

AMENDED IN SENATE APRIL 18, 2006  
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**

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**Introduced by Senator Alquist**

January 9, 2006

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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, 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, 3000, ~~3001~~, 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, *making an appropriation therefor*, 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~~ *felony or misdemeanor actions resulting in a requirement that the defendant register as a sex offender for 75 years*. 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~~ *75 years*. Because the bill would impose new responsibilities on local agencies, the bill would impose a state-mandated local program.

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

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

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

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

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

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

This bill would create new offenses for persons who arrange a meeting with a minor or person he or she believes to be a minor for the purpose of exposing his or her genitals or 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 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 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 provisions apply, delete the 10-year exception, and would eliminate the possibility of the person receiving credit to reduce his or her sentence.

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

This bill would eliminate that eligibility for those persons.

Under existing law, the punishment for a conviction of certain sex offenses is 25 years to life if the offense was committed in the course

of a kidnapping or burglary, the victim was tortured, or the defendant had previously been convicted of one of 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 person~~ convicted of an offense that requires him or her to register as a sex offender. The bill would require each probation ~~officer department~~ 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 are placed on an intensive and specialized parole supervision caseload.

This bill would instead 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 require the Corrections Standards Authority to establish standards by which grants are awarded on a competitive basis to counties for SAFE teams. The bill would appropriate \$6,000,000 from the General Fund for that purpose.~~

*This bill would appropriate \$495,000 from the General Fund to the Office of Emergency Services, Division of Criminal Justice Programs for child abuse and abduction programs that provide prevention education to children in schools.*

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~~ yes. Fiscal committee: yes.  
State-mandated local program: yes.

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

1 SECTION 1. This act shall be known 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

- 1 the following times have expired after final disposition of the  
2 case in the categories listed:
- 3 (a) Adoption: retain permanently.  
4 (b) Change of name: retain permanently.  
5 (c) Other civil actions and proceedings, as follows:  
6 (1) Except as otherwise specified: 10 years.  
7 (2) Where a party appears by a guardian ad litem: 10 years  
8 after termination of the court's jurisdiction.  
9 (3) Domestic violence: same period as duration of the  
10 restraining or other orders and any renewals, then retain the  
11 restraining or other orders as a judgment; 60 days after expiration  
12 of the temporary protective or temporary restraining order.  
13 (4) Eminent domain: retain permanently.  
14 (5) Family law, except as otherwise specified: 30 years.  
15 (6) Harassment: same period as duration of the injunction and  
16 any renewals, then retain the injunction as a judgment; 60 days  
17 after expiration of the temporary restraining order.  
18 (7) Mental health (Lanterman Developmental Disabilities  
19 Services Act and Lanterman-Petris-Short Act): 30 years.  
20 (8) Paternity: retain permanently.  
21 (9) Petition, except as otherwise specified: 10 years.  
22 (10) Real property other than unlawful detainer: retain  
23 permanently if the action affects title or an interest in real  
24 property.  
25 (11) Small claims: 10 years.  
26 (12) Unlawful detainer: one year if judgment is for possession  
27 of the premises; 10 years if judgment is for money.  
28 (d) Notwithstanding subdivision (c), any civil or small claims  
29 case in the trial court:  
30 (1) Involuntarily dismissed by the court for delay in  
31 prosecution or failure to comply with state or local rules: one  
32 year.  
33 (2) Voluntarily dismissed by a party without entry of  
34 judgment: one year.  
35 Notation of the dismissal shall be made on the civil index of  
36 cases or on a separate dismissal index.  
37 (e) Criminal.  
38 (1) Capital felony (murder with special circumstances where  
39 the prosecution seeks the death penalty): retain permanently. If

1 the charge is disposed of by acquittal or a sentence less than  
2 death, the case shall be reclassified.

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

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

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

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

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

14 (7) Misdemeanor alleging a violation of Section 14601,  
15 14601.1, 20002, 23104, or 23109 of the Vehicle Code: five years.

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

23 (9) Misdemeanor, infraction, or civil action alleging a  
24 violation of the regulation and licensing of dogs under Sections  
25 30951 to 30956, inclusive, of the Food and Agricultural Code or  
26 violation of any other local ordinance: three years.

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

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

32 ~~(12) Records relating to a person required to Felony or~~  
33 ~~misdemeanor action resulting in a requirement that the~~  
34 ~~defendant register as a sex offender pursuant to Section 290 of~~  
35 ~~the Penal Code: retain for the life of the person. 75 years.~~

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

38 (g) Juvenile.

