

AMENDED IN SENATE AUGUST 16, 2005

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL

No. 760

Introduced by Assembly Member Nava

(Coauthors: Assembly Members DeVore, Dymally, Koretz, and Leno)

(Coauthors: Senators Alquist, Kuehl, and Romero)

February 18, 2005

An act to amend Sections 851.5, 1170, 1170.3, and 1203.016 of, and to add Sections 833.2 and 13517.7 to, the Penal Code, relating to criminal procedure.

LEGISLATIVE COUNSEL'S DIGEST

AB 760, as amended, Nava. Criminal procedure.

Existing law generally prescribes the authority and obligations of law enforcement entities in regard to effecting an arrest.

This bill would state the intent of the Legislature to encourage law enforcement and county child welfare agencies to develop protocols in collaboration with local educational, judicial, correctional, and community-based organizations, when appropriate, regarding how to best cooperate in their response to the arrest of a caretaker parent in a home in which a minor child resides, to ensure the child's safety and well-being.

Existing law provides an arrested person with certain rights regarding the opportunity to make telephone calls incident to the person being booked or detained, as specified. The willful deprivation of these rights by a public officer or employee is a misdemeanor.

This bill would, in addition, provide that when, during booking, an arrested person is determined to be a custodial parent of a minor child or children, the person would be entitled to make 3 telephone calls at

no expense, as specified, for the purpose of arranging for the care of the minor child or children.

By imposing additional duties on local government entities, this bill would impose a state-mandated local program. By expanding the scope of an existing crime, this bill would impose a state-mandated local program.

Existing law generally regulates sentencing, including the consideration of mitigating factors and other criteria for purposes of sentencing.

This bill would include a defendant's custodial responsibilities for minor children as an element for consideration for specified purposes related to sentencing.

Existing law establishes the Commission on Peace Officer Standards and Training and charges it with various duties in connection with training law enforcement personnel.

This bill would require the commission to establish guidelines and training for use by state and local law enforcement officers to address issues of child safety at the time of a caretaker parent's or guardians arrest.

This bill would incorporate changes to Section 1203.016 of the Penal Code proposed by this bill and SB 963, which would become operative only if both bills are enacted and become effective on or before January 1, 2006, and this bill is enacted after SB 963.

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 with regard to certain mandates no reimbursement is required by this act for a specified reason.

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

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

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

1 SECTION 1. Section 833.2 is added to the Penal Code, to
2 read:

1 833.2. It is the intent of the Legislature to encourage law
2 enforcement and county child welfare agencies to develop
3 protocols in collaboration with other local entities, which may
4 include local educational, judicial, correctional, and
5 community-based organizations, when appropriate, regarding
6 how to best cooperate in their response to the arrest of a caretaker
7 parent in a home in which a minor child resides, to ensure the
8 child's safety and well-being.

9 SEC. 2. Section 851.5 of the Penal Code is amended to read:

10 851.5. (a) Immediately upon being booked, and, except
11 where physically impossible, no later than three hours after
12 arrest, an arrested person has the right to make at least three
13 completed telephone calls, as described in subdivision (b).

14 The arrested person shall be entitled to make at least three calls
15 at no expense if the calls are completed to telephone numbers
16 within the local calling area.

17 (b) At any police facility or place where an arrestee is
18 detained, a sign containing the following information in bold
19 block type shall be posted in a conspicuous place:

20 That the arrestee has the right to free telephone calls within the
21 local dialing area, or at his or her own expense if outside the
22 local area, to three of the following:

23 (1) An attorney of his or her choice or, if he or she has no
24 funds, the public defender or other attorney assigned by the court
25 to assist indigents, whose telephone number shall be posted. This
26 telephone call shall not be monitored, eavesdropped upon, or
27 recorded.

28 (2) A bail bondsman.

29 (3) A relative or other person.

30 (c) If, upon questioning during the booking process, the
31 arrested person is identified as a custodial parent with
32 responsibility for a minor child, the arrested person shall be
33 entitled to make three additional calls at no expense if the calls
34 are completed to telephone numbers within the local calling area
35 to a relative or other person for the purpose of arranging for the
36 care of the minor child or children in the parent's absence.

37 (d) These telephone calls shall be given immediately upon
38 request, or as soon as practicable.

1 (e) This provision shall not abrogate a law enforcement
2 officer's duty to advise a suspect of his or her right to counsel or
3 of any other right.

4 (f) Any public officer or employee who willfully deprives an
5 arrested person of any right granted by this section is guilty of a
6 misdemeanor.

