

AMENDED IN SENATE MARCH 7, 2006

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 209, 220, 269, 288.5, 290, 290.3, 290.46, ~~331.4~~ 311, 311.1, 311.2, 311.3, 311.4, 311.5, 311.7, 311.8, 311.10, 311.11, 311.13, 312.1, 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, *and to repeal Section 311.9 of*, the Penal Code, and to amend Sections 6600, 6601, 6604, 6604.1, and 6605 of, and to repeal Section 6608 of, the Welfare and Institutions Code, relating to sex offenders, *and* 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.

The bill would 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 or *sexual exploitation of a child* is a misdemeanor, and *enticing a minor to perform in matter that depicts sexual conduct by a minor for commercial purposes, or distributing matter that contains a minor engaged in sexual conduct, is a felony.*

~~This bill would provide that if the material depicts a minor who is prepubescent, the crime is felony, and if the person intends to distribute or exchange that material with another person, regardless of commercial intent, the crime is a felony~~ *change the punishment for importing, producing, publishing, possessing, duplicating, distributing, exhibiting, or exchanging matter that depicts minors engaging in sexual conduct or explicit sexual conduct, depending on the age of the minor and whether or not the person is required to register as a sex offender. The bill would make related changes.* 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 $\frac{2}{3}$ 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~~ *presentencing* 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.

7 (b) California's tactics for monitoring registered sex offenders
8 must be transformed into a cohesive and comprehensive system
9 of state and local law enforcement supervision to observe, assess,
10 and proactively respond to patterns and conduct of registered sex
11 offenders in the community.

12 (c) California's infrastructure for collecting, maintaining, and
13 disseminating information about registered sex offenders must be
14 retooled to ensure that law enforcement and the public have
15 access to accurate, up-to-date, and relevant information about
16 registered sex offenders.

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

19 SEC. 3. Section 68152 of the Government Code is amended
20 to read:

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

28 (a) Adoption: retain permanently.

29 (b) Change of name: retain permanently.

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

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

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

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

38 (4) Eminent domain: retain permanently.

- 1 (5) Family law, except as otherwise specified: 30 years.
- 2 (6) Harassment: same period as duration of the injunction and
- 3 any renewals, then retain the injunction as a judgment; 60 days
- 4 after expiration of the temporary restraining order.
- 5 (7) Mental health (Lanterman Developmental Disabilities
- 6 Services Act and Lanterman-Petris-Short Act): 30 years.
- 7 (8) Paternity: retain permanently.
- 8 (9) Petition, except as otherwise specified: 10 years.
- 9 (10) Real property other than unlawful detainer: retain
- 10 permanently if the action affects title or an interest in real
- 11 property.
- 12 (11) Small claims: 10 years.
- 13 (12) Unlawful detainer: one year if judgment is for possession
- 14 of the premises; 10 years if judgment is for money.
- 15 (d) Notwithstanding subdivision (c), any civil or small claims
- 16 case in the trial court:
- 17 (1) Involuntarily dismissed by the court for delay in
- 18 prosecution or failure to comply with state or local rules: one
- 19 year.
- 20 (2) Voluntarily dismissed by a party without entry of
- 21 judgment: one year.
- 22 Notation of the dismissal shall be made on the civil index of
- 23 cases or on a separate dismissal index.
- 24 (e) Criminal.
- 25 (1) Capital felony (murder with special circumstances where
- 26 the prosecution seeks the death penalty): retain permanently. If
- 27 the charge is disposed of by acquittal or a sentence less than
- 28 death, the case shall be reclassified.
- 29 (2) Felony, except as otherwise specified: 75 years.
- 30 (3) Felony, except capital felony, with court records from the
- 31 initial complaint through the preliminary hearing or plea and for
- 32 which the case file does not include final sentencing or other
- 33 final disposition of the case because the case was bound over to
- 34 the superior court: five years.
- 35 (4) Misdemeanor, except as otherwise specified: five years.
- 36 (5) Misdemeanor alleging a violation of the Vehicle Code,
- 37 except as otherwise specified: three years.
- 38 (6) Misdemeanor alleging a violation of Section 23103, 23152,
- 39 or 23153 of the Vehicle Code: 10 years.

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

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

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

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

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

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

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

(g) Juvenile.

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

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

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

(4) Traffic and some nontraffic misdemeanors and infractions (Section 601 of the Welfare and Institutions Code): upon reaching age 21 or five years after jurisdiction over the person has terminated under subdivision (c) of Section 826 of the Welfare and Institutions Code. May be microfilmed or photocopied.

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

(h) Probate.

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

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

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

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

(j) Other records.

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

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

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

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

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

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

(7) Court reporter notes: 10 years after the notes have been taken in criminal and juvenile proceedings and five years after

1 the notes have been taken in all other proceedings, except notes
2 reporting proceedings in capital felony cases (murder with
3 special circumstances where the prosecution seeks the death
4 penalty and the sentence is death), including notes reporting the
5 preliminary hearing, which shall be retained permanently, unless
6 the Supreme Court on request of the court clerk authorizes the
7 destruction.

8 (8) Electronic recordings made as the official record of the
9 oral proceedings under the California Rules of Court: any time
10 after final disposition of the case in infraction and misdemeanor
11 proceedings, 10 years in all other criminal proceedings, and five
12 years in all other proceedings.

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

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

17 (11) Index for cases alleging traffic violations: same period as
18 period for retention of the records in the underlying case
19 category.

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

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

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

28 (15) Naturalization index: retain permanently.

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

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

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

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

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

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

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

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

22 (b) (1) Any person who kidnaps or carries away any
23 individual to commit robbery, rape, spousal rape, oral copulation,
24 sodomy, or any violation of Section 264.1, 288, or 289, shall be
25 punished by imprisonment in the state prison for life with the
26 possibility of parole.

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

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

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

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

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

5 220. (a) Every person who assaults another with intent to
6 commit mayhem, rape, sodomy, oral copulation, or any violation
7 of Section 264.1, 288 or 289 shall be punished by imprisonment
8 in the state prison for two, four, or six years.

9 (b) Any person who, in the commission of a burglary of the
10 first degree, as defined in subdivision (a) of Section 460, assaults
11 another with the intent to commit rape, sodomy, oral copulation,
12 or any violation of Section 264.1, 288, or 289 shall be punished
13 by imprisonment in the state prison for life with the possibility of
14 parole.

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

16 269. (a) Any person who commits any of the following acts
17 upon a child who is under 14 years of age and seven or more
18 years younger than the person is guilty of aggravated sexual
19 assault of a child:

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

22 (2) Rape or sexual penetration, in concert, in violation of
23 Section 264.1.

24 (3) Sodomy, in violation of paragraph (2) or (3) of subdivision
25 (c), or subdivision (d), of Section 286.

26 (4) Oral copulation, in violation of paragraph (2) or (3) of
27 subdivision (c), or subdivision (d), of Section 288a.

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

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

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

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

38 288.3. (a) (1) Every person who, motivated by an unnatural
39 or abnormal sexual interest in children, arranges a meeting with a
40 minor or a person he or she believes to be a minor for the

1 purpose of exposing his or her genitals or pubic or rectal area,
2 having the child expose his or her genitals or pubic or rectal area,
3 or engaging in lewd or lascivious behavior, shall be punished by
4 a fine not exceeding five thousand dollars (\$5,000), by
5 imprisonment in a county jail not exceeding one year, or by both
6 the fine and imprisonment.

7 (2) Every person who violates this subdivision after a prior
8 conviction for an offense listed in subparagraph (A) of paragraph
9 (2) of subdivision (a) of Section 290 shall be punished by
10 imprisonment in the state prison.

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

15 (c) Prosecution under this section shall not prohibit
16 prosecution under any other provision of law.

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

18 288.5. (a) Any person who either resides in the same home
19 with the minor child or has recurring access to the child, who
20 over a period of time, not less than three months in duration,
21 engages in three or more acts of substantial sexual conduct with
22 a child under the age of 14 years at the time of the commission of
23 the offense, as defined in subdivision (b) of Section 1203.066, or
24 three or more acts of lewd or lascivious conduct, as defined in
25 Section 288, with a child under the age of 14 years at the time of
26 the commission of the offense is guilty of the offense of
27 continuous sexual abuse of a child and shall be punished by
28 imprisonment in the state prison for a term of 6, 12, or 16 years.

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

32 (c) No other act of substantial sexual conduct, as defined in
33 subdivision (b) of Section 1203.066, with a child under 14 years
34 of age at the time of the commission of the offenses, or lewd and
35 lascivious acts, as defined in Section 288, involving the same
36 victim may be charged in the same proceeding with a charge
37 under this section unless the other charged offense occurred
38 outside the time period charged under this section or the other
39 offense is charged in the alternative. A defendant may be charged
40 with only one count under this section unless more than one

1 victim is involved in which case a separate count may be charged
2 for each victim.

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

4 288.7. Any person 18 years of age or older who engages in
5 sexual intercourse or sodomy with a child who is 10 years of age
6 or younger is guilty of a felony and shall be punished by
7 imprisonment in the state prison for a term of 25 years to life.

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

11
12 CHAPTER 5.5. SEX OFFENDERS
13

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

15 290. (a) (1) (A) Every person described in paragraph (2),
16 for the rest of his or her life while residing in California, or while
17 attending school or working in California, as described in
18 subparagraph (G), shall be required to register with the chief of
19 police of the city in which he or she is residing, or the sheriff of
20 the county if he or she is residing in an unincorporated area or
21 city that has no police department, and, additionally, with the
22 chief of police of a campus of the University of California, the
23 California State University, or community college if he or she is
24 residing upon the campus or in any of its facilities, within five
25 working days of coming into, or changing his or her residence
26 within, any city, county, or city and county, or campus in which
27 he or she temporarily resides.

28 (B) If the person who is registering has more than one
29 residence address at which he or she regularly resides, he or she
30 shall register in accordance with subparagraph (A) in each of the
31 jurisdictions in which he or she regularly resides, regardless of
32 the number of days or nights spent there. If all of the addresses
33 are within the same jurisdiction, the person shall provide the
34 registering authority with all of the addresses where he or she
35 regularly resides.

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

39 (i) A transient must register, or reregister if the person has
40 previously registered, within five working days from release

1 from incarceration, placement or commitment, or release on
2 probation, pursuant to paragraph (1) of subdivision (a), except
3 that if the person previously registered as a transient less than 30
4 days from the date of his or her release from incarceration, he or
5 she does not need to reregister as a transient until his or her next
6 required 30-day update of registration. If a transient is not
7 physically present in any one jurisdiction for five consecutive
8 working days, he or she must register in the jurisdiction in which
9 he or she is physically present on the fifth working day following
10 release, pursuant to paragraph (1) of subdivision (a). Beginning
11 on or before the 30th day following initial registration upon
12 release, a transient must reregister no less than once every 30
13 days thereafter. A transient shall register with the chief of police
14 of the city in which he or she is physically present within that
15 30-day period, or the sheriff of the county if he or she is
16 physically present in an unincorporated area or city that has no
17 police department, and additionally, with the chief of police of a
18 campus of the University of California, the California State
19 University, or community college if he or she is physically
20 present upon the campus or in any of its facilities. A transient
21 must reregister no less than once every 30 days regardless of the
22 length of time he or she has been physically present in the
23 particular jurisdiction in which he or she reregisters. If a transient
24 fails to reregister within any 30-day period, he or she may be
25 prosecuted in any jurisdiction in which he or she is physically
26 present.

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

35 (iii) Beginning on his or her first birthday following
36 registration, a transient shall register annually, within five
37 working days of his or her birthday, to update his or her
38 registration with the entities described in clause (i). A transient
39 shall register in whichever jurisdiction he or she is physically
40 present on that date. At the 30-day updates and the annual

1 update, a transient shall provide current information as required
2 on the Department of Justice annual update form, including the
3 information described in subparagraphs (A) to (C), inclusive, of
4 paragraph (2) of subdivision (e), and the information specified in
5 clause (iv).

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

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

19 (vi) A transient who moves out of state shall inform, in person,
20 the chief of police in the city in which he or she is physically
21 present, or the sheriff of the county if he or she is physically
22 present in an unincorporated area or city that has no police
23 department, within five working days, of his or her move out of
24 state. The transient shall inform that registering agency of his or
25 her planned destination, residence or transient location out of
26 state, and any plans he or she has to return to California, if
27 known. The law enforcement agency shall, within three days
28 after receipt of this information, forward a copy of the change of
29 location information to the Department of Justice. The
30 department shall forward appropriate registration data to the law
31 enforcement agency having local jurisdiction of the new place of
32 residence or location.

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

1 (viii) The transient registrant's duty to update his or her
2 registration no less than every 30 days shall begin with his or her
3 second transient update following the date this subdivision
4 became effective.

5 (D) Beginning on his or her first birthday following
6 registration or change of address, the person shall be required to
7 register annually, within five working days of his or her birthday,
8 to update his or her registration with the entities described in
9 subparagraph (A). At the annual update, the person shall provide
10 current information as required on the Department of Justice
11 annual update form, including the information described in
12 subparagraphs (A) to (C), inclusive, of paragraph (2) of
13 subdivision (e).

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

20 (F) No entity shall require a person to pay a fee to register or
21 update his or her registration pursuant to this section. The
22 registering agency shall submit registrations, including annual
23 updates or changes of address, directly into the Department of
24 Justice Violent Crime Information Network (VCIN). The
25 registering agency shall give the registrant a copy of the
26 completed Department of Justice form each time the person
27 registers or reregisters, including at the annual update.

28 (G) Persons required to register in their state of residence who
29 are out-of-state residents employed, or carrying on a vocation in
30 California on a full-time or part-time basis, with or without
31 compensation, for more than 14 days, or for an aggregate period
32 exceeding 30 days in a calendar year, shall register in accordance
33 with subparagraph (A). Persons described in paragraph (2) who
34 are out-of-state residents enrolled in any educational institution
35 in California, as defined in Section 22129 of the Education Code,
36 on a full-time or part-time basis, shall register in accordance with
37 subparagraph (A). The place where the out-of-state resident is
38 located, for purposes of registration, shall be the place where the
39 person is employed, carrying on a vocation, or attending school.
40 The out-of-state resident subject to this subparagraph shall, in

1 addition to the information required pursuant to subdivision (e),
 2 provide the registering authority with the name of his or her place
 3 of employment or the name of the school attended in California,
 4 and his or her address or location in his or her state of residence.
 5 The registration requirement for persons subject to this
 6 subparagraph shall become operative on November 25, 2000.
 7 The terms “employed or carries on a vocation” include
 8 employment whether or not financially compensated,
 9 volunteered, or performed for government or educational benefit.

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

12 (A) Any person who, since July 1, 1944, has been or is
 13 hereafter convicted in any court in this state or in any federal or
 14 military court of a violation of Section 207 or 209 committed
 15 with intent to violate Section 261, 286, 288, 288a, or 289,
 16 Section 220, except assault to commit mayhem, Section 243.4,
 17 paragraph (1), (2), (3), (4), or (6) of subdivision (a) of Section
 18 261, or paragraph (1) of subdivision (a) of Section 262 involving
 19 the use of force or violence for which the person is sentenced to
 20 the state prison, Section 264.1, 266, or 266c, subdivision (b) of
 21 Section 266h, subdivision (b) of Section 266i, Section 266j, 267,
 22 269, 285, 286, 288, 288a, 288.5, 288.7, or 289, Section 311.1,
 23 subdivision (b), (c), or (d) of Section 311.2, Section 311.3, 311.4,
 24 311.10, 311.11, 626.83, or 647.6, former Section 647a,
 25 subdivision (c) of Section 653f, subdivision 1 or 2 of Section
 26 314, any offense involving lewd or lascivious conduct under
 27 Section 272, or any felony violation of Section 288.2; or any
 28 statutory predecessor that includes all elements of one of the
 29 above-mentioned offenses; or any person who since that date has
 30 been or is hereafter convicted of the attempt to commit any of the
 31 above-mentioned offenses.

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

37 (C) Any person who, since July 1, 1944, has been or hereafter
 38 is determined to be a mentally disordered sex offender under
 39 Article 1 (commencing with Section 6300) of Chapter 2 of Part 2
 40 of Division 6 of the Welfare and Institutions Code or any person

1 who has been found guilty in the guilt phase of a trial for an
2 offense for which registration is required by this section but who
3 has been found not guilty by reason of insanity in the sanity
4 phase of the trial.

