

AMENDED IN SENATE MARCH 2, 2006

AMENDED IN SENATE FEBRUARY 9, 2006

SENATE BILL

No. 1128

Introduced by Senator Alquist

January 9, 2006

An act to amend Section 68152 of the Government Code, to amend Sections ~~290, 290.46, 311.4, 311.11, 626.8, 800, 1192.7, 1202.8, 1203,~~ Sections 209, 220, 269, 288.5, 290, 290.3, 290.46, 331.4, 311.11, 626.8, 647.6, 667.1, 667.5, 667.51, 667.6, 667.61, 667.71, 800, 1170.125, 1192.7, 1202.8, 1203, 1203.06, 1203.065, 1203.075, 1203c, 3000, 3005, 12022.75, 13887, and 13887.1 of, to add Sections 288.3, 288.7, 290.03, 290.04, 290.05, 290.06, 290.07, 290.08, 290.09, 311.12, 626.83, 13015, and 13105 to, to add a heading to Chapter 5.5 (commencing with Section 290) to Title 9 of Part 2 of, and to add Chapter 1.5 (commencing with Section 5040) to Title 7 of Part 3 of, the Penal Code, and to amend Sections 6600 ~~and 6601 of~~, 6601, 6604, 6604.1, and 6605 of, and to repeal Section 6608 of, the Welfare and Institutions Code, relating to sex offenders, *declaring the urgency thereof, to take effect immediately.*

LEGISLATIVE COUNSEL'S DIGEST

SB 1128, as amended, Alquist. Sex Offender Punishment, Control, and Containment Act of 2006.

Existing law sets forth timelines for the retention of court records, depending upon the subject matter or criminal offense.

This bill would require courts to keep all records relating to persons required to register as sex offenders for the life of the offender. The bill also would prohibit a state or local law enforcement agency from destroying any records relating to a registered sex offender for the life

of the offender. Because the bill would impose new responsibilities on local agencies, the bill would impose a state-mandated local program.

Under existing law, the punishment for kidnapping with the intent to commit any of several specified sexual acts is imprisonment in the state prison for life with the possibility of parole.

This bill would add rape committed in concert and committing lewd and lascivious acts to the above specified sexual acts.

Under existing law, the punishment for assault with intent to commit any of several specified sexual acts is imprisonment in the state prison for 2, 4, or 6 years.

This bill would provide that the punishment for assaulting another person with the intent to commit any of several specified sexual acts while in the commission of a first degree burglary is imprisonment in the state prison for life with the possibility of parole.

Under existing law, a person who commits any of several sexual acts upon a child who is under 14 years of age and 10 or more years younger than the person, is guilty of aggravated sexual assault of a child.

This bill would change the age elements of the crime to 14 years of age and 7 or more years younger than the perpetrator, and would expand the types of sex offenses to which it would apply. The bill would require the court to impose a consecutive sentence for each offense that results in a conviction under this provision.

This bill would create new offenses for persons who arrange a meeting with a minor or person he or she believes to be a minor for the purpose of exposing his or her genitals or public or rectal area, having the child expose any of these areas, or engaging in lewd or lascivious behavior; and for persons who actually go to that arranged meeting.

Under existing law, continuous sexual abuse of a child is a felony punishable by imprisonment in the state prison for 6, 12, or 16 years. Existing law prohibits and other felony sex offense involving the same victim from being charged in the same proceeding, except as specified.

This bill would change that provision to prohibit any other act of substantial sexual conduct with a child under 14 years of age, or lewd and lascivious acts, involving the same victim, from being charged in the same proceeding, except as specified.

Under existing law, the punishment for annoying or molesting a child is a maximum fine of \$1,000 and imprisonment in the county jail.

This bill would increase the maximum fine to \$5,000 and would create a new crime for persons who, motivated by an unnatural or abnormal sexual interest in children, engages in conduct with an adult whom he or she believes to be a child, which conduct, if directed toward a child, would be a violation of the above provision.

Under existing law, lewd or lascivious conduct with a minor is a felony. Under existing law, any person who engages in unlawful sexual intercourse with a minor who is more than 3 years younger than the perpetrator is guilty of either a misdemeanor or felony, and may also be liable for civil penalties.

~~This bill would provide that a person who contacts or communicates with a minor with the intent to commit a lewd or lascivious act is guilty of a misdemeanor or felony.~~ The bill would also provide that any adult who engages in sexual intercourse or sodomy with a child who is 10 years of age or younger is guilty of a felony and shall be punished by imprisonment in the state prison for 25 years to life. Because the bill would create new crimes, the bill would impose a state-mandated local program.

Existing law requires a person convicted any specified sex offense to register as a sex offender.

This bill would add the above new crimes to the list of crimes that require a person to register as a sex offender, and would require every adult male who is required to register as a sex offender to be assessed for risk of recidivism using the STATIC-99 assessment tool. The bill would require the Department of Corrections and Rehabilitation, in consultation with the Department of Mental Health and other experts, to research actuarial risk assessment tools for female and juvenile sex offenders. The bill would require the department to establish a training program for probation officers, parole officers, and others to become designated risk assessment testers. The bill would require the Department of Justice to renovate the Violent Crime Information Network, as specified.

This bill would make findings and declarations regarding the need for a comprehensive system of risk assessment, supervision, monitoring, and containment for registered sex offenders.

Under existing law, the court is required to impose a fine of \$200 for the first conviction of a person who is convicted of a sex offense for which registration as a sex offender is required, and \$300 for a subsequent conviction.

This bill would increase those fines to \$300 and \$500, respectively, and would allocate \$100 from each fine to the Department of Corrections and Rehabilitation to SAFE teams.

Existing law requires the Department of Justice to make available to the public information regarding registered sex offenders via an Internet Web site.

This bill would require the Attorney General to develop strategies to assist members of the public in understanding how to use the information on the Web site to further public safety.

Under existing law, possession of pornographic material that depicts a minor engaging in sexual conduct is a misdemeanor.

This bill would provide that if the material depicts a minor who is prepubescent, the crime is ~~a misdemeanor or~~ a felony, and if the person intends to distribute or exchange that material with another person, regardless of commercial intent, the crime is a felony. Because the bill would change the scope of a crime, the bill would impose a state-mandated local program.

The bill would authorize any monetary assets gained from the production, publication, sale, distribution, exchange, or control of pornographic material that depicts a minor to be subject to forfeiture.

Under existing law, it is a misdemeanor for any person without any lawful business thereon, including any specified sex offender, to remain on school grounds, or to reenter school grounds, or any public way adjacent thereto, after being asked to leave, as specified.

This bill would instead make it a misdemeanor for any person who is required to register as a sex offender to come into any school building or upon any school ground without lawful business thereon or written permission from the chief administrative official of that school, or who loiters about any street, sidewalk, or public way adjacent to any school building, school grounds, public playground, or other youth recreational facility where minors are present, without lawful business thereon. Because the bill would increase the scope of an existing crime, the bill would impose a state-mandated local program.

This bill also would make it a misdemeanor for a person who is required to register as a sex offender where the victim was an elderly or dependent person to come onto any property where elderly or dependent persons reside or regularly are present, without lawful business thereon or written permission from the director of the facility.

Existing law, added by initiative 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 include in that definition various sex offenses committed against a child who is under 14 years of age and more than 10 years younger than the perpetrator, or committed in concert.

Existing law provides for an enhanced prison term of 5 years for a person convicted of committing any of several specified sex offenses who had a prior conviction for any of several other specified sex offenses. The enhanced term for a person with 2 or more previous convictions of any of those sex offense is 10 years. 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 work, to reduce his or her sentence.

This bill would expand the types of sex crimes to which these provision 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 offense 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 these sex crimes.

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, a court is prohibited from granting probation to, or suspending the execution or imposition of sentence for any

person who, with the intent to inflict the injury, personally inflicts great bodily injury on another person during the commission of any of several crimes.

This bill would eliminate the intent requirement of that provision.

Under existing law, prosecution for an offense punishable by imprisonment in the state prison for 8 years or more is required to be commenced within 6 years after the commission of the offense.

This bill would extend the statute of limitations for prosecuting possession of child pornography for commercial purposes to 10 years from the date of production.

Existing law, added by an initiative statute which provides for amendment of its provision by 2/3 vote of the Legislature, prohibits plea bargaining in certain felony cases, except as specified.

This bill would state the intent of the Legislature that district attorneys prosecute violent sex crimes under statutes that provide sentencing under “one strike,” “3 strikes” or habitual sexual offender laws instead of engaging in plea bargaining, and would require a district attorney to state on the record why a sentence should not be prosecuted under those provisions, if he or she engages in plea bargaining despite the stated intent.

Existing law establishes a county probation system.

This bill would require probation officers trained in the use of the STATIC-99 assessment tool to perform a pre-sentencing risk assessment of every adult male convicted of an offense that requires him to register as a sex offender. The bill would require each probation officer to compile a Facts of Offense Sheet for those offenders, as specified. The bill would require each county to designate certain probation officers to be trained to administer the STATIC-99 assessment tool and to monitor registered sex offenders. The bill would require those probationers to report more frequently to their probation officer and to be subject to more intensive scrutiny. Because the bill would impose additional duties on probation officers, it would impose a state-mandated local program.

Existing law requires a probation officer to prepare a report for the court for each person convicted of a felony.

This bill would require a probation officer to also use the STATIC-99 assessment tool on each person convicted of a felony that requires him or her to register as a sex offender, in order to determine the persons’ risk of reoffending, and to include that assessment in the presentencing report. The bill would require the results of that

assessment to be considered by the court in determining suitability for probation.

Existing law provides for a 3-year maximum period of parole for persons who are convicted of a felony, except that the maximum period of parole for persons who are convicted of certain violent felonies is 5 years.

This bill would set the maximum period of parole for persons who are convicted of certain sex offenses at 10 years.

Existing law requires the Department of Corrections and Rehabilitation to ensure that all parolees under active supervision and deemed to pose a high risk to the public of committing a violent sex crime to be placed on an intensive and specialized parole supervision caseload.

This bill would instead required those parolees who are deemed to pose a moderate-high or high risk to the public of committing any sex crime, as determined by the STATIC-99 assessment tool, to be placed on such a caseload, and to be required to report frequently to designated parole officers.

This bill would require the department to use the STATIC-99 assessment tool to perform a risk assessment on all inmates who are convicted of a sex offense that requires them to register as a sex offender, upon commitment to the department or prior to being released on parole. The bill would require the department to develop containment and control programming for sex offenders who have been assessed as having a moderate-high or high risk of committing a sex offense, pursuant to that provision.

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 sexual offenders.

This bill would require every county to establish a SAFE team. Because the bill would impose new duties on local governments, it would create a state-mandated local program.

Existing law defines “sexually violent offense” for purposes of the sexually violent predator law.

This bill would include prior convictions for certain offenses convicted as a juvenile or that resulted in an indeterminate sentence in that definition, *and would otherwise expand that definition to include additional crimes.*

Under existing law, any finding made that a person is a sexually violent predator, as specified, shall not toll, discharge, or otherwise affect that person's period of parole, as specified.

This bill instead would provide that such a finding shall toll his or her period of parole.

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.

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.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

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

- 1 SECTION 1. This act shall be known as the Sex Offender
- 2 Punishment, Control, and Containment Act of 2006.
- 3 SEC. 2. The Legislature finds and declares all of the
- 4 following:
- 5 (a) The primary public policy goal of managing sex offenders
- 6 in the community is the prevention of future victimization.

1 (b) California's tactics for monitoring registered sex offenders
2 must be transformed into a cohesive and comprehensive system
3 of state and local law enforcement supervision to observe, assess,
4 and proactively respond to patterns and conduct of registered sex
5 offenders in the community.

6 (c) California's infrastructure for collecting, maintaining, and
7 disseminating information about registered sex offenders must be
8 retooled to ensure that law enforcement and the public have
9 access to accurate, up-to-date, and relevant information about
10 registered sex offenders.

11 (d) In order to accomplish these goals, the Legislature hereby
12 enacts the Sex Offender Control and Containment Act of 2006.

13 SEC. 3. Section 68152 of the Government Code is amended
14 to read:

15 68152. The trial court clerk may destroy court records under
16 Section 68153 after notice of destruction and if there is no
17 request and order for transfer of the records, except the
18 comprehensive historical and sample superior court records
19 preserved for research under the California Rules of Court, when
20 the following times have expired after final disposition of the
21 case in the categories listed:

22 (a) Adoption: retain permanently.

23 (b) Change of name: retain permanently.

24 (c) Other civil actions and proceedings, as follows:

25 (1) Except as otherwise specified: 10 years.

26 (2) Where a party appears by a guardian ad litem: 10 years
27 after termination of the court's jurisdiction.

28 (3) Domestic violence: same period as duration of the
29 restraining or other orders and any renewals, then retain the
30 restraining or other orders as a judgment; 60 days after expiration
31 of the temporary protective or temporary restraining order.

32 (4) Eminent domain: retain permanently.

33 (5) Family law, except as otherwise specified: 30 years.

34 (6) Harassment: same period as duration of the injunction and
35 any renewals, then retain the injunction as a judgment; 60 days
36 after expiration of the temporary restraining order.

37 (7) Mental health (Lanterman Developmental Disabilities
38 Services Act and Lanterman-Petris-Short Act): 30 years.

39 (8) Paternity: retain permanently.

40 (9) Petition, except as otherwise specified: 10 years.

1 (10) Real property other than unlawful detainer: retain
2 permanently if the action affects title or an interest in real
3 property.

4 (11) Small claims: 10 years.

5 (12) Unlawful detainer: one year if judgment is for possession
6 of the premises; 10 years if judgment is for money.

7 (d) Notwithstanding subdivision (c), any civil or small claims
8 case in the trial court:

9 (1) Involuntarily dismissed by the court for delay in
10 prosecution or failure to comply with state or local rules: one
11 year.

12 (2) Voluntarily dismissed by a party without entry of
13 judgment: one year.

14 Notation of the dismissal shall be made on the civil index of
15 cases or on a separate dismissal index.

16 (e) Criminal.

17 (1) Capital felony (murder with special circumstances where
18 the prosecution seeks the death penalty): retain permanently. If
19 the charge is disposed of by acquittal or a sentence less than
20 death, the case shall be reclassified.

21 (2) Felony, except as otherwise specified: 75 years.

22 (3) Felony, except capital felony, with court records from the
23 initial complaint through the preliminary hearing or plea and for
24 which the case file does not include final sentencing or other
25 final disposition of the case because the case was bound over to
26 the superior court: five years.

27 (4) Misdemeanor, except as otherwise specified: five years.

28 (5) Misdemeanor alleging a violation of the Vehicle Code,
29 except as otherwise specified: three years.

30 (6) Misdemeanor alleging a violation of Section 23103, 23152,
31 or 23153 of the Vehicle Code: 10 years.

32 (7) Misdemeanor alleging a violation of Section 14601,
33 14601.1, 20002, 23104, or 23109 of the Vehicle Code: five years.

34 (8) Misdemeanor alleging a marijuana violation under
35 subdivision (b), (c), (d), or (e) of Section 11357 of the Health and
36 Safety Code, or subdivision (b) of Section 11360 of the Health
37 and Safety Code in accordance with the procedure set forth in
38 Section 11361.5 of the Health and Safety Code: records shall be
39 destroyed two years from the date of conviction or from the date
40 of arrest if no conviction.

1 (9) Misdemeanor, infraction, or civil action alleging a
2 violation of the regulation and licensing of dogs under Sections
3 30951 to 30956, inclusive, of the Food and Agricultural Code or
4 violation of any other local ordinance: three years.

5 (10) Infraction, except as otherwise specified: three years.

6 (11) Parking infractions, including alleged violations under the
7 stopping, standing, and parking provisions set forth in Chapter 9
8 (commencing with Section 22500) of Division 11 of the Vehicle
9 Code: two years.

10 (12) Records relating to a person required to register as a sex
11 offender pursuant to Section 290 of the Penal Code: retain for the
12 life of the person.

13 (f) Habeas corpus: same period as period for retention of the
14 records in the underlying case category.

15 (g) Juvenile.

16 (1) Dependent (Section 300 of the Welfare and Institutions
17 Code): upon reaching age 28 or on written request shall be
18 released to the juvenile five years after jurisdiction over the
19 person has terminated under subdivision (a) of Section 826 of the
20 Welfare and Institutions Code. Sealed records shall be destroyed
21 upon court order five years after the records have been sealed
22 pursuant to subdivision (c) of Section 389 of the Welfare and
23 Institutions Code.

24 (2) Ward (Section 601 of the Welfare and Institutions Code):
25 upon reaching age 21 or on written request shall be released to
26 the juvenile five years after jurisdiction over the person has
27 terminated under subdivision (a) of Section 826 of the Welfare
28 and Institutions Code. Sealed records shall be destroyed upon
29 court order five years after the records have been sealed under
30 subdivision (d) of Section 781 of the Welfare and Institutions
31 Code.

32 (3) Ward (Section 602 of the Welfare and Institutions Code):
33 upon reaching age 38 under subdivision (a) of Section 826 of the
34 Welfare and Institutions Code. Sealed records shall be destroyed
35 upon court order when the subject of the record reaches the age
36 of 38 under subdivision (d) of Section 781 of the Welfare and
37 Institutions Code.

38 (4) Traffic and some nontraffic misdemeanors and infractions
39 (Section 601 of the Welfare and Institutions Code): upon
40 reaching age 21 or five years after jurisdiction over the person

1 has terminated under subdivision (c) of Section 826 of the
2 Welfare and Institutions Code. May be microfilmed or
3 photocopied.

4 (5) Marijuana misdemeanor under subdivision (e) of Section
5 11357 of the Health and Safety Code in accordance with
6 procedures specified in subdivision (a) of Section 11361.5 of the
7 Health and Safety Code: upon reaching age 18 the records shall
8 be destroyed.

9 (h) Probate.

10 (1) Conservatorship: 10 years after decree of termination.

11 (2) Guardianship: 10 years after the age of 18.

12 (3) Probate, including probated wills, except as otherwise
13 specified: retain permanently.

14 (i) Court records of the appellate division of the superior court:
15 five years.

16 (j) Other records.

17 (1) Applications in forma pauperis: any time after the
18 disposition of the underlying case.

19 (2) Arrest warrant: same period as period for retention of the
20 records in the underlying case category.

21 (3) Bench warrant: same period as period for retention of the
22 records in the underlying case category.

23 (4) Bond: three years after exoneration and release.

24 (5) Coroner's inquest report: same period as period for
25 retention of the records in the underlying case category; if no
26 case, then permanent.

27 (6) Court orders not associated with an underlying case, such
28 as orders for destruction of court records for telephone taps, or to
29 destroy drugs, and other miscellaneous court orders: three years.

30 (7) Court reporter notes: 10 years after the notes have been
31 taken in criminal and juvenile proceedings and five years after
32 the notes have been taken in all other proceedings, except notes
33 reporting proceedings in capital felony cases (murder with
34 special circumstances where the prosecution seeks the death
35 penalty and the sentence is death), including notes reporting the
36 preliminary hearing, which shall be retained permanently, unless
37 the Supreme Court on request of the court clerk authorizes the
38 destruction.

39 (8) Electronic recordings made as the official record of the
40 oral proceedings under the California Rules of Court: any time

1 after final disposition of the case in infraction and misdemeanor
2 proceedings, 10 years in all other criminal proceedings, and five
3 years in all other proceedings.

4 (9) Electronic recordings not made as the official record of the
5 oral proceedings under the California Rules of Court: any time
6 either before or after final disposition of the case.

7 (10) Index, except as otherwise specified: retain permanently.

8 (11) Index for cases alleging traffic violations: same period as
9 period for retention of the records in the underlying case
10 category.

11 (12) Judgments within the jurisdiction of the superior court
12 other than in a limited civil case, misdemeanor case, or infraction
13 case: retain permanently.

14 (13) Judgments in misdemeanor cases, infraction cases, and
15 limited civil cases: same period as period for retention of the
16 records in the underlying case category.

17 (14) Minutes: same period as period for retention of the
18 records in the underlying case category.

19 (15) Naturalization index: retain permanently.

20 (16) Ninety-day evaluation (under Section 1203.03 of the
21 Penal Code): same period as period for retention of the records in
22 the underlying case category, or period for completion or
23 termination of probation, whichever is longer.

24 (17) Register of actions or docket: same period as period for
25 retention of the records in the underlying case category, but in no
26 event less than 10 years for civil and small claims cases.

27 (18) Search warrant: 10 years, except search warrants issued in
28 connection with a capital felony case defined in paragraph (7),
29 which shall be retained permanently.

30 (k) Retention of any of the court records under this section
31 shall be extended as follows:

32 (1) By order of the court on its own motion, or on application
33 of a party or any interested member of the public for good cause
34 shown and on those terms as are just. A fee shall not be charged
35 for making the application.

36 (2) Upon application and order for renewal of the judgment to
37 the extended time for enforcing the judgment.

38 *SEC. 4. Section 209 of the Penal Code is amended to read:*

39 209. (a) Any person who seizes, confines, inveigles, entices,
40 decoys, abducts, conceals, kidnaps or carries away another

1 person by any means whatsoever with intent to hold or detain, or
2 who holds or detains, that person for ransom, reward or to
3 commit extortion or to exact from another person any money or
4 valuable thing, or any person who aids or abets any ~~such act of~~
5 ~~those acts~~, is guilty of a felony, ~~and upon~~. Upon conviction
6 thereof, shall be punished by imprisonment in the state prison for
7 life without possibility of parole in cases in which any person
8 subjected to any ~~such act of those acts~~ suffers death or bodily
9 harm, or is intentionally confined in a manner which exposes that
10 person to a substantial likelihood of death, or shall be punished
11 by imprisonment in the state prison for life with the possibility of
12 parole ~~in cases where no such person suffers if the victim does~~
13 ~~not suffer~~ death or bodily harm.

14 (b) (1) Any person who kidnaps or carries away any
15 individual to commit robbery, rape, spousal rape, oral copulation,
16 sodomy, or ~~sexual penetration in any violation of Section 264.1,~~
17 ~~288, or 289,~~ shall be punished by imprisonment in the state
18 prison for life with *the* possibility of parole.

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

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

30 (d) Subdivision (b) shall not be construed to supersede or
31 affect Section 667.61. A person may be charged with a violation
32 of subdivision (b) and Section 667.61. However, a person may
33 not be punished under subdivision (b) and Section 667.61 for the
34 same act that constitutes a violation of both subdivision (b) and
35 Section 667.61.

36 *SEC. 5. Section 220 of the Penal Code is amended to read:*

37 220. (a) Every person who assaults another with intent to
38 commit mayhem, rape, sodomy, oral copulation, or any violation
39 of Section 264.1, 288 or 289 ~~is punishable~~ *shall be punished* by
40 imprisonment in the state prison for two, four, or six years.

1 **(b)** Any person who, in the commission of a burglary of the
2 first degree, as defined in subdivision (a) of Section 460, assaults
3 another with the intent to commit rape, sodomy, oral copulation,
4 or any violation of Section 264.1, 288, or 289 shall be punished
5 by imprisonment in the state prison for life with the possibility of
6 parole.

7 SEC. 6. Section 269 of the Penal Code is amended to read:

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

12 (1) ~~A Rape~~, in violation of paragraph (2) or (6) of subdivision
13 (a) of Section 261.

