *is alleged in the accusatory pleading pursuant to this section and*

1 *either admitted by the defendant in open court or found to be true*
 2 *by the trier of fact.*

3 *SEC. 18. Section 667.71 of the Penal Code is amended to*
 4 *read:*

5 667.71. (a) For the purpose of this section, a habitual sexual
 6 offender is a person who has been previously convicted of one or
 7 more of the offenses ~~listed~~ *specified* in subdivision (c) and who is
 8 convicted in the present proceeding of one of those offenses.

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

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

21 (1) ~~A Rape, in violation of paragraph (2) of subdivision (a) of~~
 22 ~~Section 261.~~

23 (2) ~~A Spousal rape, in violation of paragraph (1) of~~
 24 ~~subdivision (a) of Section 262.~~

25 (3) ~~A Rape, spousal rape, or sexual penetration, in concert, in~~
 26 ~~violation of Section 264.1.~~

27 (4) ~~A lewd or lascivious act, in violation of subdivision (a) or~~
 28 ~~(b) of Section 288.~~

29 (5) ~~A Sexual penetration, in violation of subdivision (a) of~~
 30 ~~Section 289.~~

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

33 (7) ~~A Sodomy, in violation of subdivision (c) or (d) of Section~~
 34 ~~286 by force, violence, duress, menace, or fear of immediate and~~
 35 ~~unlawful bodily injury on the victim or another person.~~

36 (8) ~~A violation of subdivision (d) of Section 286.~~

37 (9) ~~A~~

38 (8) ~~Oral copulation, in violation of subdivision (c) or (d) of~~
 39 ~~Section 288a by force, violence, duress, menace, or fear of~~

1 ~~immediate and unlawful bodily injury on the victim or another~~
2 ~~person.~~

3 ~~(10) A~~

4 ~~(9) Kidnapping, in violation of subdivision (b) of Section 207.~~

5 ~~(11) A~~

6 ~~(10) Kidnapping, in violation of former subdivision (d) of~~
7 ~~Section 208 (kidnapping to commit specified sex offenses).~~

8 ~~(12)~~

9 ~~(11) Kidnapping in violation of subdivision (b) of Section 209~~
10 ~~with the intent to commit rape, spousal rape, oral copulation, or~~
11 ~~sodomy or sexual penetration in violation of Section 289 a~~
12 ~~specified offense.~~

13 ~~(13) A~~

14 ~~(12) Aggravated sexual assault of a child, in violation of~~
15 ~~Section 269.~~

16 ~~(14)~~

17 ~~(13) An offense committed in another jurisdiction that has~~
18 ~~includes all of the elements of an offense specified in paragraphs~~
19 ~~(1) to (13), inclusive, of this subdivision.~~

20 ~~(d) Notwithstanding Section 1385 or any other provision of~~
21 ~~law, the court shall not strike any allegation, admission, or~~
22 ~~finding of any prior conviction specified in subdivision (c) for~~
23 ~~any person who is subject to punishment under this section.~~

24 ~~(e) Notwithstanding any other provision of law, probation~~
25 ~~shall not be granted to, nor shall the execution or imposition of~~
26 ~~sentence be suspended for, any person who is subject to~~
27 ~~punishment under this section.~~

28 ~~(f) This section shall apply only if the defendant's status as a~~
29 ~~habitual sexual offender is alleged in the information accusatory~~
30 ~~pleading, and either admitted by the defendant in open court, or~~
31 ~~found to be true by the jury trying the issue of guilt or by the~~
32 ~~court where guilt is established by a plea of guilty or nolo~~
33 ~~contendere or by trial by court sitting without a jury trier of fact.~~

34 ~~SEC. 19. Section 1170.125 of the Penal Code is amended to~~
35 ~~read:~~

36 1170.125. Notwithstanding Section 2 of Proposition 184, as
37 adopted at the November 8, 1994 General Election, for all
38 offenses committed on or after the effective date of this act, all
39 references to existing statutes in Section 1170.12 are to those
40 statutes as they existed on the effective date of this act, including

1 amendments made to those statutes by ~~this act~~ *the act enacted*
 2 *during the 2005–06 Regular Session that amended this section.*

3 *SEC. 20. Section 1203.06 of the Penal Code is amended to*
 4 *read:*

5 ~~1203.06. Notwithstanding Section 1203:~~

6 ~~(a) Probation~~ *(a) Notwithstanding any other provision of law,*
 7 *probation shall not be granted to, nor shall the execution or*
 8 *imposition of sentence be suspended for, nor shall a finding*
 9 *bring the defendant within this section be stricken pursuant to*
 10 *Section 1385 for, any of the following persons:*

11 (1) Any person who personally used a firearm during the
 12 commission or attempted commission of any of the following
 13 crimes:

14 (A) Murder.

15 (B) Robbery, in violation of Section 211.

16 (C) Kidnapping, in violation of Section 207, 209, or 209.5.

17 ~~(D) Kidnapping in violation of Section 209—A lewd or~~
 18 ~~lascivious act, in violation of Section 288.~~

19 (E) Burglary of the first degree, as defined in Section 460.

20 ~~(F) Except as provided in Section 1203.065, rape—Rape, in~~
 21 ~~violation of paragraph (2) of subdivision (a) of Section 261, 262,~~
 22 ~~or 264.1.~~

23 (G) Assault with intent to commit ~~rape or sodomy~~ *a specified*
 24 *sexual offense*, in violation of Section 220.

25 (H) Escape, in violation of Section 4530 or 4532.

26 (I) Carjacking, in violation of Section 215.

27 ~~(J) Any person convicted of aggravated—Aggravated mayhem~~
 28 ~~in violation of Section 205.~~

29 (K) Torture, in violation of Section 206.

30 ~~(L) Kidnapping, in violation of Section 209.5—Continuous~~
 31 ~~sexual abuse of a child, in violation of Section 288.5.~~

32 (M) A felony violation of Section 136.1 or 137.

33 (N) Sodomy, in violation of Section 286.

34 (O) Oral copulation, in violation of Section 288a.

35 (P) Sexual penetration, in violation of Section 289 or 264.1.

36 ~~(Q) Aggravated sexual assault of a child, in violation of~~
 37 ~~Section 269.~~

38 (2) Any person previously convicted of a felony specified in
 39 ~~subparagraphs (A) to (L), inclusive, of paragraph (1), or assault~~
 40 ~~with intent to commit murder under former Section 217, who is~~

1 convicted of a subsequent felony and who was personally armed
2 with a firearm at any time during its commission or attempted
3 commission or was unlawfully armed with a firearm at the time
4 of his or her arrest for the subsequent felony.

5 (3) Aggravated arson, in violation of Section 451.5.

6 (b) (1) The existence of any fact ~~which~~ *that* would make a
7 person ineligible for probation under subdivision (a) shall be
8 alleged in the accusatory pleading, and either admitted by the
9 defendant in open court, or found to be true by the jury trying the
10 issue of guilt, by the court where guilt is established by plea of
11 guilty or nolo contendere, or by trial by the court sitting without
12 a jury trier of fact.

13 ~~(2) This subdivision does not prohibit the adjournment of~~
14 ~~criminal proceedings pursuant to Division 6 (commencing with~~
15 ~~Section 6000) of the Welfare and Institutions Code.~~

16 ~~(3)~~

17 (2) As used in subdivision (a), “used a firearm” means to
18 display a firearm in a menacing manner, to intentionally fire it, ~~or~~
19 to intentionally strike or hit a human being with it, *or to use it in*
20 *any manner that qualifies under Section 12022.5.*

21 ~~(4)~~

22 (3) As used in subdivision (a), “armed with a firearm” means
23 to knowingly carry *or have available for use* a firearm as a
24 means of offense or defense.

