

AMENDED IN SENATE MARCH 22, 2006

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, 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, ~~1203c~~, 1203.06, 1203.065, 1203.075, ~~1203e~~, 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, ~~311.13~~, 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 ~~that~~ *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~~ *pubic* 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~~ *any* 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 of 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 *fund* 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 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 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~~ offenses 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 *for* work, to reduce his or her sentence.

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

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

This bill would eliminate that eligibility for those persons.

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

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

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

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

Under existing law, a court is prohibited from granting probation to, or suspending the execution or imposition of sentence for, any person who, with the intent to inflict the injury, personally inflicts great bodily injury on another person during the commission of any of several crimes.

This bill would eliminate the intent requirement of that provision.

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

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

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

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

Existing law establishes a county probation system.

This bill would require probation officers trained in the use of the STATIC-99 assessment tool to perform a 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~~ are placed on an intensive and specialized parole supervision caseload.

This bill would instead ~~required~~ *require* 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

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

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

3 (7) Misdemeanor alleging a violation of Section 14601,
4 14601.1, 20002, 23104, or 23109 of the Vehicle Code: five years.

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

12 (9) Misdemeanor, infraction, or civil action alleging a
13 violation of the regulation and licensing of dogs under Sections
14 30951 to 30956, inclusive, of the Food and Agricultural Code or
15 violation of any other local ordinance: three years.

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

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

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

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

26 (g) Juvenile.

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

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

1 subdivision (d) of Section 781 of the Welfare and Institutions
2 Code.

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

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

15 (5) Marijuana misdemeanor under subdivision (e) of Section
16 11357 of the Health and Safety Code in accordance with
17 procedures specified in subdivision (a) of Section 11361.5 of the
18 Health and Safety Code: upon reaching age 18 the records shall
19 be destroyed.

20 (h) Probate.

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

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

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

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

27 (j) Other records.

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

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

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

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

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

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

1 (7) Court reporter notes: 10 years after the notes have been
2 taken in criminal and juvenile proceedings and five years after
3 the notes have been taken in all other proceedings, except notes
4 reporting proceedings in capital felony cases (murder with
5 special circumstances where the prosecution seeks the death
6 penalty and the sentence is death), including notes reporting the
7 preliminary hearing, which shall be retained permanently, unless
8 the Supreme Court on request of the court clerk authorizes the
9 destruction.

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

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

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

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

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

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

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

30 (15) Naturalization index: retain permanently.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 288.3. (a) (1) Every person who, motivated by an unnatural
2 or abnormal sexual interest in children, arranges a meeting with a
3 minor or a person he or she believes to be a minor for the
4 purpose of exposing his or her genitals or pubic or rectal area,
5 having the child expose his or her genitals or pubic or rectal area,
6 or engaging in lewd or lascivious behavior, shall be punished by
7 a fine not exceeding five thousand dollars (\$5,000), by
8 imprisonment in a county jail not exceeding one year, or by both
9 the fine and imprisonment.

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

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

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

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

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

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

35 (c) No other act of substantial sexual conduct, as defined in
36 subdivision (b) of Section 1203.066, with a child under 14 years
37 of age at the time of the commission of the offenses, or lewd and
38 lascivious acts, as defined in Section 288, involving the same
39 victim may be charged in the same proceeding with a charge
40 under this section unless the other charged offense occurred

1 outside the time period charged under this section or the other
2 offense is charged in the alternative. A defendant may be charged
3 with only one count under this section unless more than one
4 victim is involved in which case a separate count may be charged
5 for each victim.

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

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

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

14
15 CHAPTER 5.5. SEX OFFENDERS
16

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

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

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

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

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

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

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

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

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

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

39 (vii) For purposes of this section, “transient” means a person
40 who has no residence. “Residence” means one or more addresses

1 at which a person regularly resides, regardless of the number of
2 days or nights spent there, such as a shelter or structure that can
3 be located by a street address, including, but not limited to,
4 houses, apartment buildings, motels, hotels, homeless shelters,
5 and recreational and other vehicles.

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

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

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

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

33 (G) Persons required to register in their state of residence who
34 are out-of-state residents employed, or carrying on a vocation in
35 California on a full-time or part-time basis, with or without
36 compensation, for more than 14 days, or for an aggregate period
37 exceeding 30 days in a calendar year, shall register in accordance
38 with subparagraph (A). Persons described in paragraph (2) who
39 are out-of-state residents enrolled in any educational institution
40 in California, as defined in Section 22129 of the Education Code,

on a full-time or part-time basis, shall register in accordance with subparagraph (A). The place where the out-of-state resident is located, for purposes of registration, shall be the place where the person is employed, carrying on a vocation, or attending school. The out-of-state resident subject to this subparagraph shall, in addition to the information required pursuant to subdivision (e), provide the registering authority with the name of his or her place of employment or the name of the school attended in California, and his or her address or location in his or her state of residence.

The registration requirement for persons subject to this subparagraph shall become operative on November 25, 2000. The terms “employed or carries on a vocation” include employment whether or not financially compensated, volunteered, or performed for government or educational benefit.

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

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

(B) Any person who, since July 1, 1944, has been or hereafter is released, discharged, or paroled from a penal institution where he or she was confined because of the commission or attempted

1 commission of one of the offenses described in subparagraph
2 (A).

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

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

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

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

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

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

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

30 (III) Incest, pursuant to Section 285.

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

38 (E) Any person ordered by any court to register pursuant to
39 this section for any offense not included specifically in this
40 section if the court finds at the time of conviction or sentencing

1 that the person committed the offense as a result of sexual
2 compulsion or for purposes of sexual gratification. The court
3 shall state on the record the reasons for its findings and the
4 reasons for requiring registration.

5 (F) Any person required to register pursuant to any provision
6 of this section, regardless of whether the person's conviction has
7 been dismissed pursuant to Section 1203.4, unless the person
8 obtains a certificate of rehabilitation and is entitled to relief from
9 registration pursuant to Section 290.5.

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

20 (I) The person submits to the Department of Justice official
21 documentary evidence, including court records or police reports,
22 that demonstrate that the person's conviction pursuant to either of
23 those sections was for conduct between consenting adults that
24 was decriminalized; or

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

33 (III) The department shall determine whether the person's
34 conviction was for conduct between consensual adults that has
35 been decriminalized. If the conviction was for consensual
36 conduct between adults that has been decriminalized, and the
37 person has no other offenses for which he or she is required to
38 register pursuant to this section, the department shall, within 60
39 days of receipt of those documents, notify the person that he or
40 she is relieved of the duty to register, and shall notify the local

1 law enforcement agency with which the person is registered that
2 he or she has been relieved of the duty to register. The local law
3 enforcement agency shall remove the person's registration from
4 its files within 30 days of receipt of notification. If the
5 documentary or other evidence submitted is insufficient to
6 establish the person's claim, the department shall, within 60 days
7 of receipt of those documents, notify the person that his or her
8 claim cannot be established, and that the person shall continue to
9 register pursuant to this section. The department shall provide,
10 upon the person's request, any information relied upon by the
11 department in making its determination that the person shall
12 continue to register pursuant to this section. Any person whose
13 claim has been denied by the department pursuant to this clause
14 may petition the court to appeal the department's denial of the
15 person's claim.

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

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

1 person. The official in charge of the place of confinement or
2 hospital shall obtain the address where the person expects to
3 reside upon his or her discharge, parole, or release and shall
4 report the address to the Department of Justice. The official shall
5 at the same time forward a current photograph of the person to
6 the Department of Justice.

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

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

37 (2) Any person who is convicted in this state of the
38 commission or attempted commission of any of the offenses
39 specified in subdivision (a) and who is granted conditional
40 release without supervised probation, or discharged upon

1 payment of a fine, shall, prior to release or discharge, be
2 informed of the duty to register under this section in open court
3 by the court in which the person has been convicted, and the
4 court shall require the person to read and sign any form that may
5 be required by the Department of Justice, stating that the duty of
6 the person to register under this section has been explained to
7 him or her. If the court finds that it is in the interest of the
8 efficiency of the court, the court may assign the bailiff to require
9 the person to read and sign forms under this section. The court
10 shall obtain the address where the person expects to reside upon
11 release or discharge and shall report within three days the address
12 to the Department of Justice. The court shall give one copy of the
13 form to the person, send one copy to the Department of Justice,
14 and forward one copy to the appropriate law enforcement agency
15 or agencies having local jurisdiction where the person expects to
16 reside upon his or her discharge, parole, or release.

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

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

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

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

38 (B) Any offense defined in paragraph (1), (2), (3), (4), or (6)
39 of subdivision (a) of Section 261, Section 264.1, 266c, or 267,
40 paragraph (1) of subdivision (b) of, or subdivision (c) or (d) of,

1 Section 286, Section 288 or 288.5, paragraph (1) of subdivision
2 (b) of, or subdivision (c) or (d) of, Section 288a, subdivision (a)
3 of Section 289, or Section 647.6.

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

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

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

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

31 (A) A preregistration statement in writing, signed by the
32 person, giving information that shall be required by the
33 Department of Justice.

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

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

37 (2) A person described in paragraph (2) of subdivision (a)
38 shall register, or reregister if the person has previously registered,
39 upon release from incarceration, placement, commitment, or

1 release on probation pursuant to paragraph (1) of subdivision (a).