14 (2) ~~A Rape or sexual penetration, in concert~~, in violation of
15 Section 264.1.

16 (3) Sodomy, in violation of paragraph (2) or (3) of
17 subdivision (c), or subdivision (d), of Section 286, ~~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 (4) Oral copulation, in violation of paragraph (2) or (3) of
22 subdivision (c), or subdivision (d), of Section 288a, ~~when~~
23 ~~committed by force, violence, duress, menace, or fear of~~
24 ~~immediate and unlawful bodily injury on the victim or another~~
25 ~~person.~~

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

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

31 (c) The court shall impose a consecutive sentence for each
32 offense that results in a conviction under this section if the crimes
33 involve separate victims or involve the same victim on separate
34 occasions, as defined in subdivision (d) of Section 667.6.

35 ~~SEC. 4.~~

36 SEC. 7. Section 288.3 is added to the Penal Code, to read:

37 ~~288.3. (a) Any adult who contacts or communicates with a~~
38 ~~minor under 16 years of age, or who contacts or communicates~~
39 ~~with another person whom the adult believes to be a minor under~~

1 16 years of age, with the intent to commit any lewd or lascivious
2 act, is guilty of a misdemeanor or felony.

3 ~~(b) Prosecution under this section shall not prohibit~~
4 ~~prosecution under any other provision of law, including~~
5 ~~prosecution for intent to commit a sex offense.~~

6 ~~(c) If the defendant acts with the requisite intent, it is not a~~
7 ~~defense to prosecution under this section that the person~~
8 ~~contacted by the defendant was a law enforcement officer posing~~
9 ~~as a minor.~~

10 ~~(d) As used in this section, “contacts or communicates” has~~
11 ~~the same meaning as in subparagraph (B) of paragraph (3) of~~
12 ~~subdivision (b) of Section 272.~~

13 288.3. (a) (1) *Every person who, motivated by an unnatural*
14 *or abnormal sexual interest in children, arranges a meeting with*
15 *a minor or a person he or she believes to be a minor for the*
16 *purpose of exposing his or her genitals or pubic or rectal area,*
17 *having the child expose his or her genitals or pubic or rectal*
18 *area, or engaging in lewd or lascivious behavior, shall be*
19 *punished by a fine not exceeding five thousand dollars (\$5,000),*
20 *by imprisonment in a county jail not exceeding one year, or by*
21 *both the fine and imprisonment.*

22 (2) *Every person who violates this subdivision after a prior*
23 *conviction for an offense listed in subparagraph (A) of*
24 *paragraph (2) of subdivision (a) of Section 290 shall be punished*
25 *by imprisonment in the state prison.*

26 (b) *Every person described in paragraph (1) of subdivision (a)*
27 *who goes to the arranged meeting place at or about the arranged*
28 *time, shall be punished by imprisonment in the state prison for*
29 *two, three, or four years.*

30 (c) *Prosecution under this section shall not prohibit*
31 *prosecution under any other provision of law.*

32 SEC. 8. *Section 288.5 of the Penal Code is amended to read:*

33 288.5. (a) *Any person who either resides in the same home*
34 *with the minor child or has recurring access to the child, who*
35 *over a period of time, not less than three months in duration,*
36 *engages in three or more acts of substantial sexual conduct with*
37 *a child under the age of 14 years at the time of the commission of*
38 *the offense, as defined in subdivision (b) of Section 1203.066, or*
39 *three or more acts of lewd or lascivious conduct—under, as*
40 *defined in Section 288, with a child under the age of 14 years at*

1 the time of the commission of the offense is guilty of the offense
2 of continuous sexual abuse of a child and shall be punished by
3 imprisonment in the state prison for a term of 6, 12, or 16 years.

4 (b) To convict under this section the trier of fact, if a jury,
5 need unanimously agree only that the requisite number of acts
6 occurred not on which acts constitute the requisite number.

7 (c) No other ~~felony sex offense act of substantial sexual~~
8 ~~conduct, as defined in subdivision (b) of Section 1203.066, with a~~
9 ~~child under 14 years of age at the time of the commission of the~~
10 ~~offenses, or lewd and lascivious acts, as defined in Section 288,~~
11 involving the same victim may be charged in the same
12 proceeding with a charge under this section unless the other
13 charged offense occurred outside the time period charged under
14 this section or the other offense is charged in the alternative. A
15 defendant may be charged with only one count under this section
16 unless more than one victim is involved in which case a separate
17 count may be charged for each victim.

18 ~~SEC. 5.~~

19 SEC. 9. Section 288.7 is added to the Penal Code, to read:

20 288.7. Any person 18 years of age or older who engages in
21 sexual intercourse or sodomy with a child who is 10 years of age
22 or younger is guilty of a felony and shall be punished by
23 imprisonment in the state prison for a term of 25 years to life.

24 ~~SEC. 6.~~

25 SEC. 10. The heading of Chapter 5.5 (commencing with
26 Section 290) is added to Title 9 of Part 2 of the Penal Code, to
27 read:

28
29 CHAPTER 5.5. SEX OFFENDERS
30

31 ~~SEC. 7.~~

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

33 290. (a) (1) (A) Every person described in paragraph (2),
34 for the rest of his or her life while residing in California, or while
35 attending school or working in California, as described in
36 subparagraph (G), shall be required to register with the chief of
37 police of the city in which he or she is residing, or the sheriff of
38 the county if he or she is residing in an unincorporated area or
39 city that has no police department, and, additionally, with the
40 chief of police of a campus of the University of California, the

1 California State University, or community college if he or she is
2 residing upon the campus or in any of its facilities, within five
3 working days of coming into, or changing his or her residence
4 within, any city, county, or city and county, or campus in which
5 he or she temporarily resides.

6 (B) If the person who is registering has more than one
7 residence address at which he or she regularly resides, he or she
8 shall register in accordance with subparagraph (A) in each of the
9 jurisdictions in which he or she regularly resides, regardless of
10 the number of days or nights spent there. If all of the addresses
11 are within the same jurisdiction, the person shall provide the
12 registering authority with all of the addresses where he or she
13 regularly resides.

14 (C) Every person described in paragraph (2), for the rest of
15 his or her life while living as a transient in California shall be
16 required to register, as follows:

17 (i) A transient must register, or reregister if the person has
18 previously registered, within five working days from release
19 from incarceration, placement or commitment, or release on
20 probation, pursuant to paragraph (1) of subdivision (a), except
21 that if the person previously registered as a transient less than 30
22 days from the date of his or her release from incarceration, he or
23 she does not need to reregister as a transient until his or her next
24 required 30-day update of registration. If a transient is not
25 physically present in any one jurisdiction for five consecutive
26 working days, he or she must register in the jurisdiction in which
27 he or she is physically present on the fifth working day following
28 release, pursuant to paragraph (1) of subdivision (a). Beginning
29 on or before the 30th day following initial registration upon
30 release, a transient must reregister no less than once every 30
31 days thereafter. A transient shall register with the chief of police
32 of the city in which he or she is physically present within that
33 30-day period, or the sheriff of the county if he or she is
34 physically present in an unincorporated area or city that has no
35 police department, and additionally, with the chief of police of a
36 campus of the University of California, the California State
37 University, or community college if he or she is physically
38 present upon the campus or in any of its facilities. A transient
39 must reregister no less than once every 30 days regardless of the
40 length of time he or she has been physically present in the

particular jurisdiction in which he or she reregisters. If a transient fails to reregister within any 30-day period, he or she may be prosecuted in any jurisdiction in which he or she is physically present.

(ii) A transient who moves to a residence shall have five working days within which to register at that address, in accordance with subparagraph (A) of paragraph (1) of subdivision (a). A person registered at a residence address in accordance with subparagraph (A) of paragraph (1) of subdivision (a), who becomes transient shall have five working days within which to reregister as a transient in accordance with clause (i).

(iii) Beginning on his or her first birthday following registration, a transient shall register annually, within five working days of his or her birthday, to update his or her registration with the entities described in clause (i). A transient shall register in whichever jurisdiction he or she is physically present on that date. At the 30-day updates and the annual update, a transient shall provide current information as required on the Department of Justice annual update form, including the information described in subparagraphs (A) to (C), inclusive, of paragraph (2) of subdivision (e), and the information specified in clause (iv).

(iv) A transient shall, upon registration and reregistration, provide current information as required on the Department of Justice registration forms, and shall also list the places where he or she sleeps, eats, works, frequents, and engages in leisure activities. If a transient changes or adds to the places listed on the form during the 30-day period, he or she does not need to report the new place or places until the next required reregistration.

(v) Failure to comply with the requirement of reregistering every 30 days following initial registration pursuant to clause (i) of this subparagraph shall be punished in accordance with paragraph (6) of subdivision (g). Failure to comply with any other requirement of this section shall be punished in accordance with either paragraph (1) or (2) of subdivision (g).

(vi) A transient who moves out of state shall inform, in person, the chief of police in the city in which he or she is physically present, or the sheriff of the county if he or she is physically present in an unincorporated area or city that has no police

1 department, within five working days, of his or her move out of
2 state. The transient shall inform that registering agency of his or
3 her planned destination, residence or transient location out of
4 state, and any plans he or she has to return to California, if
5 known. The law enforcement agency shall, within three days
6 after receipt of this information, forward a copy of the change of
7 location information to the Department of Justice. The
8 department shall forward appropriate registration data to the law
9 enforcement agency having local jurisdiction of the new place of
10 residence or location.

11 (vii) For purposes of this section, “transient” means a person
12 who has no residence. “Residence” means one or more addresses
13 at which a person regularly resides, regardless of the number of
14 days or nights spent there, such as a shelter or structure that can
15 be located by a street address, including, but not limited to,
16 houses, apartment buildings, motels, hotels, homeless shelters,
17 and recreational and other vehicles.

18 (viii) The transient registrant’s duty to update his or her
19 registration no less than every 30 days shall begin with his or her
20 second transient update following the date this subdivision
21 became effective.

22 (D) Beginning on his or her first birthday following
23 registration or change of address, the person shall be required to
24 register annually, within five working days of his or her birthday,
25 to update his or her registration with the entities described in
26 subparagraph (A). At the annual update, the person shall provide
27 current information as required on the Department of Justice
28 annual update form, including the information described in
29 subparagraphs (A) to (C), inclusive, of paragraph (2) of
30 subdivision (e).

31 (E) In addition, every person who has ever been adjudicated a
32 sexually violent predator, as defined in Section 6600 of the
33 Welfare and Institutions Code, shall, after his or her release from
34 custody, verify his or her address no less than once every 90 days
35 and place of employment, including the name and address of the
36 employer, in a manner established by the Department of Justice.

37 (F) No entity shall require a person to pay a fee to register or
38 update his or her registration pursuant to this section. The
39 registering agency shall submit registrations, including annual
40 updates or changes of address, directly into the Department of

Justice Violent Crime Information Network (VCIN). The registering agency shall give the registrant a copy of the completed Department of Justice form each time the person registers or reregisters, including at the annual update.

(G) Persons required to register in their state of residence who are out-of-state residents employed, or carrying on a vocation in California on a full-time or part-time basis, with or without compensation, for more than 14 days, or for an aggregate period exceeding 30 days in a calendar year, shall register in accordance with subparagraph (A). Persons described in paragraph (2) who are out-of-state residents enrolled in any educational institution in California, as defined in Section 22129 of the Education Code, on a full-time or part-time basis, shall register in accordance with subparagraph (A). The place where the out-of-state resident is located, for purposes of registration, shall be the place where the person is employed, carrying on a vocation, or attending school. The out-of-state resident subject to this subparagraph shall, in addition to the information required pursuant to subdivision (e), provide the registering authority with the name of his or her place of employment or the name of the school attended in California, and his or her address or location in his or her state of residence. The registration requirement for persons subject to this subparagraph shall become operative on November 25, 2000. The terms “employed or carries on a vocation” include employment whether or not financially compensated, volunteered, or performed for government or educational benefit.

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

(A) Any person who, since July 1, 1944, has been or is hereafter convicted in any court in this state or in any federal or military court of a violation of Section 207 or 209 committed with intent to violate Section 261, 286, 288, 288a, or 289, Section 220, except assault to commit mayhem, Section 243.4, paragraph (1), (2), (3), (4), or (6) of subdivision (a) of Section 261, or paragraph (1) of subdivision (a) of Section 262 involving the use of force or violence for which the person is sentenced to the state prison, Section 264.1, 266, or 266c, subdivision (b) of Section 266h, subdivision (b) of Section 266i, Section 266j, 267, 269, 285, 286, 288, 288a, 288.5, 288.7, or 289, Section 311.1, subdivision (b), (c), or (d) of Section 311.2, Section 311.3, 311.4,

1 311.10, 311.11, 626.83, or 647.6, former Section 647a,
2 subdivision (c) of Section 653f, subdivision 1 or 2 of Section
3 314, any offense involving lewd or lascivious conduct under
4 Section 272, or any felony violation of Section 288.2; or any
5 statutory predecessor that includes all elements of one of the
6 above-mentioned offenses; or any person who since that date has
7 been or is hereafter convicted of the attempt to commit any of the
8 above-mentioned offenses.

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

14 (C) Any person who, since July 1, 1944, has been or hereafter
15 is determined to be a mentally disordered sex offender under
16 Article 1 (commencing with Section 6300) of Chapter 2 of Part 2
17 of Division 6 of the Welfare and Institutions Code or any person
18 who has been found guilty in the guilt phase of a trial for an
19 offense for which registration is required by this section but who
20 has been found not guilty by reason of insanity in the sanity
21 phase of the trial.

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

27 (ii) Any person ordered by any other court, including any
28 state, federal, or military court, to register as a sex offender for
29 any offense, if the court found at the time of conviction or
30 sentencing that the person committed the offense as a result of
31 sexual compulsion or for purposes of sexual gratification.

32 (iii) Except as provided in clause (iv), any person who would
33 be required to register while residing in the state of conviction for
34 a sex offense committed in that state.

35 (iv) Clause (iii) shall not apply to a person required to register
36 in the state of conviction if the conviction was for the equivalent
37 of one of the following offenses, and the person is not subject to
38 clause (i):

39 (I) Indecent exposure, pursuant to Section 314.

40 (II) Unlawful sexual intercourse, pursuant to Section 261.5.

1 (III) Incest, pursuant to Section 285.

2 (IV) Sodomy, pursuant to Section 286, or oral copulation,
3 pursuant to Section 288a, provided that the offender notifies the
4 Department of Justice that the sodomy or oral copulation
5 conviction was for conduct between consenting adults, as
6 described in subparagraph (F) of paragraph (2) of subdivision (a),
7 and the department is able, upon the exercise of reasonable
8 diligence, to verify that fact.

9 (E) Any person ordered by any court to register pursuant to
10 this section for any offense not included specifically in this
11 section if the court finds at the time of conviction or sentencing
12 that the person committed the offense as a result of sexual
13 compulsion or for purposes of sexual gratification. The court
14 shall state on the record the reasons for its findings and the
15 reasons for requiring registration.

16 (F) Any person required to register pursuant to any provision
17 of this section, regardless of whether the person's conviction has
18 been dismissed pursuant to Section 1203.4, unless the person
19 obtains a certificate of rehabilitation and is entitled to relief from
20 registration pursuant to Section 290.5.

21 (G) (i) Notwithstanding any other subdivision, a person who
22 was convicted before January 1, 1976, under subdivision (a) of
23 Section 286, or Section 288a, shall not be required to register
24 pursuant to this section for that conviction if the conviction was
25 for conduct between consenting adults that was decriminalized
26 by Chapter 71 of the Statutes of 1975 or Chapter 1139 of the
27 Statutes of 1976. The Department of Justice shall remove that
28 person from the Sex Offender Registry, and the person is
29 discharged from his or her duty to register pursuant to the
30 following procedure:

31 (I) The person submits to the Department of Justice official
32 documentary evidence, including court records or police reports,
33 that demonstrate that the person's conviction pursuant to either of
34 those sections was for conduct between consenting adults that
35 was decriminalized; or

36 (II) The person submits to the department a declaration stating
37 that the person's conviction pursuant to either of those sections
38 was for consensual conduct between adults that has been
39 decriminalized. The declaration shall be confidential and not a
40 public record, and shall include the person's name, address,

1 telephone number, date of birth, and a summary of the
2 circumstances leading to the conviction, including the date of the
3 conviction and county of the occurrence.

4 (III) The department shall determine whether the person's
5 conviction was for conduct between consensual adults that has
6 been decriminalized. If the conviction was for consensual
7 conduct between adults that has been decriminalized, and the
8 person has no other offenses for which he or she is required to
9 register pursuant to this section, the department shall, within 60
10 days of receipt of those documents, notify the person that he or
11 she is relieved of the duty to register, and shall notify the local
12 law enforcement agency with which the person is registered that
13 he or she has been relieved of the duty to register. The local law
14 enforcement agency shall remove the person's registration from
15 its files within 30 days of receipt of notification. If the
16 documentary or other evidence submitted is insufficient to
17 establish the person's claim, the department shall, within 60 days
18 of receipt of those documents, notify the person that his or her
19 claim cannot be established, and that the person shall continue to
20 register pursuant to this section. The department shall provide,
21 upon the person's request, any information relied upon by the
22 department in making its determination that the person shall
23 continue to register pursuant to this section. Any person whose
24 claim has been denied by the department pursuant to this clause
25 may petition the court to appeal the department's denial of the
26 person's claim.

27 (ii) On or before July 1, 1998, the department shall make a
28 report to the Legislature concerning the status of persons who
29 may come under the provisions of this subparagraph, including
30 the number of persons who were convicted before January 1,
31 1976, under subdivision (a) of Section 286 or Section 288a and
32 are required to register under this section, the average age of
33 these persons, the number of these persons who have any
34 subsequent convictions for a registerable sex offense, and the
35 number of these persons who have sought successfully or
36 unsuccessfully to be relieved of their duty to register under this
37 section.

38 (b) (1) Any person who is released, discharged, or paroled
39 from a jail, state or federal prison, school, road camp, or other
40 institution where he or she was confined because of the

1 commission or attempted commission of one of the offenses
2 specified in subdivision (a) or is released from a state hospital to
3 which he or she was committed as a mentally disordered sex
4 offender under Article 1 (commencing with Section 6300) of
5 Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions
6 Code, shall, prior to discharge, parole, or release, be informed of
7 his or her duty to register under this section by the official in
8 charge of the place of confinement or hospital, and the official
9 shall require the person to read and sign any form that may be
10 required by the Department of Justice, stating that the duty of the
11 person to register under this section has been explained to the
12 person. The official in charge of the place of confinement or
13 hospital shall obtain the address where the person expects to
14 reside upon his or her discharge, parole, or release and shall
15 report the address to the Department of Justice. The official shall
16 at the same time forward a current photograph of the person to
17 the Department of Justice.

18 (2) The official in charge of the place of confinement or
19 hospital shall give one copy of the form to the person and shall
20 send one copy to the Department of Justice and one copy to the
21 appropriate law enforcement agency or agencies having
22 jurisdiction over the place the person expects to reside upon
23 discharge, parole, or release. If the conviction that makes the
24 person subject to this section is a felony conviction, the official
25 in charge shall, not later than 45 days prior to the scheduled
26 release of the person, send one copy to the appropriate law
27 enforcement agency or agencies having local jurisdiction where
28 the person expects to reside upon discharge, parole, or release;
29 one copy to the prosecuting agency that prosecuted the person;
30 and one copy to the Department of Justice. The official in charge
31 of the place of confinement or hospital shall retain one copy.

32 (c) (1) Any person who is convicted in this state of the
33 commission or attempted commission of any of the offenses
34 specified in subdivision (a) and who is released on probation,
35 shall, prior to release or discharge, be informed of the duty to
36 register under this section by the probation department, and a
37 probation officer shall require the person to read and sign any
38 form that may be required by the Department of Justice, stating
39 that the duty of the person to register under this section has been
40 explained to him or her. The probation officer shall obtain the

1 address where the person expects to reside upon release or
2 discharge and shall report within three days the address to the
3 Department of Justice. The probation officer shall give one copy
4 of the form to the person, send one copy to the Department of
5 Justice, and forward one copy to the appropriate law enforcement
6 agency or agencies having local jurisdiction where the person
7 expects to reside upon his or her discharge, parole, or release.

8 (2) Any person who is convicted in this state of the
9 commission or attempted commission of any of the offenses
10 specified in subdivision (a) and who is granted conditional
11 release without supervised probation, or discharged upon
12 payment of a fine, shall, prior to release or discharge, be
13 informed of the duty to register under this section in open court
14 by the court in which the person has been convicted, and the
15 court shall require the person to read and sign any form that may
16 be required by the Department of Justice, stating that the duty of
17 the person to register under this section has been explained to
18 him or her. If the court finds that it is in the interest of the
19 efficiency of the court, the court may assign the bailiff to require
20 the person to read and sign forms under this section. The court
21 shall obtain the address where the person expects to reside upon
22 release or discharge and shall report within three days the address
23 to the Department of Justice. The court shall give one copy of the
24 form to the person, send one copy to the Department of Justice,
25 and forward one copy to the appropriate law enforcement agency
26 or agencies having local jurisdiction where the person expects to
27 reside upon his or her discharge, parole, or release.

28 (d) (1) Any person who, on or after January 1, 1986, is
29 discharged or paroled from the Department of Corrections and
30 Rehabilitation to the custody of which he or she was committed
31 after having been adjudicated a ward of the juvenile court
32 pursuant to Section 602 of the Welfare and Institutions Code
33 because of the commission or attempted commission of any
34 offense described in paragraph (3) shall be subject to registration
35 under the procedures of this section.

36 (2) Any person who is discharged or paroled from a facility in
37 another state that is equivalent to the Division of Juvenile Justice,
38 to the custody of which he or she was committed because of an
39 offense which, if committed or attempted in this state, would
40 have been punishable as one or more of the offenses described in

1 paragraph (3), shall be subject to registration under the
2 procedures of this section.

3 (3) Any person described in this subdivision who committed
4 an offense in violation of any of the following provisions shall be
5 required to register pursuant to this section:

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

9 (B) Any offense defined in paragraph (1), (2), (3), (4), or (6)
10 of subdivision (a) of Section 261, Section 264.1, 266c, or 267,
11 paragraph (1) of subdivision (b) of, or subdivision (c) or (d) of,
12 Section 286, Section 288 or 288.5, paragraph (1) of subdivision
13 (b) of, or subdivision (c) or (d) of, Section 288a, subdivision (a)
14 of Section 289, or Section 647.6.

15 (C) A violation of Section 207 or 209 committed with the
16 intent to violate Section 261, 286, 288, 288a, or 289.

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

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

34 (e) (1) On or after January 1, 1998, upon incarceration,
35 placement, or commitment, or prior to release on probation, any
36 person who is required to register under this section shall
37 preregister. The preregistering official shall be the admitting
38 officer at the place of incarceration, placement, or commitment,
39 or the probation officer if the person is to be released on

1 probation. The preregistration shall consist of all of the
2 following:

3 (A) A preregistration statement in writing, signed by the
4 person, giving information that shall be required by the
5 Department of Justice.

6 (B) The fingerprints and a current photograph of the person.

7 (C) Any person who is preregistered pursuant to this
8 subdivision is required to be preregistered only once.