39 (1) Dependent (Section 300 of the Welfare and Institutions  
40 Code): upon reaching age 28 or on written request shall be

1 released to the juvenile five years after jurisdiction over the  
2 person has terminated under subdivision (a) of Section 826 of the  
3 Welfare and Institutions Code. Sealed records shall be destroyed  
4 upon court order five years after the records have been sealed  
5 pursuant to subdivision (c) of Section 389 of the Welfare and  
6 Institutions Code.

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

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

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

27 (5) Marijuana misdemeanor under subdivision (e) of Section  
28 11357 of the Health and Safety Code in accordance with  
29 procedures specified in subdivision (a) of Section 11361.5 of the  
30 Health and Safety Code: upon reaching age 18 the records shall  
31 be destroyed.

32 (h) Probate.

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

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

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

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

39 (j) Other records.

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

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

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

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

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

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

14 (7) Court reporter notes: 10 years after the notes have been  
15 taken in criminal and juvenile proceedings and five years after  
16 the notes have been taken in all other proceedings, except notes  
17 reporting proceedings in capital felony cases (murder with  
18 special circumstances where the prosecution seeks the death  
19 penalty and the sentence is death), including notes reporting the  
20 preliminary hearing, which shall be retained permanently, unless  
21 the Supreme Court on request of the court clerk authorizes the  
22 destruction.

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

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

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

32 (11) Index for cases alleging traffic violations: same period as  
33 period for retention of the records in the underlying case  
34 category.

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

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

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

3 (15) Naturalization index: retain permanently.

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

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

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

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

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

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

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

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

37 (b) (1) Any person who kidnaps or carries away any  
38 individual to commit robbery, rape, spousal rape, oral copulation,  
39 sodomy, or any violation of Section 264.1, 288, or 289, shall be

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 three or more acts of lewd or lascivious conduct, as defined in  
2 Section 288, with a child under the age of 14 years at the time of  
3 the commission of the offense is guilty of the offense of  
4 continuous sexual abuse of a child and shall be punished by  
5 imprisonment in the state prison for a term of 6, 12, or 16 years.

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

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

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

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

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

28  
29 CHAPTER 5.5. SEX OFFENDERS  
30

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

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

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

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

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

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

1 fails to reregister within any 30-day period, he or she may be  
2 prosecuted in any jurisdiction in which he or she is physically  
3 present.

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

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

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

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

36 (vi) A transient who moves out of state shall inform, in person,  
37 the chief of police in the city in which he or she is physically  
38 present, or the sheriff of the county if he or she is physically  
39 present in an unincorporated area or city that has no police  
40 department, within five working days, of his or her move out of

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

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

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

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

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

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

1 registering agency shall give the registrant a copy of the  
2 completed Department of Justice form each time the person  
3 registers or reregisters, including at the annual update.

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

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

28 (A) Any person who, since July 1, 1944, has been or is  
29 hereafter convicted in any court in this state or in any federal or  
30 military court of a violation of Section 207 or 209 committed  
31 with intent to violate Section 261, 286, 288, 288a, or 289,  
32 Section 220, except assault to commit mayhem, Section 243.4,  
33 paragraph (1), (2), (3), (4), or (6) of subdivision (a) of Section  
34 261, or paragraph (1) of subdivision (a) of Section 262 involving  
35 the use of force or violence for which the person is sentenced to  
36 the state prison, Section 264.1, 266, or 266c, subdivision (b) of  
37 Section 266h, subdivision (b) of Section 266i, Section 266j, 267,  
38 269, 285, 286, 288, 288a, 288.5, 288.7, or 289, Section 311.1,  
39 subdivision (b), (c), or (d) of Section 311.2, Section 311.3, 311.4,  
40 311.10, 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 commission of one of the offenses described in subparagraph (A).

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

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

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

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

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

(I) Indecent exposure, pursuant to Section 314.

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

(III) Incest, pursuant to Section 285.

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

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

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

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

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

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

1 circumstances leading to the conviction, including the date of the  
2 conviction and county of the occurrence.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21 (n) On or before January 1, ~~2010~~ 2011, the Department of  
22 Justice shall renovate the VCIN to do the following:

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

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

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

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

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

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

37 290.03. (a) The Legislature finds and declares that a  
38 comprehensive system of risk assessment, supervision,  
39 monitoring and containment for registered sex offenders residing  
40 in California communities is necessary to enhance public safety

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

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

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

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

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

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

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

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

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

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

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

22 290.04. (a) Commencing on January 1, 2007, all adult males  
23 who are required to register as a sex offender pursuant to Section  
24 290 shall be subject to assessment by the STATIC-99 assessment  
25 tool. The STATIC-99 and its successor instruments shall be the  
26 sole actuarial risk assessment instrument used for registered sex  
27 offenders.