25 *SEC. 21. Section 1203.065 of the Penal Code is amended to*
26 *read:*

27 1203.065. (a) Notwithstanding any other *provision of* law,
28 probation shall not be granted to, nor shall the execution or
29 imposition of sentence be suspended for, any person who is
30 convicted of violating paragraph (2) *or (6)* of subdivision (a) of
31 Section 261, Section 264.1, 266h, 266i, ~~or 266j,~~ *or 269 or*
32 *paragraph (2) or (3) of subdivision (c) or subdivision (d) of*
33 *Section 286 or 288a, or subdivision (a) of Section 289, ~~of~~
34 ~~committing sodomy or oral copulation in violation of Section 286~~
35 ~~or 288a by force, violence, duress, menace, or fear of immediate~~
36 ~~and unlawful bodily injury on the victim or another person, or~~
37 ~~of violating or~~ subdivision (c) of Section 311.4.*

38 (b) (1) Except in unusual cases where the interests of justice
39 would best be served if the person is granted probation, probation
40 shall not be granted to any person who is convicted of a violation

1 of violating paragraph (7) of subdivision (a) of Section 261,
 2 subdivision (k) of Section 286, subdivision (k) of Section 288a,
 3 or Section 220 for assault with intent to commit ~~any of the~~
 4 ~~following: rape, sodomy, oral copulation, or any violation of~~
 5 ~~Section 264.1, subdivision (b) of Section 288, or Section 289 a~~
 6 ~~specified sexual offense.~~

7 (2) When probation is granted, the court shall specify on the
 8 record and shall enter on the minutes the circumstances
 9 indicating that the interests of justice would best be served by the
 10 disposition.

11 SEC. 22. Section 1203.075 of the Penal Code is amended to
 12 read:

13 1203.075. ~~Notwithstanding the provisions of Section 1203:~~

14 (a) ~~Probation~~ (a) *Notwithstanding any other provision of law,*
 15 *probation shall not be granted to, nor shall the execution or*
 16 *imposition of sentence be suspended for, nor shall a finding*
 17 *bringing the defendant within this section be stricken pursuant to*
 18 *Section 1385 for, any person who, with the intent to inflict the*
 19 *injury, as defined in Section 12022.7, personally inflicts great*
 20 *bodily injury on the person of another in the commission or*
 21 *attempted commission of any of the following crimes:*

- 22 (1) Murder.
- 23 (2) Robbery, in violation of Section 211.
- 24 (3) Kidnapping, in violation of Section 207, 209, or 209.5.
- 25 (4) ~~Kidnapping, in violation of Section 209—~~ *A lewd or*
 26 *lascivious act, in violation of Section 288.*
- 27 (5) Burglary of the first degree, as defined in Section 460.
- 28 (6) Rape, in violation of paragraph (2) or (6) of subdivision (a)
 29 ~~of Section 261 or paragraph (1) or (4) of subdivision (a) of~~
 30 ~~Section 262~~ *Section 261, 262, or 264.1.*
- 31 (7) Assault with intent to commit ~~rape or sodomy a specified~~
 32 *sexual offense, in violation of Section 220.*
- 33 (8) Escape, in violation of Section 4530 or 4532.
- 34 (9) ~~A—~~ *Sexual penetration, in violation of subdivision (a) of*
 35 *Section 289.*
- 36 (10) Sodomy, in violation of Section 286.
- 37 (11) Oral copulation, in violation of Section 288a.
- 38 (12) Carjacking, in violation of Section 215.
- 39 (13) ~~Kidnapping, in violation of Section 209.5—~~ *Continuous*
 40 *sexual abuse of a child, in violation of Section 288.5.*

1 (14) *Aggravated sexual assault of a child, in violation of*
2 *Section 269.*

3 (b) ~~(1)~~ The existence of any fact ~~which~~ *that* would make a
4 person ineligible for probation under subdivision (a) shall be
5 alleged in the accusatory pleading, and either admitted by the
6 defendant in open court, or found to be true by the jury trying the
7 issue of guilt or by the court where guilt is established by a plea
8 of guilty or nolo contendere or by a trial by the court sitting
9 without a jury trier of fact.

10 ~~(2) This subdivision does not prohibit the adjournment of~~
11 ~~criminal proceedings pursuant to Division 3 (commencing with~~
12 ~~Section 3000) or Division 6 (commencing with Section 6000) of~~
13 ~~the Welfare and Institutions Code.~~

14 ~~(3) As used in subdivision (a), “great bodily injury” means~~
15 ~~“great bodily injury” as defined in Section 12022.7.~~

16 ~~SEC. 12.~~

17 *SEC. 23.* Section 3000 of the Penal Code is amended to read:

18 3000. (a) (1) The Legislature finds and declares that the
19 period immediately following incarceration is critical to
20 successful reintegration of the offender into society and to
21 positive citizenship. It is in the interest of public safety for the
22 state to provide for the supervision of and surveillance of
23 parolees, including the judicious use of revocation actions, and to
24 provide educational, vocational, family and personal counseling
25 necessary to assist parolees in the transition between
26 imprisonment and discharge. A sentence pursuant to Section
27 1168 or 1170 shall include a period of parole, unless waived, as
28 provided in this section.

29 (2) The Legislature finds and declares that it is not the intent
30 of this section to diminish resources allocated to the Department
31 of Corrections and Rehabilitation for parole functions for which
32 the department is responsible. It is also not the intent of this
33 section to diminish the resources allocated to the Board of Parole
34 Hearings to execute its duties with respect to parole functions for
35 which the board is responsible.

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

1 (4) *The Legislature finds and declares that a large number of*
2 *offenders who are committed to the Department of Mental Health*
3 *as a sexually violent predators are not participating in the*
4 *required treatment program and some have been unconditionally*
5 *discharge from the program and release into the community*
6 *without supervision. It is the intent of the Legislature that these*
7 *offenders be placed on a period of parole under the jurisdiction*
8 *of the Department of Corrections and Rehabilitation. It is the*
9 *intent of the Legislature, that in order to encourage offenders to*
10 *participate in treatment, those offenders who are conditionally*
11 *released and unconditionally discharged with the*
12 *recommendation and concurrence of the Director of the*
13 *Department of Mental Health shall not be placed on a period of*
14 *parole.*

15 (5) Any finding made pursuant to Article 4 (commencing with
16 Section 6600) of Chapter 2 of Part 2 of Division 6 of the Welfare
17 and Institutions Code, that a person is a sexually violent predator
18 ~~shall not toll, discharge, or otherwise affect that person's period~~
19 ~~of parole.~~ *toll that person's period of parole until that person is*
20 *discharged from the custody of the Department of Mental Health,*
21 *at which time the period of parole, or any remaining portion*
22 *thereof, shall begin to run. However, parole shall not be tolled,*
23 *discharged, or otherwise affected, if the person committed as a*
24 *sexually violent predator participated in treatment as required by*
25 *the Director of the Department of Mental Health and was*
26 *conditionally released and unconditionally discharged with the*
27 *recommendation and concurrence of the director.*

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

31 (1) (A) At the expiration of a term of imprisonment of one
32 year and one day, or a term of imprisonment imposed pursuant to
33 Section 1170 or at the expiration of a term reduced pursuant to
34 Section 2931 or 2933, if applicable, the inmate shall be released
35 on parole for a period not exceeding three years, except that any
36 inmate sentenced for an offense specified in paragraph (3), (4),
37 (5), (11), or (18) of subdivision (c) of Section 667.5 shall be
38 released on parole for a period not exceeding five years, unless in
39 either case the parole authority for good cause waives parole and
40 discharges the inmate from the custody of the department.