7 SEC. 3. Section 1170 of the Penal Code is amended to read:

8 1170. (a) (1) The Legislature finds and declares that the
9 purpose of imprisonment for crime is punishment. This purpose
10 is best served by terms proportionate to the seriousness of the
11 offense with provision for uniformity in the sentences of
12 offenders committing the same offense under similar
13 circumstances. The Legislature further finds and declares that the
14 elimination of disparity and the provision of uniformity of
15 sentences can best be achieved by determinate sentences fixed by
16 statute in proportion to the seriousness of the offense as
17 determined by the Legislature to be imposed by the court with
18 specified discretion.

19 (2) Notwithstanding paragraph (1), the Legislature further
20 finds and declares that programs should be available for inmates
21 including, but not limited to, educational programs, that are
22 designed to prepare nonviolent felony offenders for successful
23 reentry into the community. The Legislature encourages the
24 development of policies and programs designed to educate and
25 rehabilitate nonviolent felony offenders. In implementing this
26 section, the Department of Corrections is encouraged to give
27 priority enrollment in programs to promote successful return to
28 the community to an inmate with a short remaining term of
29 commitment and a release date that would allow him or her
30 adequate time to complete the program particularly those who are
31 sole custodial parents of minor dependent children.

32 (3) In any case in which the punishment prescribed by statute
33 for a person convicted of a public offense is a term of
34 imprisonment in the state prison of any specification of three
35 time periods, the court shall sentence the defendant to one of the
36 terms of imprisonment specified unless the convicted person is
37 given any other disposition provided by law, including a fine,
38 jail, probation, or the suspension of imposition or execution of
39 sentence or is sentenced pursuant to subdivision (b) of Section
40 1168 because he or she had committed his or her crime prior to

1 July 1, 1977. In sentencing the convicted person, the court shall
2 apply the sentencing rules of the Judicial Council. The court,
3 unless it determines that there are circumstances in mitigation of
4 the punishment prescribed, shall also impose any other term that
5 it is required by law to impose as an additional term. Nothing in
6 this article shall affect any provision of law that imposes the
7 death penalty, that authorizes or restricts the granting of
8 probation or suspending the execution or imposition of sentence,
9 or expressly provides for imprisonment in the state prison for
10 life. In any case in which the amount of preimprisonment credit
11 under Section 2900.5 or any other provision of law is equal to or
12 exceeds any sentence imposed pursuant to this chapter, the entire
13 sentence shall be deemed to have been served and the defendant
14 shall not be actually delivered to the custody of the Director of
15 Corrections. The court shall advise the defendant that he or she
16 shall serve a period of parole and order the defendant to report to
17 the parole office closest to the defendant's last legal residence,
18 unless the in-custody credits equal the total sentence, including
19 both confinement time and the period of parole. The sentence
20 shall be deemed a separate prior prison term under Section 667.5,
21 and a copy of the judgment and other necessary documentation
22 shall be forwarded to the Director of Corrections.

23 (b) When a judgment of imprisonment is to be imposed and
24 the statute specifies three possible terms, the court shall order
25 imposition of the middle term, unless there are circumstances in
26 aggravation or mitigation of the crime. At least four days prior to
27 the time set for imposition of judgment, either party or the
28 victim, or the family of the victim if the victim is deceased, may
29 submit a statement in aggravation or mitigation to dispute facts in
30 the record or the probation officer's report, or to present
31 additional facts. In determining whether there are circumstances
32 that justify imposition of the upper or lower term, the court may
33 consider the record in the case, the probation officer's report,
34 other reports including reports received pursuant to Section
35 1203.03 and statements in aggravation or mitigation submitted by
36 the prosecution, the defendant, or the victim, or the family of the
37 victim if the victim is deceased, and any further evidence
38 introduced at the sentencing hearing. The court shall set forth on
39 the record the facts and reasons for imposing the upper or lower
40 term. The court may not impose an upper term by using the fact

1 of any enhancement upon which sentence is imposed under any
2 provision of law. A term of imprisonment shall not be specified
3 if imposition of sentence is suspended.

4 (c) The court shall state the reasons for its sentence choice on
5 the record at the time of sentencing. The court shall also inform
6 the defendant that as part of the sentence after expiration of the
7 term he or she may be on parole for a period as provided in
8 Section 3000.