9 (2) A person described in paragraph (2) of subdivision (a)
10 shall register, or reregister if the person has previously registered,
11 upon release from incarceration, placement, commitment, or
12 release on probation pursuant to paragraph (1) of subdivision (a).
13 The registration shall consist of all of the following:

14 (A) A statement in writing signed by the person, giving
15 information as shall be required by the Department of Justice and
16 giving the name and address of the person's employer, and the
17 address of the person's place of employment if that is different
18 from the employer's main address.

19 (B) The fingerprints and a current photograph of the person
20 taken by the registering official.

21 (C) The license plate number of any vehicle owned by,
22 regularly driven by, or registered in the name of the person.

23 (D) Notice to the person that, in addition to the requirements
24 of paragraph (4), he or she may have a duty to register in any
25 other state where he or she may relocate.

26 (E) Copies of adequate proof of residence, which shall be
27 limited to a California driver's license, California identification
28 card, recent rent or utility receipt, printed personalized checks or
29 other recent banking documents showing that person's name and
30 address, or any other information that the registering official
31 believes is reliable. If the person has no residence and no
32 reasonable expectation of obtaining a residence in the foreseeable
33 future, the person shall so advise the registering official and shall
34 sign a statement provided by the registering official stating that
35 fact. Upon presentation of proof of residence to the registering
36 official or a signed statement that the person has no residence,
37 the person shall be allowed to register. If the person claims that
38 he or she has a residence but does not have any proof of
39 residence, he or she shall be allowed to register but shall furnish

1 proof of residence within 30 days of the date he or she is allowed
2 to register.

3 (3) Within three days thereafter, the preregistering official or
4 the registering law enforcement agency or agencies shall forward
5 the statement, fingerprints, photograph, and vehicle license plate
6 number, if any, to the Department of Justice.

7 (f) (1) (A) Any person who was last registered at a residence
8 address pursuant to this section who changes his or her residence
9 address, whether within the jurisdiction in which he or she is
10 currently registered or to a new jurisdiction inside or outside the
11 state, shall, in person, within five working days of the move,
12 inform the law enforcement agency or agencies with which he or
13 she last registered of the move, the new address or transient
14 location, if known, and any plans he or she has to return to
15 California.

16 (B) If the person does not know the new residence address or
17 location at the time of the move, the registrant shall, in person,
18 within five working days of the move, inform the last registering
19 agency or agencies that he or she is moving. The person shall
20 later notify the last registering agency or agencies, in writing,
21 sent by certified or registered mail, of the new address or location
22 within five working days of moving into the new residence
23 address or location, whether temporary or permanent.

24 (C) The law enforcement agency or agencies shall, within
25 three working days after receipt of this information, forward a
26 copy of the change of address information to the Department of
27 Justice. The Department of Justice shall forward appropriate
28 registration data to the law enforcement agency or agencies
29 having local jurisdiction of the new place of residence.

30 (2) If the person's new address is in a Department of
31 Corrections and Rehabilitation facility or state mental institution,
32 an official of the place of incarceration, placement, or
33 commitment shall, within 90 days of receipt of the person,
34 forward the registrant's change of address information to the
35 Department of Justice. The agency need not provide a physical
36 address for the registrant but shall indicate that he or she is
37 serving a period of incarceration or commitment in a facility
38 under the agency's jurisdiction. This paragraph shall apply to
39 persons received in a department facility or state mental
40 institution on or after January 1, 1999. The Department of Justice

1 shall forward the change of address information to the agency
2 with which the person last registered.

3 (3) If any person who is required to register pursuant to this
4 section changes his or her name, the person shall inform, in
5 person, the law enforcement agency or agencies with which he or
6 she is currently registered within five working days. The law
7 enforcement agency or agencies shall forward a copy of this
8 information to the Department of Justice within three working
9 days of its receipt.

10 (g) (1) Any person who is required to register under this
11 section based on a misdemeanor conviction or juvenile
12 adjudication who willfully violates any requirement of this
13 section is guilty of a misdemeanor punishable by imprisonment
14 in a county jail not exceeding one year.

15 (2) Except as provided in paragraphs (5), (7), and (9), any
16 person who is required to register under this section based on a
17 felony conviction or juvenile adjudication who willfully violates
18 any requirement of this section or who has a prior conviction or
19 juvenile adjudication for the offense of failing to register under
20 this section and who subsequently and willfully violates any
21 requirement of this section is guilty of a felony and shall be
22 punished by imprisonment in the state prison for 16 months, or
23 two or three years.

24 If probation is granted or if the imposition or execution of
25 sentence is suspended, it shall be a condition of the probation or
26 suspension that the person serve at least 90 days in a county jail.
27 The penalty described in this paragraph shall apply whether or
28 not the person has been released on parole or has been discharged
29 from parole.

30 (3) Any person determined to be a mentally disordered sex
31 offender or who has been found guilty in the guilt phase of trial
32 for an offense for which registration is required under this
33 section, but who has been found not guilty by reason of insanity
34 in the sanity phase of the trial, or who has had a petition
35 sustained in a juvenile adjudication for an offense for which
36 registration is required under this section pursuant to subdivision
37 (d), but who has been found not guilty by reason of insanity, who
38 willfully violates any requirement of this section is guilty of a
39 misdemeanor and shall be punished by imprisonment in a county
40 jail not exceeding one year. For any second or subsequent willful

violation of any requirement of this section, the person is guilty of a felony and shall be punished by imprisonment in the state prison for 16 months, or two or three years.

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

(5) Any person who has ever been adjudicated a sexually violent predator, as defined in Section 6600 of the Welfare and Institutions Code, and who fails to verify his or her registration every 90 days as required pursuant to subparagraph (E) of paragraph (1) of subdivision (a), shall be punished by imprisonment in the state prison, or in a county jail not exceeding one year.

(6) Except as otherwise provided in paragraph (5), any person who is required to register or reregister pursuant to clause (i) of subparagraph (C) of paragraph (1) of subdivision (a) and willfully fails to comply with the requirement that he or she reregister no less than every 30 days is guilty of a misdemeanor and shall be punished by imprisonment in a county jail at least 30 days, but not exceeding six months. A person who willfully fails to comply with the requirement that he or she reregister no less than every 30 days shall not be charged with this violation more often than once for a failure to register in any period of 90 days. Any person who willfully commits a third or subsequent violation of the requirements of subparagraph (C) of paragraph (1) of subdivision (a) that he or she reregister no less than every 30 days shall be punished in accordance with either paragraph (1) or (2) of this subdivision.

(7) Any person who fails to provide proof of residence as required by subparagraph (E) of paragraph (2) of subdivision (e), regardless of the offense upon which the duty to register is based,

1 is guilty of a misdemeanor punishable by imprisonment in a
2 county jail not exceeding six months.

3 (8) Any person who is required to register under this section
4 who willfully violates any requirement of this section is guilty of
5 a continuing offense as to each requirement he or she violated.

6 (9) In addition to any other penalty imposed under this
7 subdivision, the failure to provide information required on
8 registration and reregistration forms of the Department of Justice,
9 or the provision of false information, is a crime punishable by
10 imprisonment in a county jail for a period not exceeding one
11 year.

12 (h) Whenever any person is released on parole or probation
13 and is required to register under this section but fails to do so
14 within the time prescribed, the parole authority or the court, as
15 the case may be, shall order the parole or probation of the person
16 revoked. For purposes of this subdivision, “parole authority” has
17 the same meaning as described in Section 3000.

18 (i) Except as otherwise provided by law, the statements,
19 photographs, and fingerprints required by this section shall not be
20 open to inspection by the public or by any person other than a
21 regularly employed peace officer or other law enforcement
22 officer.

23 (j) In any case in which a person who would be required to
24 register pursuant to this section for a felony conviction is to be
25 temporarily sent outside the institution where he or she is
26 confined on any assignment within a city or county including
27 firefighting, disaster control, or of whatever nature the
28 assignment may be, the local law enforcement agency having
29 jurisdiction over the place or places where the assignment shall
30 occur shall be notified within a reasonable time prior to removal
31 from the institution. This subdivision shall not apply to any
32 person who is temporarily released under guard from the
33 institution where he or she is confined.

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

1 (l) (1) Every person who, prior to January 1, 1997, is required
2 to register under this section, shall be notified whenever he or she
3 next reregisters of the reduction of the registration period from
4 14 to 5 working days. This notice shall be provided in writing by
5 the registering agency or agencies. Failure to receive this
6 notification shall be a defense against the penalties prescribed by
7 subdivision (g) if the person did register within 14 days.

8 (2) Every person who, as a sexually violent predator, as
9 defined in Section 6600 of the Welfare and Institutions Code, is
10 required to verify his or her registration every 90 days, shall be
11 notified whenever he or she next registers of his or her increased
12 registration obligations. This notice shall be provided in writing
13 by the registering agency or agencies. Failure to receive this
14 notice shall be a defense against the penalties prescribed by
15 paragraph (5) of subdivision (g).

16 (m) The registration provisions of this section are applicable to
17 every person described in this section, without regard to when his
18 or her crime or crimes were committed or his or her duty to
19 register pursuant to this section arose, and to every offense
20 described in this section, regardless of when it was committed.

21 (n) On or before January 1, 2010, the Department of Justice
22 shall renovate the VCIN to do the following:

23 (1) Correct all software deficiencies affecting data integrity
24 and include designated data fields for all mandated sex offender
25 data.

26 (2) Consolidate and simplify program logic, thereby increasing
27 system performance and reducing system maintenance costs.

28 (3) Provide all necessary data storage, processing, and search
29 capabilities.

30 (4) Provide law enforcement agencies with full Internet access
31 to all sex offender data and photos.

32 (5) Incorporate a flexible design structure to readily meet
33 future demands for enhanced system functionality, including
34 public Internet access to sex offender information pursuant to
35 Section 290.46.

36 ~~SEC. 8.~~

37 *SEC. 12.* Section 290.03 is added to the Penal Code, to read:

38 290.03. (a) The Legislature finds and declares that a
39 comprehensive system of risk assessment, supervision,
40 monitoring and containment for registered sex offenders residing

1 in California communities is necessary to enhance public safety
2 and reduce the risk of recidivism posed by these offenders. The
3 Legislature further affirms and incorporates the following
4 findings and declarations, previously reflected in its enactment of
5 “Megan’s Law”:

6 (1) Sex offenders pose a potentially high risk of committing
7 further sex offenses after release from incarceration or
8 commitment, and the protection of the public from reoffending
9 by these offenders is a paramount public interest.

10 (2) It is a compelling and necessary public interest that the
11 public have information concerning persons convicted of
12 offenses involving unlawful sexual behavior collected pursuant
13 to Sections 290 and 290.4 to allow members of the public to
14 adequately protect themselves and their children from these
15 persons.

16 (3) Persons convicted of these offenses involving unlawful
17 sexual behavior have a reduced expectation of privacy because of
18 the public’s interest in public safety.

19 (4) In balancing the offenders’ due process and other rights
20 against the interests of public security, the Legislature finds that
21 releasing information about sex offenders under the
22 circumstances specified in the Sex Offender Punishment,
23 Control, and Containment Act of 2006 will further the primary
24 government interest of protecting vulnerable populations from
25 potential harm.

26 (5) The registration of sex offenders, the public release of
27 specified information about certain sex offenders pursuant to
28 Sections 290 and 290.4, and public notice of the presence of
29 certain high risk sexual offenders in communities will further the
30 governmental interests of public safety and public scrutiny of the
31 criminal and mental health systems that deal with these
32 offenders.

33 (6) To protect the safety and general welfare of the people of
34 this state, it is necessary to provide for continued registration of
35 sex offenders, for the public release of specified information
36 regarding certain more serious sex offenders, and for community
37 notification regarding high risk sex offenders who are about to be
38 released from custody or who already reside in communities in
39 this state. This policy of authorizing the release of necessary and
40 relevant information about serious and high risk sex offenders to

members of the general public is a means of assuring public protection and shall not be construed as punitive.

(7) The Legislature also declares, however, that in making information available about certain sex offenders to the public, it does not intend that the information be used to inflict retribution or additional punishment on any person convicted of a sexual offense. While the Legislature is aware of the possibility of misuse, it finds that the dangers to the public of nondisclosure far outweigh the risk of possible misuse of the information. The Legislature is further aware of studies in Oregon and Washington indicating that community notification laws and public release of similar information in those states have resulted in little criminal misuse of the information and that the enhancement to public safety has been significant.

(b) In enacting the Sex Offender Punishment, Control and Containment Act of 2006, the Legislature hereby creates a standardized, statewide system to identify, assess, monitor and contain known sex offenders for the purpose of reducing the risk of recidivism posed by these offenders, thereby protecting victims and potential victims from future harm.

~~SEC. 9.~~

SEC. 13. Section 290.04 is added to the Penal Code, to read:

290.04. (a) Commencing on January 1, 2007, all adult males who are required to register as a sex offender pursuant to Section 290 shall be subject to assessment by the STATIC-99 assessment tool. The STATIC-99 and its successor instruments shall be the sole actuarial risk assessment instrument used for registered sex offenders.

(b) The Department of Corrections and Rehabilitation, in consultation with the Attorney General and local law enforcement, shall establish and implement a schedule for conducting, no later than January 1, 2012, STATIC-99 assessments of adult male registered sex offenders living in California who no longer are in custody, on probation, or on parole as of the effective date of this section. These persons shall be administered a STATIC-99 assessment according to the implementation schedule during their annual registration update by persons authorized to administer the instrument. The schedule adopted by the department shall give priority to assessing those registrants with the most recent sex offense convictions. Any

1 adult male required to register as a sex offender pursuant to
2 Section 290 may seek an assessment *by a state agency* before
3 their scheduled assessment period at his or her own cost as
4 determined by the department. These assessments shall be
5 conducted in a manner consistent with the requirements of this
6 section.

7 (c) On or before January 1, 2010, the Department of
8 Corrections and Rehabilitation, in consultation with the
9 Department of Mental Health and experts in sex offender risk
10 assessment and the use of actuarial instruments in predicting sex
11 offender risk, shall periodically evaluate and update the
12 STATIC-99 or its successor instrument to ensure that
13 California's standardized actuarial assessment instrument for
14 assessing sex offender risk reflects reliable, objective and
15 well-established protocols for predicting sex offender risk of
16 recidivism, has been scientifically validated with multiple
17 cross-validations, and is widely accepted by the courts.

18 (d) On or before January 1, 2008, the Department of
19 Corrections and Rehabilitation, in consultation with the
20 Department of Mental Health and experts in sex offender risk
21 assessment and the use of actuarial instruments in predicting sex
22 offender risk, shall research actuarial risk assessment tools for
23 female and juvenile registered sex offenders, and shall make
24 recommendations to the Governor and to the Legislature
25 concerning the appropriate actuarial risk assessment instrument
26 to be used to assess those populations.

27 (e) On or before January 1, 2008, the Department of
28 Corrections and Rehabilitation, in consultation with the
29 Department of Mental Health and experts in sex offender risk
30 assessment and the use of actuarial instruments in predicting sex
31 offender risk, shall establish a training program for probation
32 officers, parole officers, and any other persons authorized by law
33 to perform risk assessment. The department shall use an expert in
34 the field of risk assessment and the use of actuarial instruments in
35 predicting sex offender risk to conduct periodic training.
36 Probation departments and regional parole officers shall
37 designate persons within their organizations to attend a yearly
38 training and shall train others within their organizations who are
39 designated to perform risk assessments as required or authorized
40 by law.

~~SEC. 10.~~

SEC. 14. Section 290.05 is added to the Penal Code, to read:

290.05. (a) Commencing on January 1, 2007, and subject to the provisions of Section 290.04, the actuarial risk assessment instrument for adult males required to register as sex offenders pursuant to Section 290 shall be the STATIC-99.

(b) There shall be four risk assessment tier levels assignable to registered sex offenders under this instrument: low, moderate low, moderate high, and high.

~~SEC. 11.~~

SEC. 15. Section 290.06 is added to the Penal Code, to read:

290.06. (a) Probation officers trained in the use of STATIC-99 shall perform a presentencing risk assessment of every adult male convicted of an offense that requires him to register as a sex offender pursuant to Section 290. Probation officers shall assign a risk assessment tier level score to the assessment, and shall include that score in a presentencing or probation officer's report. Probation officers who conduct sex offender risk assessments shall be trained in an approved program established pursuant to subdivision (d) of Section 290.04, and shall receive updated training no less frequently than every two years, as determined by the Department of Corrections and Rehabilitation.

(b) (1) The designated probation officer shall compile a Facts of Offense Sheet for every adult male convicted of an offense that requires him to register as a sex offender under Section 290 containing the following information concerning the offender and his offense: name; all known aliases; CII number; physical description; criminal history, including registerable sex offenses, other offenses, and arrests that did not result in conviction for sexual or violent offenses; unique circumstances of the offense for which registration is required, including but not limited to, weapons used or victim pattern; risk assessment tier level; and type of victims targeted in the past. The defendant may move the court to correct the Facts of the Offense Sheet. Any corrections to the Facts of the Offense Sheet offered by the defendant shall be made consistent with Section 1204. The Facts of Offense Sheet shall be included in the probation officer's report and shall also be forwarded to the incarcerating agency, if any. A copy of the Facts of Offense Sheet shall be sent by the probation

1 department to the registering law enforcement agency in the
2 jurisdiction where the person will reside on supervised probation
3 within three days of the person's release on probation. In
4 addition, probation shall send a copy of the Facts of Offense
5 Sheet to the Department of Justice Sex Offender Tracking
6 Program within three days of the person's sex offense conviction,
7 and it shall be made part of the registered sex offender's file
8 maintained by the Sex Offender Tracking Program. The Facts of
9 Offense Sheet shall thereafter be made available to law
10 enforcement by the Department of Justice, which shall post it
11 with the offender's record on the Department of Justice Internet
12 Web site maintained pursuant to Section 290.46, and shall be
13 accessible only to law enforcement.

14 (2) If the registered sex offender is sentenced to a period of
15 incarceration, at either the state prison or a county jail, the Facts
16 of Offense Sheet shall be sent by the Department of Corrections
17 and Rehabilitation or the county sheriff to the registering law
18 enforcement agency in the jurisdiction where the registered sex
19 offender will be paroled or will live on release, within three days
20 of the person's release. If the registered sex offender is
21 committed to the Department of Mental Health, the Facts of
22 Offense Sheet shall be sent by the Department of Mental Health
23 to the registering law enforcement agency in the jurisdiction
24 where the person will live on release, within three days of
25 release.

26 ~~SEC. 12:~~

27 *SEC. 16.* Section 290.07 is added to the Penal Code, to read:

28 290.07. (a) All adult males who have been convicted of an
29 offense for which they are required to register as a sex offender
30 pursuant to Section 290 and who are incarcerated in state prison
31 or committed to the Department of Mental Health shall be
32 subject to sex offender risk assessment pursuant to the provisions
33 of this chapter. The assessment shall take place at least four
34 months, but no sooner than 10 months, prior to release from
35 incarceration or commitment.

36 (b) The prerelease risk assessment shall be performed by the
37 Department of Corrections and Rehabilitation. Persons
38 administering the assessment shall be trained through an
39 approved program established pursuant to subdivision (d) of
40 Section 290.04, and shall receive updated training no less

1 frequently than every two years as determined by the Department
2 of Corrections and Rehabilitation.

3 (c) Adult male registered sex offenders who, subsequent to
4 their conviction for a sex offense, are convicted of a separate
5 criminal offense resulting in incarceration or commitment, or
6 which would require a probation officer's report, but who have
7 not been the subject of a risk assessment, shall be assessed in
8 accordance with this chapter.

9 ~~SEC. 13.~~

10 *SEC. 17.* Section 290.08 is added to the Penal Code, to read:

11 290.08. (a) Adult male registered sex offenders who are on
12 probation or parole as of the effective date of this section shall be
13 subject to a risk assessment using the STATIC-99. Adult male
14 sex offenders convicted in a jurisdiction other than California
15 who are required to register while living in California pursuant to
16 Section 290, who are being supervised in California under an
17 interstate compact or who are on federal or military supervision
18 in California, shall be also be assessed. Those offenders who
19 were assigned the highest risk level under the STATIC-99 in the
20 jurisdiction where they were convicted shall be given priority in
21 performing a new risk assessment.

22 (b) Probation departments and the parole authority shall create
23 specialized caseloads for all sex offenders, and shall develop
24 expertise in sex offender management. Sex offenders assessed at
25 high risk levels shall be monitored by agents responsible for
26 reduced caseloads.

27 (c) The risk assessment tier level assigned to a registered sex
28 offender shall be used to determine the level of monitoring and
29 control on supervision.

30 ~~SEC. 14.~~

31 *SEC. 18.* Section 290.09 is added to the Penal Code, to read:

32 290.09. (a) Notwithstanding any other law, any person
33 authorized and trained to perform STATIC-99 risk assessments
34 shall be granted access to all relevant records pertaining to a
35 registered sex offender, including but not limited to criminal
36 histories, sex offender registration records, police reports,
37 probation and pre-sentencing reports, judicial records and case
38 files, juvenile records, records maintained by Child Protective
39 Services, psychological evaluations and psychiatric hospital
40 reports, sexually violent predator treatment program reports, and

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

6 (b) All state and local agencies and departments that maintain
7 records that contain information about registered sex offenders,
8 including but not limited to, the courts, probation, parole, law
9 enforcement agencies, the Department of Justice, district
10 attorney's and public defender's offices, and Child Protective
11 Services, shall maintain those records during the lifetime of the
12 registered sex offender.

13 *SEC. 19. Section 290.3 of the Penal Code is amended to*
14 *read:*

15 290.3. (a) Every person who is convicted of any offense
16 specified in subdivision (a) of Section 290 shall, in addition to
17 any imprisonment or fine, or both, imposed for violation of the
18 underlying offense, be punished by a fine of ~~two~~ *three* hundred
19 dollars ~~(\$200)~~ *(\$300)* upon the first conviction or a fine of ~~three~~
20 *five* hundred dollars ~~(\$300)~~ *(\$500)* upon the second and each
21 subsequent conviction, unless the court determines that the
22 defendant does not have the ability to pay the fine.

23 An amount equal to all fines collected pursuant to this
24 subdivision during the preceding month upon conviction of, or
25 upon the forfeiture of bail by, any person arrested for, or
26 convicted of, committing an offense specified in subdivision (a)
27 of Section 290, shall be transferred once a month by the county
28 treasurer to the Controller for deposit in the General Fund.
29 Moneys deposited in the General Fund pursuant to this
30 subdivision shall be transferred by the Controller as provided in
31 subdivision (b).

32 (b) Out of the moneys deposited pursuant to subdivision (a) as
33 a result of second and subsequent convictions of Section 290,
34 one-third shall first be transferred to the Department of Justice
35 Sexual Habitual Offender Fund, as provided in paragraph (1) of
36 this subdivision. Out of the remainder of all moneys deposited
37 pursuant to subdivision (a), 50 percent shall be transferred to the
38 Department of Justice Sexual Habitual Offender Fund, as
39 provided in paragraph (1), 25 percent shall be transferred to the
40 Department of Justice DNA Testing Fund, as provided in

1 paragraph (2), and 25 percent shall be allocated equally to
2 counties that maintain a local DNA testing laboratory, as
3 provided in paragraph (3).