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

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

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

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

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

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

24 (III) Incest, pursuant to Section 285.

25 (IV) Sodomy, pursuant to Section 286, or oral copulation,
26 pursuant to Section 288a, provided that the offender notifies the
27 Department of Justice that the sodomy or oral copulation
28 conviction was for conduct between consenting adults, as
29 described in subparagraph (F) of paragraph (2) of subdivision (a),
30 and the department is able, upon the exercise of reasonable
31 diligence, to verify that fact.

32 (E) Any person ordered by any court to register pursuant to
33 this section for any offense not included specifically in this
34 section if the court finds at the time of conviction or sentencing
35 that the person committed the offense as a result of sexual
36 compulsion or for purposes of sexual gratification. The court
37 shall state on the record the reasons for its findings and the
38 reasons for requiring registration.

39 (F) Any person required to register pursuant to any provision
40 of this section, regardless of whether the person's conviction has

1 been dismissed pursuant to Section 1203.4, unless the person
2 obtains a certificate of rehabilitation and is entitled to relief from
3 registration pursuant to Section 290.5.

4 (G) (i) Notwithstanding any other subdivision, a person who
5 was convicted before January 1, 1976, under subdivision (a) of
6 Section 286, or Section 288a, shall not be required to register
7 pursuant to this section for that conviction if the conviction was
8 for conduct between consenting adults that was decriminalized
9 by Chapter 71 of the Statutes of 1975 or Chapter 1139 of the
10 Statutes of 1976. The Department of Justice shall remove that
11 person from the Sex Offender Registry, and the person is
12 discharged from his or her duty to register pursuant to the
13 following procedure:

14 (I) The person submits to the Department of Justice official
15 documentary evidence, including court records or police reports,
16 that demonstrate that the person's conviction pursuant to either of
17 those sections was for conduct between consenting adults that
18 was decriminalized; or

19 (II) The person submits to the department a declaration stating
20 that the person's conviction pursuant to either of those sections
21 was for consensual conduct between adults that has been
22 decriminalized. The declaration shall be confidential and not a
23 public record, and shall include the person's name, address,
24 telephone number, date of birth, and a summary of the
25 circumstances leading to the conviction, including the date of the
26 conviction and county of the occurrence.

27 (III) The department shall determine whether the person's
28 conviction was for conduct between consensual adults that has
29 been decriminalized. If the conviction was for consensual
30 conduct between adults that has been decriminalized, and the
31 person has no other offenses for which he or she is required to
32 register pursuant to this section, the department shall, within 60
33 days of receipt of those documents, notify the person that he or
34 she is relieved of the duty to register, and shall notify the local
35 law enforcement agency with which the person is registered that
36 he or she has been relieved of the duty to register. The local law
37 enforcement agency shall remove the person's registration from
38 its files within 30 days of receipt of notification. If the
39 documentary or other evidence submitted is insufficient to
40 establish the person's claim, the department shall, within 60 days

1 of receipt of those documents, notify the person that his or her
2 claim cannot be established, and that the person shall continue to
3 register pursuant to this section. The department shall provide,
4 upon the person's request, any information relied upon by the
5 department in making its determination that the person shall
6 continue to register pursuant to this section. Any person whose
7 claim has been denied by the department pursuant to this clause
8 may petition the court to appeal the department's denial of the
9 person's claim.

10 (ii) On or before July 1, 1998, the department shall make a
11 report to the Legislature concerning the status of persons who
12 may come under the provisions of this subparagraph, including
13 the number of persons who were convicted before January 1,
14 1976, under subdivision (a) of Section 286 or Section 288a and
15 are required to register under this section, the average age of
16 these persons, the number of these persons who have any
17 subsequent convictions for a registerable sex offense, and the
18 number of these persons who have sought successfully or
19 unsuccessfully to be relieved of their duty to register under this
20 section.

21 (b) (1) Any person who is released, discharged, or paroled
22 from a jail, state or federal prison, school, road camp, or other
23 institution where he or she was confined because of the
24 commission or attempted commission of one of the offenses
25 specified in subdivision (a) or is released from a state hospital to
26 which he or she was committed as a mentally disordered sex
27 offender under Article 1 (commencing with Section 6300) of
28 Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions
29 Code, shall, prior to discharge, parole, or release, be informed of
30 his or her duty to register under this section by the official in
31 charge of the place of confinement or hospital, and the official
32 shall require the person to read and sign any form that may be
33 required by the Department of Justice, stating that the duty of the
34 person to register under this section has been explained to the
35 person. The official in charge of the place of confinement or
36 hospital shall obtain the address where the person expects to
37 reside upon his or her discharge, parole, or release and shall
38 report the address to the Department of Justice. The official shall
39 at the same time forward a current photograph of the person to
40 the Department of Justice.

1 (2) The official in charge of the place of confinement or
2 hospital shall give one copy of the form to the person and shall
3 send one copy to the Department of Justice and one copy to the
4 appropriate law enforcement agency or agencies having
5 jurisdiction over the place the person expects to reside upon
6 discharge, parole, or release. If the conviction that makes the
7 person subject to this section is a felony conviction, the official
8 in charge shall, not later than 45 days prior to the scheduled
9 release of the person, send one copy to the appropriate law
10 enforcement agency or agencies having local jurisdiction where
11 the person expects to reside upon discharge, parole, or release;
12 one copy to the prosecuting agency that prosecuted the person;
13 and one copy to the Department of Justice. The official in charge
14 of the place of confinement or hospital shall retain one copy.

15 (c) (1) Any person who is convicted in this state of the
16 commission or attempted commission of any of the offenses
17 specified in subdivision (a) and who is released on probation,
18 shall, prior to release or discharge, be informed of the duty to
19 register under this section by the probation department, and a
20 probation officer shall require the person to read and sign any
21 form that may be required by the Department of Justice, stating
22 that the duty of the person to register under this section has been
23 explained to him or her. The probation officer shall obtain the
24 address where the person expects to reside upon release or
25 discharge and shall report within three days the address to the
26 Department of Justice. The probation officer shall give one copy
27 of the form to the person, send one copy to the Department of
28 Justice, and forward one copy to the appropriate law enforcement
29 agency or agencies having local jurisdiction where the person
30 expects to reside upon his or her discharge, parole, or release.

31 (2) Any person who is convicted in this state of the
32 commission or attempted commission of any of the offenses
33 specified in subdivision (a) and who is granted conditional
34 release without supervised probation, or discharged upon
35 payment of a fine, shall, prior to release or discharge, be
36 informed of the duty to register under this section in open court
37 by the court in which the person has been convicted, and the
38 court shall require the person to read and sign any form that may
39 be required by the Department of Justice, stating that the duty of
40 the person to register under this section has been explained to

1 him or her. If the court finds that it is in the interest of the
2 efficiency of the court, the court may assign the bailiff to require
3 the person to read and sign forms under this section. The court
4 shall obtain the address where the person expects to reside upon
5 release or discharge and shall report within three days the address
6 to the Department of Justice. The court shall give one copy of the
7 form to the person, send one copy to the Department of Justice,
8 and forward one copy to the appropriate law enforcement agency
9 or agencies having local jurisdiction where the person expects to
10 reside upon his or her discharge, parole, or release.

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

19 (2) Any person who is discharged or paroled from a facility in
20 another state that is equivalent to the Division of Juvenile Justice,
21 to the custody of which he or she was committed because of an
22 offense which, if committed or attempted in this state, would
23 have been punishable as one or more of the offenses described in
24 paragraph (3), shall be subject to registration under the
25 procedures of this section.

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

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

32 (B) Any offense defined in paragraph (1), (2), (3), (4), or (6)
33 of subdivision (a) of Section 261, Section 264.1, 266c, or 267,
34 paragraph (1) of subdivision (b) of, or subdivision (c) or (d) of,
35 Section 286, Section 288 or 288.5, paragraph (1) of subdivision
36 (b) of, or subdivision (c) or (d) of, Section 288a, subdivision (a)
37 of Section 289, or Section 647.6.

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

1 (4) Prior to discharge or parole from the Department of
2 Corrections and Rehabilitation, any person who is subject to
3 registration under this subdivision shall be informed of the duty
4 to register under the procedures set forth in this section.
5 Department officials shall transmit the required forms and
6 information to the Department of Justice.

7 (5) All records specifically relating to the registration in the
8 custody of the Department of Justice, law enforcement agencies,
9 and other agencies or public officials shall be destroyed when the
10 person who is required to register has his or her records sealed
11 under the procedures set forth in Section 781 of the Welfare and
12 Institutions Code. This subdivision shall not be construed as
13 requiring the destruction of other criminal offender or juvenile
14 records relating to the case that are maintained by the
15 Department of Justice, law enforcement agencies, the juvenile
16 court, or other agencies and public officials unless ordered by a
17 court under Section 781 of the Welfare and Institutions Code.

18 (e) (1) On or after January 1, 1998, upon incarceration,
19 placement, or commitment, or prior to release on probation, any
20 person who is required to register under this section shall
21 preregister. The preregistering official shall be the admitting
22 officer at the place of incarceration, placement, or commitment,
23 or the probation officer if the person is to be released on
24 probation. The preregistration shall consist of all of the
25 following:

26 (A) A preregistration statement in writing, signed by the
27 person, giving information that shall be required by the
28 Department of Justice.

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

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

32 (2) A person described in paragraph (2) of subdivision (a)
33 shall register, or reregister if the person has previously registered,
34 upon release from incarceration, placement, commitment, or
35 release on probation pursuant to paragraph (1) of subdivision (a).
36 The registration shall consist of all of the following:

37 (A) A statement in writing signed by the person, giving
38 information as shall be required by the Department of Justice and
39 giving the name and address of the person's employer, and the

1 address of the person's place of employment if that is different
2 from the employer's main address.

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

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

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

10 (E) Copies of adequate proof of residence, which shall be
11 limited to a California driver's license, California identification
12 card, recent rent or utility receipt, printed personalized checks or
13 other recent banking documents showing that person's name and
14 address, or any other information that the registering official
15 believes is reliable. If the person has no residence and no
16 reasonable expectation of obtaining a residence in the foreseeable
17 future, the person shall so advise the registering official and shall
18 sign a statement provided by the registering official stating that
19 fact. Upon presentation of proof of residence to the registering
20 official or a signed statement that the person has no residence,
21 the person shall be allowed to register. If the person claims that
22 he or she has a residence but does not have any proof of
23 residence, he or she shall be allowed to register but shall furnish
24 proof of residence within 30 days of the date he or she is allowed
25 to register.

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

30 (f) (1) (A) Any person who was last registered at a residence
31 address pursuant to this section who changes his or her residence
32 address, whether within the jurisdiction in which he or she is
33 currently registered or to a new jurisdiction inside or outside the
34 state, shall, in person, within five working days of the move,
35 inform the law enforcement agency or agencies with which he or
36 she last registered of the move, the new address or transient
37 location, if known, and any plans he or she has to return to
38 California.

39 (B) If the person does not know the new residence address or
40 location at the time of the move, the registrant shall, in person,

1 within five working days of the move, inform the last registering
2 agency or agencies that he or she is moving. The person shall
3 later notify the last registering agency or agencies, in writing,
4 sent by certified or registered mail, of the new address or location
5 within five working days of moving into the new residence
6 address or location, whether temporary or permanent.

7 (C) The law enforcement agency or agencies shall, within
8 three working days after receipt of this information, forward a
9 copy of the change of address information to the Department of
10 Justice. The Department of Justice shall forward appropriate
11 registration data to the law enforcement agency or agencies
12 having local jurisdiction of the new place of residence.

13 (2) If the person's new address is in a Department of
14 Corrections and Rehabilitation facility or state mental institution,
15 an official of the place of incarceration, placement, or
16 commitment shall, within 90 days of receipt of the person,
17 forward the registrant's change of address information to the
18 Department of Justice. The agency need not provide a physical
19 address for the registrant but shall indicate that he or she is
20 serving a period of incarceration or commitment in a facility
21 under the agency's jurisdiction. This paragraph shall apply to
22 persons received in a department facility or state mental
23 institution on or after January 1, 1999. The Department of Justice
24 shall forward the change of address information to the agency
25 with which the person last registered.

26 (3) If any person who is required to register pursuant to this
27 section changes his or her name, the person shall inform, in
28 person, the law enforcement agency or agencies with which he or
29 she is currently registered within five working days. The law
30 enforcement agency or agencies shall forward a copy of this
31 information to the Department of Justice within three working
32 days of its receipt.

33 (g) (1) Any person who is required to register under this
34 section based on a misdemeanor conviction or juvenile
35 adjudication who willfully violates any requirement of this
36 section is guilty of a misdemeanor punishable by imprisonment
37 in a county jail not exceeding one year.

38 (2) Except as provided in paragraphs (5), (7), and (9), any
39 person who is required to register under this section based on a
40 felony conviction or juvenile adjudication who willfully violates

1 any requirement of this section or who has a prior conviction or
2 juvenile adjudication for the offense of failing to register under
3 this section and who subsequently and willfully violates any
4 requirement of this section is guilty of a felony and shall be
5 punished by imprisonment in the state prison for 16 months, or
6 two or three years.

7 If probation is granted or if the imposition or execution of
8 sentence is suspended, it shall be a condition of the probation or
9 suspension that the person serve at least 90 days in a county jail.
10 The penalty described in this paragraph shall apply whether or
11 not the person has been released on parole or has been discharged
12 from parole.

13 (3) Any person determined to be a mentally disordered sex
14 offender or who has been found guilty in the guilt phase of trial
15 for an offense for which registration is required under this
16 section, but who has been found not guilty by reason of insanity
17 in the sanity phase of the trial, or who has had a petition
18 sustained in a juvenile adjudication for an offense for which
19 registration is required under this section pursuant to subdivision
20 (d), but who has been found not guilty by reason of insanity, who
21 willfully violates any requirement of this section is guilty of a
22 misdemeanor and shall be punished by imprisonment in a county
23 jail not exceeding one year. For any second or subsequent willful
24 violation of any requirement of this section, the person is guilty
25 of a felony and shall be punished by imprisonment in the state
26 prison for 16 months, or two or three years.

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

38 (5) Any person who has ever been adjudicated a sexually
39 violent predator, as defined in Section 6600 of the Welfare and
40 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, is guilty of a misdemeanor punishable by imprisonment in a county jail not exceeding six months.

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

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

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

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

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

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

23 (l) (1) Every person who, prior to January 1, 1997, is required
24 to register under this section, shall be notified whenever he or she
25 next reregisters of the reduction of the registration period from
26 14 to 5 working days. This notice shall be provided in writing by
27 the registering agency or agencies. Failure to receive this
28 notification shall be a defense against the penalties prescribed by
29 subdivision (g) if the person did register within 14 days.

30 (2) Every person who, as a sexually violent predator, as
31 defined in Section 6600 of the Welfare and Institutions Code, is
32 required to verify his or her registration every 90 days, shall be
33 notified wherever he or she next registers of his or her increased
34 registration obligations. This notice shall be provided in writing
35 by the registering agency or agencies. Failure to receive this
36 notice shall be a defense against the penalties prescribed by
37 paragraph (5) of subdivision (g).

38 (m) The registration provisions of this section are applicable to
39 every person described in this section, without regard to when his
40 or her crime or crimes were committed or his or her duty to

1 register pursuant to this section arose, and to every offense
2 described in this section, regardless of when it was committed.

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

5 (1) Correct all software deficiencies affecting data integrity
6 and include designated data fields for all mandated sex offender
7 data.

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

10 (3) Provide all necessary data storage, processing, and search
11 capabilities.

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

14 (5) Incorporate a flexible design structure to readily meet
15 future demands for enhanced system functionality, including
16 public Internet access to sex offender information pursuant to
17 Section 290.46.

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

19 290.03. (a) The Legislature finds and declares that a
20 comprehensive system of risk assessment, supervision,
21 monitoring and containment for registered sex offenders residing
22 in California communities is necessary to enhance public safety
23 and reduce the risk of recidivism posed by these offenders. The
24 Legislature further affirms and incorporates the following
25 findings and declarations, previously reflected in its enactment of
26 “Megan’s Law”:

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

31 (2) It is a compelling and necessary public interest that the
32 public have information concerning persons convicted of
33 offenses involving unlawful sexual behavior collected pursuant
34 to Sections 290 and 290.4 to allow members of the public to
35 adequately protect themselves and their children from these
36 persons.