9 (d) When a defendant subject to this section or subdivision (b)
10 of Section 1168 has been sentenced to be imprisoned in the state
11 prison and has been committed to the custody of the Director of
12 Corrections, the court may, within 120 days of the date of
13 commitment on its own motion, or at any time upon the
14 recommendation of the Director of Corrections or the Board of
15 Prison Terms, recall the sentence and commitment previously
16 ordered and resentence the defendant in the same manner as if he
17 or she had not previously been sentenced, provided the new
18 sentence, if any, is no greater than the initial sentence. The
19 resentence under this subdivision shall apply the sentencing rules
20 of the Judicial Council so as to eliminate disparity of sentences
21 and to promote uniformity of sentencing. Credit shall be given
22 for time served.

23 (e) (1) Notwithstanding any other law and consistent with
24 paragraph (1) of subdivision (a) of Section 1170, if the Director
25 of Corrections or the Board of Prison Terms or both determine
26 that a prisoner satisfies the criteria set forth in paragraph (2), the
27 director or the board may recommend to the court that the
28 prisoner's sentence be recalled.

29 (2) The court shall have the discretion to resentence or recall if
30 the court finds both of the following:

31 (A) The prisoner is terminally ill with an incurable condition
32 caused by an illness or disease that would produce death within
33 six months, as determined by a physician employed by the
34 department.

35 (B) The conditions under which the prisoner would be
36 released or receive treatment do not pose a threat to public safety.

37 The Board of Prison Terms shall make findings pursuant to this
38 subdivision before making a recommendation for resentence or
39 recall to the court. This subdivision does not apply to a prisoner

1 sentenced to death or a term of life without the possibility of
2 parole.

3 (3) Within 10 days of receipt of a positive recommendation by
4 the director or the board, the court shall hold a hearing to
5 consider whether the prisoner's sentence should be recalled.

6 (4) The prisoner or his or her family member or designee may
7 request consideration for recall and resentencing by contacting
8 the chief medical officer at the prison or the Director of
9 Corrections. Upon receipt of the request, if the director
10 determines that the prisoner satisfies the criteria set forth in
11 paragraph (2), the director or board may recommend to the court
12 that the prisoner's sentence be recalled. The director shall submit
13 a recommendation for release within 30 days in the case of
14 inmates sentenced to determinate terms and, in the case of
15 inmates sentenced to indeterminate terms, the director may make
16 a recommendation to the Board of Prison Terms with respect to
17 the inmates who have applied under this section. The board shall
18 consider this information and make an independent judgment
19 pursuant to paragraph (2) and make findings related thereto
20 before rejecting the request or making a recommendation to the
21 court. This action shall be taken at the next lawfully noticed
22 board meeting.

23 (5) Any recommendation for recall submitted to the court by
24 the Director of Corrections or the Board of Prison Terms shall
25 include one or more medical evaluations, a postrelease plan, and
26 findings pursuant to paragraph (2).

27 (6) If possible, the matter shall be heard before the same judge
28 of the court who sentenced the prisoner.

29 (f) Any sentence imposed under this article shall be subject to
30 the provisions of Sections 3000 and 3057 and any other
31 applicable provisions of law.

32 (g) A sentence to state prison for a determinate term for which
33 only one term is specified, is a sentence to state prison under this
34 section.

35 SEC. 4. Section 1170.3 of the Penal Code is amended to read:

36 1170.3. The Judicial Council shall seek to promote
37 uniformity in sentencing under Section 1170, by:

38 (a) The adoption of rules providing criteria for the
39 consideration of the trial judge at the time of sentencing
40 regarding the court's decision to:

1 (1) Grant or deny probation.

2 (2) Impose the lower or upper prison term.

3 (3) Impose concurrent or consecutive sentences.

4 (4) Determine whether or not to impose an enhancement
5 where that determination is permitted by law.

6 (b) The adoption of rules standardizing the minimum content
7 and the sequential presentation of material in probation officer
8 reports submitted to the court, including a defendant's custodial
9 responsibilities for minor children.

10 SEC. 5. Section 1203.016 of the Penal Code is amended to
11 read:

12 1203.016. (a) Notwithstanding any other provision of law,
13 the board of supervisors of any county may authorize the
14 correctional administrator, as defined in subdivision (h), to offer
15 a program under which minimum security inmates and low-risk
16 offenders committed to a county jail or other county correctional
17 facility or granted probation, or inmates participating in a work
18 furlough program, may voluntarily participate in a home
19 detention program during their sentence in lieu of confinement in
20 the county jail or other county correctional facility or program
21 under the auspices of the probation officer. Low-risk offenders
22 who are the sole custodial parents of minor children should
23 especially be considered for the program, if otherwise eligible.