4 (1) Those moneys so designated shall be transferred to the
5 Department of Justice Sexual Habitual Offender Fund created
6 pursuant to paragraph (5) of subdivision (b) of Section 11170
7 and, when appropriated by the Legislature, shall be used for the
8 purposes of Chapter 9.5 (commencing with Section 13885) and
9 Chapter 10 (commencing with Section 13890) of Title 6 of Part 4
10 for the purpose of monitoring, apprehending, and prosecuting
11 sexual habitual offenders.

12 (2) Those moneys so designated shall be directed to the
13 Department of Justice and transferred to the Department of
14 Justice DNA Testing Fund, which is hereby created, for the
15 exclusive purpose of testing deoxyribonucleic acid (DNA)
16 samples for law enforcement purposes. The moneys in that fund
17 shall be available for expenditure upon appropriation by the
18 Legislature.

19 (3) Those moneys so designated shall be allocated equally and
20 distributed quarterly to counties that maintain a local DNA
21 testing laboratory. Before making any allocations under this
22 paragraph, the Controller shall deduct the estimated costs that
23 will be incurred to set up and administer the payment of these
24 funds to the counties. Any funds allocated to a county pursuant to
25 this paragraph shall be used by that county for the exclusive
26 purpose of testing DNA samples for law enforcement purposes.

27 (c) Notwithstanding any other provision of this section, the
28 Department of Corrections ~~or the Department of the Youth~~
29 ~~Authority and Rehabilitation~~ may collect a fine imposed
30 pursuant to this section from a person convicted of a violation of
31 any offense listed in subdivision (a) of Section 290, that results in
32 incarceration in a facility under the jurisdiction of the
33 ~~Department of Corrections or the Department of the Youth~~
34 ~~Authority department~~. All moneys collected by the ~~Department~~
35 ~~of Corrections or the Department of the Youth Authority~~
36 ~~department~~ under this subdivision shall be transferred, once a
37 month, to the Controller for deposit in the General Fund, as
38 provided in subdivision (a), for transfer by the Controller, as
39 provided in subdivision (b).

1 (d) *An amount equal to one hundred dollars (\$100) for every*
2 *fine imposed pursuant to subdivision (a) in excess of one hundred*
3 *dollars (\$100) shall be transferred to the Department of*
4 *Corrections and Rehabilitation to fund SAFE teams pursuant to*
5 *Chapter 9.7 (commencing with Section 13887) of Title 6 of Part*
6 *4.*

7 ~~SEC. 15.~~

8 SEC. 20. Section 290.46 of the Penal Code is amended to
9 read:

10 290.46. (a) On or before the dates specified in this section,
11 the Department of Justice shall make available information
12 concerning persons who are required to register pursuant to
13 Section 290 to the public via an Internet Web site as specified in
14 this section. The department shall update the Internet Web site on
15 an ongoing basis. All information identifying the victim by name,
16 birth date, address, or relationship to the registrant shall be
17 excluded from the Internet Web site. The name or address of the
18 person's employer and the listed person's criminal history other
19 than the specific crimes for which the person is required to
20 register shall not be included on the Internet Web site. The Web
21 site shall display the risk assessment tier level for each posted
22 registrant who has been assessed by the STATIC-99. If no risk
23 assessment has been done, the Web site shall state, "Risk
24 Level-Not Yet Assessed." The Department of Corrections and
25 Rehabilitation and the Department of Mental Health shall
26 provide the risk assessment tier level for each registered sex
27 offender assessed to the Department of Justice Sex Offender
28 Tracking Program at least two months prior to release from
29 incarceration or commitment. Probation departments shall
30 provide the risk assessment tier level for each registered sex
31 offender under their jurisdiction to the Department of Justice Sex
32 Offender Tracking Program no later than three days following
33 release on probation. The Department of Mental Health shall
34 provide to the Department of Justice Sex Offender Tracking
35 Program the names of all persons committed to its custody
36 pursuant to Article 4 (commencing with Section 6600) of
37 Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions
38 Code, within 30 days of commitment, and shall provide the
39 names of all of those persons released from its custody within
40 five working days of release. The Department of Corrections and

1 Rehabilitation shall provide the actual release date of each
2 registered sex offender to the Department of Justice Sex Offender
3 Tracking Program within five days of release or as soon as
4 practicable thereafter. The Web site shall display the date of
5 conviction and the date of release from incarceration or
6 commitment for each posted registrant. The Web site shall also
7 post, in a separate section from those listing current registered
8 sex offenders, the names and reported state of destination, if any,
9 of former registrants who have been deported or moved out of
10 state. The Internet Web site shall be translated into languages
11 other than English as determined by the department.

12 (b) (1) On or before July 1, 2005, with respect to a person
13 who has been convicted of the commission or the attempted
14 commission of any of the offenses listed in, or who is described
15 in, paragraph (2), the Department of Justice shall make available
16 to the public via the Internet Web site his or her name and known
17 aliases, a photograph, a physical description, including gender
18 and race, date of birth, criminal history, *prior adjudication as a*
19 *sexually violent predator*, the address at which the person resides,
20 and any other information that the Department of Justice deems
21 relevant, but not the information excluded pursuant to
22 subdivision (a).

23 (2) This subdivision shall apply to the following offenses and
24 offenders:

25 (A) Section 207 committed with intent to violate Section 261,
26 286, 288, 288a, or 289.

27 (B) Section 209 committed with intent to violate Section 261,
28 286, 288, 288a, or 289.

29 (C) Paragraph (2) or (6) of subdivision (a) of Section 261.

30 (D) Section 264.1.

31 (E) Section 269.

32 (F) Subdivision (c) or (d) of Section 286.

33 (G) Subdivision (a), (b), or (c) of Section 288, provided that
34 the offense is a felony.

35 (H) Subdivision (c) or (d) of Section 288a.

36 (I) Section 288.5 or 288.7.

37 (J) Subdivision (a) or (j) of Section 289.

38 (K) Any person who has ever been adjudicated a sexually
39 violent predator as defined in Section 6600 of the Welfare and
40 Institutions Code.

(c) (1) On or before July 1, 2005, with respect to a person who has been convicted of the commission or the attempted commission of any of the offenses listed in paragraph (2), the Department of Justice shall make available to the public via the Internet Web site his or her name and known aliases, a photograph, a physical description, including gender and race, date of birth, criminal history, the community of residence and ZIP Code in which the person resides or the county in which the person is registered as a transient, and any other information that the Department of Justice deems relevant, but not the information excluded pursuant to subdivision (a). On or before July 1, 2006, the Department of Justice shall determine whether any person convicted of an offense listed in paragraph (2) also has one or more prior or subsequent convictions of an offense listed in paragraph (2) of subdivision (a) of Section 290, and, for those persons, the Department of Justice shall make available to the public via the Internet Web site the address at which the person resides. However, the address at which the person resides shall not be disclosed until a determination is made that the person is, by virtue of his or her additional prior or subsequent conviction of an offense listed in paragraph (2) of subdivision (a) of Section 290, subject to this subdivision.

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

(A) Section 220, except assault to commit mayhem.

(B) Paragraph (1), (3), or (4) of subdivision (a) of Section 261.

(C) Paragraph (2) of subdivision (b), or subdivision (f), (g), or (i), of Section 286.

(D) Paragraph (2) of subdivision (b), or subdivision (f), (g), or (i), of Section 288a.

(E) Subdivision (b), (d), (e), or (i) of Section 289.

(d) (1) On or before July 1, 2005, with respect to a person who has been convicted of the commission or the attempted commission of any of the offenses listed in, or who is described in, this subdivision, the Department of Justice shall make available to the public via the Internet Web site his or her name and known aliases, a photograph, a physical description, including gender and race, date of birth, criminal history, the community of residence and ZIP Code in which the person resides or the county in which the person is registered as a transient, and any other information that the Department of

Justice deems relevant, but not the information excluded pursuant to subdivision (a) or the address at which the person resides.

(2) This subdivision shall apply to the following offenses and offenders:

(A) Subdivision (a) of Section 243.4, provided that the offense is a felony.

(B) Section 266, provided that the offense is a felony.

(C) Section 266c, provided that the offense is a felony.

(D) Section 266j.

(E) Section 267.

(F) Subdivision (c) of Section 288, provided that the offense is a misdemeanor.

(G) Section 626.83 or 647.6.

(H) Any person required to register pursuant to Section 290 based upon an out-of-state conviction, unless that person is excluded from the Internet Web site pursuant to subdivision (e). However, if the Department of Justice has determined that the out-of-state crime, if committed or attempted in this state, would have been punishable in this state as a crime described in subparagraph (A) of paragraph (2) of subdivision (a) of Section 290, the person shall be placed on the Internet Web site as provided in subdivision (b) or (c), as applicable to the crime.

(e) (1) If a person has been convicted of the commission or the attempted commission of any of the offenses listed in this subdivision, and he or she has been convicted of no other offense listed in subdivision (b), (c), or (d) other than those listed in this subdivision, that person may file an application with the Department of Justice, on a form approved by the department, for exclusion from the Internet Web site. If the department determines that the person meets the requirements of this subdivision, the department shall grant the exclusion and no information concerning the person shall be made available via the Internet Web site described in this section. He or she bears the burden of proving the facts that make him or her eligible for exclusion from the Internet Web site. However, a person who has filed for or been granted an exclusion from the Internet Web site is not relieved of his or her duty to register as a sex offender pursuant to Section 290 nor from any otherwise applicable provision of law.

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

1 (A) A felony violation of subdivision (a) of Section 243.4.

2 (B) Section 647.6, if the offense is a misdemeanor, and the
3 person has a risk assessment level of low or moderate low.

4 (C) (i) An offense for which the offender successfully
5 completed probation, provided that the offender submits to the
6 department a certified copy of a probation report, presentencing
7 report, report prepared pursuant to Section 288.1, or other official
8 court document that clearly demonstrates both of the following:

9 (I) The offender was the victim's parent, stepparent, sibling, or
10 grandparent.

11 (II) The crime did not involve either oral copulation or
12 penetration of the vagina or rectum of either the victim or the
13 offender by the penis of the other or by any foreign object.

14 (ii) An offense for which the offender is on probation at the
15 time of his or her application, provided that the offender submits
16 to the department a certified copy of a probation report,
17 presentencing report, report prepared pursuant to Section 288.1,
18 or other official court document that clearly demonstrates both of
19 the following:

20 (I) The offender was the victim's parent, stepparent, sibling, or
21 grandparent.

22 (II) The crime did not involve either oral copulation or
23 penetration of the vagina or rectum of either the victim or the
24 offender by the penis of the other or by any foreign object.

25 (iii) If, subsequent to his or her application, the offender
26 commits a violation of probation resulting in his or her
27 incarceration in county jail or state prison, his or her exclusion,
28 or application for exclusion, from the Internet Web site shall be
29 terminated.

30 (iv) For the purposes of this subparagraph, "successfully
31 completed probation" means that during the period of probation
32 the offender neither received additional county jail or state prison
33 time for a violation of probation nor was convicted of another
34 offense resulting in a sentence to county jail or state prison.

35 (3) The department shall periodically review the list of those
36 persons excluded pursuant to this subdivision. If it determines
37 that a person who was granted an exclusion under a former
38 version of this subdivision would not qualify for an exclusion
39 under the current version of this subdivision, the department shall
40 rescind the exclusion, make a reasonable effort to provide

1 notification to the person that the exclusion has been rescinded,
2 and, no sooner than 30 days after notification is attempted, make
3 information about the offender available to the public on the
4 Internet Web site as provided in this section.

5 (f) The Department of Justice shall make a reasonable effort to
6 provide notification to persons who have been convicted of the
7 commission or attempted commission of an offense specified in
8 subdivision (b), (c), or (d), that on or before July 1, 2005, the
9 department is required to make information about specified sex
10 offenders available to the public via an Internet Web site as
11 specified in this section. The Department of Justice shall also
12 make a reasonable effort to provide notice that some offenders
13 are eligible to apply for exclusion from the Internet Web site.

14 (g) (1) A designated law enforcement entity, as defined in
15 subdivision (f) of Section 290.45, may make available
16 information concerning persons who are required to register
17 pursuant to Section 290 to the public via an Internet Web site as
18 specified in paragraph (2).

19 (2) The law enforcement entity may make available by way of
20 an Internet Web site the information described in subdivision (c)
21 if it determines that the public disclosure of the information
22 about a specific offender by way of the entity's Internet Web site
23 is necessary to ensure the public safety based upon information
24 available to the entity concerning that specific offender.

25 (3) The information that may be provided pursuant to this
26 subdivision may include the information specified in subdivision
27 (b) of Section 290.45. However, that offender's address may not
28 be disclosed unless he or she is a person whose address is on the
29 Department of Justice's Internet Web site pursuant to subdivision
30 (b) or (c).

31 (h) For purposes of this section, "offense" includes the
32 statutory predecessors of that offense, or any offense committed
33 in another jurisdiction that, if committed or attempted to be
34 committed in this state, would have been punishable in this state
35 as an offense listed in subparagraph (A) of paragraph (2) of
36 subdivision (a) of Section 290.

37 (i) Notwithstanding Section 6254.5 of the Government Code,
38 disclosure of information pursuant to this section is not a waiver
39 of exemptions under Chapter 3.5 (commencing with Section
40 6250) of Title 1 of Division 7 of the Government Code and does

1 not affect other statutory restrictions on disclosure in other
2 situations.

3 (j) (1) Any person who uses information disclosed pursuant to
4 this section to commit a misdemeanor shall be subject to, in
5 addition to any other penalty or fine imposed, a fine of not less
6 than ten thousand dollars (\$10,000) and not more than fifty
7 thousand dollars (\$50,000).

8 (2) Any person who uses information disclosed pursuant to
9 this section to commit a felony shall be punished, in addition and
10 consecutive to any other punishment, by a five-year term of
11 imprisonment in the state prison.

12 (k) Any person who is required to register pursuant to Section
13 290 who enters an Internet Web site established pursuant to this
14 section shall be punished by a fine not exceeding one thousand
15 dollars (\$1,000), imprisonment in a county jail for a period not to
16 exceed six months, or by both that fine and imprisonment.

17 (l) (1) A person is authorized to use information disclosed
18 pursuant to this section only to protect a person at risk.

19 (2) Except as authorized under paragraph (1) or any other
20 provision of law, use of any information that is disclosed
21 pursuant to this section for purposes relating to any of the
22 following is prohibited:

23 (A) Health insurance.

24 (B) Insurance.

25 (C) Loans.

26 (D) Credit.

27 (E) Employment.

28 (F) Education, scholarships, or fellowships.

29 (G) Housing or accommodations.

30 (H) Benefits, privileges, or services provided by any business
31 establishment.

32 (3) This section shall not affect authorized access to, or use of,
33 information pursuant to, among other provisions, Sections 11105
34 and 11105.3, Section 8808 of the Family Code, Sections 777.5
35 and 14409.2 of the Financial Code, Sections 1522.01 and
36 1596.871 of the Health and Safety Code, and Section 432.7 of
37 the Labor Code.

38 (4) (A) Any use of information disclosed pursuant to this
39 section for purposes other than those provided by paragraph (1)
40 or in violation of paragraph (2) shall make the user liable for the

1 actual damages, and any amount that may be determined by a
2 jury or a court sitting without a jury, not exceeding three times
3 the amount of actual damage, and not less than two hundred fifty
4 dollars (\$250), and attorney's fees, exemplary damages, or a civil
5 penalty not exceeding twenty-five thousand dollars (\$25,000).

6 (B) Whenever there is reasonable cause to believe that any
7 person or group of persons is engaged in a pattern or practice of
8 misuse of the information available via an Internet Web site
9 established pursuant to this section in violation of paragraph (2),
10 the Attorney General, any district attorney, or city attorney, or
11 any person aggrieved by the misuse is authorized to bring a civil
12 action in the appropriate court requesting preventive relief,
13 including an application for a permanent or temporary injunction,
14 restraining order, or other order against the person or group of
15 persons responsible for the pattern or practice of misuse. The
16 foregoing remedies shall be independent of any other remedies or
17 procedures that may be available to an aggrieved party under
18 other provisions of law, including Part 2 (commencing with
19 Section 43) of Division 1 of the Civil Code.

20 (m) The public notification provisions of this section are
21 applicable to every person described in this section, without
22 regard to when his or her crimes were committed or his or her
23 duty to register pursuant to Section 290 arose, and to every
24 offense described in this section, regardless of when it was
25 committed.

26 (n) On or before July 1, 2006, and every year thereafter, the
27 Department of Justice shall make a report to the Legislature
28 concerning the operation of this section.

29 (o) A designated law enforcement entity and its employees
30 shall be immune from liability for good faith conduct under this
31 section.

32 (p) The Attorney General, in collaboration with local law
33 enforcement and others knowledgeable about sex offenders, shall
34 develop strategies to assist members of the public in
35 understanding and using publicly available information about
36 registered sex offenders to further public safety. These strategies
37 may include but are not limited to a hotline for community
38 inquiries, neighborhood and business guidelines for how to
39 respond to information posted on this Web site, and any other
40 resource that promotes public education about these offenders.

1 ~~SEC. 16.~~

2 *SEC. 21.* Section 311.4 of the Penal Code is amended to read:

3 311.4. (a) Every person who, with knowledge that a person is
4 a minor, or who, while in possession of any facts on the basis of
5 which he or she should reasonably know that the person is a
6 minor, hires, employs, or uses the minor to do or assist in doing
7 any of the acts described in Section 311.2, is, for a first offense,
8 guilty of a misdemeanor. If the person has previously been
9 convicted of any violation of this section, the court may, in
10 addition to the punishment authorized in Section 311.9, impose a
11 fine not exceeding fifty thousand dollars (\$50,000).

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

32 (c) Every person who, with knowledge that a person is a minor
33 under the age of 18 years, or who, while in possession of any
34 facts on the basis of which he or she should reasonably know that
35 the person is a minor under the age of 18 years, knowingly
36 promotes, employs, uses, persuades, induces, or coerces a minor
37 under the age of 18 years, or any parent or guardian of a minor
38 under the age of 18 years under his or her control who knowingly
39 permits the minor, to engage in or assist others to engage in
40 either posing or modeling alone or with others for purposes of

1 preparing any representation of information, data, or image,
2 including, but not limited to, any film, filmstrip, photograph,
3 negative, slide, photocopy, videotape, video laser disc, computer
4 hardware, computer software, computer floppy disc, data storage
5 media, CD-ROM, or computer-generated equipment or any other
6 computer-generated image that contains or incorporates in any
7 manner, any film, filmstrip, or a live performance involving,
8 sexual conduct by a minor under the age of 18 years alone or
9 with other persons or animals, is guilty of a felony. It is not
10 necessary to prove commercial purposes in order to establish a
11 violation of this subdivision. A violation of this subdivision is
12 separate and distinct from a violation of subdivision (b).

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

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

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

36 (f) In every prosecution under this section involving a minor
37 under the age of 14 years at the time of the offense, the age of the
38 victim shall be pled and proven for the purpose of the enhanced
39 penalty provided in Section 647.6. Failure to plead and prove that
40 the victim was under the age of 14 years at the time of the

1 offense is not a bar to prosecution under this section if it is
2 proven that the victim was under the age of 18 years at the time
3 of the offense.

4 ~~SEC. 17.~~

5 *SEC. 22.* Section 311.11 of the Penal Code is amended to
6 read:

7 311.11. (a) (1) Every person who knowingly possesses or
8 controls any matter, representation of information, data, or
9 image, including, but not limited to, any film, filmstrip,
10 photograph, negative, slide, photocopy, videotape, video laser
11 disc, computer hardware, computer software, computer floppy
12 disc, data storage media, CD-ROM, or computer-generated
13 equipment or any other computer-generated image that contains
14 or incorporates in any manner, any film or filmstrip, the
15 production of which involves the use of a person under the age of
16 18 years, knowing that the matter depicts a person under the age
17 of 18 years personally engaging in or simulating sexual conduct,
18 as defined in subdivision (d) of Section 311.4, is guilty of a
19 public offense and shall be punished by imprisonment in the
20 county jail for up to one year, or by a fine not exceeding two
21 thousand five hundred dollars (\$2,500), or by both the fine and
22 imprisonment.

23 (2) If that matter depicts a minor who is prepubescent, the
24 person is guilty of a ~~misdemeanor~~ or felony.

25 (3) If that matter depicts a minor who is prepubescent and the
26 person intends to distribute or exchange the matter with another
27 person, regardless of commercial intent, the person is guilty of a
28 felony.

29 (b) Every person who commits a violation of subdivision (a)
30 and who has been previously convicted of a violation of this
31 section, or of an offense described in subparagraph (A) of
32 paragraph (2) of subdivision (a) of Section 290, or an attempt to
33 commit any of those offenses, is guilty of a felony and shall be
34 punished by imprisonment for two, four, or six years.

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

37 (d) This section does not apply to drawings, figurines, statues,
38 or any film rated by the Motion Picture Association of America,
39 nor does it apply to live or recorded telephone messages when

1 transmitted, disseminated, or distributed as part of a commercial
2 transaction.

3 ~~SEC. 18.~~

4 *SEC. 23.* Section 311.12 is added to the Penal Code, to read:

5 311.12. Any monetary assets gained from the production,
6 publication, sale, distribution, exchange, or control of any matter
7 that depicts a minor under 18 years of age that is unlawful
8 pursuant to Section 311.1, 311.2, 311.3, 311.4, 311.5, 311.10, or
9 311.11, is subject to forfeiture, upon conviction for a violation of
10 one of those sections. Upon petition by the prosecuting attorney,
11 at any time following sentencing for a violation of one of those
12 sections, the court shall conduct a hearing to determine the
13 amount of monetary assets that are subject to forfeiture. The
14 Civil Discovery Act of 1986 (Article 3 (commencing with
15 Section 2016) of Chapter 3 of Title 3 of Part 4 of the Code of
16 Civil Procedure) applies to that hearing.

17 ~~SEC. 19.~~

18 *SEC. 24.* Section 626.8 of the Penal Code is amended to read:

19 626.8. (a) Any person who comes into any school building or
20 upon any school ground, or street, sidewalk, or public way
21 adjacent thereto, without lawful business thereon, and whose
22 presence or acts interfere with the peaceful conduct of the
23 activities of the school or disrupt the school or its pupils or
24 school activities, unless the person is a parent or guardian of a
25 child attending that school, or is a student at the school or has
26 prior written permission for the entry from the chief
27 administrative officer of that school, is guilty of a misdemeanor
28 if he or she does any of the following:

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

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

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

1 This section shall not be utilized 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. 20.~~

4 *SEC. 25.* Section 626.83 is added to the Penal Code, to read:

5 626.83. (a) Any person who has been convicted of a crime
6 listed in subparagraph (A) of paragraph (2) of subdivision (a) of
7 Section 290, who comes into any school building or upon any
8 school ground, without lawful business thereon or written
9 permission from the chief administrative official of that school,
10 or who loiters about any street, sidewalk, or public way adjacent
11 to any school building, school grounds, public playground, or
12 other youth recreational facility where minors are present without
13 lawful business thereon, is guilty of a misdemeanor.

14 (b) Any person who has been convicted of a crime listed in
15 subparagraph (A) of paragraph (2) of subdivision (a) of Section
16 290 where the victim was an elderly or dependent person, as
17 defined in Section 288, who comes onto any property where
18 elderly or dependent persons reside without lawful business
19 thereon or written permission from the director of the facility, is
20 guilty of a misdemeanor.