2 The registration shall consist of all of the following:

3 (A) A statement in writing signed by the person, giving
4 information as shall be required by the Department of Justice and
5 giving the name and address of the person's employer, and the
6 address of the person's place of employment if that is different
7 from the employer's main address.

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

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

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

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

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

35 (f) (1) (A) Any person who was last registered at a residence
36 address pursuant to this section who changes his or her residence
37 address, whether within the jurisdiction in which he or she is
38 currently registered or to a new jurisdiction inside or outside the
39 state, shall, in person, within five working days of the move,
40 inform the law enforcement agency or agencies with which he or

1 she last registered of the move, the new address or transient
2 location, if known, and any plans he or she has to return to
3 California.

4 (B) If the person does not know the new residence address or
5 location at the time of the move, the registrant shall, in person,
6 within five working days of the move, inform the last registering
7 agency or agencies that he or she is moving. The person shall
8 later notify the last registering agency or agencies, in writing,
9 sent by certified or registered mail, of the new address or location
10 within five working days of moving into the new residence
11 address or location, whether temporary or permanent.

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

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

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

38 (g) (1) Any person who is required to register under this
39 section based on a misdemeanor conviction or juvenile
40 adjudication who willfully violates any requirement of this

1 section is guilty of a misdemeanor punishable by imprisonment
2 in a county jail not exceeding one year.

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

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

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

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

1 circumstances indicating that the interests of justice would best
2 be served by the disposition.

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

10 (6) Except as otherwise provided in paragraph (5), any person
11 who is required to register or reregister pursuant to clause (i) of
12 subparagraph (C) of paragraph (1) of subdivision (a) and
13 willfully fails to comply with the requirement that he or she
14 reregister no less than every 30 days is guilty of a misdemeanor
15 and shall be punished by imprisonment in a county jail at least 30
16 days, but not exceeding six months. A person who willfully fails
17 to comply with the requirement that he or she reregister no less
18 than every 30 days shall not be charged with this violation more
19 often than once for a failure to register in any period of 90 days.
20 Any person who willfully commits a third or subsequent
21 violation of the requirements of subparagraph (C) of paragraph
22 (1) of subdivision (a) that he or she reregister no less than every
23 30 days shall be punished in accordance with either paragraph (1)
24 or (2) of this subdivision.

25 (7) Any person who fails to provide proof of residence as
26 required by subparagraph (E) of paragraph (2) of subdivision (e),
27 regardless of the offense upon which the duty to register is based,
28 is guilty of a misdemeanor punishable by imprisonment in a
29 county jail not exceeding six months.

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

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

39 (h) Whenever any person is released on parole or probation
40 and is required to register under this section but fails to do so

1 within the time prescribed, the parole authority or the court, as
2 the case may be, shall order the parole or probation of the person
3 revoked. For purposes of this subdivision, “parole authority” has
4 the same meaning as described in Section 3000.

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

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

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

27 (l) (1) Every person who, prior to January 1, 1997, is required
28 to register under this section, shall be notified whenever he or she
29 next reregisters of the reduction of the registration period from
30 14 to 5 working days. This notice shall be provided in writing by
31 the registering agency or agencies. Failure to receive this
32 notification shall be a defense against the penalties prescribed by
33 subdivision (g) if the person did register within 14 days.

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

1 notice shall be a defense against the penalties prescribed by
2 paragraph (5) of subdivision (g).

3 (m) The registration provisions of this section are applicable to
4 every person described in this section, without regard to when his
5 or her crime or crimes were committed or his or her duty to
6 register pursuant to this section arose, and to every offense
7 described in this section, regardless of when it was committed.

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

10 (1) Correct all software deficiencies affecting data integrity
11 and include designated data fields for all mandated sex offender
12 data.

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

15 (3) Provide all necessary data storage, processing, and search
16 capabilities.

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

19 (5) Incorporate a flexible design structure to readily meet
20 future demands for enhanced system functionality, including
21 public Internet access to sex offender information pursuant to
22 Section 290.46.

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

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

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

36 (2) It is a compelling and necessary public interest that the
37 public have information concerning persons convicted of
38 offenses involving unlawful sexual behavior collected pursuant
39 to Sections 290 and 290.4 to allow members of the public to

1 adequately protect themselves and their children from these
2 persons.

3 (3) Persons convicted of these offenses involving unlawful
4 sexual behavior have a reduced expectation of privacy because of
5 the public's interest in public safety.

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

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

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

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

1 misuse of the information and that the enhancement to public
2 safety has been significant.

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

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

10 290.04. (a) Commencing on January 1, 2007, all adult males
11 who are required to register as a sex offender pursuant to Section
12 290 shall be subject to assessment by the STATIC-99 assessment
13 tool. The STATIC-99 and its successor instruments shall be the
14 sole actuarial risk assessment instrument used for registered sex
15 offenders.

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

34 (c) On or before January 1, 2010, the Department of
35 Corrections and Rehabilitation, in consultation with the
36 Department of Mental Health and experts in sex offender risk
37 assessment and the use of actuarial instruments in predicting sex
38 offender risk, shall periodically evaluate and update the
39 STATIC-99 or its successor instrument to ensure that
40 California's standardized actuarial assessment instrument for

1 assessing sex offender risk reflects reliable, objective and
2 well-established protocols for predicting sex offender risk of
3 recidivism, has been scientifically validated with multiple
4 cross-validations, and is widely accepted by the courts.

5 (d) On or before January 1, 2008, the Department of
6 Corrections and Rehabilitation, in consultation with the
7 Department of Mental Health and experts in sex offender risk
8 assessment and the use of actuarial instruments in predicting sex
9 offender risk, shall research actuarial risk assessment tools for
10 female and juvenile registered sex offenders, and shall make
11 recommendations to the Governor and to the Legislature
12 concerning the appropriate actuarial risk assessment instrument
13 to be used to assess those populations.

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

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

29 290.05. (a) Commencing on January 1, 2007, and subject to
30 the provisions of Section 290.04, the actuarial risk assessment
31 instrument for adult males required to register as sex offenders
32 pursuant to Section 290 shall be the STATIC-99.

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

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

37 290.06. (a) Probation officers trained in the use of
38 STATIC-99 shall perform a presentencing risk assessment of
39 every adult male convicted of an offense that requires him to
40 register as a sex offender pursuant to Section 290. Probation

1 officers shall assign a risk assessment tier level score to the
2 assessment, and shall include that score in a presentencing or
3 probation officer's report. Probation officers who conduct sex
4 offender risk assessments shall be trained in an approved
5 program established pursuant to subdivision-~~(d)~~ (e) of Section
6 290.04, and shall receive updated training no less frequently than
7 every two years, as determined by the Department of Corrections
8 and Rehabilitation.

9 (b) (1) The designated probation officer shall compile a Facts
10 of Offense Sheet for every adult male convicted of an offense
11 that requires him to register as a sex offender under Section 290
12 containing the following information concerning the offender and
13 his offense: name; all known aliases; CII number; physical
14 description; criminal history, including registerable sex offenses,
15 other offenses, and arrests that did not result in conviction for
16 sexual or violent offenses; unique circumstances of the offense
17 for which registration is required, including, but not limited to,
18 weapons used or victim pattern; risk assessment tier level; and
19 type of victims targeted in the past. The defendant may move the
20 court to correct the Facts of ~~the~~ Offense Sheet. Any corrections
21 to the Facts of ~~the~~ Offense Sheet offered by the defendant shall
22 be made consistent with Section 1204. The Facts of Offense
23 Sheet shall be included in the probation officer's report and shall
24 also be forwarded to the incarcerating agency, if any. A copy of
25 the Facts of Offense Sheet shall be sent by the probation
26 department to the registering law enforcement agency in the
27 jurisdiction where the person will reside on supervised probation
28 within three days of the person's release on probation. In
29 addition, probation shall send a copy of the Facts of Offense
30 Sheet to the Department of Justice Sex Offender Tracking
31 Program within three days of the person's sex offense conviction,
32 and it shall be made part of the registered sex offender's file
33 maintained by the Sex Offender Tracking Program. The Facts of
34 Offense Sheet shall thereafter be made available to law
35 enforcement by the Department of Justice, which shall post it
36 with the offender's record on the Department of Justice Internet
37 Web site maintained pursuant to Section 290.46, and shall be
38 accessible only to law enforcement.

39 (2) If the registered sex offender is sentenced to a period of
40 incarceration, at either the state prison or a county jail, the Facts

1 of Offense Sheet shall be sent by the Department of Corrections
2 and Rehabilitation or the county sheriff to the registering law
3 enforcement agency in the jurisdiction where the registered sex
4 offender will be paroled or will live on release, within three days
5 of the person's release. If the registered sex offender is
6 committed to the Department of Mental Health, the Facts of
7 Offense Sheet shall be sent by the Department of Mental Health
8 to the registering law enforcement agency in the jurisdiction
9 where the person will live on release, within three days of
10 release.

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

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

20 (b) The prerelease risk assessment shall be performed by the
21 Department of Corrections and Rehabilitation. Persons
22 administering the assessment shall be trained through an
23 approved program established pursuant to subdivision ~~(d)~~ (e) of
24 Section 290.04, and shall receive updated training no less
25 frequently than every two years as determined by the Department
26 of Corrections and Rehabilitation.