24 (b) The board of supervisors may prescribe reasonable rules
25 and regulations under which a home detention program may
26 operate. As a condition of participation in the home detention
27 program, the inmate shall give his or her consent in writing to
28 participate in the home detention program and shall in writing
29 agree to comply with the rules and regulations of the program,
30 including, but not limited to, the following rules:

31 (1) The participant shall remain within the interior premises of
32 his or her residence during the hours designated by the
33 correctional administrator.

34 (2) The participant shall admit any person or agent designated
35 by the correctional administrator into his or her residence at any
36 time for purposes of verifying the participant's compliance with
37 the conditions of his or her detention.

38 (3) The participant shall agree to the use of electronic
39 monitoring or supervising devices for the purpose of helping to
40 verify his or her compliance with the rules and regulations of the

1 home detention program. The devices shall not be used to
2 eavesdrop or record any conversation, except a conversation
3 between the participant and the person supervising the participant
4 which is to be used solely for the purposes of voice
5 identification.

6 (4) The participant shall agree that the correctional
7 administrator in charge of the county correctional facility from
8 which the participant was released may, without further order of
9 the court, immediately retake the person into custody to serve the
10 balance of his or her sentence if the electronic monitoring or
11 supervising devices are unable for any reason to properly
12 perform their function at the designated place of home detention,
13 if the person fails to remain within the place of home detention as
14 stipulated in the agreement, if the person willfully fails to pay
15 fees to the provider of electronic home detention services, as
16 stipulated in the agreement, subsequent to the written notification
17 of the participant that the payment has not been received and that
18 return to custody may result, or if the person for any other reason
19 no longer meets the established criteria under this section. A
20 copy of the agreement shall be delivered to the participant and a
21 copy retained by the correctional administrator.

22 (c) Whenever the peace officer supervising a participant has
23 reasonable cause to believe that the participant is not complying
24 with the rules or conditions of the program, or that the electronic
25 monitoring devices are unable to function properly in the
26 designated place of confinement, the peace officer may, under
27 general or specific authorization of the correctional
28 administrator, and without a warrant of arrest, retake the person
29 into custody to complete the remainder of the original sentence.

30 (d) Nothing in this section shall be construed to require the
31 correctional administrator to allow a person to participate in this
32 program if it appears from the record that the person has not
33 satisfactorily complied with reasonable rules and regulations
34 while in custody. A person shall be eligible for participation in a
35 home detention program only if the correctional administrator
36 concludes that the person meets the criteria for release
37 established under this section and that the person's participation
38 is consistent with any reasonable rules and regulations prescribed
39 by the board of supervisors or the administrative policy of the
40 correctional administrator.

1 (1) The rules and regulations and administrative policy of the
2 program shall be written and reviewed on an annual basis by the
3 county board of supervisors and the correctional administrator.
4 The rules and regulations shall be given to or made available to
5 any participant upon request.

6 (2) The correctional administrator, or his or her designee, shall
7 have the sole discretionary authority to permit program
8 participation as an alternative to physical custody. All persons
9 referred or recommended by the court to participate in the home
10 detention program pursuant to subdivision (e) who are denied
11 participation or all persons removed from program participation
12 shall be notified in writing of the specific reasons for the denial
13 or removal. The notice of denial or removal shall include the
14 participant's appeal rights, as established by program
15 administrative policy.

16 (e) The court may recommend or refer a person to the
17 correctional administrator for consideration for placement in the
18 home detention program. The recommendation or referral of the
19 court shall be given great weight in the determination of
20 acceptance or denial. At the time of sentencing or at any time that
21 the court deems it necessary, the court may restrict or deny the
22 defendant's participation in a home detention program.

23 (f) The correctional administrator may permit home detention
24 program participants to seek and retain employment in the
25 community, attend psychological counseling sessions or
26 educational or vocational training classes, or seek medical and
27 dental assistance. Willful failure of the program participant to
28 return to the place of home detention not later than the expiration
29 of any period of time during which he or she is authorized to be
30 away from the place of home detention pursuant to this section
31 and unauthorized departures from the place of home detention
32 are punishable as provided in Section 4532.