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

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

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

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

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

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

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

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

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

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

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

1 ~~copy of the Facts of Offense Sheet shall be sent by the probation~~  
2 ~~department to the registering law enforcement agency in the~~  
3 ~~jurisdiction where the person will reside on supervised probation~~  
4 ~~within three days of the person's release on probation. In~~  
5 ~~addition, probation. The defendant may move the court to correct~~  
6 ~~the Facts of Offense Sheet. Any corrections to that sheet shall be~~  
7 ~~made consistent with procedures contained in Section 1204. The~~  
8 ~~probation officer shall send a copy of the Facts of Offense Sheet~~  
9 ~~to the Department of Justice Sex Offender Tracking Program~~  
10 ~~within three 30 days of the person's sex offense conviction, and~~  
11 ~~it shall be made part of the registered sex offender's file~~  
12 ~~maintained by the Sex Offender Tracking Program. The Facts of~~  
13 ~~Offense Sheet shall thereafter be made available to law~~  
14 ~~enforcement by the Department of Justice, which shall post it~~  
15 ~~with the offender's record on the Department of Justice Internet~~  
16 ~~Web site maintained pursuant to Section 290.46, and shall be~~  
17 ~~accessible only to law enforcement.~~

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

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

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

39 (b) The prerelease risk assessment shall be performed by the  
40 Department of Corrections and Rehabilitation. Persons

1 administering the assessment shall be trained through an  
2 approved program established pursuant to subdivision (e) of  
3 Section 290.04, and shall receive updated training no less  
4 frequently than every two years as determined by the Department  
5 of Corrections and Rehabilitation.

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

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

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

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

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

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

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

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

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

14 *(b) Every districts attorney's office, parole office, and the*  
15 *Department of Justice shall maintain records relating to a person*  
16 *convicted of an offense for which registration is required*  
17 *pursuant to Section 290 for a period of 75 years after disposition*  
18 *of the case.*

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

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

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

37 (b) Out of the moneys deposited pursuant to subdivision (a) as  
38 a result of second and subsequent convictions of Section 290,  
39 one-third shall first be transferred to the Department of Justice  
40 Sexual Habitual Offender Fund, as provided in paragraph (1) of

1 this subdivision. Out of the remainder of all moneys deposited  
2 pursuant to subdivision (a), 50 percent shall be transferred to the  
3 Department of Justice Sexual Habitual Offender Fund, as  
4 provided in paragraph (1), 25 percent shall be transferred to the  
5 Department of Justice DNA Testing Fund, as provided in  
6 paragraph (2), and 25 percent shall be allocated equally to  
7 counties that maintain a local DNA testing laboratory, as  
8 provided in paragraph (3).

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

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

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

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

1 subdivision (a), for transfer by the Controller, as provided in  
2 subdivision (b).

3 (d) An amount equal to one hundred dollars (\$100) for every  
4 fine imposed pursuant to subdivision (a) in excess of one  
5 hundred dollars (\$100) shall be transferred to the Department of  
6 Corrections and Rehabilitation to fund SAFE teams pursuant to  
7 Chapter 9.7 (commencing with Section 13887) of Title 6 of Part  
8 4.

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

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

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

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

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

26 (A) Section 207 committed with intent to violate Section 261,  
27 286, 288, 288a, or 289.

28 (B) Section 209 committed with intent to violate Section 261,  
29 286, 288, 288a, or 289.

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

31 (D) Section 264.1.

32 (E) Section 269.

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

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

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

37 (I) Section 288.5 or 288.7.

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

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

4 (c) (1) On or before July 1, 2005, with respect to a person  
5 who has been convicted of the commission or the attempted  
6 commission of any of the offenses listed in paragraph (2), the  
7 Department of Justice shall make available to the public via the  
8 Internet Web site his or her name and known aliases, a  
9 photograph, a physical description, including gender and race,  
10 date of birth, criminal history, the community of residence and  
11 ZIP Code in which the person resides or the county in which the  
12 person is registered as a transient, and any other information that  
13 the Department of Justice deems relevant, but not the information  
14 excluded pursuant to subdivision (a). On or before July 1, 2006,  
15 the Department of Justice shall determine whether any person  
16 convicted of an offense listed in paragraph (2) also has one or  
17 more prior or subsequent convictions of an offense listed in  
18 paragraph (2) of subdivision (a) of Section 290, and, for those  
19 persons, the Department of Justice shall make available to the  
20 public via the Internet Web site the address at which the person  
21 resides. However, the address at which the person resides shall  
22 not be disclosed until a determination is made that the person is,  
23 by virtue of his or her additional prior or subsequent conviction  
24 of an offense listed in paragraph (2) of subdivision (a) of Section  
25 290, subject to this subdivision.