21 (c) Punishment for violation of this section shall be as follows:

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

26 (2) If the defendant has been previously convicted once of a
27 violation of this section, by imprisonment in a county jail for a
28 period of not less than 10 days or more than six months, or by
29 both imprisonment and a fine of not exceeding five hundred
30 dollars (\$500), and shall not be released on probation, parole, or
31 any other basis until he or she has served not less than 10 days.

32 (3) If the defendant has been previously convicted two or more
33 times of a violation of this section, by imprisonment in a county
34 jail for a period of not less than 90 days or more than six months,
35 or by both imprisonment and a fine of not exceeding five
36 hundred dollars (\$500), and shall not be released on probation,
37 parole, or any other basis until he or she has served not less than
38 90 days.

39 (d) Local jurisdictions shall post signs at all relevant locations
40 informing the public of the provisions of this section.

1 *SEC. 26. Section 647.6 of the Penal Code is amended to*
2 *read:*

3 647.6. (a) (1) Every person who annoys or molests any child
4 under the age of 18 shall be punished by a fine not exceeding ~~one~~
5 *five thousand dollars* ~~(\$1,000)~~ *(\$5,000)*, by imprisonment in a
6 county jail not exceeding one year, or by both the fine and
7 imprisonment.

8 (2) *Every person who, motivated by an unnatural or abnormal*
9 *sexual interest in children, engages in conduct with an adult*
10 *whom he or she believes to be a child under 18 years of age,*
11 *which conduct, if directed toward a child under 18 years of age,*
12 *would be a violation of this section, shall be punished by a fine*
13 *not exceeding five thousand dollars (\$5,000), by imprisonment in*
14 *a county jail for up to one year, or by both that fine and*
15 *imprisonment.*

16 (b) Every person who violates this section after having
17 entered, without consent, an inhabited dwelling house, or trailer
18 coach as defined in Section 635 of the Vehicle Code, or the
19 inhabited portion of any other building, shall be punished by
20 imprisonment in the state prison, or in a county jail not exceeding
21 one year, *and by a fine not exceeding five thousand dollars*
22 *(\$5,000).*

23 (c) (1) Every person who violates this section shall be
24 punished upon the second and each subsequent conviction by
25 imprisonment in the state prison.

26 (2) Every person who violates this section after a previous
27 felony conviction under Section 261, 264.1, 269, 285, 286, 288a,
28 288.5, or 289, any of which involved a minor under the age of 16
29 years, or a previous felony conviction under this section, a
30 conviction under Section 288, or a felony conviction under
31 Section 311.4 involving a minor under the age of 14 years shall
32 be punished by imprisonment in the state prison for two, four, or
33 six years.

34 (d) (1) In any case in which a person is convicted of violating
35 this section and probation is granted, the court shall require
36 counseling as a condition of probation, unless the court makes a
37 written statement in the court record, that counseling would be
38 inappropriate or ineffective.

39 (2) In any case in which a person is convicted of violating this
40 section, and as a condition of probation, the court prohibits the

defendant from having contact with the victim, the court order prohibiting contact shall not be modified except upon the request of the victim and a finding by the court that the modification is in the best interest of the victim. As used in this paragraph, “contact with the victim” includes all physical contact, being in the presence of the victim, communication by any means, any communication by a third party acting on behalf of the defendant, and any gifts.

(e) Nothing in this section prohibits prosecution under any other provision of law.

SEC. 27. Section 667.1 of the Penal Code is amended to read:

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

SEC. 28. Section 667.5 of the Penal Code is amended to read:

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

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

(b) Except where subdivision (a) applies, where the new offense is any felony for which a prison sentence is imposed, in addition and consecutive to any other prison terms therefor, the court shall impose a one-year term for each prior separate prison term served for any felony; provided that no additional term shall be imposed under this subdivision for any prison term served prior to a period of five years in which the defendant remained

1 free of both prison custody and the commission of an offense
2 which results in a felony conviction.

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

5 (1) Murder or voluntary manslaughter.

6 (2) Mayhem.

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

10 (4) Sodomy by force, violence, duress, menace, or fear of
11 immediate and unlawful bodily injury on the victim or another
12 person, as defined in subdivision (c) or (d) of Section 286.

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

16 (6) Lewd acts on a child under the age of 14 years or
17 lascivious acts, as defined in subdivision (a) or (b) of Section
18 288.

19 (7) Any felony punishable by death or imprisonment in the
20 state prison for life.

21 (8) Any felony in which the defendant inflicts great bodily
22 injury on any person other than an accomplice which has been
23 charged and proved as provided for in Section 12022.7 or
24 12022.9 on or after July 1, 1977, or as specified prior to July 1,
25 1977, in Sections 213, 264, and 461, or any felony in which the
26 defendant uses a firearm which use has been charged and proved
27 as provided in Section 12022.5 or 12022.55.

28 (9) Any robbery.

29 (10) Arson, in violation of subdivision (a) or (b) of Section
30 451.

31 (11) ~~The offense Sexual penetration, as defined in subdivision~~
32 ~~(a) or (j) of Section 289 where the act is accomplished against~~
33 ~~the victim’s will by force, violence, duress, menace, or fear of~~
34 ~~immediate and unlawful bodily injury on the victim or another~~
35 ~~person.~~

36 (12) Attempted murder.

37 (13) A violation of Section 12308, 12309, or 12310.

38 (14) Kidnapping.

39 (15) Assault with the intent to commit mayhem, rape, sodomy,
40 ~~or oral copulation~~ a specified felony, in violation of Section 220.

1 (16) Continuous sexual abuse of a child, in violation of
2 Section 288.5.

3 (17) Carjacking, as defined in subdivision (a) of Section 215.

4 (18) ~~A Rape, spousal rape, or sexual penetration, in concert,~~
5 ~~in violation of Section 264.1.~~

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

8 (20) Threats to victims or witnesses, as defined in Section
9 136.1, which would constitute a felony violation of Section
10 186.22 of the Penal Code.

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

15 (22) Any violation of Section 12022.53.

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

17 The Legislature finds and declares that these specified crimes
18 merit special consideration when imposing a sentence to display
19 society's condemnation for these extraordinary crimes of
20 violence against the person.

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

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

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

1 defined under California law if the defendant served one year or
2 more in prison for the offense in the other jurisdiction.

3 (g) A prior separate prison term for the purposes of this
4 section shall mean a continuous completed period of prison
5 incarceration imposed for the particular offense alone or in
6 combination with concurrent or consecutive sentences for other
7 crimes, including any reimprisonment on revocation of parole
8 which is not accompanied by a new commitment to prison, and
9 including any reimprisonment after an escape from incarceration.

10 (h) Serving a prison term includes any confinement time in
11 any state prison or federal penal institution as punishment for
12 commission of an offense, including confinement in a hospital or
13 other institution or facility credited as service of prison time in
14 the jurisdiction of the confinement.

15 (i) For the purposes of this section, a commitment to the State
16 Department of Mental Health as a mentally disordered sex
17 offender following a conviction of a felony, which commitment
18 exceeds one year in duration, shall be deemed a prior prison
19 term.

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

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

34 This subdivision shall not apply when a full, separate, and
35 consecutive term is imposed pursuant to any other provision of
36 law.

37 *SEC. 29. Section 667.51 of the Penal Code is amended to*
38 *read:*

39 667.51. (a) Any person who is ~~found guilty~~ *convicted* of
40 violating Section 288 or 288.5 shall receive a five-year

enhancement for a prior conviction of an offense-listed *specified* in subdivision (b), ~~provided that no additional term shall be imposed under this subdivision for any prison term served prior to a period of 10 years in which the defendant remained free of both prison custody and the commission of an offense that results in a felony conviction.~~

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

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

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

SEC. 30. Section 667.6 of the Penal Code is amended to read:

667.6. (a) Any person who is ~~found guilty of violating paragraph (2), (3), (6), or (7) of subdivision (a) of Section 261, paragraph (1), (4), or (5) of subdivision (a) of Section 262, Section 264.1, subdivision (b) of Section 288, Section 288.5 or subdivision (a) of Section 289, of committing sodomy in violation of subdivision (k) of Section 286, of committing oral copulation in violation of subdivision (k) of Section 288a, or of committing sodomy or oral copulation in violation of Section 286 or 288a by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person~~

1 *convicted of an offense specified in subdivision (e) and who has*
2 *been convicted previously of any of those offenses shall receive*
3 *a five-year enhancement for each of those prior convictions*
4 ~~*provided that no enhancement shall be imposed under this*~~
5 ~~*subdivision for any conviction occurring prior to a period of 10*~~
6 ~~*years in which the person remained free of both prison custody*~~
7 ~~*and the commission of an offense which results in a felony*~~
8 ~~*conviction.*~~ In addition to the five-year enhancement imposed
9 under this subdivision, the court also may impose a fine not to
10 exceed twenty thousand dollars (\$20,000) for anyone sentenced
11 under these provisions. The fine imposed and collected pursuant
12 to this subdivision shall be deposited in the Victim-Witness
13 Assistance Fund to be available for appropriation to fund child
14 sexual exploitation and child sexual abuse victim counseling
15 centers and prevention programs established pursuant to Section
16 13837.

17 (b) Any person *who is convicted of an offense specified in*
18 ~~*subdivision (a) (e) and who has served two or more prior prison*~~
19 ~~*terms as defined in Section 667.5 for any offense specified in*~~
20 ~~*subdivision (a) of those offenses,*~~ shall receive a 10-year
21 enhancement for each of those prior terms ~~*provided that no*~~
22 ~~*additional enhancement shall be imposed under this subdivision*~~
23 ~~*for any prison term served prior to a period of 10 years in which*~~
24 ~~*the person remained free of both prison custody and the*~~
25 ~~*commission of an offense which results in a felony conviction.*~~ In
26 addition to the 10-year enhancement imposed under this
27 subdivision, the court also may impose a fine not to exceed
28 twenty thousand dollars (\$20,000) for any person sentenced
29 under this subdivision. The fine imposed and collected pursuant
30 to this subdivision shall be deposited in the Victim-Witness
31 Assistance Fund to be available for appropriation to fund child
32 sexual exploitation and child sexual abuse victim counseling
33 centers and prevention programs established pursuant to Section
34 13837.

35 (c) In lieu of the term provided in Section 1170.1, a full,
36 separate, and consecutive term may be imposed for each
37 violation of ~~*Section 220, other than an assault with intent to*~~
38 ~~*commit mayhem, provided that the person has been convicted*~~
39 ~~*previously of violating Section 220 for an offense other than an*~~
40 ~~*assault with intent to commit mayhem, paragraph (2), (3), (6), or*~~

(7) of subdivision (a) of Section 261, paragraph (1), (4), or (5) of subdivision (a) of Section 262, Section 264.1, subdivision (b) of Section 288, Section 288.5 or subdivision (a) of Section 289, of committing sodomy in violation of subdivision (k) of Section 286, of committing oral copulation in violation of subdivision (k) of Section 288a, or of committing sodomy or oral copulation in violation of Section 286 or 288a by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person whether or not the crimes were committed during a single transaction *an offense specified in subdivision (e) if the crimes involved the same victim on the same occasion. A term may be imposed consecutively pursuant to this subdivision if a person is convicted of at least one offense specified in subdivision (e).* If the term is imposed consecutively pursuant to this subdivision, it shall be served consecutively to any other term of imprisonment, and shall commence from the time the person otherwise would have been released from imprisonment. The term shall not be included in any determination pursuant to Section 1170.1. Any other term imposed subsequent to that term shall not be merged therein but shall commence at the time the person otherwise would have been released from prison.

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

In determining whether crimes against a single victim were committed on separate occasions under this subdivision, the court

1 shall consider whether, between the commission of one sex crime
2 and another, the defendant had a reasonable opportunity to reflect
3 upon his or her actions and nevertheless resumed sexually
4 assaultive behavior. Neither the duration of time between crimes,
5 nor whether or not the defendant lost or abandoned his or her
6 opportunity to attack, shall be, in and of itself, determinative on
7 the issue of whether the crimes in question occurred on separate
8 occasions.

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

16 (e) *This section applies to the following offenses:*

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

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

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

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

25 (5) *A lewd or lascivious act, in violation of subdivision (b) of*
26 *Section 288.*

27 (6) *Continuous sexual abuse of a child, in violation of Section*
28 *288.5.*

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

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

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

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

39 (f) *If the court orders a fine to be imposed pursuant to*
40 ~~*subdivision (a) or (b) this section,*~~ the actual administrative cost

1 of collecting that fine, not to exceed 2 percent of the total amount
2 paid, may be paid into the general fund of the county treasury for
3 the use and benefit of the county.

4 *SEC. 31. Section 667.61 of the Penal Code is amended to*
5 *read:*

6 667.61. (a) A person who is convicted of an offense specified
7 in subdivision (c) under one or more of the circumstances
8 specified in subdivision (d) or under two or more of the
9 circumstances specified in subdivision (e) shall be punished by
10 imprisonment in the state prison for life ~~and shall not be eligible~~
11 ~~for release on parole for 25 years except as provided in~~
12 ~~subdivision (j) 25 years to life.~~

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

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

20 (1) ~~A Rape, in violation of paragraph (2) or (6) of subdivision~~
21 ~~(a) of Section 261.~~

22 (2) ~~A Spousal rape, in violation of paragraph (1) or (4) of~~
23 ~~subdivision (a) of Section 262.~~

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

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

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

30 (6) ~~Sodomy or oral copulation, in violation of Section 286 or~~
31 ~~288a by force, violence, duress, menace, or fear of immediate~~
32 ~~and unlawful bodily injury on the victim or another person.~~

33 (7) ~~Oral copulation, in violation of paragraph (2) or (3) of~~
34 ~~subdivision (c), or subdivision (d), of Section 288a.~~

35 (8) ~~Oral copulation or sexual penetration by a perpetrator who~~
36 ~~is an adult and the victim is 10 years of age or younger.~~

37 (9) ~~A lewd or lascivious act, in violation of subdivision (a) of~~
38 ~~Section 288, unless the defendant qualifies for probation under~~
39 ~~subdivision (c) of Section 1203.066.~~

1 (10) *Continuous sexual abuse of a child, in violation of*
2 *Section 288.5.*

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

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

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

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

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

20 (5) *The defendant committed the present offense in violation of*
21 *Section 264.1, subdivision (d) of Section 286, or subdivision (d)*
22 *of Section 288a, and, in the commission of that offense, any*
23 *person committed any act described in paragraph (2), (3), or (4)*
24 *of this subdivision.*

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

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

30 (2) Except as provided in paragraph (4) of subdivision (d), the
31 defendant committed the present offense during the commission
32 of a burglary, as defined in subdivision (a) of Section 460, or
33 during the commission of a burglary of a building, including any
34 commercial establishment, which was then closed to the public,
35 in violation of Section 459.

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

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

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

7 (6) The defendant engaged in the tying or binding of the
8 victim or another person in the commission of the present
9 offense.

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

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

18 (9) *The victim of an oral copulation was a child 10 years of*
19 *age or younger who was made to orally copulate the adult.*

20 (10) *The victim of sexual penetration was a child 10 years of*
21 *age or younger and the adult penetrated or caused the*
22 *penetration of the vagina or rectum of the child.*

23 (f) If only the minimum number of circumstances specified in
24 subdivision (d) or (e) ~~which~~ *that* are required for the punishment
25 provided in subdivision (a) or (b) to apply have been pled and
26 proved, that circumstance or those circumstances shall be used as
27 the basis for imposing the term provided in subdivision (a) or (b),
28 *whichever is greater*, rather than being used to impose the
29 punishment authorized under any other *provision of* law, unless
30 another *provision of* law provides for a greater penalty, *or the*
31 *punishment under another provision of law may be imposed in*
32 *addition to the punishment provided by this section.* However, if
33 any additional circumstance or circumstances specified in
34 subdivision (d) or (e) have been pled and proved, the minimum
35 number of circumstances shall be used as the basis for imposing
36 the term provided in subdivision (a), and any other additional
37 circumstance or circumstances shall be used to impose any
38 punishment or enhancement authorized under any other *provision*
39 *of law.* ~~Notwithstanding~~

1 (g) Notwithstanding Section 1385 or any other provision of
2 law, the court shall not strike any *allegation, admission, or*
3 *finding of any* of the circumstances specified in subdivision (d) or
4 (e) *for any person who is subject to punishment under this*
5 *section.*

6 (g)

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

16 (h) Probation

17 (i) Notwithstanding any other provision of law, probation shall
18 not be granted to, nor shall the execution or imposition of
19 sentence be suspended for, any person who is subject to
20 punishment under this section ~~for any offense specified in~~
21 ~~paragraphs (1) to (6), inclusive, of subdivision (c).~~

22 (i) For the penalties provided in this section to

23 (j) The penalties provided in this section shall apply; only if
24 the existence of any ~~fact required under~~ *circumstance specified in*
25 ~~subdivision (d) or (e) shall be~~ *is alleged in the accusatory*
26 *pleading pursuant to this section* and either admitted by the
27 defendant in open court or found to be true by the trier of fact.

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

38 SEC. 32. Section 667.71 of the Penal Code is amended to
39 read:

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

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

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

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

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

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

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

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

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

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

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

(9) ~~A Oral copulation, in violation of subdivision (c) or (d) of Section 288a by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person.~~

(10) ~~A~~

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

(11) ~~A~~

1 (10) *Kidnapping*, in violation of former subdivision (d) of
2 Section 208 (kidnapping to commit specified sex offenses).

3 ~~(12)~~

4 (11) Kidnapping in violation of *subdivision (b)* of Section 209
5 with the intent to commit ~~rape, spousal rape, oral copulation, or~~
6 ~~sodomy or sexual penetration in violation of Section 289 a~~
7 *specified sexual offense*.

8 ~~(13)A~~

9 (12) *Aggravated sexual assault of a child*, in violation of
10 Section 269.

11 ~~(14)~~

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

15 (d) *Notwithstanding Section 1385 or any other provision of*
16 *law, the court shall not strike any allegation, admission, or*
17 *finding of any prior conviction specified in subdivision (c) for*
18 *any person who is subject to punishment under this section.*

19 (e) *Notwithstanding any other provision of law, probation*
20 *shall not be granted to, nor shall the execution or imposition of*
21 *sentence be suspended for, any person who is subject to*
22 *punishment under this section.*

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

29 ~~SEC. 21.~~

30 *SEC. 33.* Section 800 of the Penal Code is amended to read:

31 800. (a) Except as provided in Section 799, prosecution for
32 an offense punishable by imprisonment in the state prison for
33 eight years or more shall be commenced within six years after
34 commission of the offense.

35 (b) Notwithstanding subdivision (a), prosecution for a
36 violation of subdivision (b) of Section 311.4 shall commence
37 within 10 years of the date of production of the pornographic
38 material.

39 *SEC. 34.* *Section 1170.125 of the Penal Code is amended to*
40 *read:*

1170.125. Notwithstanding Section 2 of Proposition 184, as adopted at the November 8, 1994 General Election, for all offenses committed on or after the effective date of this act, all references to existing statutes in Section 1170.12 are to those statutes as they existed on the effective date of this act, including amendments made to those statutes by ~~this act~~ *the act enacted during the 2005–06 Regular Session that amended this section.*

~~SEC. 22:~~

SEC. 35. Section 1192.7 of the Penal Code is amended to read:

1192.7. (a) (1) It is the intent of the Legislature that district attorneys prosecute violent sex crimes under statutes that provide sentencing under a “one strike,” “three strikes” or habitual sex offender statute instead of engaging in plea bargaining over those offenses.

(2) Plea bargaining in any case in which the indictment or information charges any serious felony, any felony in which it is alleged that a firearm was personally used by the defendant, or any offense of driving while under the influence of alcohol, drugs, narcotics, or any other intoxicating substance, or any combination thereof, is prohibited, unless there is insufficient evidence to prove the people’s case, or testimony of a material witness cannot be obtained, or a reduction or dismissal would not result in a substantial change in sentence.

(3) If the indictment or information charges the defendant with a violent sex crime, as listed in subdivision (c) of Section 667.61, that could be prosecuted under Sections 269, 288.7, subdivisions (b) through (i) of Section 667, Section 667.61, or 667.71, plea bargaining is prohibited unless there is insufficient evidence to prove the people’s case, or testimony of a material witness cannot be obtained, or a reduction or dismissal would not result in a substantial change in sentence. At the time of presenting the agreement to the court, the district attorney shall state on the record why a sentence under one of those sections was not sought.

(b) As used in this section “plea bargaining” means any bargaining, negotiation, or discussion between a criminal defendant, or his or her counsel, and a prosecuting attorney or judge, whereby the defendant agrees to plead guilty or nolo contendere, in exchange for any promises, commitments,

1 concessions, assurances, or consideration by the prosecuting
2 attorney or judge relating to any charge against the defendant or
3 to the sentencing of the defendant.

4 (c) As used in this section, “serious felony” means any of the
5 following:

6 (1) Murder or voluntary manslaughter; (2) mayhem; (3) rape;
7 (4) sodomy by force, violence, duress, menace, threat of great
8 bodily injury, or fear of immediate and unlawful bodily injury on
9 the victim or another person; (5) oral copulation by force,
10 violence, duress, menace, threat of great bodily injury, or fear of
11 immediate and unlawful bodily injury on the victim or another
12 person; (6) lewd or lascivious act on a child under 14 years of
13 age; (7) any felony punishable by death or imprisonment in the
14 state prison for life; (8) any felony in which the defendant
15 personally inflicts great bodily injury on any person, other than
16 an accomplice, or any felony in which the defendant personally
17 uses a firearm; (9) attempted murder; (10) assault with intent to
18 commit rape or robbery; (11) assault with a deadly weapon or
19 instrument on a peace officer; (12) assault by a life prisoner on a
20 noninmate; (13) assault with a deadly weapon by an inmate; (14)
21 arson; (15) exploding a destructive device or any explosive with
22 intent to injure; (16) exploding a destructive device or any
23 explosive causing bodily injury, great bodily injury, or mayhem;
24 (17) exploding a destructive device or any explosive with intent
25 to murder; (18) any burglary of the first degree; (19) robbery or
26 bank robbery; (20) kidnapping; (21) holding of a hostage by a
27 person confined in a state prison; (22) attempt to commit a felony
28 punishable by death or imprisonment in the state prison for life;
29 (23) any felony in which the defendant personally used a
30 dangerous or deadly weapon; (24) selling, furnishing,
31 administering, giving, or offering to sell, furnish, administer, or
32 give to a minor any heroin, cocaine, phencyclidine (PCP), or any
33 methamphetamine-related drug, as described in paragraph (2) of
34 subdivision (d) of Section 11055 of the Health and Safety Code,
35 or any of the precursors of methamphetamines, as described in
36 subparagraph (A) of paragraph (1) of subdivision (f) of Section
37 11055 or subdivision (a) of Section 11100 of the Health and
38 Safety Code; (25) any violation of subdivision (a) of Section 289
39 where the act is accomplished against the victim’s will by force,
40 violence, duress, menace, or fear of immediate and unlawful

bodily injury on the victim or another person; (26) grand theft involving a firearm; (27) carjacking; (28) any felony offense, which would also constitute a felony violation of Section 186.22; (29) assault with the intent to commit mayhem, rape, sodomy, or oral copulation, in violation of Section 220; (30) throwing acid or flammable substances, in violation of Section 244; (31) assault with a deadly weapon, firearm, machinegun, assault weapon, or semiautomatic firearm or assault on a peace officer or firefighter, in violation of Section 245; (32) assault with a deadly weapon against a public transit employee, custodial officer, or school employee, in violation of Sections 245.2, 245.3, or 245.5; (33) discharge of a firearm at an inhabited dwelling, vehicle, or aircraft, in violation of Section 246; (34) commission of rape or sexual penetration in concert with another person, in violation of Section 264.1; (35) continuous sexual abuse of a child, in violation of Section 288.5; (36) shooting from a vehicle, in violation of subdivision (c) or (d) of Section 12034; (37) intimidation of victims or witnesses, in violation of Section 136.1; (38) criminal threats, in violation of Section 422; (39) any attempt to commit a crime listed in this subdivision other than an assault; (40) any violation of Section 12022.53; (41) a violation of subdivision (b) or (c) of Section 11418; and (42) any conspiracy to commit an offense described in this subdivision.