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

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

17 (3) Notwithstanding paragraphs (1) and (2), for an offense for
18 which the inmate has received a life sentence pursuant to Section
19 667.61 or 667.71, the period of parole shall be ~~five years. Upon~~
20 ~~the request of the Department of Corrections and Rehabilitation,~~
21 ~~and on the grounds that the paroled inmate may pose a~~
22 ~~substantial danger to public safety, the Board of Parole Hearings~~
23 ~~shall conduct a hearing to determine if the parolee shall be~~
24 ~~subject to a single additional five-year period of parole. The~~
25 ~~board shall conduct the hearing pursuant to the procedures and~~
26 ~~standards governing parole revocation. The request for parole~~
27 ~~extension shall be made no less than 180 days prior to the~~
28 ~~expiration of the initial five-year period of parole. 10 years.~~

29 (4) The parole authority shall consider the request of any
30 inmate regarding the length of his or her parole and the
31 conditions thereof.

32 (5) Upon successful completion of parole, or at the end of the
33 maximum statutory period of parole specified for the inmate
34 under paragraph (1), (2), or (3), as the case may be, whichever is
35 earlier, the inmate shall be discharged from custody. The date of
36 the maximum statutory period of parole under this subdivision
37 and paragraphs (1), (2), and (3) shall be computed from the date
38 of initial parole ~~or from the date of extension of parole pursuant~~
39 ~~to paragraph (3) and shall be a period chronologically~~
40 determined. Time during which parole is suspended because the

1 inmate has absconded or has been returned to custody as a parole
2 violator shall not be credited toward any period of parole unless
3 the inmate is found not guilty of the parole violation. However,
4 ~~except as provided in Section 3064, an inmate subject to three~~
5 ~~years on parole shall not be retained under parole supervision or~~
6 ~~in custody for a period longer than four years from the date of his~~
7 ~~or her initial parole, and, except as provided in Section 3064, an~~
8 ~~inmate subject to five years on parole shall not be retained under~~
9 ~~parole supervision or in custody for a period longer than seven~~
10 ~~years from the date of his or her initial parole or from the date of~~
11 ~~extension of parole pursuant to paragraph (3): the period of~~
12 ~~parole is subject to the following:~~

13 (A) *Except as provided in Section 3064, an inmate subject to*
14 *three years on parole may not be retained under parole*
15 *supervision or in custody for a period longer than four years*
16 *from the date of his or her initial parole.*

17 (B) *Except as provided in Section 3064, an inmate subject to*
18 *five years on parole may not be retained under parole*
19 *supervision or in custody for a period longer than seven years*
20 *from the date of his or her initial parole.*

21 (C) *Except as provided in Section 3064, an inmate subject to*
22 *10 years on parole may not be retained under parole supervisor*
23 *or in custody for a period longer than 15 years from the date of*
24 *his or her initial parole.*

25 (6) The Department of Corrections and Rehabilitation shall
26 meet with each inmate at least 30 days prior to his or her good
27 time release date and shall provide, under guidelines specified by
28 the parole authority, the conditions of parole and the length of
29 parole up to the maximum period of time provided by law. The
30 inmate has the right to reconsideration of the length of parole and
31 conditions thereof by the parole authority. The department or the
32 Board of Parole Hearings may impose as a condition of parole
33 that an inmate make payments on the inmate's outstanding
34 restitution fines or orders imposed pursuant to subdivision (a) or
35 (c) of Section 13967 of the Government Code, as operative prior
36 to September 28, 1994, or subdivision (b) or (f) of Section
37 1202.4.

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

1 (8) The sole authority to issue warrants for the return to actual
2 custody of any state-prisoner *inmate* released on parole rests with
3 the Board of Parole Hearings, except for any escaped state
4 inmate or any state inmate released prior to his or her scheduled
5 release date who should be returned to custody, and Section 3060
6 shall apply.

7 (9) It is the intent of the Legislature that efforts be made with
8 respect to persons who are subject to subparagraph (C) of
9 paragraph (1) of subdivision (a) of Section 290 who are on parole
10 to engage them in treatment.

11 ~~SEC. 13.~~

12 *SEC. 24.* Section 3001 of the Penal Code is amended to read:

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

38 (b) Notwithstanding any other provision of law, when any
39 person referred to in paragraph (2) ~~or (3)~~ of subdivision (b) of
40 Section 3000 has been released on parole from the state prison,

1 and has been on parole continuously for three years since release
2 from confinement ~~or since extension of parole~~, the board shall
3 discharge, within 30 days, the person from parole, unless the
4 board, for good cause, determines that the person will be retained
5 on parole. The board shall make a written record of its
6 determination and the department shall transmit a copy thereof to
7 the parolee.

8 (c) Notwithstanding any other provision of law, when any
9 person referred to in subparagraph (B) of paragraph (1) of
10 subdivision (b) of Section 3000 has been released on parole from
11 the state prison, and has been on parole continuously for six
12 years since release from confinement, the board shall discharge,
13 within 30 days, the person from parole, unless the board, for
14 good cause, determines that the person will be retained on parole.
15 The board shall make a written record of its determination and
16 the department shall transmit a copy thereof to the parolee.

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

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

25 ~~SEC. 14.~~

26 *SEC. 25.* Section 3005 of the Penal Code, as amended by
27 Chapter 55 of the Statutes of 2005, is amended to read:

28 3005. (a) The Department of Corrections and Rehabilitation,
29 to the maximum extent practicable and feasible, and subject to
30 legislative appropriation of necessary funds, shall ensure that all
31 parolees under active supervision and deemed to pose a high risk
32 to the public of committing violent sex crimes shall be placed on
33 an intensive and specialized parole supervision caseload.

34 (b) The department shall develop and, at the discretion of the
35 director and subject to an appropriation of the necessary funds,
36 may implement a plan for the implementation of relapse
37 prevention treatment programs and the provision of other
38 services deemed necessary by the department, in conjunction
39 with intensive and specialized parole supervision, to reduce the
40 recidivism of high-risk sex offenders.

1 (c) The department shall study the effects of the specialized
2 supervision caseload and of any plan implemented pursuant to
3 this section on recidivism rates of parolees. The study should pay
4 particular attention to the effectiveness of different treatment
5 models. The study shall be a two-year analysis completed by
6 January 1, 2009, with an initial report to the Legislature on or
7 before January 1, 2010, and a final report on or before January 1,
8 2012.

9 *SEC. 26. Section 3003 of the Penal Code is amended to read:*

10 3003. (a) Except as otherwise provided in this section, an
11 inmate who is released on parole shall be returned to the county
12 that was the last legal residence of the inmate prior to his or her
13 incarceration.

14 For purposes of this subdivision, “last legal residence” shall
15 not be construed to mean the county wherein the inmate
16 committed an offense while confined in a state prison or local jail
17 facility or while confined for treatment in a state hospital.