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

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

34 290.08. (a) Adult male registered sex offenders who are on
35 probation or parole as of the effective date of this section shall be
36 subject to a risk assessment using the STATIC-99. Adult male
37 sex offenders convicted in a jurisdiction other than California
38 who are required to register while living in California pursuant to
39 Section 290, who are being supervised in California under an
40 interstate compact or who are on federal or military supervision

1 in California, shall be also be assessed. Those offenders who
2 were assigned the highest risk level under the STATIC-99 in the
3 jurisdiction where they were convicted shall be given priority in
4 performing a new risk assessment.

5 (b) Probation departments and the parole authority shall create
6 specialized caseloads for all sex offenders, and shall develop
7 expertise in sex offender management. Sex offenders assessed at
8 high risk levels shall be monitored by agents responsible for
9 reduced caseloads.

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

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

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

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

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

36 290.3. (a) Every person who is convicted of any offense
37 specified in subdivision (a) of Section 290 shall, in addition to
38 any imprisonment or fine, or both, imposed for violation of the
39 underlying offense, be punished by a fine of three hundred
40 dollars (\$300) upon the first conviction or a fine of five hundred

1 dollars (\$500) upon the second and each subsequent conviction,
2 unless the court determines that the defendant does not have the
3 ability to pay the fine.

4 An amount equal to all fines collected pursuant to this
5 subdivision during the preceding month upon conviction of, or
6 upon the forfeiture of bail by, any person arrested for, or
7 convicted of, committing an offense specified in subdivision (a)
8 of Section 290, shall be transferred once a month by the county
9 treasurer to the Controller for deposit in the General Fund.
10 Moneys deposited in the General Fund pursuant to this
11 subdivision shall be transferred by the Controller as provided in
12 subdivision (b).

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

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

33 (2) Those moneys so designated shall be directed to the
34 Department of Justice and transferred to the Department of
35 Justice DNA Testing Fund, which is hereby created, for the
36 exclusive purpose of testing deoxyribonucleic acid (DNA)
37 samples for law enforcement purposes. The moneys in that fund
38 shall be available for expenditure upon appropriation by the
39 Legislature.

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

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

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

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

290.46. (a) On or before the dates specified in this section, the Department of Justice shall make available information concerning persons who are required to register pursuant to Section 290 to the public via an Internet Web site as specified in this section. The department shall update the Internet Web site on an ongoing basis. All information identifying the victim by name, birth date, address, or relationship to the registrant shall be excluded from the Internet Web site. The name or address of the person's employer and the listed person's criminal history other than the specific crimes for which the person is required to register shall not be included on the Internet Web site. The Web site shall display the risk assessment tier level for each posted registrant who has been assessed by the STATIC-99. If no risk assessment has been done, the Web site shall state, "Risk

1 Level-Not Yet Assessed.” The Department of Corrections and
2 Rehabilitation and the Department of Mental Health shall
3 provide the risk assessment tier level for each registered sex
4 offender assessed to the Department of Justice Sex Offender
5 Tracking Program at least two months prior to release from
6 incarceration or commitment. Probation departments shall
7 provide the risk assessment tier level for each registered sex
8 offender under their jurisdiction to the Department of Justice Sex
9 Offender Tracking Program no later than three days following
10 release on probation. The Department of Mental Health shall
11 provide to the Department of Justice Sex Offender Tracking
12 Program the names of all persons committed to its custody
13 pursuant to Article 4 (commencing with Section 6600) of
14 Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions
15 Code, within 30 days of commitment, and shall provide the
16 names of all of those persons released from its custody within
17 five working days of release. The Department of Corrections and
18 Rehabilitation shall provide the actual release date of each
19 registered sex offender to the Department of Justice Sex Offender
20 Tracking Program within five days of release or as soon as
21 practicable thereafter. The Web site shall display the date of
22 conviction and the date of release from incarceration or
23 commitment for each posted registrant. The Web site shall also
24 post, in a separate section from those listing current registered
25 sex offenders, the names and reported state of destination, if any,
26 of former registrants who have been deported or moved out of
27 state. The Internet Web site shall be translated into languages
28 other than English as determined by the department.

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

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

3 (A) Section 207 committed with intent to violate Section 261,
4 286, 288, 288a, or 289.

5 (B) Section 209 committed with intent to violate Section 261,
6 286, 288, 288a, or 289.

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

8 (D) Section 264.1.

9 (E) Section 269.

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

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

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

14 (I) Section 288.5 or 288.7.

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

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

19 (c) (1) On or before July 1, 2005, with respect to a person
20 who has been convicted of the commission or the attempted
21 commission of any of the offenses listed in paragraph (2), the
22 Department of Justice shall make available to the public via the
23 Internet Web site his or her name and known aliases, a
24 photograph, a physical description, including gender and race,
25 date of birth, criminal history, the community of residence and
26 ZIP Code in which the person resides or the county in which the
27 person is registered as a transient, and any other information that
28 the Department of Justice deems relevant, but not the information
29 excluded pursuant to subdivision (a). On or before July 1, 2006,
30 the Department of Justice shall determine whether any person
31 convicted of an offense listed in paragraph (2) also has one or
32 more prior or subsequent convictions of an offense listed in
33 paragraph (2) of subdivision (a) of Section 290, and, for those
34 persons, the Department of Justice shall make available to the
35 public via the Internet Web site the address at which the person
36 resides. However, the address at which the person resides shall
37 not be disclosed until a determination is made that the person is,
38 by virtue of his or her additional prior or subsequent conviction
39 of an offense listed in paragraph (2) of subdivision (a) of Section
40 290, subject to this subdivision.

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

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

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

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

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

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

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

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

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

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

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

(D) Section 266j.

(E) Section 267.

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

(G) Section 626.83 or 647.6.

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

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

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

(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.

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

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

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

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

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

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

38 (2) The law enforcement entity may make available by way of
39 an Internet Web site the information described in subdivision (c)
40 if it determines that the public disclosure of the information

1 about a specific offender by way of the entity's Internet Web site
2 is necessary to ensure the public safety based upon information
3 available to the entity concerning that specific offender.

4 (3) The information that may be provided pursuant to this
5 subdivision may include the information specified in subdivision
6 (b) of Section 290.45. However, that offender's address may not
7 be disclosed unless he or she is a person whose address is on the
8 Department of Justice's Internet Web site pursuant to subdivision
9 (b) or (c).

10 (h) For purposes of this section, "offense" includes the
11 statutory predecessors of that offense, or any offense committed
12 in another jurisdiction that, if committed or attempted to be
13 committed in this state, would have been punishable in this state
14 as an offense listed in subparagraph (A) of paragraph (2) of
15 subdivision (a) of Section 290.

16 (i) Notwithstanding Section 6254.5 of the Government Code,
17 disclosure of information pursuant to this section is not a waiver
18 of exemptions under Chapter 3.5 (commencing with Section
19 6250) of Title 1 of Division 7 of the Government Code and does
20 not affect other statutory restrictions on disclosure in other
21 situations.

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

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

31 (k) Any person who is required to register pursuant to Section
32 290 who enters an Internet Web site established pursuant to this
33 section shall be punished by a fine not exceeding one thousand
34 dollars (\$1,000), imprisonment in a county jail for a period not to
35 exceed six months, or by both that fine and imprisonment.

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

38 (2) Except as authorized under paragraph (1) or any other
39 provision of law, use of any information that is disclosed

1 pursuant to this section for purposes relating to any of the
2 following is prohibited:

3 (A) Health insurance.

4 (B) Insurance.

5 (C) Loans.

6 (D) Credit.

7 (E) Employment.

8 (F) Education, scholarships, or fellowships.

9 (G) Housing or accommodations.

10 (H) Benefits, privileges, or services provided by any business
11 establishment.

12 (3) This section shall not affect authorized access to, or use of,
13 information pursuant to, among other provisions, Sections 11105
14 and 11105.3, Section 8808 of the Family Code, Sections 777.5
15 and 14409.2 of the Financial Code, Sections 1522.01 and
16 1596.871 of the Health and Safety Code, and Section 432.7 of
17 the Labor Code.

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

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

1 (m) The public notification provisions of this section are
2 applicable to every person described in this section, without
3 regard to when his or her crimes were committed or his or her
4 duty to register pursuant to Section 290 arose, and to every
5 offense described in this section, regardless of when it was
6 committed.

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

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

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

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

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

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

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

36 (2) In prosecutions under this chapter, if circumstances of
37 production, presentation, sale, dissemination, distribution, or
38 publicity indicate that matter is being commercially exploited by
39 the defendant for the sake of its prurient appeal, this evidence is
40 probative with respect to the nature of the matter and may justify

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

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

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

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

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

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

29 (f) “Exhibit” means show.

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

39 (1) If it appears from the nature of the conduct or the
40 circumstances of its production, presentation, or exhibition that it

1 is designed for clearly defined deviant sexual groups, the appeal
2 of the conduct shall be judged with reference to its intended
3 recipient group.

4 (2) In prosecutions under this chapter, if circumstances of
5 production, presentation, advertising, or exhibition indicate that
6 live conduct is being commercially exploited by the defendant
7 for the sake of its prurient appeal, that evidence is probative with
8 respect to the nature of the conduct and may justify the
9 conclusion that the conduct lacks serious literary, artistic,
10 political, or scientific value.