(d) As used in this section, “bank robbery” means to take or attempt to take, by force or violence, or by intimidation from the person or presence of another any property or money or any other thing of value belonging to, or in the care, custody, control, management, or possession of, any bank, credit union, or any savings and loan association.

As used in this subdivision, the following terms have the following meanings:

(1) “Bank” means any member of the Federal Reserve System, and any bank, banking association, trust company, savings bank, or other banking institution organized or operating under the laws of the United States, and any bank the deposits of which are insured by the Federal Deposit Insurance Corporation.

(2) “Savings and loan association” means any federal savings and loan association and any “insured institution” as defined in Section 401 of the National Housing Act, as amended, and any

1 federal credit union as defined in Section 2 of the Federal Credit
2 Union Act.

3 (3) “Credit union” means any federal credit union and any
4 state-chartered credit union the accounts of which are insured by
5 the Administrator of the National Credit Union administration.

6 (e) The provisions of this section shall not be amended by the
7 Legislature except by statute passed in each house by rollcall
8 vote entered in the journal, two-thirds of the membership
9 concurring, or by a statute that becomes effective only when
10 approved by the electors.

11 ~~SEC. 23.~~

12 *SEC. 36.* Section 1202.8 of the Penal Code is amended to
13 read:

14 1202.8. (a) Persons placed on probation by a court shall be
15 under the supervision of the county probation officer who shall
16 determine both the level and type of supervision consistent with
17 the court-ordered conditions of probation. Each county shall
18 designate certain probation officers to monitor registered sex
19 offenders, as specified in subdivision (b) of Section 290.08.
20 Those probationers shall be ~~required to report more frequently to~~
21 ~~one of those designated probation officers than any other~~
22 ~~probationer is required to report, and shall be subject to intensive~~
23 ~~scrutiny by~~ *subject to active and intense supervision by* that
24 designated officer.

25 (b) Within 30 days of a court making an order to provide
26 restitution to a victim or to the Restitution Fund, the probation
27 officer shall establish an account into which any restitution
28 payments that are not deposited into the Restitution Fund shall be
29 deposited.

30 ~~SEC. 24.~~

31 *SEC. 37.* Section 1203 of the Penal Code is amended to read:

32 1203. (a) As used in this code, “probation” means the
33 suspension of the imposition or execution of a sentence and the
34 order of conditional and revocable release in the community
35 under the supervision of a probation officer. As used in this code,
36 “conditional sentence” means the suspension of the imposition or
37 execution of a sentence and the order of revocable release in the
38 community subject to conditions established by the court without
39 the supervision of a probation officer. It is the intent of the
40 Legislature that both conditional sentence and probation are

1 authorized whenever probation is authorized in any code as a
2 sentencing option for infractions or misdemeanors.

3 (b) (1) Except as provided in subdivision (j), if a person is
4 convicted of a felony and is eligible for probation, before
5 judgment is pronounced, the court shall immediately refer the
6 matter to a probation officer to investigate and report to the court,
7 at a specified time, upon the circumstances surrounding the crime
8 and the prior history and record of the person, which may be
9 considered either in aggravation or mitigation of the punishment.

10 (2) (A) The probation officer shall immediately investigate
11 and make a written report to the court of his or her findings and
12 recommendations, including his or her recommendations as to
13 the granting or denying of probation and the conditions of
14 probation, if granted.

15 (B) Pursuant to Section 828 of the Welfare and Institutions
16 Code, the probation officer shall include in his or her report any
17 information gathered by a law enforcement agency relating to the
18 taking of the defendant into custody as a minor, which shall be
19 considered for purposes of determining whether adjudications of
20 commissions of crimes as a juvenile warrant a finding that there
21 are circumstances in aggravation pursuant to Section 1170 or to
22 deny probation.

23 (C) If the person is convicted of a felony specified in
24 subparagraph (A) of paragraph (2) of subdivision (a) of Section
25 290, the probation officer shall administer the STATIC-99, as set
26 forth in Section 290.06, in order to determine the person's risk of
27 reoffending.

28 (D) The probation officer shall also include in the report his or
29 her recommendation of both of the following:

30 (i) The amount the defendant should be required to pay as a
31 restitution fine pursuant to subdivision (b) of Section 1202.4.

32 (ii) Whether the court shall require, as a condition of
33 probation, restitution to the victim or to the Restitution Fund and
34 the amount thereof.

35 (E) The report shall be made available to the court and the
36 prosecuting and defense attorneys at least five days, or upon
37 request of the defendant or prosecuting attorney, nine days prior
38 to the time fixed by the court for the hearing and determination
39 of the report, and shall be filed with the clerk of the court as a
40 record in the case at the time of the hearing. The time within

1 which the report shall be made available and filed may be waived
2 by written stipulation of the prosecuting and defense attorneys
3 that is filed with the court or an oral stipulation in open court that
4 is made and entered upon the minutes of the court.

5 (3) At a time fixed by the court, the court shall hear and
6 determine the application, if one has been made, or, in any case,
7 the suitability of probation in the particular case. At the hearing,
8 the court shall consider any report of the probation officer,
9 including the results of the STATIC-99 assessment, and shall
10 make a statement that it has considered the report which shall be
11 filed with the clerk of the court as a record in the case. If the
12 court determines that there are circumstances in mitigation of the
13 punishment prescribed by law or that the ends of justice would be
14 served by granting probation to the person, it may place the
15 person on probation. If probation is denied, the clerk of the court
16 shall immediately send a copy of the report to the Department of
17 Corrections and Rehabilitation at the prison or other institution to
18 which the person is delivered.

19 (4) The preparation of the report or the consideration of the
20 report by the court may be waived only by a written stipulation
21 of the prosecuting and defense attorneys that is filed with the
22 court or an oral stipulation in open court that is made and entered
23 upon the minutes of the court, except that there shall be no
24 waiver unless the court consents thereto. However, if the
25 defendant is ultimately sentenced and committed to the state
26 prison, a probation report shall be completed pursuant to Section
27 1203c.

28 (c) If a defendant is not represented by an attorney, the court
29 shall order the probation officer who makes the probation report
30 to discuss its contents with the defendant.

31 (d) If a person is convicted of a misdemeanor, the court may
32 either refer the matter to the probation officer for an investigation
33 and a report or summarily pronounce a conditional sentence. If
34 the crime requires the person to register as a sex offender
35 pursuant to Section 290, the probation officer shall administer the
36 STATIC-99, as set forth in Section 290.06, in order to determine
37 the person's risk of reoffending. If the case is not referred to the
38 probation officer, in sentencing the person, the court may
39 consider any information concerning the person that could have
40 been included in a probation report. The court shall inform the

1 person of the information to be considered and permit him or her
2 to answer or controvert the information. For this purpose, upon
3 the request of the person, the court shall grant a continuance
4 before the judgment is pronounced.

5 (e) Except in unusual cases where the interests of justice
6 would best be served if the person is granted probation, probation
7 shall not be granted to any of the following persons:

8 (1) Unless the person had a lawful right to carry a deadly
9 weapon, other than a firearm, at the time of the perpetration of
10 the crime or his or her arrest, any person who has been convicted
11 of arson, robbery, carjacking, burglary, burglary with explosives,
12 rape with force or violence, torture, aggravated mayhem, murder,
13 attempt to commit murder, trainwrecking, kidnapping, escape
14 from the state prison, or a conspiracy to commit one or more of
15 those crimes and who was armed with the weapon at either of
16 those times.

17 (2) Any person who used, or attempted to use, a deadly
18 weapon upon a human being in connection with the perpetration
19 of the crime of which he or she has been convicted.

20 (3) Any person who willfully inflicted great bodily injury or
21 torture in the perpetration of the crime of which he or she has
22 been convicted.

23 (4) Any person who has been previously convicted twice in
24 this state of a felony or in any other place of a public offense
25 which, if committed in this state, would have been punishable as
26 a felony.

27 (5) Unless the person has never been previously convicted
28 once in this state of a felony or in any other place of a public
29 offense which, if committed in this state, would have been
30 punishable as a felony, any person who has been convicted of
31 burglary with explosives, rape with force or violence, torture,
32 aggravated mayhem, murder, attempt to commit murder,
33 trainwrecking, extortion, kidnapping, escape from the state
34 prison, a violation of Section 286, 288, 288a, or 288.5, or a
35 conspiracy to commit one or more of those crimes.

36 (6) Any person who has been previously convicted once in this
37 state of a felony or in any other place of a public offense which,
38 if committed in this state, would have been punishable as a
39 felony, if he or she committed any of the following acts:

1 (A) Unless the person had a lawful right to carry a deadly
2 weapon at the time of the perpetration of the previous crime or
3 his or her arrest for the previous crime, he or she was armed with
4 a weapon at either of those times.

5 (B) The person used, or attempted to use, a deadly weapon
6 upon a human being in connection with the perpetration of the
7 previous crime.

8 (C) The person willfully inflicted great bodily injury or torture
9 in the perpetration of the previous crime.

10 (7) Any public official or peace officer of this state or any city,
11 county, or other political subdivision who, in the discharge of the
12 duties of his or her public office or employment, accepted or
13 gave or offered to accept or give any bribe, embezzled public
14 money, or was guilty of extortion.

15 (8) Any person who knowingly furnishes or gives away
16 phencyclidine.

17 (9) Any person who intentionally inflicted great bodily injury
18 in the commission of arson under subdivision (a) of Section 451
19 or who intentionally set fire to, burned, or caused the burning of,
20 an inhabited structure or inhabited property in violation of
21 subdivision (b) of Section 451.

22 (10) Any person who, in the commission of a felony, inflicts
23 great bodily injury or causes the death of a human being by the
24 discharge of a firearm from or at an occupied motor vehicle
25 proceeding on a public street or highway.

26 (11) Any person who possesses a short-barreled rifle or a
27 short-barreled shotgun under Section 12020, a machinegun under
28 Section 12220, or a silencer under Section 12520.

29 (12) Any person who is convicted of violating Section 8101 of
30 the Welfare and Institutions Code.

31 (13) Any person who is described in paragraph (2) or (3) of
32 subdivision (g) of Section 12072.

33 (f) When probation is granted in a case which comes within
34 subdivision (e), the court shall specify on the record and shall
35 enter on the minutes the circumstances indicating that the
36 interests of justice would best be served by that disposition.

37 (g) If a person is not eligible for probation, the judge shall
38 refer the matter to the probation officer for an investigation of the
39 facts relevant to determination of the amount of a restitution fine
40 pursuant to subdivision (b) of Section 1202.4 in all cases where

the determination is applicable. The judge, in his or her discretion, may direct the probation officer to investigate all facts relevant to the sentencing of the person. Upon that referral, the probation officer shall immediately investigate the circumstances surrounding the crime and the prior record and history of the person and make a written report to the court of his or her findings. The findings shall include a recommendation of the amount of the restitution fine as provided in subdivision (b) of Section 1202.4.

(h) If a defendant is convicted of a felony and a probation report is prepared pursuant to subdivision (b) or (g), the probation officer may obtain and include in the report a statement of the comments of the victim concerning the offense. The court may direct the probation officer not to obtain a statement if the victim has in fact testified at any of the court proceedings concerning the offense.

(i) No probationer shall be released to enter another state unless his or her case has been referred to the Administrator of the Interstate Probation and Parole Compacts, pursuant to the Uniform Act for Out-of-State Probationer or Parolee Supervision (Article 3 (commencing with Section 11175) of Chapter 2 of Title 1 of Part 4) and the probationer has reimbursed the county that has jurisdiction over his or her probation case the reasonable costs of processing his or her request for interstate compact supervision. The amount and method of reimbursement shall be in accordance with Section 1203.1b.

(j) In any court where a county financial evaluation officer is available, in addition to referring the matter to the probation officer, the court may order the defendant to appear before the county financial evaluation officer for a financial evaluation of the defendant's ability to pay restitution, in which case the county financial evaluation officer shall report his or her findings regarding restitution and other court-related costs to the probation officer on the question of the defendant's ability to pay those costs.

Any order made pursuant to this subdivision may be enforced as a violation of the terms and conditions of probation upon willful failure to pay and at the discretion of the court, may be enforced in the same manner as a judgment in a civil action, if

1 any balance remains unpaid at the end of the defendant's
2 probationary period.

3 (k) Probation shall not be granted to, nor shall the execution
4 of, or imposition of sentence be suspended for, any person who is
5 convicted of a violent felony, as defined in subdivision (c) of
6 Section 667.5, or a serious felony, as defined in subdivision (c)
7 of Section 1192.7, and who was on probation for a felony offense
8 at the time of the commission of the new felony offense.

9 (l) Each probation department shall develop control and
10 containment programming, in conjunction with the Department
11 of Corrections and Rehabilitation, for persons who are designated
12 at a moderate-high or high level of risk based on the STATIC-99,
13 and shall require participation in appropriate programming of
14 those persons as a condition of probation.

15 ~~SEC. 25.~~

16 *SEC. 38.* Section 1203c of the Penal Code is amended to
17 read:

18 1203c. (a) (1) Notwithstanding any other provisions of law,
19 whenever a person is committed to an institution under the
20 jurisdiction of the Department of Corrections and Rehabilitation,
21 whether probation has been applied for or not, or granted and
22 revoked, it shall be the duty of the probation officer of the county
23 from which the person is committed to send to the Department of
24 Corrections and Rehabilitation a report of the circumstances
25 surrounding the offense and the prior record and history of the
26 defendant, as may be required by the Secretary of the Department
27 of Corrections and Rehabilitation.

28 (2) If the person is being committed to the jurisdiction of the
29 department for a conviction of an offense listed in subparagraph
30 (A) of paragraph (2) of subdivision (a) of Section 290, the
31 probation officer shall perform a risk assessment of the person
32 using the STATIC-99 assessment tool, as set forth in Section
33 290.06.

34 (b) These reports shall accompany the commitment papers.
35 The reports shall be prepared in the form prescribed by the
36 administrator following consultation with the Corrections
37 Standards Authority, except that if the defendant is ineligible for
38 probation, a report of the circumstances surrounding the offense
39 and the prior record and history of the defendant, prepared by the
40 probation officer on request of the court and filed with the court

1 before sentence, shall be deemed to meet the requirements of
2 paragraph (1) of subdivision (a).

3 (c) In order to allow the probation officer an opportunity to
4 interview, for the purpose of preparation of these reports, the
5 defendant shall be held in the county jail for 48 hours, excluding
6 Saturdays, Sundays and holidays, subsequent to imposition of
7 sentence and prior to delivery to the custody of the Secretary of
8 the Department of Corrections and Rehabilitation, unless the
9 probation officer has indicated the need for a different period of
10 time.

11 *SEC. 39. Section 1203.06 of the Penal Code is amended to*
12 *read:*

13 ~~1203.06. Notwithstanding Section 1203:~~

14 (a) ~~Probation~~ *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 of the following persons:*

19 (1) Any person who personally used a firearm during the
20 commission or attempted commission of any of the following
21 crimes:

22 (A) Murder.

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

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

25 (D) ~~Kidnapping in violation of Section 209~~ *A lewd or*
26 *lascivious act, in violation of Section 288.*

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

28 (F) ~~Except as provided in Section 1203.065, rape~~ *Rape*, in
29 violation of paragraph (2) of subdivision (a) of Section 261, 262,
30 or 264.1.

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

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

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

35 (J) ~~Any person convicted of aggravated~~ *Aggravated* mayhem
36 in violation of Section 205.

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

38 (L) ~~Kidnapping, in violation of Section 209.5~~ *Continuous*
39 *sexual abuse of a child, in violation of Section 288.5.*

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

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

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

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

4 (Q) Aggravated sexual assault of a child, in violation of
5 Section 269.

6 (2) Any person previously convicted of a felony specified in
7 subparagraphs (A) to (L), inclusive, of paragraph (1), or assault
8 with intent to commit murder under former Section 217, who is
9 convicted of a subsequent felony and who was personally armed
10 with a firearm at any time during its commission or attempted
11 commission or was unlawfully armed with a firearm at the time
12 of his or her arrest for the subsequent felony.

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

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

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

24 (3) ~~As used in subdivision (a), “used a firearm” means to~~
25 ~~display a firearm in a menacing manner, to intentionally fire it, or~~
26 ~~to intentionally strike or hit a human being with it, or to use it in~~
27 ~~any manner that qualifies under Section 12022.5.~~

28 (4)

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

32 SEC. 40. Section 1203.065 of the Penal Code is amended to
33 read:

34 1203.065. (a) Notwithstanding any other *provision of* law,
35 probation shall not be granted to, nor shall the execution or
36 imposition of sentence be suspended for, any person who is
37 convicted of violating paragraph (2) *or* (6) of subdivision (a) of
38 Section 261, Section 264.1, 266h, 266i, ~~or~~ 266j, *or* 269, *or*
39 *paragraph (2) or (3) of subdivision (c), or subdivision (d), of*
40 *Section 286 or 288a, or subdivision (a) of Section 289, or*

1 committing sodomy or oral copulation in violation of Section 286
2 or 288a by force, violence, duress, menace, or fear of immediate
3 and unlawful bodily injury on the victim or another person, or of
4 violating or subdivision (c) of Section 311.4.

5 (b) (1) Except in unusual cases where the interests of justice
6 would best be served if the person is granted probation, probation
7 shall not be granted to any person who is convicted of a violation
8 of violating paragraph (7) of subdivision (a) of Section 261,
9 subdivision (k) of Section 286, subdivision (k) of Section 288a,
10 or Section 220 for assault with intent to commit any of the
11 following: rape, sodomy, oral copulation, or any violation of
12 Section 264.1, subdivision (b) of Section 288, or Section 289 a
13 specified sexual offense.

14 (2) When probation is granted, the court shall specify on the
15 record and shall enter on the minutes the circumstances
16 indicating that the interests of justice would best be served by the
17 disposition.

18 SEC. 41. Section 1203.075 of the Penal Code is amended to
19 read:

20 1203.075. Notwithstanding the provisions of Section 1203:

21 (a) Probation (a) Notwithstanding any other provision of law,
22 probation shall not be granted to, nor shall the execution or
23 imposition of sentence be suspended for, nor shall a finding
24 bringing the defendant within this section be stricken pursuant to
25 Section 1385 for, any person who, with the intent to inflict the
26 injury, personally inflicts great bodily injury, as defined in
27 Section 12022.7, on the person of another in the commission or
28 attempted commission of any of the following crimes:

29 (1) Murder.

30 (2) Robbery, in violation of Section 211.

31 (3) Kidnapping, in violation of Section 207, 209, or 209.5.

32 (4) Kidnapping, in violation of Section 209—A lewd or
33 lascivious act, in violation of Section 288.

34 (5) Burglary of the first degree, as defined in Section 460.

35 (6) Rape, in violation of paragraph (2) or (6) of subdivision (a)
36 of Section 261 or paragraph (1) or (4) of subdivision (a) of
37 Section 262 Section 261, 262, or 264.1.

38 (7) Assault with intent to commit rape or sodomy a specified
39 sexual offense, in violation of Section 220.

40 (8) Escape, in violation of Section 4530 or 4532.

1 (9) ~~A Sexual penetration, in violation of subdivision (a) of~~
2 ~~Section 289 or of Section 264.1.~~

3 (10) Sodomy, in violation of Section 286.

4 (11) Oral copulation, in violation of Section 288a.

5 (12) Carjacking, in violation of Section 215.

6 (13) ~~Kidnapping, in violation of Section 209.5 Continuous~~
7 ~~sexual abuse of a child, in violation of Section 288.5.~~

8 (14) Aggravated sexual assault of a child, in violation of
9 Section 269.

10 (b) ~~(4) The existence of any fact which that would make a~~
11 ~~person ineligible for probation under subdivision (a) shall be~~
12 ~~alleged in the accusatory pleading, and either admitted by the~~
13 ~~defendant in open court, or found to be true by the jury trying the~~
14 ~~issue of guilt or by the court where guilt is established by a plea~~
15 ~~of guilty or nolo contendere or by a trial by the court sitting~~
16 ~~without a jury trier of fact.~~

17 ~~(2) This subdivision does not prohibit the adjournment of~~
18 ~~criminal proceedings pursuant to Division 3 (commencing with~~
19 ~~Section 3000) or Division 6 (commencing with Section 6000) of~~
20 ~~the Welfare and Institutions Code.~~

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

23 SEC. 26.

24 SEC. 42. Section 3000 of the Penal Code is amended to read:

25 3000. (a) (1) The Legislature finds and declares that the
26 period immediately following incarceration is critical to
27 successful reintegration of the offender into society and to
28 positive citizenship. It is in the interest of public safety for the
29 state to provide for the supervision of and surveillance of
30 parolees, including the judicious use of revocation actions, and to
31 provide educational, vocational, family and personal counseling
32 necessary to assist parolees in the transition between
33 imprisonment and discharge. A sentence pursuant to Section
34 1168 or 1170 shall include a period of parole, unless waived, as
35 provided in this section.

36 (2) The Legislature finds and declares that it is not the intent
37 of this section to diminish resources allocated to the Department
38 of Corrections and Rehabilitation for parole functions for which
39 the department is responsible. It is also not the intent of this
40 section to diminish the resources allocated to the Board of Parole

Hearings to execute its duties with respect to parole functions for which the board is responsible.

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

(4) For any person being evaluated as a sexually violent predator pursuant to Article 4 (commencing with Section 6600) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code, parole shall toll from evaluation through the period of commitment, if any. The period during which parole is tolled shall include the filing of a petition for commitment, hearing on probable cause, trial proceedings and actual commitment. Parole shall be tolled through any subsequent evaluation and commitment proceedings and actual commitment. Time spent on conditional release under court monitoring shall be included in the period of parole.

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

(1) At the expiration of a term of imprisonment of one year and one day, or a term of imprisonment imposed pursuant to Section 1170 or at the expiration of a term reduced pursuant to Section 2931 or 2933, if applicable, the inmate shall be released on parole for a period not exceeding three years, unless the parole authority, for good cause, waives parole and discharges the inmate from the custody of the department. However, any inmate sentenced for an offense specified in paragraph (11) of subdivision (c) of Section 667.5 shall be released on parole for a period not exceeding five years, and an inmate sentenced for an offense specified in paragraph (3), (4), (5), (6), (15), (16), or (18) of subdivision (c) of Section 667.5 shall be released on parole for a period not exceeding 10 years.