18 (b) Notwithstanding subdivision (a), an inmate may be
19 returned to another county if that would be in the best interests of
20 the public. If the Board of ~~Prison Terms Parole Hearings~~ setting
21 the conditions of parole for inmates sentenced pursuant to
22 subdivision (b) of Section 1168, as determined by the parole
23 consideration panel, or the Department of Corrections *and*
24 *Rehabilitation* setting the conditions of parole for inmates
25 sentenced pursuant to Section 1170, decides on a return to
26 another county, it shall place its reasons in writing in the
27 parolee’s permanent record and include these reasons in the
28 notice to the sheriff or chief of police pursuant to Section 3058.6.
29 In making its decision, the paroling authority shall consider,
30 among others, the following factors, giving the greatest weight to
31 the protection of the victim and the safety of the community:

32 (1) The need to protect the life or safety of a victim, the
33 parolee, a witness, or any other person.

34 (2) Public concern that would reduce the chance that the
35 inmate’s parole would be successfully completed.

36 (3) The verified existence of a work offer, or an educational or
37 vocational training program.

38 (4) The existence of family in another county with whom the
39 inmate has maintained strong ties and whose support would

1 increase the chance that the inmate's parole would be
2 successfully completed.

3 (5) The lack of necessary outpatient treatment programs for
4 parolees receiving treatment pursuant to Section 2960.

5 (c) The Department of Corrections, in determining an
6 out-of-county commitment, shall give priority to the safety of the
7 community and any witnesses and victims.

8 (d) In making its decision about an inmate who participated in
9 a joint venture program pursuant to Article 1.5 (commencing
10 with Section 2717.1) of Chapter 5, the ~~parole~~ *parole* authority
11 shall give serious consideration to releasing him or her to the
12 county where the joint venture program employer is located if
13 that employer states to the paroling authority that he or she
14 intends to employ the inmate upon release.

15 (e) (1) The following information, if available, shall be
16 released by the Department of Corrections *and Rehabilitation* to
17 local law enforcement agencies regarding a paroled inmate who
18 is released in their jurisdictions:

19 (A) Last, first, and middle name.

20 (B) Birth date.

21 (C) Sex, race, height, weight, and hair and eye color.

22 (D) Date of parole and discharge.

23 (E) Registration status, if the inmate is required to register as a
24 result of a controlled substance, sex, or arson offense.

25 (F) California Criminal Information Number, FBI number,
26 social security number, and driver's license number.

27 (G) County of commitment.

28 (H) A description of scars, marks, and tattoos on the inmate.

29 (I) Offense or offenses for which the inmate was convicted
30 that resulted in parole in this instance.

31 (J) Address, including all of the following information:

32 (i) Street name and number. Post office box numbers are not
33 acceptable for purposes of this subparagraph.

34 (ii) City and ZIP Code.

35 (iii) Date that the address provided pursuant to this
36 subparagraph was proposed to be effective.

37 (K) Contact officer and unit, including all of the following
38 information:

39 (i) Name and telephone number of each contact officer.

1 (ii) Contact unit type of each contact officer such as units
2 responsible for parole, registration, or county probation.

3 (L) A digitized image of the photograph and at least a single
4 digit fingerprint of the parolee.

5 (M) A geographic coordinate for the parolee's residence
6 location for use with a Geographical Information System (GIS)
7 or comparable computer program.

8 (2) The information required by this subdivision shall come
9 from the statewide parolee database. The information obtained
10 from each source shall be based on the same timeframe.

11 (3) All of the information required by this subdivision shall be
12 provided utilizing a computer-to-computer transfer in a format
13 usable by a desktop computer system. The transfer of this
14 information shall be continually available to local law
15 enforcement agencies upon request.

16 (4) The unauthorized release or receipt of the information
17 described in this subdivision is a violation of Section 11143.

18 (f) Notwithstanding any other provision of law, an inmate who
19 is released on parole shall not be returned to a location within 35
20 miles of the actual residence of a victim of, or a witness to, a
21 violent felony as defined in paragraphs (1) to (7), inclusive, of
22 subdivision (c) of Section 667.5 or a felony in which the
23 defendant inflicts great bodily injury on any person other than an
24 accomplice that has been charged and proved as provided for in
25 Section 12022.53, 12022.7, or 12022.9, if the victim or witness
26 has requested additional distance in the placement of the inmate
27 on parole, and if the Board of ~~Prison Terms~~ *Parole Hearings* or
28 the Department of Corrections *and Rehabilitation* finds that there
29 is a need to protect the life, safety, or well-being of a victim or
30 witness.

31 (g) (1) Notwithstanding any other law, an inmate who is
32 released on parole for any violation of Section 288 or 288.5 shall
33 not be placed or reside, for the duration of his or her period of
34 parole, within one-quarter mile of any public or private school,
35 including any or all of kindergarten and grades 1 to 8, inclusive.

36 (2) Notwithstanding any other law, an inmate who is released
37 on parole for a violation of Section 288 or 288.5 whom the
38 Department of Corrections and Rehabilitation determines poses a
39 high risk to the public shall not be placed or reside, for the
40 duration of his or her parole, within one-half mile of any public

1 or private school including any or all of kindergarten and grades
2 1 to 12, inclusive.

3 ~~(h)~~ Notwithstanding any other law, an inmate who is released
4 on parole for an offense involving stalking shall not be returned
5 to a location within 35 miles of the victim’s actual residence or
6 place of employment if the victim or witness has requested
7 additional distance in the placement of the inmate on parole, and
8 if the Board of ~~Prison Terms~~ *Parole Hearings* or the Department
9 of Corrections *and Rehabilitation* finds that there is a need to
10 protect the life, safety, or well-being of the victim.

11 ~~(i)~~
12 *(h)* The authority shall give consideration to the equitable
13 distribution of parolees and the proportion of out-of-county
14 commitments from a county compared to the number of
15 commitments from that county when making parole decisions.

16 ~~(j)~~
17 *(i)* An inmate may be paroled to another state pursuant to any
18 other law.

19 ~~(k)~~
20 *(j)* (1) Except as provided in paragraph (2), the Department of
21 Corrections *and Rehabilitation* shall be the agency primarily
22 responsible for, and shall have control over, the program,
23 resources, and staff implementing the Law Enforcement
24 Automated Data System (LEADS) in conformance with
25 subdivision (e).

26 (2) Notwithstanding paragraph (1), the Department of Justice
27 shall be the agency primarily responsible for the proper release of
28 information under LEADS that relates to fingerprint cards.

29 ~~SEC. 15.~~

30 *SEC. 27.* Section 3006 is added to the Penal Code, to read:

31 3006. (a) The Department of Corrections and Rehabilitation,
32 subject to the legislative appropriation of the necessary funds,
33 may establish and operate, after January 1, 2007, a specialized
34 sex offender treatment program for parolees the department
35 deems to pose a high risk to the public of committing violent sex
36 crimes.

37 (b) (1) The program shall be based upon a relapse prevention
38 model, targeted primarily for the same offenders receiving more
39 intensive and specialized supervision under Section 3005, and

1 shall include referral to specialized services such as substance
2 abuse treatment, for offenders needing those specialized services.

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

5 (3) The department may include other appropriate offenders in
6 the treatment program if doing so facilitates the effectiveness of
7 the treatment program.