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

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

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

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

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

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

34 (d) (1) On or before July 1, 2005, with respect to a person  
35 who has been convicted of the commission or the attempted  
36 commission of any of the offenses listed in, or who is described  
37 in, this subdivision, the Department of Justice shall make  
38 available to the public via the Internet Web site his or her name  
39 and known aliases, a photograph, a physical description,  
40 including gender and race, date of birth, criminal history, the

1 community of residence and ZIP Code in which the person  
2 resides or the county in which the person is registered as a  
3 transient, and any other information that the Department of  
4 Justice deems relevant, but not the information excluded pursuant  
5 to subdivision (a) or the address at which the person resides.

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

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

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

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

12 (D) Section 266j.

13 (E) Section 267.

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

16 (G) Section 626.83 or 647.6.

17 (H) Any person required to register pursuant to Section 290  
18 based upon an out-of-state conviction, unless that person is  
19 excluded from the Internet Web site pursuant to subdivision (e).  
20 However, if the Department of Justice has determined that the  
21 out-of-state crime, if committed or attempted in this state, would  
22 have been punishable in this state as a crime described in  
23 subparagraph (A) of paragraph (2) of subdivision (a) of Section  
24 290, the person shall be placed on the Internet Web site as  
25 provided in subdivision (b) or (c), as applicable to the crime.

26 (e) (1) If a person has been convicted of the commission or  
27 the attempted commission of any of the offenses listed in this  
28 subdivision, and he or she has been convicted of no other offense  
29 listed in subdivision (b), (c), or (d) other than those listed in this  
30 subdivision, that person may file an application with the  
31 Department of Justice, on a form approved by the department, for  
32 exclusion from the Internet Web site. If the department  
33 determines that the person meets the requirements of this  
34 subdivision, the department shall grant the exclusion and no  
35 information concerning the person shall be made available via  
36 the Internet Web site described in this section. He or she bears  
37 the burden of proving the facts that make him or her eligible for  
38 exclusion from the Internet Web site. However, a person who has  
39 filed for or been granted an exclusion from the Internet Web site  
40 is not relieved of his or her duty to register as a sex offender

1 pursuant to Section 290 nor from any otherwise applicable  
2 provision of law.

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

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

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

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

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

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

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

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

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

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

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

38 ~~(3) The department shall periodically review the list of those~~  
39 ~~persons excluded pursuant to this subdivision. If it determines~~

(3) *If the department determines* that a person who was granted an exclusion under a former version of this subdivision would not qualify for an exclusion under the current version of this subdivision, the department shall rescind the exclusion, make a reasonable effort to provide notification to the person that the exclusion has been rescinded, and, no sooner than 30 days after notification is attempted, make information about the offender available to the public on the Internet Web site as provided in this section.

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

(g) (1) A designated law enforcement entity, as defined in subdivision (f) of Section 290.45, may 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 paragraph (2).

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

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

(h) For purposes of this section, "offense" includes the statutory predecessors of that offense, or any offense committed in another jurisdiction that, if committed or attempted to be committed in this state, would have been punishable in this state

1 as an offense listed in subparagraph (A) of paragraph (2) of  
2 subdivision (a) of Section 290.

3 (i) Notwithstanding Section 6254.5 of the Government Code,  
4 disclosure of information pursuant to this section is not a waiver  
5 of exemptions under Chapter 3.5 (commencing with Section  
6 6250) of Title 1 of Division 7 of the Government Code and does  
7 not affect other statutory restrictions on disclosure in other  
8 situations.

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

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

18 (k) Any person who is required to register pursuant to Section  
19 290 who enters an Internet Web site established pursuant to this  
20 section shall be punished by a fine not exceeding one thousand  
21 dollars (\$1,000), imprisonment in a county jail for a period not to  
22 exceed six months, or by both that fine and imprisonment.

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

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

29 (A) Health insurance.

30 (B) Insurance.

31 (C) Loans.

32 (D) Credit.

33 (E) Employment.

34 (F) Education, scholarships, or fellowships.

35 (G) Housing or accommodations.