(2) In the case of any inmate sentenced under Section 1168, the period of parole shall not exceed five years in the case of an inmate imprisoned for any offense other than first or second degree murder for which the inmate has received a life sentence, and shall not exceed three years in the case of any other inmate, unless in either case the parole authority for good cause waives parole and discharges the inmate from custody of the department.

1 This subdivision shall also be applicable to inmates who
2 committed crimes prior to July 1, 1977, to the extent specified in
3 Section 1170.2.

4 (3) The parole authority shall consider the request of any
5 inmate regarding the length of his or her parole and the
6 conditions thereof.

7 (4) Upon successful completion of parole, or at the end of the
8 maximum statutory period of parole specified for the inmate
9 under paragraph (1) or (2) whichever is earlier, the inmate shall
10 be discharged from custody. The date of the maximum statutory
11 period of parole under this subdivision and paragraphs (1) and
12 (2) shall be computed from the date of initial parole and shall be
13 a period chronologically determined. Time during which parole
14 is suspended because the prisoner has absconded or has been
15 returned to custody as a parole violator shall not be credited
16 toward any period of parole unless the prisoner is found not
17 guilty of the parole violation. However, except as provided in
18 Section 3064, an inmate subject to three years on parole may not
19 be retained under parole supervision or in custody for a period
20 longer than four years from the date of his or her initial parole,
21 and, except as provided in Section 3064, an inmate subject to five
22 years on parole may not be retained under parole supervision or
23 in custody for a period longer than seven years from the date of
24 his or her initial parole. Except as provided in Section 3064, an
25 inmate subject to 10 years on parole may not be retained under
26 parole supervision or in custody for a period longer than 15 years
27 from the date of his or her initial parole.

28 (5) The Department of Corrections and Rehabilitation shall
29 meet with each inmate at least 30 days prior to his or her good
30 time release date and shall provide, under guidelines specified by
31 the parole authority, the conditions of parole and the length of
32 parole up to the maximum period of time provided by law. The
33 inmate has the right to reconsideration of the length and
34 conditions of parole by the parole authority. The department or
35 the board may impose as a condition of parole that an inmate
36 make payments on the inmate's outstanding restitution fines or
37 orders imposed pursuant to subdivision (a) or (c) of Section
38 13967 of the Government Code, as operative prior to September
39 28, 1994, or subdivision (b) or (f) of Section 1202.4.

1 (6) For purposes of this chapter, the Board of Parole Hearings
2 shall be considered the parole authority.

3 (7) The sole authority to issue warrants for the return to actual
4 custody of any inmate released on parole rests with the board,
5 except for any escaped inmate or any inmate released prior to his
6 or her scheduled release date who is returned to custody, in
7 which case Section 3060 shall apply.

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

11 ~~SEC. 27.~~

12 *SEC. 43.* Section 3005 of the Penal Code is amended to read:

13 3005. (a) The Department of Corrections and Rehabilitation
14 shall ensure that all parolees under active supervision and
15 deemed to pose a risk to the public of committing sex crimes, as
16 determined by the STATIC-99 assessment tool, shall be placed
17 on an intensive and specialized parole supervision caseload, and
18 shall be required to report frequently to designated parole
19 officers.

20 (b) The department shall develop and, at the discretion of the
21 secretary, and subject to an appropriation of the necessary funds,
22 may implement a plan for the implementation of relapse
23 prevention treatment programs, and the provision of other
24 services deemed necessary by the department, in conjunction
25 with intensive and specialized parole supervision, to reduce the
26 recidivism of sex offenders.

27 (c) The department shall develop control and containment
28 programming for sex offenders who have been assessed pursuant
29 to Section 5040 and shall require participation in appropriate
30 programming as a condition of parole.

31 ~~SEC. 28.~~

32 *SEC. 44.* Chapter 1.5 (commencing with Section 5040) is
33 added to Title 7 of Part 3 of the Penal Code, to read:

34
35 CHAPTER 1.5. RISK ASSESSMENT OF SEX OFFENDERS
36

37 5040. (a) The Department of Corrections and Rehabilitation
38 shall use the STATIC-99 assessment tool to perform a risk
39 assessment on all male inmates who are convicted of a sex
40 offense listed in subparagraph (A) of paragraph (2) of

1 subdivision (a) of Section 290, upon commitment to the
2 department. For those inmates already in the custody of the
3 department, the assessment shall be performed prior to being
4 released on parole. The assessment shall be performed as
5 prescribed in Chapter 5.5 (commencing with Section 290) of
6 Title 9 of Part 2.

7 (b) Inmates who were assessed using the STATIC-99 prior to
8 being committed to the department shall not be required to be
9 reassessed.

10 (c) Inmates who have a risk assessment of moderate-high or
11 high risk for committing a sex offense, according to the
12 STATIC-99, shall participate in sex offender control and
13 containment programming while incarcerated and while on
14 parole, as developed and specified by the department. The
15 programming shall be based on current, evidence-based
16 correctional standards that is proven to reduce the risk of
17 reoffending.

18 (d) Notwithstanding any other provision of law, inmates who
19 ~~fail to participate in the programming prescribed shall not be~~ *are*
20 *sentenced to a life term shall not be* eligible to earn any credits
21 pursuant to Article 2.5 (commencing with Section 2930) of
22 Chapter 7 of Title 1.

23 (e) Notwithstanding subdivision (d), an inmate serving a life
24 term may be excluded from sex offender programming until he
25 or she receives a parole date and is within five years of that date,
26 unless the department determines that the programming for that
27 inmate is necessary for the public safety.

28 (f) Notwithstanding subdivision (d), inmates who are
29 condemned to death or sentenced to life without the possibility of
30 parole are ineligible to participate in sex offender programming.

31 *SEC. 45. Section 12022.75 of the Penal Code is amended to*
32 *read:*

33 12022.75. (a) Any person who, for the purpose of
34 committing a felony, administers by injection, inhalation,
35 ingestion, or any other means, any controlled substance listed in
36 Section 11054, 11055, 11056, 11057, or 11058 of the Health and
37 Safety Code, against the victim's will by means of force,
38 violence, or fear of immediate and unlawful bodily injury to the
39 victim or another person, shall, in addition and consecutive to the
40 penalty provided for the felony or attempted felony of which he

1 or she has been convicted, be punished by an additional term of
2 three years.

3 *(b) (1) Any person who, in the commission or attempted*
4 *commission of any offense specified in paragraph (2),*
5 *administers any controlled substance listed in Section 11054,*
6 *11055, 11056, 11057, or 11058 of the Health and Safety Code to*
7 *the victim shall be punished by an additional and consecutive*
8 *term of imprisonment in the state prison for three years.*

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

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

12 *(B) Sodomy, in violation of subdivision (f) or (i) of Section*
13 *286.*

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

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

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

19 ~~SEC. 29.~~

20 *SEC. 46.* Section 13015 is added to the Penal Code, to read:

21 13015. It is the intent of the Legislature to create
22 school-based programs to promote child safety and prevent child
23 abductions.

24 ~~SEC. 30.~~

25 *SEC. 47.* Section 13105 is added to the Penal Code, to read:

26 13105. A state or local law enforcement agency shall not
27 destroy any records relating to a person who is required to
28 register as a sex offender pursuant to Section 290, for as long as
29 the person is living.

30 ~~SEC. 31.~~

31 *SEC. 48.* Section 13887 of the Penal Code is amended to
32 read:

33 13887. Every county shall establish and implement a sexual
34 assault felony enforcement (SAFE) team program pursuant to the
35 provisions of this chapter.

36 ~~SEC. 32.~~

37 *SEC. 49.* Section 13887.1 of the Penal Code is amended to
38 read:

39 13887.1. (a) The mission of this program shall be to reduce
40 violent sexual assault offenses in the county through proactive

1 surveillance and arrest of habitual sexual offenders, as defined in
2 Section 667.71, and strict enforcement of registration
3 requirements for sex offenders pursuant to Section 290.

4 (b) The proactive surveillance and arrest authorized by this
5 chapter shall be conducted within the limits of existing statutory
6 and constitutional law.

7 (c) The mission of this program shall also be to provide
8 community education regarding the purposes of Sections 290 to
9 290.46, inclusive. The goal of community education is to do all
10 of the following:

11 (1) Provide information to the public about ways to protect
12 themselves and families from sexual assault.

13 (2) Emphasize of the importance of using the knowledge of
14 the presence of registered sex offenders in the community to
15 enhance public safety.

16 (3) To explain that harassment or vigilantism against
17 registrants may cause them to disappear and attempt to live
18 without supervision, or to register as transients, which would
19 defeat the purpose of sex offender registration.

20 ~~SEC. 33.~~

21 *SEC. 50.* Section 6600 of the Welfare and Institutions Code is
22 amended to read:

23 6600. As used in this article, the following terms have the
24 following meanings:

25 (a) (1) “Sexually violent predator” means a person who has
26 been convicted of a sexually violent offense against two or more
27 victims and who has a diagnosed mental disorder that makes the
28 person a danger to the health and safety of others in that it is
29 likely that he or she will engage in sexually violent criminal
30 behavior.

31 (2) For purposes of this subdivision any of the following shall
32 be considered a conviction for a sexually violent offense:

33 (A) A prior or current conviction that resulted in a determinate
34 prison sentence for an offense described in subdivision (b).

35 (B) A conviction for an offense described in subdivision (b)
36 that was committed prior to July 1, 1977, and that resulted in an
37 indeterminate prison sentence.

38 (C) A prior conviction in another jurisdiction for an offense
39 that includes all of the elements of an offense described in
40 subdivision (b).

1 (D) A conviction for an offense under a predecessor statute
2 that includes all of the elements of an offense described in
3 subdivision (b).

4 (E) A prior conviction for which the inmate received a grant of
5 probation for an offense described in subdivision (b).

6 (F) A prior finding of not guilty by reason of insanity for an
7 offense described in subdivision (b).

8 (G) A conviction resulting in a finding that the person was a
9 mentally disordered sex offender.

10 (H) A prior conviction for an offense described in subdivision
11 (b) for which the person was committed to the Department of
12 Corrections and Rehabilitation, Division of Juvenile Facilities,
13 pursuant to Section 1731.5.

14 (I) A prior conviction for an offense described in subdivision
15 (b) that resulted in an indeterminate prison sentence.

16 (3) Conviction of one or more of the crimes enumerated in this
17 section shall constitute evidence that may support a court or jury
18 determination that a person is a sexually violent predator, but
19 shall not be the sole basis for the determination. The existence of
20 any prior convictions may be shown with documentary evidence.
21 The details underlying the commission of an offense that led to a
22 prior conviction, including a predatory relationship with the
23 victim, may be shown by documentary evidence, including, but
24 not limited to, preliminary hearing transcripts, trial transcripts,
25 probation and sentencing reports, and evaluations by the State
26 Department of Mental Health. Jurors shall be admonished that
27 they may not find a person a sexually violent predator based on
28 prior offenses absent relevant evidence of a currently diagnosed
29 mental disorder that makes the person a danger to the health and
30 safety of others in that it is likely that he or she will engage in
31 sexually violent criminal behavior.

32 (4) The provisions of this section shall apply to any person
33 against whom proceedings were initiated for commitment as a
34 sexually violent predator on or after January 1, 1996.

35 (b) “Sexually violent offense” means the following acts when
36 committed by force, violence, duress, menace, ~~or~~ fear of
37 immediate and unlawful bodily injury on the victim or another
38 person, *or threatening to retaliate in the future against the victim*
39 *or any other person*, and that are committed on, before, or after
40 the effective date of this article and result in a conviction or a

1 finding of not guilty by reason of insanity, as ~~provided~~ *defined* in
2 subdivision (a): ~~a felony violation of paragraph (2) of subdivision~~
3 ~~(a) of Section 261, paragraph (1) of subdivision (a) of Section~~
4 ~~262, Section 264.1, subdivision (a) or (b) of Section 288, or~~
5 ~~subdivision (a) of Section 289 of the Penal Code, or sodomy or~~
6 ~~oral copulation in violation of Section 286 or 288a of the Penal~~
7 ~~Code.~~ *felony violation of Section 261, 262, 264.1, 269, 286, 288,*
8 *288a, 288.5, or 289 of the Penal Code, or any felony violation of*
9 *Section 207, 209, or 220 of the Penal Code, committed with the*
10 *intent to commit a violation of Section 261, 262, 264.1, 269, 288,*
11 *288a, or 289 of the Penal Code.*

12 (c) “Diagnosed mental disorder” includes a congenital or
13 acquired condition affecting the emotional or volitional capacity
14 that predisposes the person to the commission of criminal sexual
15 acts in a degree constituting the person a menace to the health
16 and safety of others.

17 (d) “Danger to the health and safety of others” does not
18 require proof of a recent overt act while the offender is in
19 custody.

20 (e) “Predatory” means an act is directed toward a stranger, a
21 person of casual acquaintance with whom no substantial
22 relationship exists, or an individual with whom a relationship has
23 been established or promoted for the primary purpose of
24 victimization.

25 (f) “Recent overt act” means any criminal act that manifests a
26 likelihood that the actor may engage in sexually violent predatory
27 criminal behavior.

28 (g) Notwithstanding any other provision of law and for
29 purposes of this section, no more than one prior juvenile
30 adjudication of a sexually violent offense may constitute a prior
31 conviction for which the person received a determinate term if all
32 of the following applies:

33 (1) The juvenile was 16 years of age or older at the time he or
34 she committed the prior offense.

35 (2) The prior offense is a sexually violent offense as specified
36 in subdivision (b). Notwithstanding Section 6600.1, only an
37 offense described in subdivision (b) shall constitute a sexually
38 violent offense for purposes of this subdivision.

39 (3) The juvenile was adjudged a ward of the juvenile court
40 within the meaning of Section 602 because of the person’s

1 commission of the offense giving rise to the juvenile court
2 adjudication.

3 (4) The juvenile was committed to the Department of
4 Corrections and Rehabilitation, Division of Juvenile Facilities for
5 the sexually violent offense.

6 (h) A minor adjudged a ward of the court for commission of
7 an offense that is defined as a sexually violent offense shall be
8 entitled to specific treatment as a sexual offender. The failure of
9 a minor to receive that treatment shall not constitute a defense or
10 bar to a determination that any person is a sexually violent
11 predator within the meaning of this article.

12 ~~SEC. 34.~~

13 *SEC. 51.* Section 6601 of the Welfare and Institutions Code is
14 amended to read:

15 6601. (a) (1) Whenever the Secretary of the Department of
16 Corrections and Rehabilitation determines that an individual who
17 is in custody under the jurisdiction of that department, and who is
18 either serving a determinate prison sentence or whose parole has
19 been revoked, may be a sexually violent predator, the secretary
20 shall, at least six months prior to that individual's scheduled date
21 for release from prison, refer the person for evaluation in
22 accordance with this section. However, if the inmate was
23 received by the department with less than nine months of his or
24 her sentence to serve, or if the inmate's release date is modified
25 by judicial or administrative action, the director may refer the
26 person for evaluation in accordance with this section at a date
27 that is less than six months prior to the inmate's scheduled
28 release date.

29 (2) A petition may be filed under this section if the individual
30 was in custody pursuant to his or her determinate prison term,
31 parole revocation term, or a hold placed pursuant to Section
32 6601.3, at the time the petition is filed. A petition shall not be
33 dismissed on the basis of a later judicial or administrative
34 determination that the individual's custody was unlawful, if the
35 unlawful custody was the result of a good faith mistake of fact or
36 law. This paragraph shall apply to any petition filed on or after
37 January 1, 1996.

38 (b) The person shall be screened by the Department of
39 Corrections and Rehabilitation and the Board of Parole Hearings
40 based on whether the person has committed a sexually violent

1 predatory offense and on a review of the person's social,
2 criminal, and institutional history. This screening shall be
3 conducted in accordance with a structured screening instrument
4 developed and updated by the State Department of Mental Health
5 in consultation with the Department of Corrections and
6 Rehabilitation. If as a result of this screening it is determined that
7 the person is likely to be a sexually violent predator, the
8 Department of Corrections and Rehabilitation shall refer the
9 person to the State Department of Mental Health for a full
10 evaluation of whether the person meets the criteria in Section
11 6600.

12 (c) The State Department of Mental Health shall evaluate the
13 person in accordance with a standardized assessment protocol,
14 developed and updated by the State Department of Mental
15 Health, to determine whether the person is a sexually violent
16 predator as defined in this article. The standardized assessment
17 protocol shall require assessment of diagnosable mental
18 disorders, as well as various factors known to be associated with
19 the risk of reoffense among sex offenders. Risk factors to be
20 considered shall include criminal and psychosexual history, type,
21 degree, and duration of sexual deviance, and severity of mental
22 disorder.

23 (d) Pursuant to subdivision (c), the person shall be evaluated
24 by two practicing psychiatrists or psychologists, or one practicing
25 psychiatrist and one practicing psychologist, designated by the
26 Director of Mental Health. If both evaluators concur that the
27 person has a diagnosed mental disorder so that he or she is likely
28 to engage in acts of sexual violence without appropriate
29 treatment and custody, the Director of Mental Health shall
30 forward a request for a petition for commitment under Section
31 6602 to the county designated in subdivision (i). Copies of the
32 evaluation reports and any other supporting documents shall be
33 made available to the attorney designated by the county pursuant
34 to subdivision (i) who may file a petition for commitment.

35 (e) If one of the professionals performing the evaluation
36 pursuant to subdivision (d) does not concur that the person meets
37 the criteria specified in subdivision (d), but the other professional
38 concludes that the person meets those criteria, the Director of
39 Mental Health shall arrange for further examination of the person

1 by two independent professionals selected in accordance with
2 subdivision (g).

3 (f) If an examination by independent professionals pursuant to
4 subdivision (e) is conducted, a petition to request commitment
5 under this article shall only be filed if both independent
6 professionals who evaluate the person pursuant to subdivision (e)
7 concur that the person meets the criteria for commitment
8 specified in subdivision (d). The professionals selected to
9 evaluate the person pursuant to subdivision (g) shall inform the
10 person that the purpose of their examination is not treatment but
11 to determine if the person meets certain criteria to be
12 involuntarily committed pursuant to this article. It is not required
13 that the person appreciate or understand that information.

14 (g) Any independent professional who is designated by the
15 Secretary of the Department of Corrections and Rehabilitation or
16 the Director of Mental Health for purposes of this section shall
17 not be a state government employee, shall have at least five years
18 of experience in the diagnosis and treatment of mental disorders,
19 and shall include psychiatrists and licensed psychologists who
20 have a doctoral degree in psychology. The requirements set forth
21 in this section also shall apply to any professionals appointed by
22 the court to evaluate the person for purposes of any other
23 proceedings under this article.

24 (h) If the State Department of Mental Health determines that
25 the person is a sexually violent predator as defined in this article,
26 the Director of Mental Health shall forward a request for a
27 petition to be filed for commitment under this article to the
28 county designated in subdivision (i). Copies of the evaluation
29 reports and any other supporting documents shall be made
30 available to the attorney designated by the county pursuant to
31 subdivision (i) who may file a petition for commitment in the
32 superior court.

33 (i) If the county's designated counsel concurs with the
34 recommendation, a petition for commitment shall be filed in the
35 superior court of the county in which the person was convicted of
36 the offense for which he or she was committed to the jurisdiction
37 of the Department of Corrections and Rehabilitation. The petition
38 shall be filed, and the proceedings shall be handled, by either the
39 district attorney or the county counsel of that county. The county
40 board of supervisors shall designate either the district attorney or

1 the county counsel to assume responsibility for proceedings
2 under this article.

3 (j) The time limits set forth in this section shall not apply
4 during the first year that this article is operative.

5 (k) If the person is otherwise subject to parole, a finding or
6 placement made pursuant to this article shall toll the term of
7 parole pursuant to Article 1 (commencing with Section 3000) of
8 Chapter 8 of Title 1 of Part 3 of the Penal Code. The tolling of
9 parole shall occur in accordance with paragraph (4) of
10 subdivision (a) of Section 3000 of the Penal Code.

11 (l) Pursuant to subdivision (d), the attorney designated by the
12 county pursuant to subdivision (i) shall notify the State
13 Department of Mental Health of its decision regarding the filing
14 of a petition for commitment within 15 days of making that
15 decision.

16 *SEC. 52. Section 6604 of the Welfare and Institutions Code is*
17 *amended to read:*

18 6604. The court or jury shall determine whether, beyond a
19 reasonable doubt, the person is a sexually violent predator. If the
20 court or jury is not satisfied beyond a reasonable doubt that the
21 person is a sexually violent predator, the court shall direct that
22 the person be released at the conclusion of the term for which he
23 or she was initially sentenced, or that the person be
24 unconditionally released at the end of parole, whichever is
25 applicable. If the court or jury determines that the person is a
26 sexually violent predator, the person shall be committed for ~~two~~
27 ~~years an indeterminate term~~ to the custody of the State
28 Department of Mental Health for appropriate treatment and
29 confinement in a secure facility designated by the Director of
30 Mental Health, ~~and the person shall not be kept in actual custody~~
31 ~~longer than two years unless a subsequent extended commitment~~
32 ~~is obtained from the court incident to the filing of a petition for~~
33 ~~extended commitment under this article or unless the term of~~
34 ~~commitment changes pursuant to subdivision (e) of Section 6605.~~
35 Time spent on conditional release shall not count toward the
36 ~~two-year~~ term of commitment, unless the person is placed in a
37 locked facility by the conditional release program, in which case
38 the time in a locked facility shall count toward the ~~two-year~~ term
39 of commitment. The facility shall be located on the grounds of an

1 institution under the jurisdiction of the Department of
2 Corrections *and Rehabilitation*.

3 *SEC. 52.5. Section 6604 of the Welfare and Institutions Code*
4 *is amended to read:*

5 6604. The court or jury shall determine whether, beyond a
6 reasonable doubt, the person is a sexually violent predator. If the
7 court or jury is not satisfied beyond a reasonable doubt that the
8 person is a sexually violent predator, the court shall direct that
9 the person be released at the conclusion of the term for which he
10 or she was initially sentenced, or that the person be
11 unconditionally released at the end of parole, whichever is
12 applicable. If the court or jury determines that the person is a
13 sexually violent predator, the person shall be committed for ~~two~~
14 *five* years to the custody of the State Department of Mental
15 Health for appropriate treatment and confinement in a secure
16 facility designated by the Director of Mental Health, and the
17 person shall not be kept in actual custody longer than ~~two~~ *five*
18 years unless a subsequent extended commitment is obtained from
19 the court incident to the filing of a petition for extended
20 commitment under this article or unless the term of commitment
21 changes pursuant to subdivision (e) of Section 6605. Time spent
22 on conditional release shall not count toward the ~~two-year~~
23 *five-year* term of commitment, unless the person is placed in a
24 locked facility by the conditional release program, in which case
25 the time in a locked facility shall count toward the ~~two-year~~
26 *five-year* term of commitment. The facility shall be located on
27 the grounds of an institution under the jurisdiction of the
28 Department of Corrections *and Rehabilitation*.