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

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

15 *SEC. 28. Section 3010.05 is added to the Penal Code, to*
16 *read:*

17 *3010.05. (a) The sum of eight million dollars (\$8,000,000) is*
18 *hereby appropriated from the General Fund to the Department of*
19 *Corrections and Rehabilitation for use in 2006–07 fiscal General*
20 *Fund to the Department of Corrections and Rehabilitation for*
21 *use in the 2006–07 fiscal year to add 500 Global Positioning*
22 *System devices to track and monitor the parolees who pose the*
23 *highest risk to public safety and who have been convicted of*
24 *sexual or violent offenses and are assessed to be a high-risk to*
25 *reoffend.*

26 *(b) There shall be a three-year plan to add 2,000 Global*
27 *Positioning System devices, bringing the total number of Global*
28 *Positioning System devices available for parolee monitoring up*
29 *to 2,500 by 2008, subject to the legislative appropriation of the*
30 *necessary funds.*

31 *(c) Parole agents supervising offenders with Global*
32 *Positioning System devices shall have no more than 20 active*
33 *cases requiring supervision.*

34 ~~SEC. 16.~~

35 *SEC. 29. Section 3072 is added to the Penal Code, to read:*

36 *3072. (a) The Department of Corrections and Rehabilitation,*
37 *subject to the legislative appropriation of the necessary funds,*
38 *may establish and operate, after January 1, 2007, a specialized*
39 *sex offender treatment pilot program for inmates the department*

1 deems to pose a high risk to the public of committing violent sex
2 crimes.

3 (b) (1) The program shall be based upon the relapse
4 prevention model and shall include referral to specialized
5 services, such as substance abuse treatment, for offenders
6 needing those specialized services.

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

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

13 (A) The offender is within two years of being released on
14 parole.

15 (B) The offender has been clinically assessed.

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

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

21 (2) The department may include other appropriate offenders in
22 the treatment program if doing so facilitates the effectiveness of
23 the treatment program.

24 (d) The program under this section shall be established with
25 the assistance and supervision of the staff of the department
26 primarily by obtaining the services of specially trained sex
27 offender treatment provider, as best determined by the secretary
28 of the department and the Director of the Department of Mental
29 Health.

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

33 (2) To the maximum extent that is practical and feasible,
34 offenders participating in the pilot program shall be held in a
35 separate portion of a prison facility segregated from any non-sex
36 offenders held at the same prison, and treatment in the pilot
37 program shall be provided in program space segregated to the
38 maximum extent that is practical and feasible from program
39 space for any non-sex offenders held at the same prison.

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

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

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

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

14 *SEC. 30. Section 12022.75 of the Penal Code is amended to*
15 *read:*

16 12022.75. ~~Any~~(a) *Except as provided in subdivision (b), any*
17 *person who, for the purpose of committing a felony, administers*
18 *by injection, inhalation, ingestion, or any other means, any*
19 *controlled substance listed in Section 11054, 11055, 11056,*
20 *11057, or 11058 of the Health and Safety Code, against the*
21 *victim's will by means of force, violence, or fear of immediate*
22 *and unlawful bodily injury to the victim or another person, shall,*
23 *in addition and consecutive to the penalty provided for the felony*
24 *or attempted felony of which he or she has been convicted, be*
25 *punished by an additional term of three years.*

26 (b) (1) *Any person who, in the commission or attempted*
27 *commission of any offense specified in paragraph (2),*
28 *administers any controlled substance listed in Section 11054,*
29 *11055, 11056, 11057, or 11058 of the Health and Safety Code to*
30 *the victim shall be punished by an additional and consecutive*
31 *term of imprisonment in the state prison for five years.*

32 (2) *This subdivision shall apply to the following offenses:*

33 (A) *Rape, in violation of paragraph (3) or (4) of subdivision*
34 *(a) of Section 261.*

35 (B) *Sodomy, in violation of subdivision (f) or (i) of Section*
36 *286.*

37 (C) *Oral copulation, in violation of subdivision (f) or (i) of*
38 *Section 288a.*

39 (D) *Sexual penetration, in violation of subdivision (d) or (e) of*
40 *Section 289.*

1 (E) Any offense specified in subdivision (c) of Section 667.61.

2 SEC. 31. Section 13887.5 is added to the Penal Code, to
3 read:

4 13887.5. (a) The sum of fifteen million dollars (\$15,000,000)
5 is hereby appropriated from the General Fund to the Controller
6 for distributed to regional SAFE team programs.

7 (b) A county may not use funds provided pursuant to this act to
8 supplant any other sources of funding.

9 (c) The funds appropriated by this act shall be allocated by the
10 Controller to regional SAFE team programs in accordance with
11 the proportionate share of sex offender registrants residing
12 within a SAFE team jurisdiction, as determined by the
13 Department of Justice.

14 (d) By accepting the funds provided by this act, local entities
15 agree to report in writing to the Department of Finance on or
16 before August 15, 2007. The Department of Finance shall make
17 the report available to the Legislature. The report shall include,
18 but not be limited to, the data measuring the objectives identified
19 in Section 13887.3 of the Penal Code.

20 (e) Local entities that receive funds pursuant to this act and
21 that either do not agree to the reporting requirements or do not
22 report within the specified time shall return the grant money
23 provided by the Controller within 30 days after the due date of
24 the report. Any returned funds shall revert to the General Fund.

25 SEC. 32. Section 6604 of the Welfare and Institutions Code is
26 amended to read:

27 6604. The court or jury shall determine whether, beyond a
28 reasonable doubt, the person is a sexually violent predator. If the
29 court or jury is not satisfied beyond a reasonable doubt that the
30 person is a sexually violent predator, the court shall direct that
31 the person be released at the conclusion of the term for which he
32 or she was initially sentenced, or that the person be
33 unconditionally released at the end of parole, whichever is
34 applicable. If the court or jury determines that the person is a
35 sexually violent predator, the person shall be committed for ~~two~~
36 ~~years~~ an indeterminate term to the custody of the State
37 Department of Mental Health for appropriate treatment and
38 confinement in a secure facility designated by the Director of
39 Mental Health, and the person shall not be kept in actual custody
40 longer than two years unless a subsequent extended commitment

1 is obtained from the court incident to the filing of a petition for
2 extended commitment under this article or unless the term of
3 commitment changes pursuant to subdivision (e) of Section 6605.
4 Time spent on conditional release shall not count toward the
5 two-year term of commitment, unless the person is placed in a
6 locked facility by the conditional release program, in which case
7 the time in a locked facility shall count toward the two-year term
8 of commitment. The facility shall be located on the grounds of an
9 institution under the jurisdiction of the Department of
10 Corrections.

11 *SEC. 33. Section 6604.1 of the Welfare and Institutions Code*
12 *is amended to read:*

13 6604.1. (a) ~~The two-year indeterminate~~ term of commitment
14 provided for in Section 6604 shall commence on the date upon
15 which the court issues the initial order of commitment pursuant
16 to that section. ~~The initial two-year term shall not be reduced by~~
17 ~~any time spent in a secure facility prior to the order of~~
18 ~~commitment. For any subsequent extended commitments, the~~
19 ~~term of commitment shall be for two years commencing from the~~
20 ~~date of the termination of the previous commitment.~~

21 (b) The person shall be evaluated by two practicing
22 psychologists or psychiatrists, or by one practicing psychologist
23 and one practicing psychiatrist, designated by the State
24 Department of Mental Health. The provisions of subdivisions (c)
25 to (i), inclusive, of Section 6601 shall apply to *all* evaluations
26 ~~performed for purposes of extended commitments.~~ The rights,
27 requirements, and procedures set forth in Section 6603 shall
28 apply to ~~extended~~ *all* commitment proceedings.