33 (g) The board of supervisors may prescribe a program
34 administrative fee to be paid by each home detention participant
35 that shall be determined according to his or her ability to pay.
36 Inability to pay all or a portion of the program fees shall not
37 preclude participation in the program, and eligibility shall not be
38 enhanced by reason of ability to pay. All program administration
39 and supervision fees shall be administered in compliance with
40 Section 1208.2.

1 (h) As used in this section, the following words have the
2 following meanings:

3 (1) “Correctional administrator” means the sheriff, probation
4 officer, or director of the county department of corrections.

5 (2) “Minimum security inmate” means an inmate who, by
6 established local classification criteria, would be eligible for
7 placement in a Type IV local detention facility, as described in
8 Title 15 of the California Code of Regulations, or for placement
9 into the community for work or school activities, or who is
10 determined to be a minimum security risk under a classification
11 plan developed pursuant to Section 1050 of Title 15 of the
12 California Code of Regulations.

13 (3) “Low-risk offender” means a probationer, as defined by
14 the National Institute of Corrections model probation system.

15 (i) Notwithstanding any other law, the police department of a
16 city where an office is located to which persons on an electronic
17 monitoring program report may require the county correctional
18 administrator to provide information concerning those persons.
19 This information shall be limited to the name, address, date of
20 birth, and offense committed by the home detainee. Any
21 information received by a police department pursuant to this
22 paragraph shall be used only for the purpose of monitoring the
23 impact of home detention programs on the community.

24 (j) It is the intent of the Legislature that home detention
25 programs established under this section maintain the highest
26 public confidence, credibility, and public safety. In the
27 furtherance of these standards, the following shall apply:

28 (1) The correctional administrator, with the approval of the
29 board of supervisors, may administer a home detention program
30 pursuant to written contracts with appropriate public or private
31 agencies or entities to provide specified program services. No
32 public or private agency or entity may operate a home detention
33 program in any county without a written contract with that
34 county’s correctional administrator. However, this does not apply
35 to the use of electronic monitoring by the California Department
36 of Corrections or the Department of the Youth Authority as
37 established in Section 3004. No public or private agency or entity
38 entering into a contract may itself employ any person who is in
39 the home detention program.

1 (2) Program acceptance shall not circumvent the normal
2 booking process for sentenced offenders. All home detention
3 program participants shall be supervised.

4 (3) (A) All privately operated home detention programs shall
5 be under the jurisdiction of, and subject to the terms and
6 conditions of the contract entered into with, the correctional
7 administrator.

8 (B) Each contract shall include, but not be limited to, all of the
9 following:

10 (i) A provision whereby the private agency or entity agrees to
11 operate in compliance with any available standards promulgated
12 by state correctional agencies and bodies, including the Board of
13 Corrections, and all statutory provisions and mandates, state and
14 county, as appropriate and applicable to the operation of home
15 detention programs and the supervision of sentenced offenders in
16 a home detention program.

17 (ii) A provision that clearly defines areas of respective
18 responsibility and liability of the county and the private agency
19 or entity.

20 (iii) A provision that requires the private agency or entity to
21 demonstrate evidence of financial responsibility, submitted and
22 approved by the board of supervisors, in amounts and under
23 conditions sufficient to fully indemnify the county for reasonably
24 foreseeable public liability, including legal defense costs, that
25 may arise from, or be proximately caused by, acts or omissions
26 of the contractor. The contract shall provide for annual review by
27 the correctional administrator to ensure compliance with
28 requirements set by the board of supervisors and for adjustment
29 of the financial responsibility requirements if warranted by
30 caseload changes or other factors.

31 (iv) A provision that requires the private agency or entity to
32 provide evidence of financial responsibility, such as certificates
33 of insurance or copies of insurance policies, prior to commencing
34 any operations pursuant to the contract or at any time requested
35 by the board of supervisors or correctional administrator.

36 (v) A provision that permits the correctional administrator to
37 immediately terminate the contract with a private agency or
38 entity at any time that the contractor fails to demonstrate
39 evidence of financial responsibility.

1 (C) All privately operated home detention programs shall
2 comply with all appropriate, applicable ordinances and
3 regulations specified in subdivision (a) of Section 1208.

4 (D) The board of supervisors, the correctional administrator,
5 and the designee of the correctional administrator shall comply
6 with Section 1090 of the Government Code in the consideration,
7 making, and execution of contracts pursuant to this section.

8 (E) The failure of the private agency or entity to comply with
9 statutory provisions and requirements or with the standards
10 established by the contract and with the correctional
11 administrator may be sufficient cause to terminate the contract.