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

1 (4) In balancing the offenders' due process and other rights
2 against the interests of public security, the Legislature finds that
3 releasing information about sex offenders under the
4 circumstances specified in the Sex Offender Punishment,
5 Control, and Containment Act of 2006 will further the primary
6 government interest of protecting vulnerable populations from
7 potential harm.

8 (5) The registration of sex offenders, the public release of
9 specified information about certain sex offenders pursuant to
10 Sections 290 and 290.4, and public notice of the presence of
11 certain high risk sexual offenders in communities will further the
12 governmental interests of public safety and public scrutiny of the
13 criminal and mental health systems that deal with these
14 offenders.

15 (6) To protect the safety and general welfare of the people of
16 this state, it is necessary to provide for continued registration of
17 sex offenders, for the public release of specified information
18 regarding certain more serious sex offenders, and for community
19 notification regarding high risk sex offenders who are about to be
20 released from custody or who already reside in communities in
21 this state. This policy of authorizing the release of necessary and
22 relevant information about serious and high risk sex offenders to
23 members of the general public is a means of assuring public
24 protection and shall not be construed as punitive.

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

37 (b) In enacting the Sex Offender Punishment, Control and
38 Containment Act of 2006, the Legislature hereby creates a
39 standardized, statewide system to identify, assess, monitor and
40 contain known sex offenders for the purpose of reducing the risk

1 of recidivism posed by these offenders, thereby protecting
2 victims and potential victims from future harm.

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

4 290.04. (a) Commencing on January 1, 2007, all adult males
5 who are required to register as a sex offender pursuant to Section
6 290 shall be subject to assessment by the STATIC-99 assessment
7 tool. The STATIC-99 and its successor instruments shall be the
8 sole actuarial risk assessment instrument used for registered sex
9 offenders.

10 (b) The Department of Corrections and Rehabilitation, in
11 consultation with the Attorney General and local law
12 enforcement, shall establish and implement a schedule for
13 conducting, no later than January 1, 2012, STATIC-99
14 assessments of adult male registered sex offenders living in
15 California who no longer are in custody, on probation, or on
16 parole as of the effective date of this section. These persons shall
17 be administered a STATIC-99 assessment according to the
18 implementation schedule during their annual registration update
19 by persons authorized to administer the instrument. The schedule
20 adopted by the department shall give priority to assessing those
21 registrants with the most recent sex offense convictions. Any
22 adult male required to register as a sex offender pursuant to
23 Section 290 may seek an assessment by a state agency before
24 their scheduled assessment period at his or her own cost as
25 determined by the department. These assessments shall be
26 conducted in a manner consistent with the requirements of this
27 section.

28 (c) On or before January 1, 2010, the Department of
29 Corrections and Rehabilitation, in consultation with the
30 Department of Mental Health and experts in sex offender risk
31 assessment and the use of actuarial instruments in predicting sex
32 offender risk, shall periodically evaluate and update the
33 STATIC-99 or its successor instrument to ensure that
34 California's standardized actuarial assessment instrument for
35 assessing sex offender risk reflects reliable, objective and
36 well-established protocols for predicting sex offender risk of
37 recidivism, has been scientifically validated with multiple
38 cross-validations, and is widely accepted by the courts.

39 (d) On or before January 1, 2008, the Department of
40 Corrections and Rehabilitation, in consultation with the

1 Department of Mental Health and experts in sex offender risk
2 assessment and the use of actuarial instruments in predicting sex
3 offender risk, shall research actuarial risk assessment tools for
4 female and juvenile registered sex offenders, and shall make
5 recommendations to the Governor and to the Legislature
6 concerning the appropriate actuarial risk assessment instrument
7 to be used to assess those populations.

8 (e) On or before January 1, 2008, the Department of
9 Corrections and Rehabilitation, in consultation with the
10 Department of Mental Health and experts in sex offender risk
11 assessment and the use of actuarial instruments in predicting sex
12 offender risk, shall establish a training program for probation
13 officers, parole officers, and any other persons authorized by law
14 to perform risk assessment. The department shall use an expert in
15 the field of risk assessment and the use of actuarial instruments in
16 predicting sex offender risk to conduct periodic training.
17 Probation departments and regional parole officers shall
18 designate persons within their organizations to attend a yearly
19 training and shall train others within their organizations who are
20 designated to perform risk assessments as required or authorized
21 by law.

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

23 290.05. (a) Commencing on January 1, 2007, and subject to
24 the provisions of Section 290.04, the actuarial risk assessment
25 instrument for adult males required to register as sex offenders
26 pursuant to Section 290 shall be the STATIC-99.

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

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

31 290.06. (a) Probation officers trained in the use of
32 STATIC-99 shall perform a presentencing risk assessment of
33 every adult male convicted of an offense that requires him to
34 register as a sex offender pursuant to Section 290. Probation
35 officers shall assign a risk assessment tier level score to the
36 assessment, and shall include that score in a presentencing or
37 probation officer's report. Probation officers who conduct sex
38 offender risk assessments shall be trained in an approved
39 program established pursuant to subdivision (d) of Section
40 290.04, 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 department to the registering law enforcement agency in the jurisdiction where the person will reside on supervised probation within three days of the person's release on probation. In addition, probation shall send a copy of the Facts of Offense Sheet to the Department of Justice Sex Offender Tracking Program within three days of the person's sex offense conviction, and it shall be made part of the registered sex offender's file maintained by the Sex Offender Tracking Program. The Facts of Offense Sheet shall thereafter be made available to law enforcement by the Department of Justice, which shall post it with the offender's record on the Department of Justice Internet Web site maintained pursuant to Section 290.46, and shall be accessible only to law enforcement.

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

1 Offense Sheet shall be sent by the Department of Mental Health
2 to the registering law enforcement agency in the jurisdiction
3 where the person will live on release, within three days of
4 release.

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

6 290.07. (a) All adult males who have been convicted of an
7 offense for which they are required to register as a sex offender
8 pursuant to Section 290 and who are incarcerated in state prison
9 or committed to the Department of Mental Health shall be
10 subject to sex offender risk assessment pursuant to the provisions
11 of this chapter. The assessment shall take place at least four
12 months, but no sooner than 10 months, prior to release from
13 incarceration or commitment.

14 (b) The prerelease risk assessment shall be performed by the
15 Department of Corrections and Rehabilitation. Persons
16 administering the assessment shall be trained through an
17 approved program established pursuant to subdivision (d) of
18 Section 290.04, and shall receive updated training no less
19 frequently than every two years as determined by the Department
20 of Corrections and Rehabilitation.

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

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

28 290.08. (a) Adult male registered sex offenders who are on
29 probation or parole as of the effective date of this section shall be
30 subject to a risk assessment using the STATIC-99. Adult male
31 sex offenders convicted in a jurisdiction other than California
32 who are required to register while living in California pursuant to
33 Section 290, who are being supervised in California under an
34 interstate compact or who are on federal or military supervision
35 in California, shall be also be assessed. Those offenders who
36 were assigned the highest risk level under the STATIC-99 in the
37 jurisdiction where they were convicted shall be given priority in
38 performing a new risk assessment.

39 (b) Probation departments and the parole authority shall create
40 specialized caseloads for all sex offenders, and shall develop

1 expertise in sex offender management. Sex offenders assessed at
2 high risk levels shall be monitored by agents responsible for
3 reduced caseloads.

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

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

8 290.09. (a) Notwithstanding any other law, any person
9 authorized and trained to perform STATIC-99 risk assessments
10 shall be granted access to all relevant records pertaining to a
11 registered sex offender, including but not limited to criminal
12 histories, sex offender registration records, police reports,
13 probation and pre-sentencing reports, judicial records and case
14 files, juvenile records, records maintained by Child Protective
15 Services, psychological evaluations and psychiatric hospital
16 reports, sexually violent predator treatment program reports, and
17 records that have been sealed by the courts or the Department of
18 Justice. Records and information obtained under this section shall
19 not be subject to the California Public Records Act, Chapter 3.5
20 (commencing with Section 6250) of Division 7 of Title 1 of the
21 Government Code.

22 (b) All state and local agencies and departments that maintain
23 records that contain information about registered sex offenders,
24 including but not limited to, the courts, probation, parole, law
25 enforcement agencies, the Department of Justice, district
26 attorney's and public defender's offices, and Child Protective
27 Services, shall maintain those records during the lifetime of the
28 registered sex offender.

29 SEC. 19. Section 290.3 of the Penal Code is amended to read:

30 290.3. (a) Every person who is convicted of any offense
31 specified in subdivision (a) of Section 290 shall, in addition to
32 any imprisonment or fine, or both, imposed for violation of the
33 underlying offense, be punished by a fine of three hundred
34 dollars (\$300) upon the first conviction or a fine of five hundred
35 dollars (\$500) upon the second and each subsequent conviction,
36 unless the court determines that the defendant does not have the
37 ability to pay the fine.

38 An amount equal to all fines collected pursuant to this
39 subdivision during the preceding month upon conviction of, or
40 upon the forfeiture of bail by, any person arrested for, or

1 convicted of, committing an offense specified in subdivision (a)
2 of Section 290, shall be transferred once a month by the county
3 treasurer to the Controller for deposit in the General Fund.
4 Moneys deposited in the General Fund pursuant to this
5 subdivision shall be transferred by the Controller as provided in
6 subdivision (b).

7 (b) Out of the moneys deposited pursuant to subdivision (a) as
8 a result of second and subsequent convictions of Section 290,
9 one-third shall first be transferred to the Department of Justice
10 Sexual Habitual Offender Fund, as provided in paragraph (1) of
11 this subdivision. Out of the remainder of all moneys deposited
12 pursuant to subdivision (a), 50 percent shall be transferred to the
13 Department of Justice Sexual Habitual Offender Fund, as
14 provided in paragraph (1), 25 percent shall be transferred to the
15 Department of Justice DNA Testing Fund, as provided in
16 paragraph (2), and 25 percent shall be allocated equally to
17 counties that maintain a local DNA testing laboratory, as
18 provided in paragraph (3).

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

27 (2) Those moneys so designated shall be directed to the
28 Department of Justice and transferred to the Department of
29 Justice DNA Testing Fund, which is hereby created, for the
30 exclusive purpose of testing deoxyribonucleic acid (DNA)
31 samples for law enforcement purposes. The moneys in that fund
32 shall be available for expenditure upon appropriation by the
33 Legislature.

34 (3) Those moneys so designated shall be allocated equally and
35 distributed quarterly to counties that maintain a local DNA
36 testing laboratory. Before making any allocations under this
37 paragraph, the Controller shall deduct the estimated costs that
38 will be incurred to set up and administer the payment of these
39 funds to the counties. Any funds allocated to a county pursuant to

1 this paragraph shall be used by that county for the exclusive
2 purpose of testing DNA samples for law enforcement purposes.

3 (c) Notwithstanding any other provision of this section, the
4 Department of Corrections and Rehabilitation may collect a fine
5 imposed pursuant to this section from a person convicted of a
6 violation of any offense listed in subdivision (a) of Section 290,
7 that results in incarceration in a facility under the jurisdiction of
8 the department. All moneys collected by the department under
9 this subdivision shall be transferred, once a month, to the
10 Controller for deposit in the General Fund, as provided in
11 subdivision (a), for transfer by the Controller, as provided in
12 subdivision (b).

13 (d) An amount equal to one hundred dollars (\$100) for every
14 fine imposed pursuant to subdivision (a) in excess of one
15 hundred dollars (\$100) shall be transferred to the Department of
16 Corrections and Rehabilitation to fund SAFE teams pursuant to
17 Chapter 9.7 (commencing with Section 13887) of Title 6 of Part
18 4.

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

21 290.46. (a) On or before the dates specified in this section,
22 the Department of Justice shall make available information
23 concerning persons who are required to register pursuant to
24 Section 290 to the public via an Internet Web site as specified in
25 this section. The department shall update the Internet Web site on
26 an ongoing basis. All information identifying the victim by name,
27 birth date, address, or relationship to the registrant shall be
28 excluded from the Internet Web site. The name or address of the
29 person's employer and the listed person's criminal history other
30 than the specific crimes for which the person is required to
31 register shall not be included on the Internet Web site. The Web
32 site shall display the risk assessment tier level for each posted
33 registrant who has been assessed by the STATIC-99. If no risk
34 assessment has been done, the Web site shall state, "Risk
35 Level-Not Yet Assessed." The Department of Corrections and
36 Rehabilitation and the Department of Mental Health shall
37 provide the risk assessment tier level for each registered sex
38 offender assessed to the Department of Justice Sex Offender
39 Tracking Program at least two months prior to release from
40 incarceration or commitment. Probation departments shall

1 provide the risk assessment tier level for each registered sex
2 offender under their jurisdiction to the Department of Justice Sex
3 Offender Tracking Program no later than three days following
4 release on probation. The Department of Mental Health shall
5 provide to the Department of Justice Sex Offender Tracking
6 Program the names of all persons committed to its custody
7 pursuant to Article 4 (commencing with Section 6600) of
8 Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions
9 Code, within 30 days of commitment, and shall provide the
10 names of all of those persons released from its custody within
11 five working days of release. The Department of Corrections and
12 Rehabilitation shall provide the actual release date of each
13 registered sex offender to the Department of Justice Sex Offender
14 Tracking Program within five days of release or as soon as
15 practicable thereafter. The Web site shall display the date of
16 conviction and the date of release from incarceration or
17 commitment for each posted registrant. The Web site shall also
18 post, in a separate section from those listing current registered
19 sex offenders, the names and reported state of destination, if any,
20 of former registrants who have been deported or moved out of
21 state. The Internet Web site shall be translated into languages
22 other than English as determined by the department.

23 (b) (1) On or before July 1, 2005, with respect to a person
24 who has been convicted of the commission or the attempted
25 commission of any of the offenses listed in, or who is described
26 in, paragraph (2), the Department of Justice shall make available
27 to the public via the Internet Web site his or her name and known
28 aliases, a photograph, a physical description, including gender
29 and race, date of birth, criminal history, prior adjudication as a
30 sexually violent predator, the address at which the person resides,
31 and any other information that the Department of Justice deems
32 relevant, but not the information excluded pursuant to
33 subdivision (a).

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

36 (A) Section 207 committed with intent to violate Section 261,
37 286, 288, 288a, or 289.

38 (B) Section 209 committed with intent to violate Section 261,
39 286, 288, 288a, or 289.

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

1 (D) Section 264.1.

2 (E) Section 269.

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

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

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

7 (I) Section 288.5 or 288.7.

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

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

12 (c) (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 paragraph (2), the
15 Department of Justice shall make available to the public via the
16 Internet Web site his or her name and known aliases, a
17 photograph, a physical description, including gender and race,
18 date of birth, criminal history, the community of residence and
19 ZIP Code in which the person resides or the county in which the
20 person is registered as a transient, and any other information that
21 the Department of Justice deems relevant, but not the information
22 excluded pursuant to subdivision (a). On or before July 1, 2006,
23 the Department of Justice shall determine whether any person
24 convicted of an offense listed in paragraph (2) also has one or
25 more prior or subsequent convictions of an offense listed in
26 paragraph (2) of subdivision (a) of Section 290, and, for those
27 persons, the Department of Justice shall make available to the
28 public via the Internet Web site the address at which the person
29 resides. However, the address at which the person resides shall
30 not be disclosed until a determination is made that the person is,
31 by virtue of his or her additional prior or subsequent conviction
32 of an offense listed in paragraph (2) of subdivision (a) of Section
33 290, subject to this subdivision.

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

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

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

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

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

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

2 (d) (1) On or before July 1, 2005, with respect to a person
3 who has been convicted of the commission or the attempted
4 commission of any of the offenses listed in, or who is described
5 in, this subdivision, the Department of Justice shall make
6 available to the public via the Internet Web site his or her name
7 and known aliases, a photograph, a physical description,
8 including gender and race, date of birth, criminal history, the
9 community of residence and ZIP Code in which the person
10 resides or the county in which the person is registered as a
11 transient, and any other information that the Department of
12 Justice deems relevant, but not the information excluded pursuant
13 to subdivision (a) or the address at which the person resides.