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

18 (h) “Sexual conduct” means any of the following, whether
19 actual or simulated:

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

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

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

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

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

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

32 (7) Any lewd or lascivious sexual act as defined in Section
33 288.

34 (i) “Simulated” means any act that gives the appearance of
35 being sexual conduct.

36 SEC. 22. Section 311.1 of the Penal Code is amended to read:

37 311.1. Every person who knowingly sends or causes to be
38 sent, or brings or causes to be brought, into this state for sale or
39 distribution, or in this state possesses, prepares, publishes,
40 produces, develops, duplicates, or prints any obscene matter,

1 with intent to distribute or to exhibit to, or to exchange with,
2 others, or who offers to distribute, distributes, or exhibits to, or
3 exchanges with, others, that matter, knowing that the matter
4 depicts a person under 18 years of age engaged in an act of
5 sexual conduct, shall be punished by imprisonment in the state
6 prison.

7 SEC. 23. Section 311.2 of the Penal Code is amended to read:

8 311.2. (a) Every person who knowingly sends or causes to be
9 sent, or brings or causes to be brought, into this state for sale or
10 distribution, or in this state possesses, prepares, publishes,
11 produces, or prints, with intent to distribute or to exhibit to
12 others, or who offers to distribute, distributes, or exhibits to
13 others, any obscene matter is, for a first offense, guilty of a
14 misdemeanor, punishable by imprisonment in a county jail and a
15 fine of up to five thousand dollars (\$5,000). If the person has
16 previously been convicted of any violation of this section, the
17 person is guilty of a felony, punishable by imprisonment in the
18 state prison and a fine of up to fifty thousand dollars (\$50,000).

19 (b) Every person who knowingly sends or causes to be sent, or
20 brings or causes to be brought, into this state for sale or
21 distribution, or in this state possesses, prepares, publishes,
22 produces, develops, duplicates, or prints any obscene matter,
23 knowing that the matter depicts a person under 18 years of age
24 engaged in an act of sexual conduct, with intent to distribute or to
25 exhibit to, or to exchange with, others for commercial
26 consideration, or who offers to distribute, distributes, or exhibits
27 to, or exchanges with, others for commercial consideration, any
28 obscene matter, knowing that the matter depicts a person under
29 18 years of age engaged in an act of sexual conduct, is guilty of a
30 felony and shall be punished by imprisonment in the state prison
31 for two, three, or six years, or by a fine not exceeding one
32 hundred thousand dollars (\$100,000), in the absence of a finding
33 that the defendant would be incapable of paying such a fine, or
34 by both that fine and imprisonment.

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

36 311.3. (a) A person is guilty of sexual exploitation of a child
37 if he or she knowingly develops, duplicates, prints, or exchanges
38 any matter that depicts a person under 18 years of age engaged in
39 an act of sexual conduct.

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

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

~~(d)~~

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

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

311.4. (a) Every person who, with knowledge that a person is a minor, or who, while in possession of any facts on the basis of which he or she should reasonably know that the person is a minor, hires, employs, or uses the minor to do or assist in doing any of the acts described in Section 311.2, is, for a first offense, guilty of a misdemeanor. If the person has previously been convicted of any violation of this subdivision, or of a violation of Section 311.11, the person is guilty of a felony and is subject to a fine not exceeding fifty thousand dollars (\$50,000).

(b) Every person who, with knowledge that a person is a minor under the age of 18 years, or who, while in possession of any facts on the basis of which he or she should reasonably know that the person is a minor under 18 years of age, knowingly promotes, employs, uses, persuades, induces, or coerces a minor under 18 years of age, or any parent or guardian of a minor under 18 years of age under his or her control who knowingly permits the minor, to engage in or assist others to engage in either posing or modeling alone or with others for purposes of preparing any matter, or a live performance involving, sexual conduct by a minor under 18 years of age alone or with other persons or animals, for commercial purposes, is guilty of a felony and shall

1 be punished by imprisonment in the state prison for three, six, or
2 eight years.

3 (c) Every person who, with knowledge that a person is a minor
4 under 18 years of age, or who, while in possession of any facts
5 on the basis of which he or she should reasonably know that the
6 person is a minor under 18 years of age, knowingly promotes,
7 employs, uses, persuades, induces, or coerces a minor under 18
8 years of age, or any parent or guardian of a minor under 18 years
9 of age under his or her control who knowingly permits the minor;
10 to engage in or assist others to engage in either posing or
11 modeling alone or with others for purposes of preparing any
12 matter, or a live performance involving, sexual conduct by a
13 minor under 18 years of age alone or with other persons or
14 animals, is guilty of a felony, *punishable by imprisonment in the*
15 *state prison for 2, 3, or 4 years*. It is not necessary to prove
16 commercial purposes in order to establish a violation of this
17 subdivision. Prosecution under this section shall not preclude
18 prosecution under any other provision of law, including, but not
19 limited to, provisions that prohibit human trafficking.

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

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

29 311.5. Every person who writes, creates, or solicits the
30 publication or distribution of advertising or other promotional
31 material, or who in any manner promotes, the sale, distribution,
32 or exhibition of matter represented or held out by him *or her* to
33 be obscene, is guilty of a misdemeanor, punishable by
34 imprisonment in the county jail for up to one year, a fine of up to
35 five thousand dollars (\$5,000), or both. If the person has
36 previously been convicted of any offense in this chapter, except
37 subdivision (b) of Section 311.2, or of a violation of Section
38 313.1, the person shall be punished by imprisonment in the state
39 prison.

40 SEC. 27. Section 311.7 of the Penal Code is amended to read:

1 311.7. (a) Every person who, knowingly, as a condition to a
2 sale, allocation, consignment, or delivery for resale of any paper,
3 magazine, book, periodical, publication or other merchandise,
4 requires that the purchaser or consignee receive any obscene
5 matter or who denies or threatens to deny a franchise, revokes or
6 threatens to revoke, or imposes any penalty, financial or
7 otherwise, by reason of the failure of any person to accept
8 obscene matter, or by reason of the return of that matter, is guilty
9 of a misdemeanor.

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

20 SEC. 28. Section 311.8 of the Penal Code is amended to read:

21 311.8. (a) It shall be a defense in any prosecution for a
22 violation of this chapter that the act charged was committed in
23 aid of legitimate medical, scientific, or educational activities, or
24 during lawful conduct between spouses when one or both are
25 under 18 years of age, or that the matter depicts a child under 18
26 years of age if that child is legally emancipated.

27 (b) This chapter does not apply to the activities of law
28 enforcement and prosecuting agencies in the investigation and
29 prosecution of criminal offenses.

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

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

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

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

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

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

20 (2) Required payment by credit card before transmission of the
21 matter.

22 (g) Any list of applicants or recipients compiled or maintained
23 by an information-access service provider for purposes of
24 compliance with subdivision (f) is confidential and shall not be
25 sold or otherwise disseminated except upon order of the court.

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

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

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

36 SEC. 31. Section 311.11 of the Penal Code is amended to
37 read:

38 311.11. (a) Every person who knowingly possesses or
39 controls any matter, knowing that the matter depicts a person
40 under 18 years of age personally engaging in or simulating

sexual conduct, is guilty of a crime. The specific offenses, penalties and additional definitions applicable to this section are described in the following paragraphs. If the offense includes an element that the child is under a specified age, it is an element of the crime that the person knew the age of the child.

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

(2) If the matter depicts a child of 16 or 17 years of age, the person is guilty of a misdemeanor. If the matter depicts a child who is 16 or 17 years of age engaging in explicit sexual conduct, 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~~ chapter, “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, 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 for which he or she was required to register pursuant to Section 290, 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

1 Institutions Code, is guilty of a felony and shall be punished by
2 imprisonment for two, four, or six years.

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

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

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

11 311.12. Every person who knowingly sends or causes to be
12 sent, or brings or causes to be brought, into this state for sale or
13 distribution, or distributes, exhibits, exchanges, possesses,
14 prepares, publishes, produces, develops, duplicates, or prints, any
15 matter, or has the intent to distribute, exhibit, or exchange that
16 matter with another person, is guilty of an offense as specified in
17 this section.

18 (a) If the matter depicts a child under 16 years of age engaged
19 in sexual conduct, the crime is a felony. If the matter depicts a
20 child under 16 years of age engaged in explicit sexual conduct, as
21 defined in subdivision (d) of Section 311.11, the person is
22 punishable by incarceration in the state prison for two, three, or
23 four years.

24 (b) If the matter depicts a child who is 16 or 17 years of age,
25 the crime may be charged as a misdemeanor or felony. If the
26 matter depicts a child who is 16 or 17 years of age engaged in
27 explicit sexual conduct, the crime is a felony.

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

32 SEC. 33. Section 311.13 is added to the Penal Code, to read:

33 311.13. Any monetary assets gained from the production,
34 publication, sale, distribution, exchange, or control of any matter
35 that depicts a minor under 18 years of age that is unlawful
36 pursuant to Section 311.1, 311.2, 311.3, 311.4, 311.5, 311.10,
37 311.11, or 311.12, is subject to forfeiture, upon conviction for a
38 violation of one of those sections. Upon petition by the
39 prosecuting attorney, at any time following sentencing for a
40 violation of one of those sections, the court shall conduct a

1 hearing to determine the amount of monetary assets that are
2 subject to forfeiture. The Civil Discovery Act of 1986 (Article 3
3 (commencing with Section 2016) of Chapter 3 of Title 3 of Part
4 4 of the Code of Civil Procedure) applies to that hearing.