12 (F) Upon the discovery that a private agency or entity with
13 whom there is a contract is not in compliance pursuant to this
14 paragraph, the correctional administrator shall give 60 days'
15 notice to the director of the private agency or entity that the
16 contract may be canceled if the specified deficiencies are not
17 corrected.

18 (G) Shorter notice may be given or the contract may be
19 canceled without notice whenever a serious threat to public
20 safety is present because the private agency or entity has failed to
21 comply with this section.

22 (k) For purposes of this section, "evidence of financial
23 responsibility" may include, but is not limited to, certified copies
24 of any of the following:

25 (1) A current liability insurance policy.

26 (2) A current errors and omissions insurance policy.

27 (3) A surety bond.

28 SEC. 6. Section 13517.7 is added to the Penal Code, to read:

29 13517.7. (a) The commission shall develop guidelines and
30 training for use by state and local law enforcement officers to
31 address issues related to child safety when a caretaker parent or
32 guardian is arrested.

33 (b) The guidelines and training shall, at a minimum, address
34 the following subjects:

35 (1) Procedures to ensure that officers and custodial employees
36 inquire whether an arrestee has minor dependent children without
37 appropriate supervision.

38 (2) Authorizing additional telephone calls by arrestees so that
39 they may arrange for the care of minor dependent children.

1 (3) Use of county child welfare services, as appropriate, and
2 other similar service providers to assist in the placement of
3 dependent children when the parent or guardian is unable or
4 unwilling to arrange suitable care for the child or children.

5 (4) Identification of local governmental or nongovernmental
6 agencies able to provide appropriate custodial services.

7 (5) Temporary supervision of minor children to ensure their
8 safety and well-being.

9 (6) Sample procedures to assist state and local law enforcement
10 agencies to develop ways to ensure the safety and well-being of
11 children when the parent or guardian has been arrested.

12 (c) The commission shall use appropriate subject matter
13 experts, including representatives of law enforcement and county
14 child welfare agencies, in developing the guidelines and training
15 required by this section.

16 ~~SEC. 7.—~~

17 *SEC. 6.5. Section 1203.016 of the Penal Code is amended to*
18 *read:*

19 1203.016. (a) Notwithstanding any other provision of law,
20 the board of supervisors of any county may authorize the
21 correctional administrator, as defined in subdivision (h), to offer
22 a program under which minimum security inmates and low-risk
23 offenders committed to a county jail or other county correctional
24 facility or granted probation, or inmates participating in a work
25 furlough program, may voluntarily participate in a home
26 detention program during their sentence in lieu of confinement in
27 the county jail or other county correctional facility or program
28 under the auspices of the probation officer. *Low-risk offenders*
29 *who are the sole custodial parents of minor children should*
30 *especially be considered for the program, if otherwise eligible.*

31 (b) The board of supervisors may prescribe reasonable rules
32 and regulations under which a home detention program may
33 operate. As a condition of participation in the home detention
34 program, the inmate shall give his or her consent in writing to
35 participate in the home detention program and shall in writing
36 agree to comply with the rules and regulations of the program,
37 including, but not limited to, the following rules:

38 (1) The participant shall remain within the interior premises of
39 his or her residence during the hours designated by the
40 correctional administrator.

1 (2) The participant shall admit any person or agent designated
2 by the correctional administrator into his or her residence at any
3 time for purposes of verifying the participant's compliance with
4 the conditions of his or her detention.

5 (3) The participant shall agree to the use of electronic
6 monitoring~~or~~, *which may include global positioning system*
7 *devices or other* supervising devices for the purpose of helping to
8 verify his or her compliance with the rules and regulations of the
9 home detention program. The devices shall not be used to
10 eavesdrop or record any conversation, except a conversation
11 between the participant and the person supervising the participant
12 which is to be used solely for the purposes of voice
13 identification.

14 (4) The participant shall agree that the correctional
15 administrator in charge of the county correctional facility from
16 which the participant was released may, without further order of
17 the court, immediately retake the person into custody to serve the
18 balance of his or her sentence if the electronic monitoring or
19 supervising devices are unable for any reason to properly
20 perform their function at the designated place of home detention,
21 if the person fails to remain within the place of home detention as
22 stipulated in the agreement, if the person willfully fails to pay
23 fees to the provider of electronic home detention services, as
24 stipulated in the agreement, subsequent to the written notification
25 of the participant that the payment has not been received and that
26 return to custody may result, or if the person for any other reason
27 no longer meets the established criteria under this section. A
28 copy of the agreement shall be delivered to the participant and a
29 copy retained by the correctional administrator.