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

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

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

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

20 (D) Section 266j.

21 (E) Section 267.

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

24 (G) Section 626.83 or 647.6.

25 (H) Any person required to register pursuant to Section 290
26 based upon an out-of-state conviction, unless that person is
27 excluded from the Internet Web site pursuant to subdivision (e).
28 However, if the Department of Justice has determined that the
29 out-of-state crime, if committed or attempted in this state, would
30 have been punishable in this state as a crime described in
31 subparagraph (A) of paragraph (2) of subdivision (a) of Section
32 290, the person shall be placed on the Internet Web site as
33 provided in subdivision (b) or (c), as applicable to the crime.

34 (e) (1) If a person has been convicted of the commission or
35 the attempted commission of any of the offenses listed in this
36 subdivision, and he or she has been convicted of no other offense
37 listed in subdivision (b), (c), or (d) other than those listed in this
38 subdivision, that person may file an application with the
39 Department of Justice, on a form approved by the department, for
40 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:

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

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

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

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

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

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

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

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

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

1 (iv) For the purposes of this subparagraph, “successfully
2 completed probation” means that during the period of probation
3 the offender neither received additional county jail or state prison
4 time for a violation of probation nor was convicted of another
5 offense resulting in a sentence to county jail or state prison.

6 (3) The department shall periodically review the list of those
7 persons excluded pursuant to this subdivision. If it determines
8 that a person who was granted an exclusion under a former
9 version of this subdivision would not qualify for an exclusion
10 under the current version of this subdivision, the department shall
11 rescind the exclusion, make a reasonable effort to provide
12 notification to the person that the exclusion has been rescinded,
13 and, no sooner than 30 days after notification is attempted, make
14 information about the offender available to the public on the
15 Internet Web site as provided in this section.

16 (f) The Department of Justice shall make a reasonable effort to
17 provide notification to persons who have been convicted of the
18 commission or attempted commission of an offense specified in
19 subdivision (b), (c), or (d), that on or before July 1, 2005, the
20 department is required to make information about specified sex
21 offenders available to the public via an Internet Web site as
22 specified in this section. The Department of Justice shall also
23 make a reasonable effort to provide notice that some offenders
24 are eligible to apply for exclusion from the Internet Web site.

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

30 (2) The law enforcement entity may make available by way of
31 an Internet Web site the information described in subdivision (c)
32 if it determines that the public disclosure of the information
33 about a specific offender by way of the entity’s Internet Web site
34 is necessary to ensure the public safety based upon information
35 available to the entity concerning that specific offender.

36 (3) The information that may be provided pursuant to this
37 subdivision may include the information specified in subdivision
38 (b) of Section 290.45. However, that offender’s address may not
39 be disclosed unless he or she is a person whose address is on the

1 Department of Justice's Internet Web site pursuant to subdivision
2 (b) or (c).

3 (h) For purposes of this section, "offense" includes the
4 statutory predecessors of that offense, or any offense committed
5 in another jurisdiction that, if committed or attempted to be
6 committed in this state, would have been punishable in this state
7 as an offense listed in subparagraph (A) of paragraph (2) of
8 subdivision (a) of Section 290.

9 (i) Notwithstanding Section 6254.5 of the Government Code,
10 disclosure of information pursuant to this section is not a waiver
11 of exemptions under Chapter 3.5 (commencing with Section
12 6250) of Title 1 of Division 7 of the Government Code and does
13 not affect other statutory restrictions on disclosure in other
14 situations.

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

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

24 (k) Any person who is required to register pursuant to Section
25 290 who enters an Internet Web site established pursuant to this
26 section shall be punished by a fine not exceeding one thousand
27 dollars (\$1,000), imprisonment in a county jail for a period not to
28 exceed six months, or by both that fine and imprisonment.

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

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

35 (A) Health insurance.

36 (B) Insurance.

37 (C) Loans.

38 (D) Credit.

39 (E) Employment.

40 (F) Education, scholarships, or fellowships.

1 (G) Housing or accommodations.

2 (H) Benefits, privileges, or services provided by any business
3 establishment.

4 (3) This section shall not affect authorized access to, or use of,
5 information pursuant to, among other provisions, Sections 11105
6 and 11105.3, Section 8808 of the Family Code, Sections 777.5
7 and 14409.2 of the Financial Code, Sections 1522.01 and
8 1596.871 of the Health and Safety Code, and Section 432.7 of
9 the Labor Code.

10 (4) (A) Any use of information disclosed pursuant to this
11 section for purposes other than those provided by paragraph (1)
12 or in violation of paragraph (2) shall make the user liable for the
13 actual damages, and any amount that may be determined by a
14 jury or a court sitting without a jury, not exceeding three times
15 the amount of actual damage, and not less than two hundred fifty
16 dollars (\$250), and attorney's fees, exemplary damages, or a civil
17 penalty not exceeding twenty-five thousand dollars (\$25,000).

18 (B) Whenever there is reasonable cause to believe that any
19 person or group of persons is engaged in a pattern or practice of
20 misuse of the information available via an Internet Web site
21 established pursuant to this section in violation of paragraph (2),
22 the Attorney General, any district attorney, or city attorney, or
23 any person aggrieved by the misuse is authorized to bring a civil
24 action in the appropriate court requesting preventive relief,
25 including an application for a permanent or temporary injunction,
26 restraining order, or other order against the person or group of
27 persons responsible for the pattern or practice of misuse. The
28 foregoing remedies shall be independent of any other remedies or
29 procedures that may be available to an aggrieved party under
30 other provisions of law, including Part 2 (commencing with
31 Section 43) of Division 1 of the Civil Code.

32 (m) The public notification provisions of this section are
33 applicable to every person described in this section, without
34 regard to when his or her crimes were committed or his or her
35 duty to register pursuant to Section 290 arose, and to every
36 offense described in this section, regardless of when it was
37 committed.

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

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

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

SEC. 21. Section 311 of the Penal Code is amended to read:

311. As used in this chapter, the following definitions apply:

(a) “Obscene matter” means matter, taken as a whole, that to the average person, applying contemporary statewide standards, appeals to the prurient interest, that, taken as a whole, depicts or describes sexual conduct in a patently offensive way, and that, taken as a whole, lacks serious literary, artistic, political, or scientific value.

(1) If it appears from the nature of the matter or the circumstances of its dissemination, distribution, or exhibition that it is designed for clearly defined deviant sexual groups, the appeal of the matter shall be judged with reference to its intended recipient group.

(2) In prosecutions under this chapter, if circumstances of production, presentation, sale, dissemination, distribution, or publicity indicate that matter is being commercially exploited by the defendant for the sake of its prurient appeal, this evidence is probative with respect to the nature of the matter and may justify the conclusion that the matter lacks serious literary, artistic, political, or scientific value.

(3) In determining whether the matter taken as a whole lacks serious literary, artistic, political, or scientific value in description or representation of those matters, the fact that the defendant knew that the matter depicts persons under the age of 16 years 16 years of age engaged in sexual conduct, as defined in subdivision (c) of Section 311.4, this chapter, is a factor that may be considered in making that determination.

(b) “Matter” means any *representation of information, data, or image, including any book, magazine, newspaper, or other printed or written material, or any picture, drawing, photograph, film, filmstrip, negative, slide, photocopy, videotape, video laser disc, computer hardware, computer software, computer floppy disc, data storage media, CD-ROM, or computer-generated equipment, or any other computer-generated image*, motion picture, or other pictorial representation, or any statue or other figure, or any recording, transcription, or mechanical, chemical, or electrical reproduction, or any other article, equipment, machine, or material. “Matter” also means live or recorded telephone messages if transmitted, disseminated, or distributed as part of a commercial transaction.

(c) “Person” means any individual, partnership, firm, association, corporation, limited liability company, or other legal entity.

(d) “Distribute” means transfer possession of, whether with or without consideration.

(e) “Knowingly” means being aware of the character of the matter or live conduct.

(f) “Exhibit” means show.

(g) “Obscene live conduct” means any physical human body activity, whether performed or engaged in alone or with other persons, including but not limited to singing, speaking, dancing, acting, simulating, or pantomiming, taken as a whole, that to the average person, applying contemporary statewide standards, appeals to the prurient interest and is conduct that, taken as a whole, depicts or describes sexual conduct in a patently offensive way and that, taken as a whole, lacks serious literary, artistic, political, or scientific value.

(1) If it appears from the nature of the conduct or the circumstances of its production, presentation, or exhibition that it is designed for clearly defined deviant sexual groups, the appeal of the conduct shall be judged with reference to its intended recipient group.

(2) In prosecutions under this chapter, if circumstances of production, presentation, advertising, or exhibition indicate that live conduct is being commercially exploited by the defendant for the sake of its prurient appeal, that evidence is probative with respect to the nature of the conduct and may justify the

1 conclusion that the conduct lacks serious literary, artistic,
2 political, or scientific value.

3 (3) In determining whether the live conduct taken as a whole
4 lacks serious literary, artistic, political, or scientific value in
5 description or representation of those matters, the fact that the
6 defendant knew that the live conduct depicts persons under ~~the~~
7 ~~age of 16 years~~ *16 years of age* engaged in sexual conduct, as
8 defined in ~~subdivision (c) of Section 311.4 this chapter,~~ is a
9 factor that may be considered in making that determination.

10 (h) ~~The Legislature expresses its approval of the holding of~~
11 ~~People v. Cantrell, 7 Cal. App. 4th 523, that, for the purposes of~~
12 ~~this chapter, matter that “depicts a person under the age of 18~~
13 ~~years personally engaging in or personally simulating sexual~~
14 ~~conduct” is limited to visual works that depict that~~
15 ~~conduct. “Sexual conduct” means any of the following, whether~~
16 ~~actual or simulated:~~

17 (1) *Sexual intercourse, including genital-genital, oral-genital,*
18 *anal-genital, or oral-anal, whether between persons of the same*
19 *or opposite sex, or between humans and animals.*

20 (2) *Penetration of the vagina or rectum by any object.*

21 (3) *Masturbation for the purpose of sexual stimulation of the*
22 *viewer.*

23 (4) *Sadomasochistic abuse for the purpose of sexual*
24 *stimulation of the viewer.*

25 (5) *Exhibition of the genitals or the pubic or rectal area, of*
26 *any person for the purpose of sexual stimulation of the viewer.*

27 (6) *Defecation or urination for the purpose of sexual*
28 *stimulation of the viewer.*

29 (7) *Any lewd or lascivious sexual act as defined in Section*
30 *288.*

31 (i) *“Simulated” means any act that gives the appearance of*
32 *being sexual conduct.*

33 SEC. 22. *Section 311.1 of the Penal Code is amended to*
34 *read:*

35 311.1. (a) ~~Every person who knowingly sends or causes to be~~
36 ~~sent, or brings or causes to be brought, into this state for sale or~~
37 ~~distribution, or in this state possesses, prepares, publishes,~~
38 ~~produces, develops, duplicates, or prints any representation of~~
39 ~~information, data, or image, including, but not limited to, any~~
40 ~~film, filmstrip, photograph, negative, slide, photocopy, videotape,~~

~~1 video laser disc, computer hardware, computer software,
2 computer floppy disc, data storage media, CD-ROM, or
3 computer-generated equipment or any other computer-generated
4 image that contains or incorporates in any manner, any film or
5 filmstrip obscene matter, with intent to distribute or to exhibit to,
6 or to exchange with, others, or who offers to distribute,
7 distributes, or exhibits to, or exchanges with, others, any obscene
8 that matter, knowing that the matter depicts a person under the
9 age of 18 years personally engaging in or personally simulating
10 sexual conduct, as defined in Section 311.4 18 years of age
11 engaged in an act of sexual conduct, shall be punished either by
12 imprisonment in the county jail for up to one year, by a fine not
13 to exceed one thousand dollars (\$1,000), or by both the fine and
14 imprisonment, or by imprisonment in the state prison, by a fine
15 not to exceed ten thousand dollars (\$10,000), or by the fine and
16 imprisonment by imprisonment in the state prison.~~

~~17 (b) This section does not apply to the activities of law
18 enforcement and prosecuting agencies in the investigation and
19 prosecution of criminal offenses or to legitimate medical,
20 scientific, or educational activities, or to lawful conduct between
21 spouses.~~

~~22 (c) This section does not apply to matter which depicts a child
23 under the age of 18, which child is legally emancipated,
24 including lawful conduct between spouses when one or both are
25 under the age of 18.~~

~~26 (d) It does not constitute a violation of this section for a
27 telephone corporation, as defined by Section 234 of the Public
28 Utilities Code, to carry or transmit messages described in this
29 chapter or perform related activities in providing telephone
30 services.~~

~~31 SEC. 23. Section 311.2 of the Penal Code is amended to
32 read:~~

~~33 311.2. (a) Every person who knowingly sends or causes to be
34 sent, or brings or causes to be brought, into this state for sale or
35 distribution, or in this state possesses, prepares, publishes,
36 produces, or prints, with intent to distribute or to exhibit to
37 others, or who offers to distribute, distributes, or exhibits to
38 others, any obscene matter is, for a first offense, guilty of a
39 misdemeanor, punishable by imprisonment in a county jail and a
40 fine of up to five thousand dollars (\$5,000). If the person has~~

1 previously been convicted of any violation of this section, the
2 court may, in addition to the punishment authorized in Section
3 311.9, impose a fine not exceeding *person is guilty of a felony,*
4 *punishable by imprisonment in the state prison and a fine of up*
5 *to fifty thousand dollars (\$50,000).*

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

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

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

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

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

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

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

SEC. 24. Section 311.3 of the Penal Code is amended to read:

311.3. (a) A person is guilty of sexual exploitation of a child if he or she knowingly develops, duplicates, prints, or exchanges any representation of information, data, or image, including, but not limited to, any film, filmstrip, photograph, negative, slide, photocopy, videotape, video laser disc, computer hardware, computer software, computer floppy disc, data storage media, CD-ROM, or computer-generated equipment or any other computer-generated image that contains or incorporates in any manner, any film or filmstrip *matter* that depicts a person under the age of 18 years *18 years of age* engaged in an act of sexual conduct.

(b) As used in this section, “sexual conduct” means any of the following:

(1) Sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex or between humans and animals.

(2) Penetration of the vagina or rectum by any object.

(3) Masturbation for the purpose of sexual stimulation of the viewer.

(4) Sadomasochistic abuse for the purpose of sexual stimulation of the viewer.

(5) Exhibition of the genitals or the pubic or rectal area of any person for the purpose of sexual stimulation of the viewer.

(6) Defecation or urination for the purpose of sexual stimulation of the viewer.

(c) Subdivision (a) does not apply to the activities of law enforcement and prosecution agencies in the investigation and prosecution of criminal offenses or to legitimate medical, scientific, or educational activities, or to lawful conduct between spouses.

~~(d)~~ Every person who violates subdivision (a) shall be punished by a fine of not more than two thousand dollars (\$2,000) or by imprisonment in a county jail for not more than

1 one year, or by both that fine and imprisonment. If the person has
2 been previously convicted of a violation of subdivision (a) or any
3 section of this chapter, he or she shall be punished by
4 imprisonment in the state prison.

5 (e)

6 (c) The provisions of this section do not apply to an employee
7 of a commercial film developer who is acting within the scope of
8 his or her employment and in accordance with the instructions of
9 his or her employer, provided that the employee has no financial
10 interest in the commercial developer by which he or she is
11 employed.

12 (f)

13 (d) Subdivision (a) does not apply to matter that is unsolicited
14 and is received without knowledge or consent through a facility,
15 system, or network over which the person or entity has no
16 control.