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

6 312.1. (a) In any prosecution for a violation of the provisions
7 of this chapter or of Chapter 7.6 (commencing with Section 313),
8 neither the prosecution nor the defense shall be required to
9 introduce expert witness testimony concerning the obscene or
10 harmful character of the matter or live conduct which is the
11 subject of the prosecution.

12 (b) Any evidence which tends to establish contemporary
13 community standards of appeal to prurient interest or of
14 customary limits of candor in the description or representation of
15 nudity, sex, or excretion, or which bears upon the question of
16 significant literary, artistic, political, educational, or scientific
17 value shall, subject to the provisions of the Evidence Code, be
18 admissible when offered by either the prosecution or by the
19 defense.

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

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

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

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

1 (3) Has otherwise established a continued pattern of
2 unauthorized entry.

3 This section shall not be utilized to impinge upon the lawful
4 exercise of constitutionally protected rights of freedom of speech
5 or assembly.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

33 (3) If the defendant has been previously convicted two or more
34 times of a violation of this section, by imprisonment in a county
35 jail for a period of not less than 90 days or more than six months,
36 or by both imprisonment and a fine of not exceeding five
37 hundred dollars (\$500), and shall not be released on probation,
38 parole, or any other basis until he or she has served not less than
39 90 days.

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

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

647.6. (a) (1) Every person who annoys or molests any child ~~under the age of 18~~ *18 years of age* shall be punished by a fine not exceeding five thousand dollars (\$5,000), by imprisonment in a county jail not 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~~ *16 years of age*, 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~~ *14 years of age* 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 communication by a third party acting on behalf of the defendant, and any gifts.

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

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

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

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

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

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

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

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

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

5 (1) Murder or voluntary manslaughter.

6 (2) Mayhem.

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

10 (4) Sodomy, as defined in subdivision (c) or (d) of Section
11 286.

12 (5) Oral copulation, as defined in subdivision (c) or (d) of
13 Section 288a.

14 (6) Lewd or lascivious acts, as defined in subdivision (a) or (b)
15 of Section 288.

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

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

25 (9) Any robbery.

26 (10) Arson, in violation of subdivision (a) or (b) of Section
27 451.

28 (11) Sexual penetration, as defined in subdivision (a) or (j) of
29 Section 289.

30 (12) Attempted murder.

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

32 (14) Kidnapping.

33 (15) Assault with the intent to commit a specified felony, in
34 violation of Section 220.

35 (16) Continuous sexual abuse of a child, in violation of
36 Section 288.5.

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

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

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

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

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

10 (22) Any violation of Section 12022.53.

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

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

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

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

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

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

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

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

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

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

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

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

30 SEC. 40. Section 667.51 of the Penal Code is amended to
31 read:

32 667.51. (a) Any person who is convicted of violating Section
33 288 or 288.5 shall receive a five-year enhancement for a prior
34 conviction of an offense specified in subdivision (b).

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

39 (c)

40 —A

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

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

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

18 (b) Any person who is convicted of an offense specified in
19 subdivision (e) and who has served two or more prior prison
20 terms as defined in Section 667.5 for any of those offenses, shall
21 receive a 10-year enhancement for each of those prior terms. In
22 addition to the 10-year enhancement imposed under this
23 subdivision, the court also may impose a fine not to exceed
24 twenty thousand dollars (\$20,000) for any person sentenced
25 under this subdivision. The fine imposed and collected pursuant
26 to this subdivision shall be deposited in the Victim-Witness
27 Assistance Fund to be available for appropriation to fund child
28 sexual exploitation and child sexual abuse victim counseling
29 centers and prevention programs established pursuant to Section
30 13837.

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

1 included in any determination pursuant to Section 1170.1. Any
2 other term imposed subsequent to that term shall not be merged
3 therein but shall commence at the time the person otherwise
4 would have been released from prison.

5 (d) A full, separate, and consecutive term shall be imposed for
6 each violation of an offense specified in subdivision (e) if the
7 crimes involve separate victims or involve the same victim on
8 separate occasions.

9 In determining whether crimes against a single victim were
10 committed on separate occasions under this subdivision, the court
11 shall consider whether, between the commission of one sex crime
12 and another, the defendant had a reasonable opportunity to reflect
13 upon his or her actions and nevertheless resumed sexually
14 assaultive behavior. Neither the duration of time between crimes,
15 nor whether or not the defendant lost or abandoned his or her
16 opportunity to attack, shall be, in and of itself, determinative on
17 the issue of whether the crimes in question occurred on separate
18 occasions.

19 The term shall be served consecutively to any other term of
20 imprisonment and shall commence from the time the person
21 otherwise would have been released from imprisonment. The
22 term shall not be included in any determination pursuant to
23 Section 1170.1. Any other term imposed subsequent to that term
24 shall not be merged therein but shall commence at the time the
25 person otherwise would have been released from prison.

26 (e) This section applies to the following offenses:

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

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

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

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

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

37 (6) Continuous sexual abuse of a child, in violation of Section
38 288.5.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13 (7) The defendant administered a controlled substance to the
14 victim in the commission of the present offense in violation of
15 Section 12022.75.

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

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

23 (10) The victim of sexual penetration was a child 10 years of
24 age or younger and the adult penetrated or caused the penetration
25 of the vagina or rectum of the child.

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

1 punishment or enhancement authorized under any other provision
2 of law.

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

8 ~~(h)~~

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

18 ~~(i)~~

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

23 ~~(j)~~

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

29 SEC. 43. Section 667.71 of the Penal Code is amended to
30 read:

31 667.71. (a) For the purpose of this section, a habitual sexual
32 offender is a person who has been previously convicted of one or
33 more of the offenses specified in subdivision (c) and who is
34 convicted in the present proceeding of one of those offenses.

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

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

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

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

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

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

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

9 (6) Continuous sexual abuse of a child, in violation of Section
10 288.5.

11 (7) Sodomy, in violation of subdivision (c) or (d) of Section
12 286.

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

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

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

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

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

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

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

29 (e)

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

34 (f)

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

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

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

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

9 SEC. 45. Section 1170.125 of the Penal Code is amended to
10 read:

11 1170.125. Notwithstanding Section 2 of Proposition 184, as
12 adopted at the November 8, 1994, general election, for all
13 offenses committed on or after the effective date of this act, all
14 references to existing statutes in Section 1170.12 are to those
15 statutes as they existed on the effective date of this act, including
16 amendments made to those statutes by the act enacted during the
17 2005–06 Regular Session that amended this section.

18 SEC. 46. Section 1192.7 of the Penal Code is amended to
19 read:

20 1192.7. (a) (1) It is the intent of the Legislature that district
21 attorneys prosecute violent sex crimes under statutes that provide
22 sentencing under a “one strike,” “three strikes” or habitual sex
23 offender statute instead of engaging in plea bargaining over those
24 offenses.

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

34 (3) If the indictment or information charges the defendant with
35 a violent sex crime, as listed in subdivision (c) of Section 667.61,
36 that could be prosecuted under Sections 269, 288.7, subdivisions
37 (b) through (i) of Section 667, Section 667.61, or 667.71, plea
38 bargaining is prohibited unless there is insufficient evidence to
39 prove the people’s case, or testimony of a material witness
40 cannot be obtained, or a reduction or dismissal would not result

1 in a substantial change in sentence. At the time of presenting the
2 agreement to the court, the district attorney shall state on the
3 record why a sentence under one of those sections was not
4 sought.

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

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

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

1 give to a minor any heroin, cocaine, phencyclidine (PCP), or any
2 methamphetamine-related drug, as described in paragraph (2) of
3 subdivision (d) of Section 11055 of the Health and Safety Code,
4 or any of the precursors of methamphetamines, as described in
5 subparagraph (A) of paragraph (1) of subdivision (f) of Section
6 11055 or subdivision (a) of Section 11100 of the Health and
7 Safety Code; (25) any violation of subdivision (a) of Section 289
8 where the act is accomplished against the victim's will by force,
9 violence, duress, menace, or fear of immediate and unlawful
10 bodily injury on the victim or another person; (26) grand theft
11 involving a firearm; (27) carjacking; (28) any felony offense,
12 which would also constitute a felony violation of Section 186.22;
13 (29) assault with the intent to commit mayhem, rape, sodomy, or
14 oral copulation, in violation of Section 220; (30) throwing acid or
15 flammable substances, in violation of Section 244; (31) assault
16 with a deadly weapon, firearm, machinegun, assault weapon, or
17 semiautomatic firearm or assault on a peace officer or firefighter,
18 in violation of Section 245; (32) assault with a deadly weapon
19 against a public transit employee, custodial officer, or school
20 employee, in violation of Sections 245.2, 245.3, or 245.5; (33)
21 discharge of a firearm at an inhabited dwelling, vehicle, or
22 aircraft, in violation of Section 246; (34) commission of rape or
23 sexual penetration in concert with another person, in violation of
24 Section 264.1; (35) continuous sexual abuse of a child, in
25 violation of Section 288.5; (36) shooting from a vehicle, in
26 violation of subdivision (c) or (d) of Section 12034; (37)
27 intimidation of victims or witnesses, in violation of Section
28 136.1; (38) criminal threats, in violation of Section 422; (39) any
29 attempt to commit a crime listed in this subdivision other than an
30 assault; (40) any violation of Section 12022.53; (41) a violation
31 of subdivision (b) or (c) of Section 11418; and (42) any
32 conspiracy to commit an offense described in this subdivision.