30 (c) Whenever the peace officer supervising a participant has
31 reasonable cause to believe that the participant is not complying
32 with the rules or conditions of the program, or that the electronic
33 monitoring devices are unable to function properly in the
34 designated place of confinement, the peace officer may, under
35 general or specific authorization of the correctional
36 administrator, and without a warrant of arrest, retake the person
37 into custody to complete the remainder of the original sentence.

38 (d) Nothing in this section shall be construed to require the
39 correctional administrator to allow a person to participate in this
40 program if it appears from the record that the person has not

1 satisfactorily complied with reasonable rules and regulations
2 while in custody. A person shall be eligible for participation in a
3 home detention program only if the correctional administrator
4 concludes that the person meets the criteria for release
5 established under this section and that the person's participation
6 is consistent with any reasonable rules and regulations prescribed
7 by the board of supervisors or the administrative policy of the
8 correctional administrator.

9 (1) The rules and regulations and administrative policy of the
10 program shall be written and reviewed on an annual basis by the
11 county board of supervisors and the correctional administrator.
12 The rules and regulations shall be given to or made available to
13 any participant upon request.

14 (2) The correctional administrator, or his or her designee, shall
15 have the sole discretionary authority to permit program
16 participation as an alternative to physical custody. All persons
17 referred or recommended by the court to participate in the home
18 detention program pursuant to subdivision (e) who are denied
19 participation or all persons removed from program participation
20 shall be notified in writing of the specific reasons for the denial
21 or removal. The notice of denial or removal shall include the
22 participant's appeal rights, as established by program
23 administrative policy.

24 (e) The court may recommend or refer a person to the
25 correctional administrator for consideration for placement in the
26 home detention program. The recommendation or referral of the
27 court shall be given great weight in the determination of
28 acceptance or denial. At the time of sentencing or at any time that
29 the court deems it necessary, the court may restrict or deny the
30 defendant's participation in a home detention program.

31 (f) The correctional administrator may permit home detention
32 program participants to seek and retain employment in the
33 community, attend psychological counseling sessions or
34 educational or vocational training classes, or seek medical and
35 dental assistance. Willful failure of the program participant to
36 return to the place of home detention not later than the expiration
37 of any period of time during which he or she is authorized to be
38 away from the place of home detention pursuant to this section
39 and unauthorized departures from the place of home detention
40 are punishable as provided in Section 4532.

(g) The board of supervisors may prescribe a program administrative fee to be paid by each home detention participant that shall be determined according to his or her ability to pay. Inability to pay all or a portion of the program fees shall not preclude participation in the program, and eligibility shall not be enhanced by reason of ability to pay. All program administration and supervision fees shall be administered in compliance with Section 1208.2.

(h) As used in this section, the following words have the following meanings:

(1) "Correctional administrator" means the sheriff, probation officer, or director of the county department of corrections.

(2) "Minimum security inmate" means an inmate who, by established local classification criteria, would be eligible for placement in a Type IV local detention facility, as described in Title 15 of the California Code of Regulations, or for placement into the community for work or school activities, or who is determined to be a minimum security risk under a classification plan developed pursuant to Section 1050 of Title 15 of the California Code of Regulations.

(3) "Low-risk offender" means a probationer, as defined by the National Institute of Corrections model probation system.

(i) Notwithstanding any other law, the police department of a city where an office is located to which persons on an electronic monitoring program report may require the county correctional administrator to provide information concerning those persons. This information shall be limited to the name, address, date of birth, and offense committed by the home detainee. Any information received by a police department pursuant to this paragraph shall be used only for the purpose of monitoring the impact of home detention programs on the community.

(j) It is the intent of the Legislature that home detention programs established under this section maintain the highest public confidence, credibility, and public safety. In the furtherance of these standards, the following shall apply:

(1) The correctional administrator, with the approval of the board of supervisors, may administer a home detention program pursuant to written contracts with appropriate public or private agencies or entities to provide specified program services. No public or private agency or entity may operate a home detention

1 program in any county without a written contract with that
2 county's correctional administrator. However, this does not apply
3 to the use of electronic monitoring by the California Department
4 of Corrections or the Department of the Youth Authority as
5 established in Section 3004. No public or private agency or entity
6 entering into a contract may itself employ any person who is in
7 the home detention program.

8 (2) Program acceptance shall not circumvent the normal
9 booking process for sentenced offenders. All home detention
10 program participants shall be supervised.