17 ~~SEC. 21.~~

18 *SEC. 25.* Section 311.4 of the Penal Code is amended to read:

19 311.4. (a) Every person who, with knowledge that a person is
20 a minor, or who, while in possession of any facts on the basis of
21 which he or she should reasonably know that the person is a
22 minor, hires, employs, or uses the minor to do or assist in doing
23 any of the acts described in Section 311.2, is, for a first offense,
24 guilty of a misdemeanor. If the person has previously been
25 convicted of any violation of this ~~section, the court may, in~~
26 ~~addition to the punishment authorized in Section 311.9, impose a~~
27 ~~subdivision, or of a violation of Section 311.11, the person is~~
28 ~~guilty of a felony and is subject to a fine not exceeding fifty~~
29 ~~thousand dollars (\$50,000).~~

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

1 ~~limited to, any film, filmstrip, photograph, negative, slide,~~
2 ~~photocopy, videotape, video laser disc, computer hardware,~~
3 ~~computer software, computer floppy disc, data storage media,~~
4 ~~CD-ROM, or computer-generated equipment or any other~~
5 ~~computer-generated image that contains or incorporates in any~~
6 ~~manner, any film, filmstrip~~ *preparing any matter*, or a live
7 performance involving, sexual conduct by a minor under the age
8 ~~of 18 years~~ *18 years of age* alone or with other persons or
9 animals, for commercial purposes, is guilty of a felony and shall
10 be punished by imprisonment in the state prison for three, six, or
11 eight years.

12 (c) Every person who, with knowledge that a person is a minor
13 ~~under the age of 18 years~~ *18 years of age*, or who, while in
14 possession of any facts on the basis of which he or she should
15 reasonably know that the person is a minor under the age of 18
16 ~~years~~ *18 years of age*, knowingly promotes, employs, uses,
17 persuades, induces, or coerces a minor under the age of 18 years
18 *18 years of age*, or any parent or guardian of a minor under the
19 ~~age of 18 years~~ *18 years of age* under his or her control who
20 knowingly permits the minor, to engage in or assist others to
21 engage in either posing or modeling alone or with others for
22 purposes of ~~preparing any representation of information, data, or~~
23 ~~image, including, but not limited to, any film, filmstrip,~~
24 ~~photograph, negative, slide, photocopy, videotape, video laser~~
25 ~~disc, computer hardware, computer software, computer floppy~~
26 ~~disc, data storage media, CD-ROM, or computer-generated~~
27 ~~equipment or any other computer-generated image that contains~~
28 ~~or incorporates in any manner, any film, filmstrip~~ *preparing any*
29 *matter*, or a live performance involving, sexual conduct by a
30 minor under the age of 18 years *18 years of age* alone or with
31 other persons or animals, is guilty of a felony. It is not necessary
32 to prove commercial purposes in order to establish a violation of
33 this subdivision. ~~A violation of this subdivision is separate and~~
34 ~~distinct from a violation of subdivision (b). Prosecution under~~
35 ~~this section shall not preclude prosecution under any other~~
36 ~~provision of law, including, but not limited to, provisions that~~
37 ~~prohibit human trafficking.~~

38 (d) ~~(1) As used in subdivisions (b) and (c), “sexual conduct”~~
39 ~~means any of the following, whether actual or simulated: sexual~~
40 ~~intercourse, oral copulation, anal intercourse, anal oral~~

1 copulation, masturbation, bestiality, sexual sadism, sexual
2 masochism, penetration of the vagina or rectum by any object in
3 a lewd or lascivious manner, exhibition of the genitals or pubic
4 or rectal area for the purpose of sexual stimulation of the viewer,
5 any lewd or lascivious sexual act as defined in Section 288, or
6 excretory functions performed in a lewd or lascivious manner,
7 whether or not any of the above conduct is performed alone or
8 between members of the same or opposite sex or between
9 humans and animals. An act is simulated when it gives the
10 appearance of being sexual conduct.

11 (2) As used in subdivisions (b) and (c), “matter” means any
12 film, filmstrip, photograph, negative, slide, photocopy, videotape,
13 video laser disc, computer hardware, computer software,
14 computer floppy disc, or any other computer-related equipment
15 or computer-generated image that contains or incorporates in any
16 manner, any film, filmstrip, photograph, negative, slide,
17 photocopy, videotape, or video laser disc.

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

21 (f)

22 (d) In every prosecution under this section involving a minor
23 under the age of 14 years *14 years of age* at the time of the
24 offense, the age of the victim shall be pled and proven for the
25 purpose of the enhanced penalty provided in Section 647.6.
26 Failure to plead and prove that the victim was under the age of 14
27 years *14 years of age* at the time of the offense is not a bar to
28 prosecution under this section if it is proven that the victim was
29 under the age of 18 years at the time of the offense.

30 SEC. 26. Section 311.5 of the Penal Code is amended to
31 read:

32 311.5. Every person who writes, creates, or solicits the
33 publication or distribution of advertising or other promotional
34 material, or who in any manner promotes, the sale, distribution,
35 or exhibition of matter represented or held out by him to be
36 obscene, is guilty of a misdemeanor, *punishable by imprisonment*
37 *in the county jail for up to one year, a fine of up to five thousand*
38 *dollars (\$5,000), or both. If the person has previously been*
39 *convicted of any offense in this chapter, except subdivision (b) of*

1 *Section 311.2, or of a violation of Section 313.1, the person shall*
2 *be punished by imprisonment in the state prison.*

3 *SEC. 27. Section 311.7 of the Penal Code is amended to*
4 *read:*

5 *311.7. (a) Every person who, knowingly, as a condition to a*
6 *sale, allocation, consignment, or delivery for resale of any paper,*
7 *magazine, book, periodical, publication or other merchandise,*
8 *requires that the purchaser or consignee receive any obscene*
9 *matter or who denies or threatens to deny a franchise, revokes or*
10 *threatens to revoke, or imposes any penalty, financial or*
11 *otherwise, by reason of the failure of any person to accept*
12 *obscene matter, or by reason of the return of ~~such obscene~~ that*
13 *matter, is guilty of a misdemeanor.*

14 *(b) Every person who violates this section is punishable by*
15 *fine of not more than one thousand dollars (\$1,000) or by*
16 *imprisonment in a county jail for not more than six months, or by*
17 *both a fine and imprisonment. For a second or subsequent*
18 *offense he or she shall be punished by a fine of not more than two*
19 *thousand dollars (\$2,000), or by imprisonment in a county jail*
20 *for not more than one year, or by both a fine and imprisonment.*
21 *If the person has twice been convicted of a violation of this*
22 *chapter, subsequent violation of this section shall be punishable*
23 *as a felony.*

24 *SEC. 28. Section 311.8 of the Penal Code is amended to*
25 *read:*

26 *311.8. (a) It shall be a defense in any prosecution for a*
27 *violation of this chapter that the act charged was committed in*
28 *aid of legitimate medical, scientific, or educational ~~purposes~~*
29 *activities, or during lawful conduct between spouses when one or*
30 *both are under 18 years of age, or that the matter depicts a child*
31 *under 18 years of age if that child is legally emancipated.*

32 *(b) This chapter does not apply to the activities of law*
33 *enforcement and prosecuting agencies in the investigation and*
34 *prosecution of criminal offenses.*

35 *(c) This chapter does not apply to an employee of a*
36 *commercial film developer who is acting within the scope of his*
37 *or her employment and in accordance with the instructions of his*
38 *or her employer, provided that the employee has no financial*
39 *interest in the commercial developer by whom he or she is*
40 *employed.*

1 (d) This chapter does not apply to matter that is unsolicited
2 and is received without knowledge or consent through a facility,
3 system or network over which the person or entity has no control.

4 (e) It does not constitute a violation of this chapter for a
5 telephone corporation, as defined by Section 234 of the Public
6 Utilities Code, to carry or transmit messages described in this
7 chapter or perform related activities in providing telephone
8 services.

9 (f) It shall be a defense in any prosecution for a violation of
10 this chapter by a person who knowingly distributed any obscene
11 matter by the use of telephones or telephone facilities to any
12 person under ~~the age of 18 years~~ 18 years of age that the
13 defendant has taken either of the following measures to restrict
14 access to the obscene matter by persons under 18 years of age:

15 (1) Required the person receiving the obscene matter to use an
16 authorized access or identification code, as provided by the
17 information provider, before transmission of the obscene matter
18 begins, where the defendant has previously issued the code by
19 mailing it to the applicant therefor after taking reasonable
20 measures to ascertain that the applicant was 18 years of age or
21 older and has established a procedure to immediately cancel the
22 code of any person after receiving notice, in writing or by
23 telephone, that the code has been lost, stolen, or used by persons
24 under ~~the age of 18 years~~ 18 years of age or that the code is no
25 longer desired.

26 (2) Required payment by credit card before transmission of the
27 matter.

28 (e)

29 (g) Any list of applicants or recipients compiled or maintained
30 by an information-access service provider for purposes of
31 compliance with subdivision ~~(b)~~ (f) is confidential and shall not
32 be sold or otherwise disseminated except upon order of the court.

33 SEC. 29. Section 311.9 of the Penal Code is repealed.

34 ~~311.9. (a) Every person who violates Section 311.2 or 311.5,~~
35 ~~except subdivision (b) of Section 311.2, is punishable by fine of~~
36 ~~not more than one thousand dollars (\$1,000) plus five dollars~~
37 ~~(\$5) for each additional unit of material coming within the~~
38 ~~provisions of this chapter, which is involved in the offense, not to~~
39 ~~exceed ten thousand dollars (\$10,000), or by imprisonment in the~~
40 ~~county jail for not more than six months plus one day for each~~

1 additional unit of material coming within the provisions of this
2 chapter, and which is involved in the offense, such basic
3 maximum and additional days not to exceed 360 days in the
4 county jail, or by both such fine and imprisonment. If such
5 person has previously been convicted of any offense in this
6 chapter, or of a violation of Section 313.1, a violation of Section
7 311.2 or 311.5, except subdivision (b) of Section 311.2, is
8 punishable as a felony.

9 (b) Every person who violates Section 311.4 is punishable by
10 fine of not more than two thousand dollars (\$2,000) or by
11 imprisonment in the county jail for not more than one year, or by
12 both such fine and such imprisonment. If such person has been
13 previously convicted of a violation of former Section 311.3 or
14 Section 311.4 he is punishable by imprisonment in the state
15 prison.

16 (c) Every person who violates Section 311.7 is punishable by
17 fine of not more than one thousand dollars (\$1,000) or by
18 imprisonment in the county jail for not more than six months, or
19 by both such fine and imprisonment. For a second and
20 subsequent offense he shall be punished by a fine of not more
21 than two thousand dollars (\$2,000), or by imprisonment in the
22 county jail for not more than one year, or by both such fine and
23 imprisonment. If such person has been twice convicted of a
24 violation of this chapter, a violation of Section 311.7 is
25 punishable as a felony.

26 *SEC. 30. Section 311.10 of the Penal Code is amended to*
27 *read:*

28 311.10. (a) Any person who advertises for sale or
29 distribution any obscene matter knowing that it depicts a person
30 under the age of 18 years personally engaging in or personally
31 simulating 18 years of age engaged in an act of sexual conduct,
32 as defined in Section 311.4, is guilty of a felony and is
33 punishable by imprisonment in the state prison for two, three, or
34 four years, or in a county jail not exceeding one year, or by a fine
35 not exceeding fifty thousand dollars (\$50,000), or by both such
36 that fine and imprisonment.

37 (b) Subdivision (a) shall not apply to the activities of law
38 enforcement and prosecution agencies in the investigation and
39 prosecution of criminal offenses.

1 ~~SEC. 22.~~

2 ~~SEC. 31.~~ Section 311.11 of the Penal Code is amended to
3 read:

4 311.11. (a) ~~(1)~~ Every person who knowingly possesses or
5 controls any matter, representation of information, data, or
6 image, including, but not limited to, any film, filmstrip,
7 photograph, negative, slide, photocopy, videotape, video laser
8 disc, computer hardware, computer software, computer floppy
9 disc, data storage media, CD-ROM, or computer-generated
10 equipment or any other computer-generated image that contains
11 or incorporates in any manner, any film or filmstrip, the
12 production of which involves the use of a person under the age of
13 18 years, knowing that the matter depicts a person under the age
14 of 18 years personally engaging in or simulating sexual conduct,
15 as defined in subdivision (d) of Section 311.4, is guilty of a
16 public offense and shall be punished by imprisonment in the
17 county jail for up to one year, or by a fine not exceeding two
18 thousand five hundred dollars (\$2,500), or by both the fine and
19 imprisonment.

20 ~~(2)~~ If that matter depicts a minor who is prepubescent, the
21 person is guilty of a felony.

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

26 ~~(b)~~ controls any matter, knowing that the matter depicts a
27 person under 18 years of age personally engaging in or
28 simulating sexual conduct, is guilty of a crime. The specific
29 offenses, penalties and additional definitions applicable to this
30 section are described in the following paragraphs. If the offense
31 includes an element that the child is under a specified age, it is
32 an element of the crime that the person knew the age of the child.

33 ~~(1)~~ If the matter depicts a child under 16 years of age, the
34 person may be charged with either a misdemeanor or felony. If
35 the matter depicts a child under the age of 16 engaging in
36 explicit sexual conduct, the crime is a felony.

37 ~~(2)~~ If the matter depicts a child of 16 or 17 years of age, the
38 person is guilty of a misdemeanor. If the matter depicts a child
39 who is 16 or 17 years of age engaging in explicit sexual conduct,
40 the crime may be charged as a misdemeanor or felony.

(b) For purposes of this section, “explicit sexual conduct” means any of the following, whether actual or simulated: sexual intercourse, oral copulation, anal intercourse, anal oral copulation, masturbation on bare skin, bestiality, sexual sadism, sexual masochism, penetration of the vagina or rectum by any object in a lewd or lascivious manner, graphic and explicit display of the genitals or pubic or rectal area of an overtly sexual character, or excretory functions performed in a lewd or lascivious manner, whether or not any of the above conduct is performed alone or between members of the same or opposite sex or between humans and animals.

(c) As used in this section, “matter that depicts a person under 18 years of age personally engaging in or personally simulating sexual conduct” is limited to visual works that depict that conduct.

(d) Every person who commits a violation of subdivision (a) and who has been previously convicted of a violation of this section, ~~or~~ of an offense described in subparagraph (A) of paragraph (2) of subdivision (a) of Section 290, any offense listed in paragraph (1) of subdivision (a) of Section 290.4, a violation of subdivision (b) or (d) of Section 311.2, subdivision (b) or (c) of Section 311.4, or an attempt to commit any of those offenses, or any person who has been found to be 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, is guilty of a felony and shall be punished by imprisonment for two, four, or six years.

~~(e)~~

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

~~(f)~~

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

SEC. 32. Section 311.12 is added to the Penal Code, to read:

311.12. Every person who knowingly sends or causes to be sent, or brings or causes to be brought, into this state for sale or distribution, or distributes, exhibits, exchanges, possesses,

1 prepares, publishes, produces, develops, duplicates, or prints,
2 any matter, or has the intent to distribute, exhibit, or exchange
3 that matter with another person, is guilty of an offense as
4 specified in this section.

5 (a) If the matter depicts a child under 16 years of age engaged
6 in sexual conduct, the crime is a felony. If the matter depicts a
7 child under 16 years of age engaged in explicit sexual conduct,
8 as defined in subdivision (d) of Section 311.11, the person is
9 punishable by incarceration in the state prison for two, three, or
10 four years.

11 (b) If the matter depicts a child who is 16 or 17 years of age,
12 the crime may be charged as a misdemeanor or felony. If the
13 matter depicts a child who is 16 or 17 years of age engaged in
14 explicit sexual conduct, the crime is a felony.

15 (c) If the person convicted of a violation of this section is
16 required to register as a sex offender pursuant to Section 290,
17 regardless of the age of the victim, the person shall be punished
18 by imprisonment in the state prison for three, six, or eight years.

19 ~~SEC. 23.~~

20 SEC. 33. Section ~~311.12~~ 311.13 is added to the Penal Code,
21 to read:

22 ~~311.12.~~

23 311.13. Any monetary assets gained from the production,
24 publication, sale, distribution, exchange, or control of any matter
25 that depicts a minor under 18 years of age that is unlawful
26 pursuant to Section 311.1, 311.2, 311.3, 311.4, 311.5, 311.10, ~~or~~
27 311.11, ~~or 311.12~~, is subject to forfeiture, upon conviction for a
28 violation of one of those sections. Upon petition by the
29 prosecuting attorney, at any time following sentencing for a
30 violation of one of those sections, the court shall conduct a
31 hearing to determine the amount of monetary assets that are
32 subject to forfeiture. The Civil Discovery Act of 1986 (Article 3
33 (commencing with Section 2016) of Chapter 3 of Title 3 of Part
34 4 of the Code of Civil Procedure) applies to that hearing.