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

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

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

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

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

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

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

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

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

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~~ *nine*

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

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

23 (4) The preparation of the report or the consideration of the
24 report by the court may be waived only by a written stipulation
25 of the prosecuting and defense attorneys that is filed with the
26 court or an oral stipulation in open court that is made and entered
27 upon the minutes of the court, except that there shall be no
28 waiver unless the court consents thereto. However, if the
29 defendant is ultimately sentenced and committed to the state
30 prison, a probation report shall be completed pursuant to Section
31 1203c.

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

35 (d) If a person is convicted of a misdemeanor, the court may
36 either refer the matter to the probation officer for an investigation
37 and a report or summarily pronounce a conditional sentence. If
38 the crime requires the person to register as a sex offender
39 pursuant to Section 290, the probation officer shall administer the
40 STATIC-99, as set forth in Section 290.06, in order to determine

1 the person's risk of reoffending. If the case is not referred to the
2 probation officer, in sentencing the person, the court may
3 consider any information concerning the person that could have
4 been included in a probation report. The court shall inform the
5 person of the information to be considered and permit him or her
6 to answer or controvert the information. For this purpose, upon
7 the request of the person, the court shall grant a continuance
8 before the judgment is pronounced.

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

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

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

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

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

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

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

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

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

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

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

19 (8) Any person who knowingly furnishes or gives away
20 phencyclidine.

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

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

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

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

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

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

1 (g) If a person is not eligible for probation, the judge shall
2 refer the matter to the probation officer for an investigation of the
3 facts relevant to determination of the amount of a restitution fine
4 pursuant to subdivision (b) of Section 1202.4 in all cases where
5 the determination is applicable. The judge, in his or her
6 discretion, may direct the probation officer to investigate all facts
7 relevant to the sentencing of the person. Upon that referral, the
8 probation officer shall immediately investigate the circumstances
9 surrounding the crime and the prior record and history of the
10 person and make a written report to the court of his or her
11 findings. The findings shall include a recommendation of the
12 amount of the restitution fine as provided in subdivision (b) of
13 Section 1202.4.

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

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

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

1 Any order made pursuant to this subdivision may be enforced
2 as a violation of the terms and conditions of probation upon
3 willful failure to pay and at the discretion of the court, may be
4 enforced in the same manner as a judgment in a civil action, if
5 any balance remains unpaid at the end of the defendant's
6 probationary period.

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

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

19 SEC. 49. Section 1203c of the Penal Code is amended to
20 read:

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

31 (2) If the person is being committed to the jurisdiction of the
32 department for a conviction of an offense listed in subparagraph
33 (A) of paragraph (2) of subdivision (a) of Section 290, the
34 probation officer shall perform a risk assessment of the person
35 using the STATIC-99 assessment tool, as set forth in Section
36 290.06.

37 (b) These reports shall accompany the commitment papers.
38 The reports shall be prepared in the form prescribed by the
39 administrator following consultation with the Corrections
40 Standards Authority, except that if the defendant is ineligible for

1 probation, a report of the circumstances surrounding the offense
2 and the prior record and history of the defendant, prepared by the
3 probation officer on request of the court and filed with the court
4 before sentence, shall be deemed to meet the requirements of
5 paragraph (1) of subdivision (a).

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

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

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

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

24 (A) Murder.

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

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

27 (D) A lewd or lascivious act, in violation of Section 288.

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

29 (F) Rape, in violation of Section 261, 262, or 264.1.

30 (G) Assault with intent to commit a specified sexual offense,
31 in violation of Section 220.

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

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

34 (J) Aggravated mayhem in violation of Section 205.

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

36 (L) Continuous sexual abuse of a child, in violation of Section
37 288.5.

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

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

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

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

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

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

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

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

16 (2) As used in subdivision (a), “used a firearm” means to
17 display a 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. 51. Section 1203.065 of the Penal Code is amended to
24 read:

25 1203.065. (a) Notwithstanding any other provision of law,
26 probation shall not be granted to, nor shall the execution or
27 imposition of sentence be suspended for, any person who is
28 convicted of violating paragraph (2) or (6) of subdivision (a) of
29 Section 261, Section 264.1, 266h, 266i, 266j, or 269, or
30 paragraph (2) or (3) of subdivision (c), or subdivision (d), of
31 Section 286 or 288a, or subdivision (a) of Section 289, or
32 subdivision (c) of Section 311.4.

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

39 (2) When probation is granted, the court shall specify on the
40 record and shall enter on the minutes the circumstances

1 indicating that the interests of justice would best be served by the
2 disposition.

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

5 1203.075. (a) Notwithstanding any other provision of law,
6 probation shall not be granted to, nor shall the execution or
7 imposition of sentence be suspended for, ~~nor shall a finding~~
8 ~~bringing the defendant within this section be stricken pursuant to~~
9 ~~Section 1385~~ for, any person who personally inflicts great bodily
10 injury, as defined in Section 12022.7, on the person of another in
11 the commission or attempted commission of any of the following
12 crimes:

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

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

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

36 3000. (a) (1) The Legislature finds and declares that the
37 period immediately following incarceration is critical to
38 successful reintegration of the offender into society and to
39 positive citizenship. It is in the interest of public safety for the
40 state to provide for the supervision of and surveillance of

1 parolees, including the judicious use of revocation actions, and to
2 provide educational, vocational, family and personal counseling
3 necessary to assist parolees in the transition between
4 imprisonment and discharge. A sentence pursuant to Section
5 1168 or 1170 shall include a period of parole, unless waived, as
6 provided in this section.

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

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

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

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

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

1 period not exceeding five years, and an inmate sentenced for an
2 offense specified in paragraph (3), (4), (5), (6), (15), (16), or (18)
3 of subdivision (c) of Section 667.5 shall be released on parole for
4 a period not exceeding 10 years.

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

15 (3) The parole authority shall consider the request of any
16 inmate regarding the length of his or her parole and the
17 conditions thereof.

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

39 (5) The Department of Corrections and Rehabilitation shall
40 meet with each inmate at least 30 days prior to his or her good

1 time release date and shall provide, under guidelines specified by
2 the parole authority, the conditions of parole and the length of
3 parole up to the maximum period of time provided by law. The
4 inmate has the right to reconsideration of the length and
5 conditions of parole by the parole authority. The department or
6 the board may impose as a condition of parole that an inmate
7 make payments on the inmate's outstanding restitution fines or
8 orders imposed pursuant to subdivision (a) or (c) of Section
9 13967 of the Government Code, as operative prior to September
10 28, 1994, or subdivision (b) or (f) of Section 1202.4.

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

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

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

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

22 3005. (a) The Department of Corrections and Rehabilitation
23 shall ensure that all parolees under active supervision and
24 deemed to pose a risk to the public of committing sex crimes, as
25 determined by the STATIC-99 assessment tool, shall be placed
26 on an intensive and specialized parole supervision caseload, and
27 shall be required to report frequently to designated parole
28 officers.

29 (b) The department shall develop and, at the discretion of the
30 secretary, and subject to an appropriation of the necessary funds,
31 may implement a plan for the implementation of relapse
32 prevention treatment programs, and the provision of other
33 services deemed necessary by the department, in conjunction
34 with intensive and specialized parole supervision, to reduce the
35 recidivism of sex offenders.

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

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

3
4 CHAPTER 1.5. RISK ASSESSMENT OF SEX OFFENDERS
5

6 5040. (a) The Department of Corrections and Rehabilitation
7 shall use the STATIC-99 assessment tool to perform a risk
8 assessment on all male inmates who are convicted of a sex
9 offense listed in subparagraph (A) of paragraph (2) of
10 subdivision (a) of Section 290, upon commitment to the
11 department. For those inmates already in the custody of the
12 department, the assessment shall be performed prior to being
13 released on parole. The assessment shall be performed as
14 prescribed in Chapter 5.5 (commencing with Section 290) of
15 Title 9 of Part 2.

16 (b) Inmates who were assessed using the STATIC-99 prior to
17 being committed to the department shall not be required to be
18 reassessed.

19 (c) Inmates who have a risk assessment of moderate-high or
20 high risk for committing a sex offense, according to the
21 STATIC-99, shall participate in sex offender control and
22 containment programming while incarcerated and while on
23 parole, as developed and specified by the department. The
24 programming shall be based on current, evidence-based
25 correctional standards ~~that is~~ *and* proven to reduce the risk of
26 reoffending.

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

31 (e) Notwithstanding subdivision ~~(d)~~ (c), an inmate serving a
32 life term may be excluded from sex offender programming until
33 he or she receives a parole date and is within five years of that
34 date, unless the department determines that the programming for
35 that inmate is necessary for the public safety.