29 *SEC. 34. Section 6605 of the Welfare and Institutions Code is*
30 *amended to read:*

31 6605. (a) A person found to be a sexually violent predator
32 and committed to the custody of the State Department of Mental
33 Health shall have a current examination of his or her mental
34 condition made at least once every year. ~~The person may retain,~~
35 ~~or if he or she is indigent and so requests, the court may appoint,~~
36 ~~a qualified expert or professional person to examine him or her,~~
37 ~~and the expert or professional person shall have access to all~~
38 ~~records concerning the person~~ *The annual report shall include*
39 *consideration of whether the committed person currently meets*
40 *the definition of a sexually violent predator and whether*

1 conditional release to a less restrictive alternative or an
2 unconditional release is in the best interest of the person, and
3 conditions can be imposed that would adequately protect the
4 community. The State Department of Mental Health shall file this
5 periodic report with the court that committed the person under
6 this section. The report shall be in the form of a declaration and
7 shall be prepared by a professionally qualified person. A copy of
8 the report shall be served on the prosecuting agency involved in
9 the initial commitment and upon the committed person. The
10 person may retain, or if he or she is indigent and so requests, the
11 court may appoint, a qualified expert or professional person to
12 examine him or her, and the expert or professional person shall
13 have access to all records concerning the person. The court may,
14 on its own motion, set a probable cause hearing upon review of
15 the annual report.

16 (b) ~~The director shall provide the committed person with an~~
17 ~~annual written notice of his or her right to petition the court for~~
18 ~~conditional release under Section 6608. The notice shall contain~~
19 ~~a waiver of rights. The director shall forward the notice and~~
20 ~~waiver form to the court with the annual report. If the person~~
21 ~~does not affirmatively waive his or her right to petition the court~~
22 ~~for conditional release, the court shall set a show cause hearing to~~
23 ~~determine whether facts exist that warrant a hearing on whether~~
24 ~~the person's condition has so changed that he or she would not be~~
25 ~~a danger to the health and safety of others if discharged. The~~
26 ~~committed person shall have the right to be present and to have~~
27 ~~an attorney represent him or her at the show cause hearing.~~
28 (1) *The director, within 30 days of the filing of the report, shall*
29 *review and consider the annual review. The person may submit*
30 *any report prepared by a retained or appointed expert and the*
31 *director shall also consider that report. Notice of review by the*
32 *director shall be filed in the court. The director shall authorize*
33 *the person to petition the court for conditional release to a less*
34 *restrictive alternative or unconditional discharge if, upon review,*
35 *the director determines that the person's condition has so*
36 *changed that either of the following apply:*

37 (A) *The person no longer meets the definition of a sexually*
38 *violent predator.*

1 (B) Conditional release to a less restrictive alternative is in
2 the best interest of the person and conditions can be imposed that
3 adequately protect the community.

4 The petition shall be filed with the court and served upon the
5 prosecuting agency responsible for the initial commitment. The
6 court, upon receipt of the petition for conditional release to a
7 less restrictive alternative or unconditional discharge, shall
8 within 45 days order a probable cause hearing.

9 (2) Nothing contained in this chapter shall prohibit the person
10 from otherwise petitioning the court for conditional release to a
11 less restrictive alternative or unconditional discharge without the
12 director's approval. The director shall provide the committed
13 person with an annual written notice of the person's right to
14 petition the court for conditional release to a less restrictive
15 alternative or unconditional discharge over the secretary's
16 objection. The notice shall contain a waiver of rights. The
17 director shall file the notice and waiver form and the annual
18 report with the court. If the person does not affirmatively waive
19 the right to petition, the court shall set a hearing to show cause
20 to determine whether probable cause exists to warrant a hearing
21 on whether the person's condition has so changed that either:

22 (A) He or she no longer meets the definition of a sexually
23 violent predator.

24 (B) Conditional release to a proposed less restrictive
25 alternative would be in the best interest of the person and
26 conditions can be imposed that would adequately protect the
27 community.

28 ~~(c) If the court at the show cause hearing determines that~~
29 ~~probable cause exists to believe that the committed person's~~
30 ~~diagnosed mental disorder has so changed that he or she is not a~~
31 ~~danger to the health and safety of others and is not likely to~~
32 ~~engage in sexually violent criminal behavior if discharged, then~~
33 ~~the court shall set a hearing on the issue. The committed person~~
34 ~~shall have a right to have an attorney represent him or her at the~~
35 ~~hearing to show cause, which may be conducted solely on the~~
36 ~~basis of affidavits or declarations, but the person is not entitled~~
37 ~~to be present at the hearing to show cause. At the hearing to~~
38 ~~show cause, the prosecuting attorney shall present prima facie~~
39 ~~evidence establishing that the committed person continues to~~
40 ~~meet the definition of a sexually violent predator and that a less~~

1 restrictive alternative is not in the best interest of the person and
2 conditions cannot be imposed that adequately protect the
3 community. In making this showing, the state may rely
4 exclusively upon the annual report prepared pursuant to
5 subdivision (a). The committed person may present responsive
6 affidavits or declarations to which the state may reply.

7 (d) ~~At the hearing, the committed person shall have the right to
8 be present and shall be entitled to the benefit of all constitutional
9 protections that were afforded to him or her at the initial
10 commitment proceeding. The attorney designated by the county
11 pursuant to subdivision (i) of Section 6601 shall represent the
12 state and shall have the right to demand a jury trial and to have
13 the committed person evaluated by experts chosen by the state.
14 The committed person also shall have the right to demand a jury
15 trial and to have experts evaluate him or her on his or her behalf.
16 The court shall appoint an expert if the person is indigent and
17 requests an appointment. The burden of proof at the hearing shall
18 be on the state to prove beyond a reasonable doubt that the
19 committed person's diagnosed mental disorder remains such that
20 he or she is a danger to the health and safety of others and is
21 likely to engage in sexually violent criminal behavior if
22 discharged. If the court, at the hearing to show cause, determines
23 that either of the following apply:~~

24 (1) *The state has failed to present prima facie evidence that
25 the committed person continues to meet the definition of a
26 sexually violent predator and that no proposed less restrictive
27 alternative is in the best interest of the person and conditions
28 cannot be imposed that would adequately protect the community.*

29 (2) *Probable cause exists to believe that the person's
30 condition has so changed that either the person no longer meets
31 the definition of a sexually violent predator, or release to a
32 proposed less restrictive alternative would be in the best interest
33 of the person and conditions can be imposed that would
34 adequately protect the community, then the court shall set a trial
35 on either or both issues.*

36 (e) ~~If the court or jury rules against the committed person at
37 the hearing conducted pursuant to subdivision (d), the term of
38 commitment of the person shall run for a period of two years
39 from the date of this ruling. If the court or jury rules for the
40 committed person, he or she shall be unconditionally released~~

1 ~~and unconditionally discharged~~ *If the court has not previously*
2 *considered the issue of release to a less restrictive alternative,*
3 *either through a trial on the merits or through the procedures set*
4 *forth in subdivision (d), the court shall consider whether release*
5 *to a less restrictive alternative would be in the best interests of*
6 *the person and conditions can be imposed that would adequately*
7 *protect the community, without considering whether the person's*
8 *condition has changed.*