35 SEC. 34. Section 312.1 of the Penal Code is amended to
36 read:

37 312.1. (a) In any prosecution for a violation of the provisions
38 of this chapter or of Chapter 7.6 (commencing with Section 313),
39 neither the prosecution nor the defense shall be required to
40 introduce expert witness testimony concerning the obscene or

1 harmful character of the matter or live conduct which is the
2 subject of the prosecution. ~~Any~~

3 (b) Any evidence which tends to establish contemporary
4 community standards of appeal to prurient interest or of
5 customary limits of candor in the description or representation of
6 nudity, sex, or excretion, or which bears upon the question of
7 significant literary, artistic, political, educational, or scientific
8 value shall, subject to the provisions of the Evidence Code, be
9 admissible when offered by either the prosecution or by the
10 defense.

11 ~~SEC. 24.~~

12 *SEC. 35.* Section 626.8 of the Penal Code is amended to read:

13 626.8. (a) Any person who comes into any school building or
14 upon any school ground, or street, sidewalk, or public way
15 adjacent thereto, without lawful business thereon, and whose
16 presence or acts interfere with the peaceful conduct of the
17 activities of the school or disrupt the school or its pupils or
18 school activities, unless the person is a parent or guardian of a
19 child attending that school, or is a student at the school or has
20 prior written permission for the entry from the chief
21 administrative officer of that school, is guilty of a misdemeanor
22 if he or she does any of the following:

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

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

32 (3) Has otherwise established a continued pattern of
33 unauthorized entry.

34 This section shall not be utilized to impinge upon the lawful
35 exercise of constitutionally protected rights of freedom of speech
36 or assembly.

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

38 (1) Upon a first conviction by a fine of not exceeding five
39 hundred dollars (\$500), by imprisonment in the county jail for a

1 period of not more than six months, or by both the fine and
2 imprisonment.

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

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

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

18 (1) "Lawful business" means a reason for being present upon
19 school property which is not otherwise prohibited by statute, by
20 ordinance, or by any regulation adopted pursuant to statute or
21 ordinance.

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

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

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

37 ~~SEC. 25.~~

38 *SEC. 36.* Section 626.83 is added to the Penal Code, to read:

39 626.83. (a) Any person who has been convicted of a crime
40 listed in subparagraph (A) of paragraph (2) of subdivision (a) of

1 Section 290, who comes into any school building or upon any
2 school ground, without lawful business thereon or written
3 permission from the chief administrative official of that school,
4 or who loiters about any street, sidewalk, or public way adjacent
5 to any school building, school grounds, public playground, or
6 other youth recreational facility where minors are present without
7 lawful business thereon, is guilty of a misdemeanor.

8 (b) Any person who has been convicted of a crime listed in
9 subparagraph (A) of paragraph (2) of subdivision (a) of Section
10 290 where the victim was an elderly or dependent person, as
11 defined in Section 288, who comes onto any property where
12 elderly or dependent persons reside without lawful business
13 thereon or written permission from the director of the facility, is
14 guilty of a misdemeanor.

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

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

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

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

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

35 ~~SEC. 26.~~

36 *SEC. 37.* Section 647.6 of the Penal Code is amended to read:

37 647.6. (a) (1) Every person who annoys or molests any child
38 under the age of 18 shall be punished by a fine not exceeding five
39 thousand dollars (\$5,000), by imprisonment in a county jail not
40 exceeding one year, or by both the fine and imprisonment.

(2) Every person 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 under 18 years of age, which conduct, if directed toward a child under 18 years of age, would be a violation of this section, shall be punished by a fine not exceeding five thousand dollars (\$5,000), by imprisonment in a county jail for up to one year, or by both that fine and imprisonment.

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

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

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

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

(2) In any case in which a person is convicted of violating this 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

1 communication by a third party acting on behalf of the defendant,
2 and any gifts.

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

5 ~~SEC. 27.~~

6 *SEC. 38.* Section 667.1 of the Penal Code is amended to read:

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

14 ~~SEC. 28.~~

15 *SEC. 39.* Section 667.5 of the Penal Code is amended to read:

16 667.5. Enhancement of prison terms for new offenses because
17 of prior prison terms shall be imposed as follows:

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

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

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

39 (1) Murder or voluntary manslaughter.

40 (2) Mayhem.

- 1 (3) Rape, as defined in paragraph (2) or (6) of subdivision (a)
- 2 of Section 261 or paragraph (1) or (4) of subdivision (a) of
- 3 Section 262.
- 4 (4) Sodomy, as defined in subdivision (c) or (d) of Section
- 5 286.
- 6 (5) Oral copulation, as defined in subdivision (c) or (d) of
- 7 Section 288a.
- 8 (6) Lewd or lascivious acts, as defined in subdivision (a) or (b)
- 9 of Section 288.
- 10 (7) Any felony punishable by death or imprisonment in the
- 11 state prison for life.
- 12 (8) Any felony in which the defendant inflicts great bodily
- 13 injury on any person other than an accomplice which has been
- 14 charged and proved as provided for in Section 12022.7 or
- 15 12022.9 on or after July 1, 1977, or as specified prior to July 1,
- 16 1977, in Sections 213, 264, and 461, or any felony in which the
- 17 defendant uses a firearm which use has been charged and proved
- 18 as provided in Section 12022.5 or 12022.55.
- 19 (9) Any robbery.
- 20 (10) Arson, in violation of subdivision (a) or (b) of Section
- 21 451.
- 22 (11) Sexual penetration, as defined in subdivision (a) or (j) of
- 23 Section 289.
- 24 (12) Attempted murder.
- 25 (13) A violation of Section 12308, 12309, or 12310.
- 26 (14) Kidnapping.
- 27 (15) Assault with the intent to commit a specified felony, in
- 28 violation of Section 220.
- 29 (16) Continuous sexual abuse of a child, in violation of
- 30 Section 288.5.
- 31 (17) Carjacking, as defined in subdivision (a) of Section 215.
- 32 (18) Rape, spousal rape, or sexual penetration, in concert, in
- 33 violation of Section 264.1.
- 34 (19) Extortion, as defined in Section 518, which would
- 35 constitute a felony violation of Section 186.22 of the Penal Code.
- 36 (20) Threats to victims or witnesses, as defined in Section
- 37 136.1, which would constitute a felony violation of Section
- 38 186.22 of the Penal Code.
- 39 (21) Any burglary of the first degree, as defined in subdivision
- 40 (a) of Section 460, wherein it is charged and proved that another

1 person, other than an accomplice, was present in the residence
2 during the commission of the burglary.

3 (22) Any violation of Section 12022.53.

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

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

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

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

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

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

37 (h) Serving a prison term includes any confinement time in
38 any state prison or federal penal institution as punishment for
39 commission of an offense, including confinement in a hospital or

1 other institution or facility credited as service of prison time in
2 the jurisdiction of the confinement.

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

8 (j) For the purposes of this section, when a person subject to
9 the custody, control, and discipline of the Secretary of the
10 Department of Corrections and Rehabilitation is incarcerated at a
11 facility operated by the Division of Juvenile Facilities, that
12 incarceration shall be deemed to be a term served in state prison.

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

21 This subdivision shall not apply when a full, separate, and
22 consecutive term is imposed pursuant to any other provision of
23 law.

24 ~~SEC. 29.~~

25 *SEC. 40.* Section 667.51 of the Penal Code is amended to
26 read:

27 667.51. (a) Any person who is convicted of violating Section
28 288 or 288.5 shall receive a five-year enhancement for a prior
29 conviction of an offense specified in subdivision (b).

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

34 (c)

35 A violation of Section 288 or 288.5 by a person who has been
36 previously convicted two or more times of an offense specified in
37 subdivision (b) shall be punished by imprisonment in the state
38 prison for 15 years to life.

39 ~~SEC. 30.~~

40 *SEC. 41.* Section 667.6 of the Penal Code is amended to read:

1 667.6. (a) Any person who is convicted of an offense
 2 specified in subdivision (e) and who has been convicted
 3 previously of any of those offenses shall receive a five-year
 4 enhancement for each of those prior convictions. In addition to
 5 the five-year enhancement imposed under this subdivision, the
 6 court also may impose a fine not to exceed twenty thousand
 7 dollars (\$20,000) for anyone sentenced under these provisions.
 8 The fine imposed and collected pursuant to this subdivision shall
 9 be deposited in the Victim-Witness Assistance Fund to be
 10 available for appropriation to fund child sexual exploitation and
 11 child sexual abuse victim counseling centers and prevention
 12 programs established pursuant to Section 13837.

13 (b) Any person who is convicted of an offense specified in
 14 subdivision (e) and who has served two or more prior prison
 15 terms as defined in Section 667.5 for any of those offenses, shall
 16 receive a 10-year enhancement for each of those prior terms. In
 17 addition to the 10-year enhancement imposed under this
 18 subdivision, the court also may impose a fine not to exceed
 19 twenty thousand dollars (\$20,000) for any person sentenced
 20 under this subdivision. The fine imposed and collected pursuant
 21 to this subdivision shall be deposited in the Victim-Witness
 22 Assistance Fund to be available for appropriation to fund child
 23 sexual exploitation and child sexual abuse victim counseling
 24 centers and prevention programs established pursuant to Section
 25 13837.

26 (c) In lieu of the term provided in Section 1170.1, a full,
 27 separate, and consecutive term may be imposed for each
 28 violation of an offense specified in subdivision (e) if the crimes
 29 involved the same victim on the same occasion. A term may be
 30 imposed consecutively pursuant to this subdivision if a person is
 31 convicted of at least one offense specified in subdivision (e). If
 32 the term is imposed consecutively pursuant to this subdivision, it
 33 shall be served consecutively to any other term of imprisonment,
 34 and shall commence from the time the person otherwise would
 35 have been released from imprisonment. The term shall not be
 36 included in any determination pursuant to Section 1170.1. Any
 37 other term imposed subsequent to that term shall not be merged
 38 therein but shall commence at the time the person otherwise
 39 would have been released from prison.

(d) A full, separate, and consecutive term shall be imposed for each violation of 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 shall consider whether, between the commission of one sex crime and another, the defendant had a reasonable opportunity to reflect upon his or her actions and nevertheless resumed sexually assaultive behavior. Neither the duration of time between crimes, nor whether or not the defendant lost or abandoned his or her opportunity to attack, shall be, in and of itself, determinative on the issue of whether the crimes in question occurred on separate occasions.

The term 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.

(e) This section applies to the following offenses:

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

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

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

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

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

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

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

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

1 (9) As a present offense under subdivision (c) or (d), assault
2 with intent to commit a specified sexual offense, in violation of
3 Section 220.

4 (10) As a prior conviction under subdivision (a) or (b), an
5 offense committed in another jurisdiction that includes all of the
6 elements of an offense specified in this subdivision.

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

12 ~~SEC. 31.~~

13 SEC. 42. Section 667.61 of the Penal Code is amended to
14 read:

15 667.61. (a) A person who is convicted of an offense specified
16 in subdivision (c) under one or more of the circumstances
17 specified in subdivision (d) or under two or more of the
18 circumstances specified in subdivision (e) shall be punished by
19 imprisonment in the state prison for 25 years to life.

20 (b) Except as provided in subdivision (a), a person who is
21 convicted of an offense specified in subdivision (c) under one of
22 the circumstances specified in subdivision (e) shall be punished
23 by imprisonment in the state prison for 15 years to life.

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

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

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

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

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

33 (5) Sexual penetration, in violation of subdivision (a) of
34 Section 289.

35 (6) Sodomy, in violation of *paragraph (2) or (3) of*
36 *subdivision (c), or subdivision (d), of* Section 286.

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

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

1 (9) A lewd or lascivious act, in violation of subdivision (a) of
2 Section 288.

3 (10) Continuous sexual abuse of a child, in violation of
4 Section 288.5.

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

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

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

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

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

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

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

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

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

38 (3) The defendant personally inflicted great bodily injury on
39 the victim or another person in the commission of the present
40 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 in the commission of the present offense in violation of
12 Section 12022.75.

13 (8) The defendant committed the present offense in violation
14 of Section 264.1, subdivision (d) of Section 286, or subdivision
15 (d) 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 age
19 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 penetration
22 of the vagina or rectum of the child.

23 (f) If only the minimum number of circumstances specified in
24 subdivision (d) or (e) 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.

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

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

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

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

~~SEC. 32.~~

SEC. 43. Section 667.71 of the Penal Code is amended to 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 specified in subdivision (c) and who is convicted in the present proceeding of one of those offenses.

(b) A habitual sexual offender shall be punished by imprisonment in the state prison for 25 years to life.

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

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

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

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

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

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

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

(7) Sodomy, in violation of subdivision (c) or (d) of Section 286.

(8) Oral copulation, in violation of subdivision (c) or (d) of Section 288a.

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

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

(11) Kidnapping in violation of subdivision (b) of Section 209 with the intent to commit a specified sexual offense.

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

(13) An offense committed in another jurisdiction that includes all of the elements of an offense specified in this subdivision.

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

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

(f) This section shall apply only if the defendant's status as a habitual sexual offender is alleged in the accusatory pleading, and either admitted by the defendant in open court, or found to be true by the trier of fact.

~~SEC. 33.~~

SEC. 44. Section 800 of the Penal Code is amended to read:

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

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

~~SEC. 34.~~

SEC. 45. Section 1170.125 of the Penal Code is amended to 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 the act enacted during the 2005–06 Regular Session that amended this section.

~~SEC. 35.~~

SEC. 46. 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

1 record why a sentence under one of those sections was not
2 sought.

3 (b) As used in this section “plea bargaining” means any
4 bargaining, negotiation, or discussion between a criminal
5 defendant, or his or her counsel, and a prosecuting attorney or
6 judge, whereby the defendant agrees to plead guilty or nolo
7 contendere, in exchange for any promises, commitments,
8 concessions, assurances, or consideration by the prosecuting
9 attorney or judge relating to any charge against the defendant or
10 to the sentencing of the defendant.

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

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

subdivision (d) of Section 11055 of the Health and Safety Code, or any of the precursors of methamphetamines, as described in subparagraph (A) of paragraph (1) of subdivision (f) of Section 11055 or subdivision (a) of Section 11100 of the Health and Safety Code; (25) any violation of subdivision (a) of Section 289 where the act is accomplished against the victim's will by force, 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,

1 or other banking institution organized or operating under the laws
2 of the United States, and any bank the deposits of which are
3 insured by the Federal Deposit Insurance Corporation.

4 (2) “Savings and loan association” means any federal savings
5 and loan association and any “insured institution” as defined in
6 Section 401 of the National Housing Act, as amended, and any
7 federal credit union as defined in Section 2 of the Federal Credit
8 Union Act.

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

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

17 ~~SEC. 36.~~

18 *SEC. 47.* Section 1202.8 of the Penal Code is amended to
19 read:

20 1202.8. (a) Persons placed on probation by a court shall be
21 under the supervision of the county probation officer who shall
22 determine both the level and type of supervision consistent with
23 the court-ordered conditions of probation. Each county shall
24 designate certain probation officers to monitor registered sex
25 offenders, as specified in subdivision (b) of Section 290.08.
26 Those probationers shall be subject to active and intense
27 supervision by that designated officer.

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

33 ~~SEC. 37.~~

34 *SEC. 48.* Section 1203 of the Penal Code is amended to read:

35 1203. (a) As used in this code, “probation” means the
36 suspension of the imposition or execution of a sentence and the
37 order of conditional and revocable release in the community
38 under the supervision of a probation officer. As used in this code,
39 “conditional sentence” means the suspension of the imposition or
40 execution of a sentence and the order of revocable release in the

1 community subject to conditions established by the court without
2 the supervision of a probation officer. It is the intent of the
3 Legislature that both conditional sentence and probation are
4 authorized whenever probation is authorized in any code as a
5 sentencing option for infractions or misdemeanors.

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

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

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

26 (C) If the person is convicted of a felony specified in
27 subparagraph (A) of paragraph (2) of subdivision (a) of Section
28 290, the probation officer shall administer the STATIC-99, as set
29 forth in Section 290.06, in order to determine the person's risk of
30 reoffending.