29 *SEC. 53. Section 6604.1 of the Welfare and Institutions Code*
30 *is amended to read:*

31 6604.1. (a) The ~~two-year~~ *indeterminate* term of commitment
32 provided for in Section 6604 shall commence on the date upon
33 which the court issues the initial order of commitment pursuant
34 to that section. ~~The initial two-year term shall not be reduced by~~
35 ~~any time spent in a secure facility prior to the order of~~
36 ~~commitment. For any subsequent extended commitments, the~~
37 ~~term of commitment shall be for two years commencing from the~~
38 ~~date of the termination of the previous commitment.~~

39 (b) The person shall be evaluated by two practicing
40 psychologists or psychiatrists, or by one practicing psychologist

1 and one practicing psychiatrist, designated by the State
2 Department of Mental Health. The provisions of subdivisions (c)
3 to (i), inclusive, of Section 6601 shall apply to evaluations
4 performed for purposes of extended commitments pursuant to a
5 trial conducted pursuant to subdivision (f) of Section 6605. The
6 rights, requirements, and procedures set forth in Section 6603
7 shall apply to ~~extended~~ all commitment proceedings.

8 SEC. 53.5. Section 6604.1 of the Welfare and Institutions
9 Code is amended to read:

10 6604.1. (a) The ~~two-year~~ five-year term of commitment
11 provided for in Section 6604 shall commence on the date upon
12 which the court issues the initial order of commitment pursuant
13 to that section. The initial ~~two-year~~ five-year term shall not be
14 reduced by any time spent in a secure facility prior to the order of
15 commitment. For any subsequent extended commitments, the
16 term of commitment shall be for two years commencing from the
17 date of the termination of the previous commitment.

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

26 SEC. 54. Section 6605 of the Welfare and Institutions Code is
27 amended to read:

28 6605. (a) A person found to be a sexually violent predator
29 and committed to the custody of the State Department of Mental
30 Health shall have a current examination of his or her mental
31 condition made at least once every year. *The annual examination*
32 *shall include consideration of whether the committed person*
33 *currently meets the definition of a sexually violent predator and*
34 *whether conditional release to a less restrictive alternative or an*
35 *unconditional release is in the best interest of the person, and*
36 *conditions can be imposed that would adequately protect the*
37 *community. The Department of Mental Health shall file a report*
38 *of this examination with the court that committed the person*
39 *under this section. The report shall be in the form of a*
40 *declaration and shall be prepared by a professionally qualified*

1 *person. A copy of the report shall be served on the prosecuting*
2 *agency involved in the initial commitment and upon the*
3 *committed person. The person may retain, or if he or she is*
4 *indigent and so requests, the court may appoint, a qualified*
5 *expert or professional person to examine him or her, and the*
6 *expert or professional person shall have access to all records*
7 *concerning the person.*

8 ~~(b) The director shall provide the committed person with an~~
9 ~~annual written notice of his or her right to petition the court for~~
10 ~~conditional release under Section 6608. The notice shall contain~~
11 ~~a waiver of rights. The director shall forward the notice and~~
12 ~~waiver form to the court with the annual report. If the person~~
13 ~~does not affirmatively waive his or her right to petition the court~~
14 ~~for conditional release, the court shall set a show cause hearing to~~
15 ~~determine whether facts exist that warrant a hearing on whether~~
16 ~~the person's condition has so changed that he or she would not be~~
17 ~~a danger to the health and safety of others if discharged. The~~
18 ~~committed person shall have the right to be present and to have~~
19 ~~an attorney represent him or her at the show cause hearing.~~

20 ~~(c) If the court at the show cause hearing determines that~~
21 ~~probable cause exists to believe that the committed person's~~
22 ~~diagnosed mental disorder has so changed that he or she is not a~~
23 ~~danger to the health and safety of others and is not likely to~~
24 ~~engage in sexually violent criminal behavior if discharged, then~~
25 ~~the court shall set a hearing on the issue.~~

26 ~~(d) At the hearing, the committed person shall have the right to~~
27 ~~be present and shall be entitled to the benefit of all constitutional~~
28 ~~protections that were afforded to him or her at the initial~~
29 ~~commitment proceeding. The attorney designated by the county~~
30 ~~pursuant to subdivision (i) of Section 6601 shall represent the~~
31 ~~state and shall have the right to demand a jury trial and to have~~
32 ~~the committed person evaluated by experts chosen by the state.~~
33 ~~The committed person also shall have the right to demand a jury~~
34 ~~trial and to have experts evaluate him or her on his or her behalf.~~
35 ~~The court shall appoint an expert if the person is indigent and~~
36 ~~requests an appointment. The burden of proof at the hearing shall~~
37 ~~be on the state to prove beyond a reasonable doubt that the~~
38 ~~committed person's diagnosed mental disorder remains such that~~
39 ~~he or she is a danger to the health and safety of others and is~~

1 likely to engage in sexually violent criminal behavior if
2 discharged.

3 (e) If the court or jury rules against the committed person at
4 the hearing conducted pursuant to subdivision (d), the term of
5 commitment of the person shall run for a period of two years
6 from the date of this ruling. If the court or jury rules for the
7 committed person, he or she shall be unconditionally released
8 and unconditionally discharged.

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.

18 (c) If the court at the show cause hearing determines that
19 probable cause exists to believe that the committed person's
20 diagnosed mental disorder has so changed that he or she is not a
21 danger to the health and safety of others and is not likely to
22 engage in sexually violent criminal behavior if discharged, then
23 the court shall set a hearing on the issue.

24 (d) At the hearing, the committed person shall have the right to
25 be present and shall be entitled to the benefit of all constitutional
26 protections that were afforded to him or her at the initial
27 commitment proceeding. The attorney designated by the county
28 pursuant to subdivision (i) of Section 6601 shall represent the
29 state and shall have the right to demand a jury trial and to have
30 the committed person evaluated by experts chosen by the state.
31 The committed person also shall have the right to demand a jury
32 trial and to have experts evaluate him or her on his or her behalf.
33 The court shall appoint an expert if the person is indigent and
34 requests an appointment. The burden of proof at the hearing shall
35 be on the state to prove beyond a reasonable doubt that the
36 committed person's diagnosed mental disorder remains such that
37 he or she is a danger to the health and safety of others and is
38 likely to engage in sexually violent criminal behavior if
39 discharged.

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

~~(f) In the event that the State Department of Mental Health has reason to believe that a person committed to it as a sexually violent predator is no longer a sexually violent predator, it shall seek judicial review of the person's commitment pursuant to the procedures set forth in Section 7250 in the superior court from which the commitment was made. If the superior court determines that the person is no longer a sexually violent predator, he or she shall be unconditionally released and unconditionally discharged.~~

(1) The director, within 30 days of the filing of the report, shall review and consider the annual report. The person may submit any report prepared by a retained or appointed expert and the director shall also consider that report. Notice of review by the director shall be filed in the court. If upon that review, the director determines that the person's condition has so changed that either: (a) The person no longer meets the definition of a sexually violent predator; or (b) conditional release to a less restrictive alternative is in the best interest of the person and conditions can be imposed that adequately protect the community, the secretary shall authorize the person to petition the court for conditional release to a less restrictive alternative or unconditional discharge. The director may request the court to set a show cause hearing, or the court may set a show cause hearing on its own motion. At that hearing, the state may decline to state a prima facie case or may submit on the evidence in the annual report. The petition shall be filed with the court and served upon the prosecuting agency responsible for the initial commitment. The court, upon receipt of the petition for conditional release to a less restrictive alternative or unconditional discharge, shall order a hearing within forty-five days.

(2) Nothing contained in this chapter shall prohibit the person from otherwise petitioning the court for conditional release to a less restrictive alternative or unconditional discharge without the

1 director's approval. The director shall provide the committed
2 person with an annual written notice of the person's right to
3 petition the court for conditional release to a less restrictive
4 alternative or unconditional discharge over the secretary's
5 objection. The notice shall contain a waiver of rights. The
6 director shall file the notice and waiver form and the annual
7 report with the court. If the person does not affirmatively waive
8 the right to petition, the court shall set a show cause hearing to
9 determine whether probable cause exists to warrant a hearing on
10 whether the person's condition has so changed that: (A) He or
11 she no longer meets the definition of a sexually violent predator;
12 or (B) conditional release to a proposed less restrictive
13 alternative would be in the best interest of the person and
14 conditions can be imposed that would adequately protect the
15 community.

16 (c) The committed person shall have a right to have an
17 attorney represent him or her at the show cause hearing, which
18 may be conducted solely on the basis of affidavits or
19 declarations, but the person is not entitled to be present at the
20 show cause hearing. At the show cause hearing, the prosecuting
21 attorney shall present prima facie evidence establishing that the
22 committed person continues to meet the definition of a sexually
23 violent predator and that a less restrictive alternative is not in
24 the best interest of the person and conditions cannot be imposed
25 that adequately protect the community. In making this showing,
26 the state may rely exclusively upon the annual report prepared
27 pursuant to subdivision (a). The committed person may present
28 responsive affidavits or declarations to which the state may
29 reply.

30 (d) If the court at the show cause hearing determines that
31 either: (1) The state has failed to present prima facie evidence
32 that the committed person continues to meet the definition of a
33 sexually violent predator and that no proposed less restrictive
34 alternative is in the best interest of the person and conditions
35 cannot be imposed that would adequately protect the community;
36 or (2) probable cause exists to believe that the person's condition
37 has so changed that: (A) The person no longer meets the
38 definition of a sexually violent predator; or (B) release to a
39 proposed less restrictive alternative would be in the best interest
40 of the person and conditions can be imposed that would

1 adequately protect the community, then the court shall set a trial
2 on either or both issues.

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

11 (f) At the trial resulting from a finding by the court under
12 subdivision (d), the committed person shall be entitled to be
13 present and to the benefit of all constitutional protections that
14 were afforded to the person at the initial commitment
15 proceeding. The prosecuting agency shall represent the state and
16 shall have a right to a jury trial and to have the committed
17 person evaluated by experts chosen by the state. The committed
18 person shall also have the right to a jury trial and the right to
19 have experts evaluate him or her on his or her behalf and the
20 court shall appoint an expert if the person is indigent and
21 requests an appointment.

22 (g) If the issue at the hearing is whether the person should be
23 unconditionally discharged, the burden of proof shall be upon
24 the state to prove beyond a reasonable doubt that the committed
25 person's condition remains such that the person continues to
26 meet the definition of a sexually violent predator. Evidence of the
27 prior commitment trial and disposition is admissible.

28 (h) If the issue at the hearing is whether the person should be
29 conditionally released to a less restrictive alternative, the burden
30 of proof at the hearing shall be upon the state to prove beyond a
31 reasonable doubt that conditional release to any proposed less
32 restrictive alternative either: (1) Is not in the best interest of the
33 committed person; or (2) does not include conditions that would
34 adequately protect the community. Evidence of the prior
35 commitment trial and disposition is admissible.

36 (i) Probable cause exists to believe that a person's condition
37 has "so changed," under paragraph (2) of subdivision (d), only
38 when evidence exists, since the person's last commitment trial
39 proceeding, of a substantial change in the person's physical or
40 mental condition such that the person either no longer meets the

1 definition of a sexually violent predator, or that a conditional
2 release to a less restrictive alternative is in the person's best
3 interest and conditions can be imposed to adequately protect the
4 community.

5 (j) A new trial proceeding under subdivision (f) may be
6 ordered or held only when there is current evidence from a
7 licensed professional of one of the following and the evidence
8 presents a change in condition since the person's last
9 commitment trial proceeding:

10 (1) An identified physiological change to the person, such as
11 paralysis, stroke, or dementia, that renders the committed person
12 unable to commit a sexually violent act and this change is
13 permanent.

14 (2) A change in the person's mental condition brought about
15 through positive response to continuing participation in
16 treatment which indicates that the person meets the standard for
17 conditional release to a less restrictive alternative or that the
18 person would be safe to be at large if unconditionally released
19 from commitment.

20 (k) For purposes of this section, a change in a single
21 demographic factor, without more, does not establish probable
22 cause for a new trial proceeding under subdivision (f). As used in
23 this section, a single demographic factor includes, but is not
24 limited to, a change in the chronological age, marital status, or
25 gender of the committed person.

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

29 (m) Before the court may enter an order directing conditional
30 release to a less restrictive alternative, it must find all of the
31 following:

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

34 (2) The treatment provider has presented a specific course of
35 treatment and has agreed to assume responsibility for that
36 treatment and will report progress to the court on a regular
37 basis, and will report violations immediately to the court, the
38 prosecutor, the supervising community corrections officer, and
39 the superintendent of the special commitment center.

1 (3) *Housing exists that is sufficiently secure to protect the*
2 *community, and the person or agency providing housing to the*
3 *conditionally released person has agreed in writing to accept the*
4 *person, to provide the level of security required by the court, and*
5 *immediately to report to the court, the prosecutor, the community*
6 *program director, the department and the superintendent of the*
7 *special commitment center if the person leaves the housing to*
8 *which he or she has been assigned without authorization.*

9 (4) *The person is willing to comply with the treatment provider*
10 *and all requirements imposed by the treatment provider and by*
11 *the court.*

12 (5) *The person is willing to comply with supervision*
13 *requirements imposed by the Department of Corrections and*
14 *Rehabilitation.*

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

23 (o) *Whenever the issue of conditional release to a less*
24 *restrictive alternative is submitted to the jury, the court shall*
25 *instruct the jury to return a verdict in substantially the following*
26 *form:*

27 *Has the state proved beyond a reasonable doubt that either:*

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

30 (2) *Does not include conditions that would adequately protect*
31 *the community? Answer:*

32 *Yes or No.*

33 (p) *If the court or jury determines that conditional release to a*
34 *less restrictive alternative is in the best interest of the person and*
35 *includes conditions that would adequately protect the*
36 *community, and the court determines that the minimum*
37 *conditions set forth in subdivision (m) section are met, the court*
38 *shall enter judgment and direct a conditional release.*

39 (q) *The court shall impose any additional conditions necessary*
40 *to ensure compliance with treatment and to protect the*

1 community. If the court finds that conditions do not exist that will
2 both ensure the person's compliance with treatment and protect
3 the community, then the person shall be remanded to the custody
4 of the Department of Health Services for control, care, and
5 treatment in a secure facility.

6 (r) If the service provider designated by the court to provide
7 inpatient or outpatient treatment or to monitor or supervise any
8 other terms and conditions of a person's placement in a less
9 restrictive alternative is other than the Department of Health
10 Services or the Department of Corrections and Rehabilitation,
11 then the service provider so designated must agree in writing to
12 provide that treatment, monitoring, or supervision in accord with
13 this section. Any person providing or agreeing to provide
14 treatment, monitoring, or supervision services pursuant to this
15 chapter may be compelled to testify and any privilege with
16 regard to such person's testimony is deemed waived.

17 (s) Prior to authorizing any release to a less restrictive
18 alternative, the court shall impose those conditions upon the
19 person as are necessary to ensure the safety of the community.
20 The court shall order the Department of Corrections and
21 Rehabilitation to investigate the less restrictive alternative and
22 recommend any additional conditions to the court. These
23 conditions shall include, but are not limited to, the following:
24 Specification of residence, prohibition of contact with potential
25 or past victims, prohibition of alcohol and other drug use,
26 participation in a specific course of inpatient or outpatient
27 treatment that may include monitoring by the use of polygraph
28 and plethysmograph, supervision by a Department of
29 Corrections and Rehabilitation community corrections officer, a
30 requirement that the person remain within the state unless the
31 person receives prior authorization by the court, and any other
32 conditions that the court determines are in the best interest of the
33 person or others. A copy of the conditions of release shall be
34 given to the person and to any designated service providers.

35 (t) Any service provider designated to provide inpatient or
36 outpatient treatment shall monthly, or as otherwise directed by
37 the court, submit to the court, to the Department of Health
38 Services facility from which the person was released, to the
39 prosecutor of the county in which the person was found to be a
40 sexually violent predator, and to the supervising community

1 corrections officer, a report stating whether the person is
2 complying with the terms and conditions of the conditional
3 release to a less restrictive alternative.

4 (u) Each person released to a less restrictive alternative shall
5 have his or her case reviewed by the court that released him or
6 her no later than one year after that release and annually
7 thereafter until the person is unconditionally discharged. Review
8 may occur in a shorter time or more frequently, if the court, in its
9 discretion on its own motion, or on motion of the person, the
10 secretary, or the prosecuting attorney so determines. The sole
11 question to be determined by the court is whether the person
12 shall continue to be conditionally released to a less restrictive
13 alternative. The court in making its determination shall be aided
14 by the annual reports filed pursuant to subdivision (a) of this
15 section and the opinions of the secretary and other experts or
16 professional persons.

17 (v) Before placing a committed person in a state-operated
18 forensic conditional release program, the community program
19 director designated by the State Department of Mental Health
20 shall submit a written recommendation to the court stating which
21 forensic conditional release program is most appropriate for
22 supervising and treating the committed person. If the court does
23 not accept the community program director's recommendation,
24 the court shall specify the reason or reasons for its order on the
25 record. The procedures described in Sections 1605 to 1610,
26 inclusive, of the Penal Code shall apply to the person placed in
27 the forensic conditional release program.

28 (w) If the court determines that the person should be
29 transferred to a state-operated forensic conditional release
30 program, the community program director, or his or her
31 designee, shall make the necessary placement arrangements and,
32 within 21 days after receiving notice of the court's finding, the
33 person shall be placed in the community in accordance with the
34 treatment and supervision plan unless good cause for not doing
35 so is presented to the court.

36 (x) If the court rules against the committed person at the trial
37 for unconditional release from commitment, the court may place
38 the committed person on outpatient status in accordance with the
39 procedures described in Title 15 (commencing with Section
40 1600) of Part 2 of the Penal Code and this section.

1 ~~SEC. 55. Section 6608 of the Welfare and Institutions Code is~~
2 ~~repealed.~~

3 ~~6608. (a) Nothing in this article shall prohibit the person who~~
4 ~~has been committed as a sexually violent predator from~~
5 ~~petitioning the court for conditional release and subsequent~~
6 ~~unconditional discharge without the recommendation or~~
7 ~~concurrence of the Director of Mental Health. If a person has~~
8 ~~previously filed a petition for conditional release without the~~
9 ~~concurrence of the director and the court determined, either upon~~
10 ~~review of the petition or following a hearing, that the petition~~
11 ~~was frivolous or that the committed person's condition had not so~~
12 ~~changed that he or she would not be a danger to others in that it is~~
13 ~~not likely that he or she will engage in sexually violent criminal~~
14 ~~behavior if placed under supervision and treatment in the~~
15 ~~community, then the court shall deny the subsequent petition~~
16 ~~unless it contains facts upon which a court could find that the~~
17 ~~condition of the committed person had so changed that a hearing~~
18 ~~was warranted. Upon receipt of a first or subsequent petition~~
19 ~~from a committed person without the concurrence of the director,~~
20 ~~the court shall endeavor whenever possible to review the petition~~
21 ~~and determine if it is based upon frivolous grounds and, if so,~~
22 ~~shall deny the petition without a hearing. The person petitioning~~
23 ~~for conditional release and unconditional discharge under this~~
24 ~~subdivision shall be entitled to assistance of counsel.~~

25 ~~(b) The court shall give notice of the hearing date to the~~
26 ~~attorney designated in subdivision (i) of Section 6601, the~~
27 ~~retained or appointed attorney for the committed person, and the~~
28 ~~Director of Mental Health at least 15 court days before the~~
29 ~~hearing date.~~

30 ~~(c) No hearing upon the petition shall be held until the person~~
31 ~~who is committed has been under commitment for confinement~~
32 ~~and care in a facility designated by the Director of Mental Health~~
33 ~~for not less than one year from the date of the order of~~
34 ~~commitment.~~

35 ~~(d) The court shall hold a hearing to determine whether the~~
36 ~~person committed would be a danger to the health and safety of~~
37 ~~others in that it is likely that he or she will engage in sexually~~
38 ~~violent criminal behavior due to his or her diagnosed mental~~
39 ~~disorder if under supervision and treatment in the community. If~~
40 ~~the court at the hearing determines that the committed person~~

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

19 (e) Before placing a committed person in a state-operated
20 forensic conditional release program, the community program
21 director designated by the State Department of Mental Health
22 shall submit a written recommendation to the court stating which
23 forensic conditional release program is most appropriate for
24 supervising and treating the committed person. If the court does
25 not accept the community program director's recommendation,
26 the court shall specify the reason or reasons for its order on the
27 record. The procedures described in Sections 1605 to 1610,
28 inclusive, of the Penal Code shall apply to the person placed in
29 the forensic conditional release program.

30 (f) If the court determines that the person should be transferred
31 to a state-operated forensic conditional release program, the
32 community program director, or his or her designee, shall make
33 the necessary placement arrangements and, within 21 days after
34 receiving notice of the court's finding, the person shall be placed
35 in the community in accordance with the treatment and
36 supervision plan unless good cause for not doing so is presented
37 to the court.

38 (g) If the court rules against the committed person at the trial
39 for unconditional release from commitment, the court may place
40 the committed person on outpatient status in accordance with the

1 ~~procedures described in Title 15 (commencing with Section~~
2 ~~1600) of Part 2 of the Penal Code.~~

3 ~~(h) If the court denies the petition to place the person in an~~
4 ~~appropriate forensic conditional release program or if the petition~~
5 ~~for unconditional discharge is denied, the person may not file a~~
6 ~~new application until one year has elapsed from the date of the~~
7 ~~denial.~~

8 ~~(i) In any hearing authorized by this section, the petitioner~~
9 ~~shall have the burden of proof by a preponderance of the~~
10 ~~evidence.~~

11 ~~(j) If the petition for conditional release is not made by the~~
12 ~~director of the treatment facility to which the person is~~
13 ~~committed, no action on the petition shall be taken by the court~~
14 ~~without first obtaining the written recommendation of the~~
15 ~~director of the treatment facility.~~

16 ~~(k) Time spent in a conditional release program pursuant to~~
17 ~~this section shall not count toward the term of commitment under~~
18 ~~this article unless the person is confined in a locked facility by~~
19 ~~the conditional release program, in which case the time spent in a~~
20 ~~locked facility shall count toward the term of commitment.~~

21 *SEC. 56. If an appellate court determines that the*
22 *indeterminate term set forth in Sections 52 and 53 is*
23 *unconstitutional, those sections shall not be operative, and*
24 *Sections 52.5 and 53.5 shall be operative.*

25 ~~SEC. 35.~~

26 *SEC. 57. No reimbursement is required by this act pursuant to*
27 *Section 6 of Article XIII B of the California Constitution for*
28 *certain costs that may be incurred by a local agency or school*
29 *district because, in that regard, this act creates a new crime or*
30 *infraction, eliminates a crime or infraction, or changes the*
31 *penalty for a crime or infraction, within the meaning of Section*
32 *17556 of the Government Code, or changes the definition of a*
33 *crime within the meaning of Section 6 of Article XIII B of the*
34 *California Constitution.*

35 *However, if the Commission on State Mandates determines*
36 *that this act contains other costs mandated by the state,*
37 *reimbursement to local agencies and school districts for those*
38 *costs shall be made pursuant to Part 7 (commencing with Section*
39 *17500) of Division 4 of Title 2 of the Government Code.*

1 *SEC. 58. This act is an urgency statute necessary for the*
2 *immediate preservation of the public peace, health, or safety*
3 *within the meaning of Article IV of the Constitution and shall go*
4 *into immediate effect. The facts constituting the necessity are:*
5 *In order to protect the health and safety of the children of*
6 *California, it is necessary that this act take effect immediately.*

O