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

39 SEC. 56. Section 12022.75 of the Penal Code is amended to
40 read:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 SEC. 60. Section 13887.1 of the Penal Code is amended to
2 read:

3 13887.1. (a) The mission of this program shall be to reduce
4 violent sexual assault offenses in the county through proactive
5 surveillance and arrest of habitual sexual offenders, as defined in
6 Section 667.71, and strict enforcement of registration
7 requirements for sex offenders pursuant to Section 290.

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

11 (c) The mission of this program shall also be to provide
12 community education regarding the purposes of ~~Sections 290 to~~
13 ~~290.46, inclusive~~ *Chapter 5.5 (commencing with Section 290) of*
14 *Title 9 of Part 2*. The goal of community education is to do all of
15 the following:

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

18 (2) ~~Emphasize~~ ~~of~~ the importance of using the knowledge of
19 the presence of registered sex offenders in the community to
20 enhance public safety.

21 (3) ~~To explain~~ *Explain* that harassment or vigilantism against
22 registrants may cause them to disappear and attempt to live
23 without supervision, or to register as transients, which would
24 defeat the purpose of sex offender registration.

25 SEC. 61. Section 6600 of the Welfare and Institutions Code is
26 amended to read:

27 6600. As used in this article, the following terms have the
28 following meanings:

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

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

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

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

4 (C) A prior conviction in another jurisdiction for an offense
5 that includes all of the elements of an offense described in
6 subdivision (b).

7 (D) A conviction for an offense under a predecessor statute
8 that includes all of the elements of an offense described in
9 subdivision (b).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

39 (b) The person shall be screened by the Department of
40 Corrections and Rehabilitation and the Board of Parole Hearings

1 based on whether the person has committed a sexually violent
2 predatory offense and on a review of the person's social,
3 criminal, and institutional history. This screening shall be
4 conducted in accordance with a structured screening instrument
5 developed and updated by the State Department of Mental Health
6 in consultation with the Department of Corrections and
7 Rehabilitation. If as a result of this screening it is determined that
8 the person is likely to be a sexually violent predator, the
9 Department of Corrections and Rehabilitation shall refer the
10 person to the State Department of Mental Health for a full
11 evaluation of whether the person meets the criteria in Section
12 6600.

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

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

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

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

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

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

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

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

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

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

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

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

16 SEC. 63. Section 6604 of the Welfare and Institutions Code is
17 amended to read:

18 6604. The court or jury shall determine whether, beyond a
19 reasonable doubt, the person is a sexually violent predator. If the
20 court or jury is not satisfied beyond a reasonable doubt that the
21 person is a sexually violent predator, the court shall direct that
22 the person be released at the conclusion of the term for which he
23 or she was initially sentenced, or that the person be
24 unconditionally released at the end of parole, whichever is
25 applicable. If the court or jury determines that the person is a
26 sexually violent predator, the person shall be committed for an
27 indeterminate term to the custody of the State Department of
28 Mental Health for appropriate treatment and confinement in a
29 secure facility designated by the Director of Mental Health. Time
30 spent on conditional release shall not count toward the 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 term of commitment. The
34 facility shall be located on the grounds of an institution under the
35 jurisdiction of the Department of Corrections and Rehabilitation.

36 SEC. 63.5. Section 6604 of the Welfare and Institutions Code
37 is amended to read:

38 6604. The court or jury shall determine whether, beyond a
39 reasonable doubt, the person is a sexually violent predator. If the
40 court or jury is not satisfied beyond a reasonable doubt that the

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

22 SEC. 64. Section 6604.1 of the Welfare and Institutions Code
23 is amended to read:

24 6604.1. (a) The indeterminate term of commitment provided
25 for in Section 6604 shall commence on the date upon which the
26 court issues the initial order of commitment pursuant to that
27 section.

28 (b) The person shall be evaluated by two practicing
29 psychologists or psychiatrists, or by one practicing psychologist
30 and one practicing psychiatrist, designated by the State
31 Department of Mental Health. The provisions of subdivisions (c)
32 to (i), inclusive, of Section 6601 shall apply to evaluations
33 performed pursuant to a trial conducted pursuant to subdivision
34 (f) of Section 6605. The rights, requirements, and procedures set
35 forth in Section 6603 shall apply to all commitment proceedings.

36 SEC. 64.5. Section 6604.1 of the Welfare and Institutions
37 Code is amended to read:

38 6604.1. (a) The five-year term of commitment provided for
39 in Section 6604 shall commence on the date upon which the
40 court issues the initial order of commitment pursuant to that

1 section. The initial five-year term shall not be reduced by any
2 time spent in a secure facility prior to the order of commitment.
3 For any subsequent extended commitments, the term of
4 commitment shall be for two years commencing from the date of
5 the termination of the previous commitment.

6 (b) The person shall be evaluated by two practicing
7 psychologists or psychiatrists, or by one practicing psychologist
8 and one practicing psychiatrist, designated by the State
9 Department of Mental Health. The provisions of subdivisions (c)
10 to (i), inclusive, of Section 6601 shall apply to evaluations
11 performed for purposes of extended commitments. The rights,
12 requirements, and procedures set forth in Section 6603 shall
13 apply to extended commitment proceedings.

14 SEC. 65. Section 6605 of the Welfare and Institutions Code is
15 amended to read:

16 6605. (a) A person found to be a sexually violent predator
17 and committed to the custody of the State Department of Mental
18 Health shall have a current examination of his or her mental
19 condition made at least once every year. The annual examination
20 shall include consideration of whether the committed person
21 currently meets the definition of a sexually violent predator and
22 whether conditional release to a less restrictive alternative or an
23 unconditional release is in the best interest of the person, and
24 conditions can be imposed that would adequately protect the
25 community. The Department of Mental Health shall file a report
26 of this examination with the court that committed the person
27 under this section. The report shall be in the form of a declaration
28 and shall be prepared by a professionally qualified person. A
29 copy of the report shall be served on the prosecuting agency
30 involved in the initial commitment and upon the committed
31 person. The person may retain, or if he or she is indigent and so
32 requests, the court may appoint, a qualified expert or professional
33 person to examine him or her, and the expert or professional
34 person shall have access to all records concerning the person.

35 (b) (1) The director, within 30 days of the filing of the report,
36 shall review and consider the annual report. The person may
37 submit any report prepared by a retained or appointed expert and
38 the director shall also consider that report. Notice of review by
39 the director shall be filed in the court. If upon that review, the
40 director determines that the person's condition has so changed

1 that either: ~~(a)~~ (A) The person no longer meets the definition of a
 2 sexually violent predator; or ~~(b)~~ (B) conditional release to a less
 3 restrictive alternative is in the best interest of the person and
 4 conditions can be imposed that adequately protect the
 5 community, the secretary shall authorize the person to petition
 6 the court for conditional release to a less restrictive alternative or
 7 unconditional discharge. The director may request the court to set
 8 a show cause hearing, or the court may set a show cause hearing
 9 on its own motion. At that hearing, the state may decline to state
 10 a prima facie case or may submit on the evidence in the annual
 11 report. The petition shall be filed with the court and served upon
 12 the prosecuting agency responsible for the initial commitment.
 13 The court, upon receipt of the petition for conditional release to a
 14 less restrictive alternative or unconditional discharge, shall order
 15 a hearing within forty-five days.

16 (2) Nothing contained in this chapter shall prohibit the person
 17 from otherwise petitioning the court for conditional release to a
 18 less restrictive alternative or unconditional discharge without the
 19 director's approval. The director shall provide the committed
 20 person with an annual written notice of the person's right to
 21 petition the court for conditional release to a less restrictive
 22 alternative or unconditional discharge over the secretary's
 23 objection. The notice shall contain a waiver of rights. The
 24 director shall file the notice and waiver form and the annual
 25 report with the court. If the person does not affirmatively waive
 26 the right to petition, the court shall set a show cause hearing to
 27 determine whether probable cause exists to warrant a hearing on
 28 whether the person's condition has so changed that: (A) He or
 29 she no longer meets the definition of a sexually violent predator;
 30 or (B) conditional release to a proposed less restrictive alternative
 31 would be in the best interest of the person and conditions can be
 32 imposed that would adequately protect the community.

33 (c) The committed person shall have a right to have an
 34 attorney represent him or her at the show cause hearing, which
 35 may be conducted solely on the basis of affidavits or
 36 declarations, but the person is not entitled to be present at the
 37 show cause hearing. At the show cause hearing, the prosecuting
 38 attorney shall present prima facie evidence establishing that the
 39 committed person continues to meet the definition of a sexually
 40 violent predator and that a less restrictive alternative is not in the

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

6 (d) If the court at the show cause hearing determines that
7 either: (1) The state has failed to present prima facie evidence
8 that the committed person continues to meet the definition of a
9 sexually violent predator and that no proposed less restrictive
10 alternative is in the best interest of the person and conditions
11 cannot be imposed that would adequately protect the community;
12 or (2) probable cause exists to believe that the person's condition
13 has so changed that: (A) The person no longer meets the
14 definition of a sexually violent predator; or (B) release to a
15 proposed less restrictive alternative would be in the best interest
16 of the person and conditions can be imposed that would
17 adequately protect the community, then the court shall set a trial
18 on either or both issues.