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

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

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

38 (E) The report shall be made available to the court and the
39 prosecuting and defense attorneys at least five days, or upon
40 request of the defendant or prosecuting attorney, nine days prior

1 to the time fixed by the court for the hearing and determination
2 of the report, and shall be filed with the clerk of the court as a
3 record in the case at the time of the hearing. The time within
4 which the report shall be made available and filed may be waived
5 by written stipulation of the prosecuting and defense attorneys
6 that is filed with the court or an oral stipulation in open court that
7 is made and entered upon the minutes of the court.

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

22 (4) The preparation of the report or the consideration of the
23 report by the court may be waived only by a written stipulation
24 of the prosecuting and defense attorneys that is filed with the
25 court or an oral stipulation in open court that is made and entered
26 upon the minutes of the court, except that there shall be no
27 waiver unless the court consents thereto. However, if the
28 defendant is ultimately sentenced and committed to the state
29 prison, a probation report shall be completed pursuant to Section
30 1203c.

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

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

1 probation officer, in sentencing the person, the court may
2 consider any information concerning the person that could have
3 been included in a probation report. The court shall inform the
4 person of the information to be considered and permit him or her
5 to answer or controvert the information. For this purpose, upon
6 the request of the person, the court shall grant a continuance
7 before the judgment is pronounced.

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

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

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

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

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

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

39 (6) Any person who has been previously convicted once in this
40 state of a felony or in any other place of a public offense which,

1 if committed in this state, would have been punishable as a
2 felony, if he or she committed any of the following acts:

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

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

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

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

17 (8) Any person who knowingly furnishes or gives away
18 phencyclidine.

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

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

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

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

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

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

39 (g) If a person is not eligible for probation, the judge shall
40 refer the matter to the probation officer for an investigation of the

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

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

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

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

38 Any order made pursuant to this subdivision may be enforced
39 as a violation of the terms and conditions of probation upon
40 willful failure to pay and at the discretion of the court, may be

1 enforced in the same manner as a judgment in a civil action, if
2 any balance remains unpaid at the end of the defendant's
3 probationary period.

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

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

16 ~~SEC. 38.~~

17 *SEC. 49.* Section 1203c of the Penal Code is amended to
18 read:

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

29 (2) If the person is being committed to the jurisdiction of the
30 department for a conviction of an offense listed in subparagraph
31 (A) of paragraph (2) of subdivision (a) of Section 290, the
32 probation officer shall perform a risk assessment of the person
33 using the STATIC-99 assessment tool, as set forth in Section
34 290.06.

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

1 probation officer on request of the court and filed with the court
2 before sentence, shall be deemed to meet the requirements of
3 paragraph (1) of subdivision (a).

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

12 ~~SEC. 39.~~

13 *SEC. 50.* Section 1203.06 of the Penal Code is amended to
14 read:

15 1203.06. (a) Notwithstanding any other provision of law,
16 probation shall not be granted to, nor shall the execution or
17 imposition of sentence be suspended for, nor shall a finding
18 bringing the defendant within this section be stricken pursuant to
19 Section 1385 for, any of the following persons:

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

- 23 (A) Murder.
- 24 (B) Robbery, in violation of Section 211.
- 25 (C) Kidnapping, in violation of Section 207, 209, or 209.5.
- 26 (D) A lewd or lascivious act, in violation of Section 288.
- 27 (E) Burglary of the first degree, as defined in Section 460.
- 28 (F) Rape, in violation of Section 261, 262, or 264.1.
- 29 (G) Assault with intent to commit a specified sexual offense,
30 in violation of Section 220.
- 31 (H) Escape, in violation of Section 4530 or 4532.
- 32 (I) Carjacking, in violation of Section 215.
- 33 (J) Aggravated mayhem in violation of Section 205.
- 34 (K) Torture, in violation of Section 206.
- 35 (L) Continuous sexual abuse of a child, in violation of Section
36 288.5.
- 37 (M) A felony violation of Section 136.1 or 137.
- 38 (N) Sodomy, in violation of Section 286.
- 39 (O) Oral copulation, in violation of Section 288a.
- 40 (P) Sexual penetration, in violation of Section 264.1 or 289.

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

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

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

11 (b) (1) The existence of any fact that would make a person
12 ineligible for probation under subdivision (a) shall be alleged in
13 the accusatory pleading, and either admitted by the defendant in
14 open court, or found to be true by the trier of fact.

15 (2)

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

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

23 ~~SEC. 40.~~

24 *SEC. 51.* Section 1203.065 of the Penal Code is amended to
25 read:

26 1203.065. (a) Notwithstanding any other provision of law,
27 probation shall not be granted to, nor shall the execution or
28 imposition of sentence be suspended for, any person who is
29 convicted of violating paragraph (2) or (6) of subdivision (a) of
30 Section 261, Section 264.1, 266h, 266i, 266j, or 269, or
31 paragraph (2) or (3) of subdivision (c), or subdivision (d), of
32 Section 286 or 288a, or subdivision (a) of Section 289, or
33 subdivision (c) of Section 311.4.

34 (b) (1) Except in unusual cases where the interests of justice
35 would best be served if the person is granted probation, probation
36 shall not be granted to any person who is convicted of violating
37 paragraph (7) of subdivision (a) of Section 261, subdivision (k)
38 of Section 286, subdivision (k) of Section 288a, or Section 220
39 for assault with intent to commit a specified sexual offense.

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

~~SEC. 41.~~

SEC. 52. Section 1203.075 of the Penal Code is amended to read:

1203.075. (a) Notwithstanding any other provision of law, probation shall not be granted to, nor shall the execution or imposition of sentence be suspended for, nor shall a finding bringing the defendant within this section be stricken pursuant to Section 1385 for, any person who personally inflicts great bodily injury, as defined in Section 12022.7, on the person of another in the commission or attempted commission of any of the following crimes:

- (1) Murder.
- (2) Robbery, in violation of Section 211.
- (3) Kidnapping, in violation of Section 207, 209, or 209.5.
- (4) A lewd or lascivious act, in violation of Section 288.
- (5) Burglary of the first degree, as defined in Section 460.
- (6) Rape, in violation of Section 261, 262, or 264.1.
- (7) Assault with intent to commit a specified sexual offense, in violation of Section 220.
- (8) Escape, in violation of Section 4530 or 4532.
- (9) Sexual penetration, in violation of subdivision (a) of Section 289 or of Section 264.1.
- (10) Sodomy, in violation of Section 286.
- (11) Oral copulation, in violation of Section 288a.
- (12) Carjacking, in violation of Section 215.
- (13) Continuous sexual abuse of a child, in violation of Section 288.5.
- (14) Aggravated sexual assault of a child, in violation of Section 269.

(b) The existence of any fact that would make a person ineligible for probation under subdivision (a) shall be alleged in the accusatory pleading, and either admitted by the defendant in open court, or found to be true by the trier of fact.

~~SEC. 42.~~

SEC. 53. Section 3000 of the Penal Code is amended to read:

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

12 (2) The Legislature finds and declares that it is not the intent
13 of this section to diminish resources allocated to the Department
14 of Corrections and Rehabilitation for parole functions for which
15 the department is responsible. It is also not the intent of this
16 section to diminish the resources allocated to the Board of Parole
17 Hearings to execute its duties with respect to parole functions for
18 which the board is responsible.

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

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

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

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

1 on parole for a period not exceeding three years, unless the
2 parole authority, for good cause, waives parole and discharges
3 the inmate from the custody of the department. However, any
4 inmate sentenced for an offense specified in paragraph (11) of
5 subdivision (c) of Section 667.5 shall be released on parole for a
6 period not exceeding five years, and an inmate sentenced for an
7 offense specified in paragraph (3), (4), (5), (6), (15), (16), or (18)
8 of subdivision (c) of Section 667.5 shall be released on parole for
9 a period not exceeding 10 years.

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

20 (3) The parole authority shall consider the request of any
21 inmate regarding the length of his or her parole and the
22 conditions thereof.

23 (4) Upon successful completion of parole, or at the end of the
24 maximum statutory period of parole specified for the inmate
25 under paragraph (1) or (2) whichever is earlier, the inmate shall
26 be discharged from custody. The date of the maximum statutory
27 period of parole under this subdivision and paragraphs (1) and
28 (2) shall be computed from the date of initial parole and shall be
29 a period chronologically determined. Time during which parole
30 is suspended because the prisoner has absconded or has been
31 returned to custody as a parole violator shall not be credited
32 toward any period of parole unless the prisoner is found not
33 guilty of the parole violation. However, except as provided in
34 Section 3064, an inmate subject to three years on parole may not
35 be retained under parole supervision or in custody for a period
36 longer than four years from the date of his or her initial parole,
37 and, except as provided in Section 3064, an inmate subject to five
38 years on parole may not be retained under parole supervision or
39 in custody for a period longer than seven years from the date of
40 his or her initial parole. Except as provided in Section 3064, an

1 inmate subject to 10 years on parole may not be retained under
2 parole supervision or in custody for a period longer than 15 years
3 from the date of his or her initial parole.

4 (5) The Department of Corrections and Rehabilitation shall
5 meet with each inmate at least 30 days prior to his or her good
6 time release date and shall provide, under guidelines specified by
7 the parole authority, the conditions of parole and the length of
8 parole up to the maximum period of time provided by law. The
9 inmate has the right to reconsideration of the length and
10 conditions of parole by the parole authority. The department or
11 the board may impose as a condition of parole that an inmate
12 make payments on the inmate's outstanding restitution fines or
13 orders imposed pursuant to subdivision (a) or (c) of Section
14 13967 of the Government Code, as operative prior to September
15 28, 1994, or subdivision (b) or (f) of Section 1202.4.

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

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

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

26 ~~SEC. 43.~~

27 *SEC. 54.* Section 3005 of the Penal Code is amended to read:

28 3005. (a) The Department of Corrections and Rehabilitation
29 shall ensure that all parolees under active supervision and
30 deemed to pose a risk to the public of committing sex crimes, as
31 determined by the STATIC-99 assessment tool, shall be placed
32 on an intensive and specialized parole supervision caseload, and
33 shall be required to report frequently to designated parole
34 officers.

35 (b) The department shall develop and, at the discretion of the
36 secretary, and subject to an appropriation of the necessary funds,
37 may implement a plan for the implementation of relapse
38 prevention treatment programs, and the provision of other
39 services deemed necessary by the department, in conjunction

1 with intensive and specialized parole supervision, to reduce the
2 recidivism of sex offenders.

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

7 ~~SEC. 44.~~

8 SEC. 55. Chapter 1.5 (commencing with Section 5040) is
9 added to Title 7 of Part 3 of the Penal Code, to read:

10
11 CHAPTER 1.5. RISK ASSESSMENT OF SEX OFFENDERS
12

13 5040. (a) The Department of Corrections and Rehabilitation
14 shall use the STATIC-99 assessment tool to perform a risk
15 assessment on all male inmates who are convicted of a sex
16 offense listed in subparagraph (A) of paragraph (2) of
17 subdivision (a) of Section 290, upon commitment to the
18 department. For those inmates already in the custody of the
19 department, the assessment shall be performed prior to being
20 released on parole. The assessment shall be performed as
21 prescribed in Chapter 5.5 (commencing with Section 290) of
22 Title 9 of Part 2.

23 (b) Inmates who were assessed using the STATIC-99 prior to
24 being committed to the department shall not be required to be
25 reassessed.

26 (c) Inmates who have a risk assessment of moderate-high or
27 high risk for committing a sex offense, according to the
28 STATIC-99, shall participate in sex offender control and
29 containment programming while incarcerated and while on
30 parole, as developed and specified by the department. The
31 programming shall be based on current, evidence-based
32 correctional standards that is proven to reduce the risk of
33 reoffending.

34 (d) Notwithstanding any other provision of law, inmates who
35 are sentenced to a life term shall not be eligible to earn any
36 credits pursuant to Article 2.5 (commencing with Section 2930)
37 of Chapter 7 of Title 1.

38 (e) Notwithstanding subdivision (d), an inmate serving a life
39 term may be excluded from sex offender programming until he
40 or she receives a parole date and is within five years of that date,

1 unless the department determines that the programming for that
2 inmate is necessary for the public safety.

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

6 ~~SEC. 45.~~

7 *SEC. 56.* Section 12022.75 of the Penal Code is amended to
8 read:

9 12022.75. (a) Any person who, for the purpose of
10 committing a felony, administers by injection, inhalation,
11 ingestion, or any other means, any controlled substance listed in
12 Section 11054, 11055, 11056, 11057, or 11058 of the Health and
13 Safety Code, against the victim's will by means of force,
14 violence, or fear of immediate and unlawful bodily injury to the
15 victim or another person, shall, in addition and consecutive to the
16 penalty provided for the felony or attempted felony of which he
17 or she has been convicted, be punished by an additional term of
18 three years.

19 (b) (1) Any person who, in the commission or attempted
20 commission of any offense specified in paragraph (2),
21 administers any controlled substance listed in Section 11054,
22 11055, 11056, 11057, or 11058 of the Health and Safety Code to
23 the victim shall be punished by an additional and consecutive
24 term of imprisonment in the state prison for three years.

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

26 (A) Rape, in violation of paragraph (3) or (4) of subdivision
27 (a) of Section 261.

28 (B) Sodomy, in violation of subdivision (f) or (i) of Section
29 286.

30 (C) Oral copulation, in violation of subdivision (f) or (i) of
31 Section 288a.

32 (D) Sexual penetration, in violation of subdivision (d) or (e) of
33 Section 289.

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

35 ~~SEC. 46.~~

36 *SEC. 57.* Section 13015 is added to the Penal Code, to read:

37 13015. It is the intent of the Legislature to create
38 school-based programs to promote child safety and prevent child
39 abductions.

1 ~~SEC. 47.~~

2 *SEC. 58.* Section 13105 is added to the Penal Code, to read:

3 13105. A state or local law enforcement agency shall not
4 destroy any records relating to a person who is required to
5 register as a sex offender pursuant to Section 290, for as long as
6 the person is living.

7 ~~SEC. 48.~~

8 *SEC. 59.* Section 13887 of the Penal Code is amended to
9 read:

10 13887. Every county shall establish and implement a sexual
11 assault felony enforcement (SAFE) team program pursuant to the
12 provisions of this chapter.

13 ~~SEC. 49.~~

14 *SEC. 60.* Section 13887.1 of the Penal Code is amended to
15 read:

16 13887.1. (a) The mission of this program shall be to reduce
17 violent sexual assault offenses in the county through proactive
18 surveillance and arrest of habitual sexual offenders, as defined in
19 Section 667.71, and strict enforcement of registration
20 requirements for sex offenders pursuant to Section 290.

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

24 (c) The mission of this program shall also be to provide
25 community education regarding the purposes of Sections 290 to
26 290.46, inclusive. The goal of community education is to do all
27 of the following:

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

30 (2) Emphasize of the importance of using the knowledge of
31 the presence of registered sex offenders in the community to
32 enhance public safety.

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

37 ~~SEC. 50.~~

38 *SEC. 61.* Section 6600 of the Welfare and Institutions Code is
39 amended to read:

1 6600. As used in this article, the following terms have the
2 following meanings:

3 (a) (1) “Sexually violent predator” means a person who has
4 been convicted of a sexually violent offense against two or more
5 victims and who has a diagnosed mental disorder that makes the
6 person a danger to the health and safety of others in that it is
7 likely that he or she will engage in sexually violent criminal
8 behavior.

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

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

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

16 (C) A prior conviction in another jurisdiction for an offense
17 that includes all of the elements of an offense described in
18 subdivision (b).

19 (D) A conviction for an offense under a predecessor statute
20 that includes all of the elements of an offense described in
21 subdivision (b).

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

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

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

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

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

34 (3) Conviction of one or more of the crimes enumerated in this
35 section shall constitute evidence that may support a court or jury
36 determination that a person is a sexually violent predator, but
37 shall not be the sole basis for the determination. The existence of
38 any prior convictions may be shown with documentary evidence.
39 The details underlying the commission of an offense that led to a
40 prior conviction, including a predatory relationship with the

1 victim, may be shown by documentary evidence, including, but
2 not limited to, preliminary hearing transcripts, trial transcripts,
3 probation and sentencing reports, and evaluations by the State
4 Department of Mental Health. Jurors shall be admonished that
5 they may not find a person a sexually violent predator based on
6 prior offenses absent relevant evidence of a currently diagnosed
7 mental disorder that makes the person a danger to the health and
8 safety of others in that it is likely that he or she will engage in
9 sexually violent criminal behavior.