11 (3) (A) All privately operated home detention programs shall
12 be under the jurisdiction of, and subject to the terms and
13 conditions of the contract entered into with, the correctional
14 administrator.

15 (B) Each contract shall include, but not be limited to, all of the
16 following:

17 (i) A provision whereby the private agency or entity agrees to
18 operate in compliance with any available standards promulgated
19 by state correctional agencies and bodies, including the Board of
20 Corrections, and all statutory provisions and mandates, state and
21 county, as appropriate and applicable to the operation of home
22 detention programs and the supervision of sentenced offenders in
23 a home detention program.

24 (ii) A provision that clearly defines areas of respective
25 responsibility and liability of the county and the private agency
26 or entity.

27 (iii) A provision that requires the private agency or entity to
28 demonstrate evidence of financial responsibility, submitted and
29 approved by the board of supervisors, in amounts and under
30 conditions sufficient to fully indemnify the county for reasonably
31 foreseeable public liability, including legal defense costs, that
32 may arise from, or be proximately caused by, acts or omissions
33 of the contractor. The contract shall provide for annual review by
34 the correctional administrator to ensure compliance with
35 requirements set by the board of supervisors and for adjustment
36 of the financial responsibility requirements if warranted by
37 caseload changes or other factors.

38 (iv) A provision that requires the private agency or entity to
39 provide evidence of financial responsibility, such as certificates
40 of insurance or copies of insurance policies, prior to commencing

1 any operations pursuant to the contract or at any time requested
2 by the board of supervisors or correctional administrator.

3 (v) A provision that permits the correctional administrator to
4 immediately terminate the contract with a private agency or
5 entity at any time that the contractor fails to demonstrate
6 evidence of financial responsibility.

7 (C) All privately operated home detention programs shall
8 comply with all appropriate, applicable ordinances and
9 regulations specified in subdivision (a) of Section 1208.

10 (D) The board of supervisors, the correctional administrator,
11 and the designee of the correctional administrator shall comply
12 with Section 1090 of the Government Code in the consideration,
13 making, and execution of contracts pursuant to this section.

14 (E) The failure of the private agency or entity to comply with
15 statutory provisions and requirements or with the standards
16 established by the contract and with the correctional
17 administrator may be sufficient cause to terminate the contract.

18 (F) Upon the discovery that a private agency or entity with
19 whom there is a contract is not in compliance pursuant to this
20 paragraph, the correctional administrator shall give 60 days'
21 notice to the director of the private agency or entity that the
22 contract may be canceled if the specified deficiencies are not
23 corrected.

24 (G) Shorter notice may be given or the contract may be
25 canceled without notice whenever a serious threat to public
26 safety is present because the private agency or entity has failed to
27 comply with this section.

28 (k) For purposes of this section, "evidence of financial
29 responsibility" may include, but is not limited to, certified copies
30 of any of the following:

31 (1) A current liability insurance policy.

32 (2) A current errors and omissions insurance policy.

33 (3) A surety bond.

34 *SEC. 7. Section 6.5 of this bill incorporates amendments to*
35 *Section 1203.016 of the Penal Code proposed by this bill and*
36 *Senate Bill No. 963. It shall only become operative if (1) both*
37 *bills are enacted and become effective on or before January 1,*
38 *2006, (2) each bill amends Section 1203.016 of the Penal Code,*
39 *and (3) this bill is enacted after Senate Bill No. 963, in which*
40 *case Section 1203.016 of the Penal Code, as amended by Senate*

1 *Bill No. 963, shall remain operative only until the operative date*
2 *of this bill, at which time Section 6.5 of this bill shall become*
3 *operative, and Section 5 of this bill shall not become operative.*

4 *SEC. 8.* No reimbursement is required by this act pursuant to
5 Section 6 of Article XIII B of the California Constitution for
6 certain costs that may be incurred by a local agency or school
7 district because, in that regard, this act creates a new crime or
8 infraction, eliminates a crime or infraction, or changes the
9 penalty for a crime or infraction, within the meaning of Section
10 17556 of the Government Code, or changes the definition of a
11 crime within the meaning of Section 6 of Article XIII B of the
12 California Constitution.

13 However, if the Commission on State Mandates determines
14 that this act contains other costs mandated by the state,
15 reimbursement to local agencies and school districts for those
16 costs shall be made pursuant to Part 7 (commencing with Section
17 17500) of Division 4 of Title 2 of the Government Code.