19 (e) If the court has not previously considered the issue of
20 release to a less restrictive alternative, either through a trial on
21 the merits or through the procedures set forth in subdivision (d),
22 the court shall consider whether release to a less restrictive
23 alternative would be in the best interests of the person and
24 conditions can be imposed that would adequately protect the
25 community, without considering whether the person's condition
26 has changed.

27 (f) At the trial resulting from a finding by the court under
28 subdivision (d), the committed person shall be entitled to be
29 present and to the benefit of all constitutional protections that
30 were afforded to the person at the initial commitment proceeding.
31 The prosecuting agency shall represent the state and shall have a
32 right to a jury trial and to have the committed person evaluated
33 by experts chosen by the state. The committed person shall also
34 have the right to a jury trial and the right to have experts evaluate
35 him or her on his or her behalf and the court shall appoint an
36 expert if the person is indigent and requests an appointment.

37 (g) If the issue at the hearing is whether the person should be
38 unconditionally discharged, the burden of proof shall be upon the
39 state to prove beyond a reasonable doubt that the committed
40 person's condition remains such that the person continues to

1 meet the definition of a sexually violent predator. Evidence of the
2 prior commitment trial and disposition is admissible.

3 (h) If the issue at the hearing is whether the person should be
4 conditionally released to a less restrictive alternative, the burden
5 of proof at the hearing shall be upon the state to prove beyond a
6 reasonable doubt that conditional release to any proposed less
7 restrictive alternative either: (1) Is not in the best interest of the
8 committed person; or (2) does not include conditions that would
9 adequately protect the community. Evidence of the prior
10 commitment trial and disposition is admissible.

11 (i) Probable cause exists to believe that a person's condition
12 has "so changed," under paragraph (2) of subdivision (d), only
13 when evidence exists, since the person's last commitment trial
14 proceeding, of a substantial change in the person's physical or
15 mental condition such that the person either no longer meets the
16 definition of a sexually violent predator, or that a conditional
17 release to a less restrictive alternative is in the person's best
18 interest and conditions can be imposed to adequately protect the
19 community.

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

25 (1) An identified physiological change to the person, such as
26 paralysis, stroke, or dementia, that renders the committed person
27 unable to commit a sexually violent act and this change is
28 permanent.

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

34 (k) For purposes of this section, a change in a single
35 demographic factor, without more, does not establish probable
36 cause for a new trial proceeding under subdivision (f). As used in
37 this section, a single demographic factor includes, but is not
38 limited to, a change in the chronological age, marital status, or
39 gender of the committed person.

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

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

7 (1) The person will be treated by a treatment provider who is
8 ~~qualified to provide such treatment in the State of California.~~
9 *qualified to provide that treatment in this state.*

10 (2) The treatment provider has presented a specific course of
11 treatment and has agreed to assume responsibility for that
12 treatment and will report progress to the court on a regular basis,
13 and will report violations immediately to the court, the
14 prosecutor, the supervising community corrections officer, and
15 the superintendent of the special commitment center.

16 (3) Housing exists that is sufficiently secure to protect the
17 community, and the person or agency providing housing to the
18 conditionally released person has agreed in writing to accept the
19 person, to provide the level of security required by the court, and
20 immediately to report to the court, the prosecutor, the community
21 program director, the department, and the superintendent of the
22 special commitment center if the person leaves the housing to
23 which he or she has been assigned without authorization.

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

27 (5) The person is willing to comply with supervision
28 requirements imposed by the Department of ~~Corrections and~~
29 ~~Rehabilitation~~ *Mental Health, or the Department of Corrections*
30 *and Rehabilitation at the direction of the Department of Mental*
31 *Health.*

32 (n) Upon the conclusion of the evidence in a hearing held
33 pursuant to subdivisions (d) through (h), or through summary
34 judgment proceedings prior to such a hearing, if the court finds
35 that there is no legally sufficient evidentiary basis for a
36 reasonable jury to find that the conditions set forth in subdivision
37 (d) have been met, the court shall grant a motion by the state for
38 a judgment as a matter of law on the issue of conditional release
39 to a less restrictive alternative.

1 (o) Whenever the issue of conditional release to a less
2 restrictive alternative is submitted to the jury, the court shall
3 instruct the jury to return a verdict in substantially the following
4 form:

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

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

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

10 Yes or No.

11 (p) If the court or jury determines that conditional release to a
12 less restrictive alternative is in the best interest of the person and
13 includes conditions that would adequately protect the
14 community, and the court determines that the minimum
15 conditions set forth in subdivision (m)-~~section~~ are met, the court
16 shall enter judgment and direct a conditional release.

17 (q) The court shall impose any additional conditions necessary
18 to ensure compliance with treatment and to protect the
19 community. If the court finds that conditions do not exist that
20 will both ensure the person's compliance with treatment and
21 protect the community, then the person shall be remanded to the
22 custody of the Department of ~~Health Services~~ *Mental Health* for
23 control, care, and treatment in a secure facility.

24 (r) If the service provider designated by the court to provide
25 inpatient or outpatient treatment or to monitor or supervise any
26 other terms and conditions of a person's placement in a less
27 restrictive alternative is other than the Department of ~~Health~~
28 ~~Services~~ *Mental Health*, or the Department of Corrections and
29 Rehabilitation, *at the direction of the Department of Mental*
30 *Health* then the service provider so designated must agree in
31 writing to provide that treatment, monitoring, or supervision in
32 accord with this section. Any person providing or agreeing to
33 provide treatment, monitoring, or supervision services pursuant
34 to this chapter may be compelled to testify and any privilege with
35 regard to such person's testimony is deemed waived.

36 (s) Prior to authorizing any release to a less restrictive
37 alternative, the court shall impose those conditions upon the
38 person as are necessary to ensure the safety of the community.
39 The court shall order the Department of ~~Corrections and~~
40 ~~Rehabilitation~~ *Mental Health* to investigate the less restrictive

1 alternative and recommend any additional conditions to the court.
2 These conditions shall include, but are not limited to, the
3 following: Specification of residence, prohibition of contact with
4 potential or past victims, prohibition of alcohol and other drug
5 use, participation in a specific course of inpatient or outpatient
6 treatment that may include monitoring by the use of polygraph
7 and plethysmograph, ~~supervision by a Department of Corrections~~
8 ~~and Rehabilitation community corrections officer~~, a requirement
9 that the person remain within the state unless the person receives
10 prior authorization by the court, and any other conditions that the
11 court determines are in the best interest of the person or others. A
12 copy of the conditions of release shall be given to the person and
13 to any designated service providers.

14 (t) Any service provider designated to provide inpatient or
15 outpatient treatment shall monthly, or as otherwise directed by
16 the court, submit to the court, to the Department of ~~Health~~
17 ~~Services~~ *Mental Health* facility from which the person was
18 released, to the prosecutor of the county in which the person was
19 found to be a sexually violent predator, and to the supervising
20 community corrections officer, a report stating whether the
21 person is complying with the terms and conditions of the
22 conditional release to a less restrictive alternative.

23 (u) Each person released to a less restrictive alternative shall
24 have his or her case reviewed by the court that released him or
25 her no later than one year after that release and annually
26 thereafter until the person is unconditionally discharged. Review
27 may occur in a shorter time or more frequently, if the court, in its
28 discretion on its own motion, or on motion of the person, the
29 secretary, or the prosecuting attorney so determines. The sole
30 question to be determined by the court is whether the person shall
31 continue to be conditionally released to a less restrictive
32 alternative. The court in making its determination shall be aided
33 by the annual reports filed pursuant to subdivision (a) of this
34 section and the opinions of the secretary and other experts or
35 professional persons.

36 (v) Before placing a committed person in a state-operated
37 forensic conditional release program, the community program
38 director designated by the State Department of Mental Health
39 shall submit a written recommendation to the court stating which
40 forensic conditional release program is most appropriate for

1 supervising and treating the committed person. If the court does
2 not accept the community program director's recommendation,
3 the court shall specify the reason or reasons for its order on the
4 record. The procedures described in Sections 1605 to 1610,
5 inclusive, of the Penal Code shall apply to the person placed in
6 the forensic conditional release program.

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

15 (x) If the court rules against the committed person at the trial
16 for unconditional release from commitment, the court may place
17 the committed person on outpatient status in accordance with the
18 procedures described in Title 15 (commencing with Section
19 1600) of Part 2 of the Penal Code and this section.

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

22 SEC. 67. ~~If an appellate court determines it is finally~~
23 ~~determined~~ that the indeterminate term set ~~fourth~~ forth in
24 Sections 63 and 64 is unconstitutional, those sections shall not be
25 operative, and Sections 63.5 and 64.5 shall be operative.

26 SEC. 68. No reimbursement is required by this act pursuant
27 to Section 6 of Article XIII B of the California Constitution for
28 certain costs that may be incurred by a local agency or school
29 district because, in that regard, this act creates a new crime or
30 infraction, eliminates a crime or infraction, or changes the
31 penalty for a crime or infraction, within the meaning of Section
32 17556 of the Government Code, or changes the definition of a
33 crime within the meaning of Section 6 of Article XIII B of the
34 California Constitution.

35 However, if the Commission on State Mandates determines
36 that this act contains other costs mandated by the state,
37 reimbursement to local agencies and school districts for those
38 costs shall be made pursuant to Part 7 (commencing with Section
39 17500) of Division 4 of Title 2 of the Government Code.

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

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