9 (f) ~~In the event that the State Department of Mental Health has~~
10 ~~reason to believe that a person committed to it as a sexually~~
11 ~~violent predator is no longer a sexually violent predator, it shall~~
12 ~~seek judicial review of the person's commitment pursuant to the~~
13 ~~procedures set forth in Section 7250 in the superior court from~~
14 ~~which the commitment was made. If the superior court~~
15 ~~determines that the person is no longer a sexually violent~~
16 ~~predator, he or she shall be unconditionally released and~~
17 ~~unconditionally discharged~~ *At the trial resulting from a finding*
18 *by the court under subdivision (d), the committed person shall be*
19 *entitled to be present and to the benefit of all constitutional*
20 *protections that were afforded to the person at the initial*
21 *commitment proceeding. The prosecuting agency shall represent*
22 *the state and shall have a right to a jury trial and to have the*
23 *committed person evaluated by experts chosen by the state. The*
24 *committed person shall also have the right to a jury trial and the*
25 *right to have experts evaluate him or her on his or her behalf and*
26 *the court shall appoint an expert if the person is indigent and*
27 *requests an appointment.*

28 (g) *If the issue at the hearing is whether the person should be*
29 *unconditionally discharged, the burden of proof shall be upon*
30 *the state to prove beyond a reasonable doubt that the committed*
31 *person's condition remains such that the person continues to*
32 *meet the definition of a sexually violent predator. Evidence of the*
33 *prior commitment trial and disposition is admissible.*

34 (h) *If the issue at the hearing is whether the person should be*
35 *conditionally released to a less restrictive alternative, the burden*
36 *of proof at the hearing shall be upon the state to prove beyond a*
37 *reasonable doubt that conditional release to any proposed less*
38 *restrictive alternative either:*

39 (1) *Is not in the best interest of the committed person.*

1 (2) Does not include conditions that would adequately protect
2 the community. Evidence of the prior commitment trial and
3 disposition is admissible.

4 (i) Probable cause exists to believe that a person's condition
5 has "so changed," under paragraph (2) of subdivision (b) of this
6 section, only when evidence exists, since the person's last
7 commitment trial proceeding, of a substantial change in the
8 person's physical or mental condition such that the person either
9 no longer meets the definition of a sexually violent predator or
10 that a conditional release to a less restrictive alternative is in the
11 person's best interest and conditions can be imposed to
12 adequately protect the community.

13 (j) A new trial proceeding under subdivision (d) of this section
14 may be ordered, or held, only when there is current evidence of a
15 change in condition since the person's last commitment trial
16 proceeding from a licensed professional and the evidence
17 presents the existence of one of the following:

18 (1) An identified physiological change to the person, such as
19 paralysis, stroke, or dementia, that renders the committed person
20 unable to commit a sexually violent act and this change is
21 permanent.

22 (2) A change in the person's mental condition brought about
23 through positive response to continuing participation in
24 treatment which indicates that the person meets the standard for
25 conditional release to a less restrictive alternative or that the
26 person would be safe to be at large if unconditionally released
27 from commitment.

28 (k) For purposes of this section, a change in a single
29 demographic factor, without more, does not establish probable
30 cause for a new trial proceeding under subdivision (d) of this
31 section. As used in this subdivision, a single demographic factor
32 includes, but is not limited to, a change in the chronological age,
33 marital status, or gender of the committed person.

34 (l) The jurisdiction of the court over a person civilly
35 committed pursuant to this chapter continues until such time as
36 the person is unconditionally discharged.

37 (m) Before the court may enter an order directing conditional
38 release to a less restrictive alternative, it must find all of the
39 following exist:

1 (1) *The person will be treated by a treatment provider who is*
2 *qualified to provide such treatment in the state of California.*

3 (2) *The treatment provider has presented a specific course of*
4 *treatment and has agreed to assume responsibility for such*
5 *treatment and will report progress to the court on a regular*
6 *basis, and will report violations immediately to the court, the*
7 *prosecutor, the supervising community corrections officer, and*
8 *the superintendent of the special commitment center.*

9 (3) *Housing exists that is sufficiently secure to protect the*
10 *community, and the person or agency providing housing to the*
11 *conditionally released person has agreed in writing to accept the*
12 *person, to provide the level of security required by the court, and*
13 *immediately to report to the court, the prosecutor, the community*
14 *program director, the department and the superintendent of the*
15 *special commitment center if the person leaves the housing to*
16 *which he or she has been assigned without authorization.*

17 (4) *The person is willing to comply with the treatment provider*
18 *and all requirements imposed by the treatment provider and by*
19 *the court.*

20 (5) *The person is willing to comply with supervision*
21 *requirements imposed by the Department of Corrections and*
22 *Rehabilitation.*

23 (n) *Upon the conclusion of the evidence in a hearing held*
24 *pursuant to subdivisions (d) through (h), or through summary*
25 *judgment proceedings prior to such a hearing, if the court finds*
26 *that there is no legally sufficient evidentiary basis for a*
27 *reasonable jury to find that the conditions set forth in subdivision*
28 *(d) have been met, the court shall grant a motion by the state for*
29 *a judgment as a matter of law on the issue of conditional release*
30 *to a less restrictive alternative.*

31 (o) *Whenever the issue of conditional release to a less*
32 *restrictive alternative is submitted to the jury, the court shall*
33 *instruct the jury to return a verdict in substantially the following*
34 *form: Has the state proved beyond a reasonable doubt that*
35 *either:*

36 (1) *The proposed less restrictive alternative is not in the best*
37 *interests of respondent.*

38 (2) *The conditional release does not include conditions that*
39 *would adequately protect the community.*

40 *Answer: Yes or No.*

1 (p) If the court or jury determines that conditional release to a
2 less restrictive alternative is in the best interest of the person and
3 includes conditions that would adequately protect the
4 community, and the court determines that the minimum
5 conditions set forth in subdivision (m) of this section are met, the
6 court shall enter judgment and direct a conditional release.

7 (q) The court shall impose any additional conditions necessary
8 to ensure compliance with treatment and to protect the
9 community. If the court finds that conditions do not exist that will
10 both ensure the person's compliance with treatment and protect
11 the community, then the person shall be remanded to the custody
12 of the Department of Social and Health Services for control,
13 care, and treatment in a secure facility.

14 (r) If the service provider designated by the court to provide
15 inpatient or outpatient treatment or to monitor or supervise any
16 other terms and conditions of a person's placement in a less
17 restrictive alternative is other than the Department of Social and
18 Health Services or the Department of Corrections and
19 Rehabilitation, then the service provider so designated must
20 agree in writing to provide such treatment, monitoring, or
21 supervision in accord with this section. Any person providing or
22 agreeing to provide treatment, monitoring, or supervision
23 services pursuant to this chapter may be compelled to testify and
24 any privilege with regard to such person's testimony is deemed
25 waived.

26 (s) Prior to authorizing any release to a less restrictive
27 alternative, the court shall impose such conditions upon the
28 person as are necessary to ensure the safety of the community.
29 The court shall order the Department of Corrections and
30 Rehabilitation to investigate the less restrictive alternative and
31 recommend any additional conditions to the court. These
32 conditions shall include, but are not limited to the following:
33 Specification of residence, prohibition of contact with potential
34 or past victims, prohibition of alcohol and other drug use,
35 participation in a specific course of inpatient or outpatient
36 treatment that may include monitoring by the use of polygraph
37 and plethysmograph, supervision by a Department of
38 Corrections and Rehabilitation community corrections officer, a
39 requirement that the person remain within the state unless the
40 person receives prior authorization by the court, and any other

1 conditions that the court determines are in the best interest of the
2 person or others. A copy of the conditions of release shall be
3 given to the person and to any designated service providers.

4 (t) Any service provider designated to provide inpatient or
5 outpatient treatment shall monthly, or as otherwise directed by
6 the court, submit to the court, to the Department of Social and
7 Health services facility from which the person was released, to
8 the prosecutor of the county in which the person was found to be
9 a sexually violent predator, and to the supervising community
10 corrections officer, a report stating whether the person is
11 complying with the terms and conditions of the conditional
12 release to a less restrictive alternative.