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

13 (b) “Sexually violent offense” means the following acts when
14 committed by force, violence, duress, menace, fear of immediate
15 and unlawful bodily injury on the victim or another person, or
16 threatening to retaliate in the future against the victim or any
17 other person, and that are committed on, before, or after the
18 effective date of this article and result in a conviction or a finding
19 of not guilty by reason of insanity, as defined in subdivision (a):
20 a felony violation of Section 261, 262, 264.1, 269, 286, 288,
21 288a, 288.5, or 289 of the Penal Code, or any felony violation of
22 Section 207, 209, or 220 of the Penal Code, committed with the
23 intent to commit a violation of Section 261, 262, 264.1, 269, 288,
24 288a, or 289 of the Penal Code.

25 (c) “Diagnosed mental disorder” includes a congenital or
26 acquired condition affecting the emotional or volitional capacity
27 that predisposes the person to the commission of criminal sexual
28 acts in a degree constituting the person a menace to the health
29 and safety of others.

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

33 (e) “Predatory” means an act is directed toward a stranger, a
34 person of casual acquaintance with whom no substantial
35 relationship exists, or an individual with whom a relationship has
36 been established or promoted for the primary purpose of
37 victimization.

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

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

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

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

(3) The juvenile was adjudged a ward of the juvenile court within the meaning of Section 602 because of the person's commission of the offense giving rise to the juvenile court adjudication.

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

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

~~SEC. 51.~~

SEC. 62. Section 6601 of the Welfare and Institutions Code is amended to read:

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

1 that is less than six months prior to the inmate's scheduled
2 release date.

3 (2) A petition may be filed under this section if the individual
4 was in custody pursuant to his or her determinate prison term,
5 parole revocation term, or a hold placed pursuant to Section
6 6601.3, at the time the petition is filed. A petition shall not be
7 dismissed on the basis of a later judicial or administrative
8 determination that the individual's custody was unlawful, if the
9 unlawful custody was the result of a good faith mistake of fact or
10 law. This paragraph shall apply to any petition filed on or after
11 January 1, 1996.

12 (b) The person shall be screened by the Department of
13 Corrections and Rehabilitation and the Board of Parole Hearings
14 based on whether the person has committed a sexually violent
15 predatory offense and on a review of the person's social,
16 criminal, and institutional history. This screening shall be
17 conducted in accordance with a structured screening instrument
18 developed and updated by the State Department of Mental Health
19 in consultation with the Department of Corrections and
20 Rehabilitation. If as a result of this screening it is determined that
21 the person is likely to be a sexually violent predator, the
22 Department of Corrections and Rehabilitation shall refer the
23 person to the State Department of Mental Health for a full
24 evaluation of whether the person meets the criteria in Section
25 6600.

26 (c) The State Department of Mental Health shall evaluate the
27 person in accordance with a standardized assessment protocol,
28 developed and updated by the State Department of Mental
29 Health, to determine whether the person is a sexually violent
30 predator as defined in this article. The standardized assessment
31 protocol shall require assessment of diagnosable mental
32 disorders, as well as various factors known to be associated with
33 the risk of reoffense among sex offenders. Risk factors to be
34 considered shall include criminal and psychosexual history, type,
35 degree, and duration of sexual deviance, and severity of mental
36 disorder.

37 (d) Pursuant to subdivision (c), the person shall be evaluated
38 by two practicing psychiatrists or psychologists, or one practicing
39 psychiatrist and one practicing psychologist, designated by the
40 Director of Mental Health. If both evaluators concur that the

1 person has a diagnosed mental disorder so that he or she is likely
2 to engage in acts of sexual violence without appropriate
3 treatment and custody, the Director of Mental Health shall
4 forward a request for a petition for commitment under Section
5 6602 to the county designated in subdivision (i). Copies of the
6 evaluation reports and any other supporting documents shall be
7 made available to the attorney designated by the county pursuant
8 to subdivision (i) who may file a petition for commitment.

9 (e) If one of the professionals performing the evaluation
10 pursuant to subdivision (d) does not concur that the person meets
11 the criteria specified in subdivision (d), but the other professional
12 concludes that the person meets those criteria, the Director of
13 Mental Health shall arrange for further examination of the person
14 by two independent professionals selected in accordance with
15 subdivision (g).

16 (f) If an examination by independent professionals pursuant to
17 subdivision (e) is conducted, a petition to request commitment
18 under this article shall only be filed if both independent
19 professionals who evaluate the person pursuant to subdivision (e)
20 concur that the person meets the criteria for commitment
21 specified in subdivision (d). The professionals selected to
22 evaluate the person pursuant to subdivision (g) shall inform the
23 person that the purpose of their examination is not treatment but
24 to determine if the person meets certain criteria to be
25 involuntarily committed pursuant to this article. It is not required
26 that the person appreciate or understand that information.

27 (g) Any independent professional who is designated by the
28 Secretary of the Department of Corrections and Rehabilitation or
29 the Director of Mental Health for purposes of this section shall
30 not be a state government employee, shall have at least five years
31 of experience in the diagnosis and treatment of mental disorders,
32 and shall include psychiatrists and licensed psychologists who
33 have a doctoral degree in psychology. The requirements set forth
34 in this section also shall apply to any professionals appointed by
35 the court to evaluate the person for purposes of any other
36 proceedings under this article.

37 (h) If the State Department of Mental Health determines that
38 the person is a sexually violent predator as defined in this article,
39 the Director of Mental Health shall forward a request for a
40 petition to be filed for commitment under this article to the

1 county designated in subdivision (i). Copies of the evaluation
2 reports and any other supporting documents shall be made
3 available to the attorney designated by the county pursuant to
4 subdivision (i) who may file a petition for commitment in the
5 superior court.

6 (i) If the county's designated counsel concurs with the
7 recommendation, a petition for commitment shall be filed in the
8 superior court of the county in which the person was convicted of
9 the offense for which he or she was committed to the jurisdiction
10 of the Department of Corrections and Rehabilitation. The petition
11 shall be filed, and the proceedings shall be handled, by either the
12 district attorney or the county counsel of that county. The county
13 board of supervisors shall designate either the district attorney or
14 the county counsel to assume responsibility for proceedings
15 under this article.

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

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

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

29 ~~SEC. 52.~~

30 *SEC. 63.* Section 6604 of the Welfare and Institutions Code is
31 amended to read:

32 6604. The court or jury shall determine whether, beyond a
33 reasonable doubt, the person is a sexually violent predator. If the
34 court or jury is not satisfied beyond a reasonable doubt that the
35 person is a sexually violent predator, the court shall direct that
36 the person be released at the conclusion of the term for which he
37 or she was initially sentenced, or that the person be
38 unconditionally released at the end of parole, whichever is
39 applicable. If the court or jury determines that the person is a
40 sexually violent predator, the person shall be committed for an

1 indeterminate term to the custody of the State Department of
2 Mental Health for appropriate treatment and confinement in a
3 secure facility designated by the Director of Mental Health. Time
4 spent on conditional release shall not count toward the term of
5 commitment, unless the person is placed in a locked facility by
6 the conditional release program, in which case the time in a
7 locked facility shall count toward the term of commitment. The
8 facility shall be located on the grounds of an institution under the
9 jurisdiction of the Department of Corrections and Rehabilitation.

10 ~~SEC. 52.5.~~

11 *SEC. 63.5.* Section 6604 of the Welfare and Institutions Code
12 is amended to read:

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

37 ~~SEC. 53.~~

38 *SEC. 64.* Section 6604.1 of the Welfare and Institutions Code
39 is amended to read:

1 6604.1. (a) The indeterminate term of commitment provided
2 for in Section 6604 shall commence on the date upon which the
3 court issues the initial order of commitment pursuant to that
4 section.

5 (b) The person shall be evaluated by two practicing
6 psychologists or psychiatrists, or by one practicing psychologist
7 and one practicing psychiatrist, designated by the State
8 Department of Mental Health. The provisions of subdivisions (c)
9 to (i), inclusive, of Section 6601 shall apply to evaluations
10 performed pursuant to a trial conducted pursuant to subdivision
11 (f) of Section 6605. The rights, requirements, and procedures set
12 forth in Section 6603 shall apply to all commitment proceedings.

13 ~~SEC. 53.5.~~

14 *SEC. 64.5.* Section 6604.1 of the Welfare and Institutions
15 Code is amended to read:

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

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

32 ~~SEC. 54.~~

33 *SEC. 65.* Section 6605 of the Welfare and Institutions Code is
34 amended to read:

35 6605. (a) A person found to be a sexually violent predator
36 and committed to the custody of the State Department of Mental
37 Health shall have a current examination of his or her mental
38 condition made at least once every year. The annual examination
39 shall include consideration of whether the committed person
40 currently meets the definition of a sexually violent predator and

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

14 (b)

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

36 (2) Nothing contained in this chapter shall prohibit the person
37 from otherwise petitioning the court for conditional release to a
38 less restrictive alternative or unconditional discharge without the
39 director's approval. The director shall provide the committed
40 person with an annual written notice of the person's right to

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

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

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

39 (e) If the court has not previously considered the issue of
40 release to a less restrictive alternative, either through a trial on

1 the merits or through the procedures set forth in subdivision (d),
2 the court shall consider whether release to a less restrictive
3 alternative would be in the best interests of the person and
4 conditions can be imposed that would adequately protect the
5 community, without considering whether the person's condition
6 has changed.

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

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

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

31 (i) Probable cause exists to believe that a person's condition
32 has "so changed," under paragraph (2) of subdivision (d), only
33 when evidence exists, since the person's last commitment trial
34 proceeding, of a substantial change in the person's physical or
35 mental condition such that the person either no longer meets the
36 definition of a sexually violent predator, or that a conditional
37 release to a less restrictive alternative is in the person's best
38 interest and conditions can be imposed to adequately protect the
39 community.

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

6 (1) An identified physiological change to the person, such as
7 paralysis, stroke, or dementia, that renders the committed person
8 unable to commit a sexually violent act and this change is
9 permanent.

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

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

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

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

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

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

35 (3) Housing exists that is sufficiently secure to protect the
36 community, and the person or agency providing housing to the
37 conditionally released person has agreed in writing to accept the
38 person, to provide the level of security required by the court, and
39 immediately to report to the court, the prosecutor, the community
40 program director, the department and the superintendent of the

1 special commitment center if the person leaves the housing to
2 which he or she has been assigned without authorization.

3 (4) The person is willing to comply with the treatment
4 provider and all requirements imposed by the treatment provider
5 and by the court.

6 (5) The person is willing to comply with supervision
7 requirements imposed by the Department of Corrections and
8 Rehabilitation.

9 (n) Upon the conclusion of the evidence in a hearing held
10 pursuant to subdivisions (d) through (h), or through summary
11 judgment proceedings prior to such a hearing, if the court finds
12 that there is no legally sufficient evidentiary basis for a
13 reasonable jury to find that the conditions set forth in subdivision
14 (d) have been met, the court shall grant a motion by the state for
15 a judgment as a matter of law on the issue of conditional release
16 to a less restrictive alternative.

17 (o) Whenever the issue of conditional release to a less
18 restrictive alternative is submitted to the jury, the court shall
19 instruct the jury to return a verdict in substantially the following
20 form:

21 Has the state proved beyond a reasonable doubt that either:

22 (1) The proposed less restrictive alternative is not in the best
23 interests of respondent.

24 (2) Does not include conditions that would adequately protect the
25 community? Answer:

26 Yes or No.

27 (p) If the court or jury determines that conditional release to a
28 less restrictive alternative is in the best interest of the person and
29 includes conditions that would adequately protect the
30 community, and the court determines that the minimum
31 conditions set forth in subdivision (m) section are met, the court
32 shall enter judgment and direct a conditional release.

33 (q) The court shall impose any additional conditions necessary
34 to ensure compliance with treatment and to protect the
35 community. If the court finds that conditions do not exist that
36 will both ensure the person's compliance with treatment and
37 protect the community, then the person shall be remanded to the
38 custody of the Department of Health Services for control, care,
39 and treatment in a secure facility.

1 (r) If the service provider designated by the court to provide
2 inpatient or outpatient treatment or to monitor or supervise any
3 other terms and conditions of a person's placement in a less
4 restrictive alternative is other than the Department of Health
5 Services or the Department of Corrections and Rehabilitation,
6 then the service provider so designated must agree in writing to
7 provide that treatment, monitoring, or supervision in accord with
8 this section. Any person providing or agreeing to provide
9 treatment, monitoring, or supervision services pursuant to this
10 chapter may be compelled to testify and any privilege with
11 regard to such person's testimony is deemed waived.

12 (s) Prior to authorizing any release to a less restrictive
13 alternative, the court shall impose those conditions upon the
14 person as are necessary to ensure the safety of the community.
15 The court shall order the Department of Corrections and
16 Rehabilitation to investigate the less restrictive alternative and
17 recommend any additional conditions to the court. These
18 conditions shall include, but are not limited to, the following:
19 Specification of residence, prohibition of contact with potential
20 or past victims, prohibition of alcohol and other drug use,
21 participation in a specific course of inpatient or outpatient
22 treatment that may include monitoring by the use of polygraph
23 and plethysmograph, supervision by a Department of Corrections
24 and Rehabilitation community corrections officer, a requirement
25 that the person remain within the state unless the person receives
26 prior authorization by the court, and any other conditions that the
27 court determines are in the best interest of the person or others. A
28 copy of the conditions of release shall be given to the person and
29 to any designated service providers.

30 (t) Any service provider designated to provide inpatient or
31 outpatient treatment shall monthly, or as otherwise directed by
32 the court, submit to the court, to the Department of Health
33 Services facility from which the person was released, to the
34 prosecutor of the county in which the person was found to be a
35 sexually violent predator, and to the supervising community
36 corrections officer, a report stating whether the person is
37 complying with the terms and conditions of the conditional
38 release to a less restrictive alternative.

39 (u) Each person released to a less restrictive alternative shall
40 have his or her case reviewed by the court that released him or

her no later than one year after that release and annually thereafter until the person is unconditionally discharged. Review may occur in a shorter time or more frequently, if the court, in its discretion on its own motion, or on motion of the person, the secretary, or the prosecuting attorney so determines. The sole question to be determined by the court is whether the person shall continue to be conditionally released to a less restrictive alternative. The court in making its determination shall be aided by the annual reports filed pursuant to subdivision (a) of this section and the opinions of the secretary and other experts or professional persons.

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

(w) If the court determines that the person should be transferred to a state-operated forensic conditional release program, the community program director, or his or her designee, shall make the necessary placement arrangements and, within 21 days after receiving notice of the court's finding, the person shall be placed in the community in accordance with the treatment and supervision plan unless good cause for not doing so is presented to the court.

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

~~SEC. 55.~~

~~SEC. 66.~~ Section 6608 of the Welfare and Institutions Code is repealed.

1 ~~SEC. 56.~~

2 ~~SEC. 67.~~ If an appellate court determines that the
3 indeterminate term set fourth in Sections ~~52 and 53~~ 63 *and* 64 is
4 unconstitutional, those sections shall not be operative, and
5 Sections ~~52.5 and 53.5~~ 63.5 *and* 64.5 shall be operative.

6 ~~SEC. 57.~~

7 ~~SEC. 68.~~ No reimbursement is required by this act pursuant to
8 Section 6 of Article XIII B of the California Constitution for
9 certain costs that may be incurred by a local agency or school
10 district because, in that regard, this act creates a new crime or
11 infraction, eliminates a crime or infraction, or changes the
12 penalty for a crime or infraction, within the meaning of Section
13 17556 of the Government Code, or changes the definition of a
14 crime within the meaning of Section 6 of Article XIII B of the
15 California Constitution.

16 However, if the Commission on State Mandates determines
17 that this act contains other costs mandated by the state,
18 reimbursement to local agencies and school districts for those
19 costs shall be made pursuant to Part 7 (commencing with Section
20 17500) of Division 4 of Title 2 of the Government Code.

21 ~~SEC. 58.~~

22 ~~SEC. 69.~~ This act is an urgency statute necessary for the
23 immediate preservation of the public peace, health, or safety
24 within the meaning of Article IV of the Constitution and shall go
25 into immediate effect. The facts constituting the necessity are:

26 In order to protect the health and safety of the children of
27 California, it is necessary that this act take effect immediately.