13 (u) Each person released to a less restrictive alternative shall
14 have his or her case reviewed by the court that released him or
15 her no later than one year after such release and annually
16 thereafter until the person is unconditionally discharged. Review
17 may occur in a shorter time or more frequently, if the court, in its
18 discretion on its own motion, or on motion of the person, the
19 secretary, or the prosecuting attorney so determines. The sole
20 question to be determined by the court is whether the person
21 shall continue to be conditionally released to a less restrictive
22 alternative. The court in making its determination shall be aided
23 by the periodic reports filed pursuant to subdivision (b) of this
24 section and the opinions of the secretary and other experts or
25 professional persons.

26 (v) Before placing a committed person in a state-operated
27 forensic conditional release program, the community program
28 director designated by the State Department of Mental Health
29 shall submit a written recommendation to the court stating which
30 forensic conditional release program is most appropriate for
31 supervising and treating the committed person. If the court does
32 not accept the community program director's recommendation,
33 the court shall specify the reason or reasons for its order on the
34 record. The procedures described in Sections 1605 to 1610,
35 inclusive, shall apply to the person placed in the forensic
36 conditional release program.

37 (w) If the court determines that the person should be
38 transferred to a state-operated forensic conditional release
39 program, the community program director, or his or her
40 designee, shall make the necessary placement arrangements and,

1 within 21 days after receiving notice of the court's finding, the
2 person shall be placed in the community in accordance with the
3 treatment and supervision plan unless good cause for not doing
4 so is presented to the court.

5 (x) If the court rules against the committed person at the trial
6 for unconditional release from commitment, the court may place
7 the committed person on outpatient status in accordance with the
8 procedures described in Title 15 (commencing with Section
9 1600) of Part 2 of the Penal Code and this section.

10 SEC. 35. Section 6608 of the Welfare and Institutions Code is
11 repealed.

12 ~~6608. (a) Nothing in this article shall prohibit the person who~~
13 ~~has been committed as a sexually violent predator from~~
14 ~~petitioning the court for conditional release and subsequent~~
15 ~~unconditional discharge without the recommendation or~~
16 ~~concurrence of the Director of Mental Health. If a person has~~
17 ~~previously filed a petition for conditional release without the~~
18 ~~concurrence of the director and the court determined, either upon~~
19 ~~review of the petition or following a hearing, that the petition~~
20 ~~was frivolous or that the committed person's condition had not so~~
21 ~~changed that he or she would not be a danger to others in that it is~~
22 ~~not likely that he or she will engage in sexually violent criminal~~
23 ~~behavior if placed under supervision and treatment in the~~
24 ~~community, then the court shall deny the subsequent petition~~
25 ~~unless it contains facts upon which a court could find that the~~
26 ~~condition of the committed person had so changed that a hearing~~
27 ~~was warranted. Upon receipt of a first or subsequent petition~~
28 ~~from a committed person without the concurrence of the director,~~
29 ~~the court shall endeavor whenever possible to review the petition~~
30 ~~and determine if it is based upon frivolous grounds and, if so,~~
31 ~~shall deny the petition without a hearing. The person petitioning~~
32 ~~for conditional release and unconditional discharge under this~~
33 ~~subdivision shall be entitled to assistance of counsel.~~

34 ~~(b) The court shall give notice of the hearing date to the~~
35 ~~attorney designated in subdivision (i) of Section 6601, the~~
36 ~~retained or appointed attorney for the committed person, and the~~
37 ~~Director of Mental Health at least 15 court days before the~~
38 ~~hearing date.~~

39 ~~(c) No hearing upon the petition shall be held until the person~~
40 ~~who is committed has been under commitment for confinement~~

1 and care in a facility designated by the Director of Mental Health
2 for not less than one year from the date of the order of
3 commitment.

4 (d) The court shall hold a hearing to determine whether the
5 person committed would be a danger to the health and safety of
6 others in that it is likely that he or she will engage in sexually
7 violent criminal behavior due to his or her diagnosed mental
8 disorder if under supervision and treatment in the community. If
9 the court at the hearing determines that the committed person
10 would not be a danger to others due to his or her diagnosed
11 mental disorder while under supervision and treatment in the
12 community, the court shall order the committed person placed
13 with an appropriate forensic conditional release program
14 operated by the state for one year. A substantial portion of the
15 state-operated forensic conditional release program shall include
16 outpatient supervision and treatment. The court shall retain
17 jurisdiction of the person throughout the course of the program.
18 At the end of one year, the court shall hold a hearing to
19 determine if the person should be unconditionally released from
20 commitment on the basis that, by reason of a diagnosed mental
21 disorder, he or she is not a danger to the health and safety of
22 others in that it is not likely that he or she will engage in sexually
23 violent criminal behavior. The court shall not make this
24 determination until the person has completed at least one year in
25 the state-operated forensic conditional release program. The
26 court shall notify the Director of Mental Health of the hearing
27 date.

28 (e) Before placing a committed person in a state-operated
29 forensic conditional release program, the community program
30 director designated by the State Department of Mental Health
31 shall submit a written recommendation to the court stating which
32 forensic conditional release program is most appropriate for
33 supervising and treating the committed person. If the court does
34 not accept the community program director's recommendation,
35 the court shall specify the reason or reasons for its order on the
36 record. The procedures described in Sections 1605 to 1610,
37 inclusive, of the Penal Code shall apply to the person placed in
38 the forensic conditional release program.

39 (f) If the court determines that the person should be transferred
40 to a state-operated forensic conditional release program, the

1 community program director, or his or her designee, shall make
2 the necessary placement arrangements and, within 21 days after
3 receiving notice of the court's finding, the person shall be placed
4 in the community in accordance with the treatment and
5 supervision plan unless good cause for not doing so is presented
6 to the court.

7 (g) If the court rules against the committed person at the trial
8 for unconditional release from commitment, the court may place
9 the committed person on outpatient status in accordance with the
10 procedures described in Title 15 (commencing with Section
11 1600) of Part 2 of the Penal Code.

12 (h) If the court denies the petition to place the person in an
13 appropriate forensic conditional release program or if the petition
14 for unconditional discharge is denied, the person may not file a
15 new application until one year has elapsed from the date of the
16 denial.

17 (i) In any hearing authorized by this section, the petitioner
18 shall have the burden of proof by a preponderance of the
19 evidence.

20 (j) If the petition for conditional release is not made by the
21 director of the treatment facility to which the person is
22 committed, no action on the petition shall be taken by the court
23 without first obtaining the written recommendation of the
24 director of the treatment facility.

25 (k) Time spent in a conditional release program pursuant to
26 this section shall not count toward the term of commitment under
27 this article unless the person is confined in a locked facility by
28 the conditional release program, in which case the time spent in a
29 locked facility shall count toward the term of commitment.

30 ~~SEC. 17.~~

31 *SEC. 36.* No reimbursement is required by this act pursuant to
32 Section 6 of Article XIII B of the California Constitution because
33 the only costs that may be incurred by a local agency or school
34 district will be incurred because this act creates a new crime or
35 infraction, eliminates a crime or infraction, or changes the
36 penalty for a crime or infraction, within the meaning of Section
37 17556 of the Government Code, or changes the definition of a

1 crime within the meaning of Section 6 of Article XIII B of the
2 California Constitution.

O