36 (H) Benefits, privileges, or services provided by any business  
37 establishment.

38 (3) This section shall not affect authorized access to, or use of,  
39 information pursuant to, among other provisions, Sections 11105  
40 and 11105.3, Section 8808 of the Family Code, Sections 777.5

1 and 14409.2 of the Financial Code, Sections 1522.01 and  
2 1596.871 of the Health and Safety Code, and Section 432.7 of  
3 the Labor Code.

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

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

26 (m) The public notification provisions of this section are  
27 applicable to every person described in this section, without  
28 regard to when his or her crimes were committed or his or her  
29 duty to register pursuant to Section 290 arose, and to every  
30 offense described in this section, regardless of when it was  
31 committed.

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

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

38 (p) The Attorney General, in collaboration with local law  
39 enforcement and others knowledgeable about sex offenders, shall  
40 develop strategies to assist members of the public in

1 understanding and using publicly available information about  
2 registered sex offenders to further public safety. These strategies  
3 may include, but are not limited to, a hotline for community  
4 inquiries, neighborhood and business guidelines for how to  
5 respond to information posted on this Web site, and any other  
6 resource that promotes public education about these offenders.

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

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

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

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

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

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

33 (b) “Matter” means any representation of information, data, or  
34 image, including any book, magazine, newspaper, or other  
35 printed or written material, or any picture, drawing, photograph,  
36 film, filmstrip, negative, slide, photocopy, videotape, video laser  
37 disc, computer hardware, computer software, computer floppy  
38 disc, data storage media, CD-ROM, or computer-generated  
39 equipment, or any other computer-generated image, motion  
40 picture, or other pictorial representation, or any statue or other

1 figure, or any recording, transcription, or mechanical, chemical,  
2 or electrical reproduction, or any other article, equipment,  
3 machine, or material. “Matter” also means live or recorded  
4 telephone messages if transmitted, disseminated, or distributed as  
5 part of a commercial transaction.

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

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

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

13 (f) “Exhibit” means show.

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

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

28 (2) In prosecutions under this chapter, if circumstances of  
29 production, presentation, advertising, or exhibition indicate that  
30 live conduct is being commercially exploited by the defendant  
31 for the sake of its prurient appeal, that evidence is probative with  
32 respect to the nature of the conduct and may justify the  
33 conclusion that the conduct lacks serious literary, artistic,  
34 political, or scientific value.

35 (3) In determining whether the live conduct taken as a whole  
36 lacks serious literary, artistic, political, or scientific value in  
37 description or representation of those matters, the fact that the  
38 defendant knew that the live conduct depicts persons under 16  
39 years of age engaged in sexual conduct, as defined in this

1 chapter, is a factor that may be considered in making that  
2 determination.

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

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

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

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

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

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

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

17 (7) Any lewd or lascivious sexual act as defined in Section  
18 288.

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

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

22 311.1. Every person who knowingly sends or causes to be  
23 sent, or brings or causes to be brought, into this state for sale or  
24 distribution, or in this state possesses, prepares, publishes,  
25 produces, develops, duplicates, or prints any obscene matter,  
26 with intent to distribute or to exhibit to, or to exchange with,  
27 others, or who offers to distribute, distributes, or exhibits to, or  
28 exchanges with, others, that matter, knowing that the matter  
29 depicts a person under 18 years of age engaged in an act of  
30 sexual conduct, shall be punished by imprisonment in the state  
31 prison.

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

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

1 previously been convicted of any violation of this section, the  
2 person is guilty of a felony, punishable by imprisonment in the  
3 state prison and a fine of up to fifty thousand dollars (\$50,000).

4 (b) Every person who knowingly sends or causes to be sent, or  
5 brings or causes to be brought, into this state for sale or  
6 distribution, or in this state possesses, prepares, publishes,  
7 produces, develops, duplicates, or prints any obscene matter,  
8 knowing that the matter depicts a person under 18 years of age  
9 engaged in an act of sexual conduct, with intent to distribute or to  
10 exhibit to, or to exchange with, others for commercial  
11 consideration, or who offers to distribute, distributes, or exhibits  
12 to, or exchanges with, others for commercial consideration, any  
13 obscene matter, knowing that the matter depicts a person under  
14 18 years of age engaged in an act of sexual conduct, is guilty of a  
15 felony and shall be punished by imprisonment in the state prison  
16 for two, three, or six years, or by a fine not exceeding one  
17 hundred thousand dollars (\$100,000), in the absence of a finding  
18 that the defendant would be incapable of paying such a fine, or  
19 by both that fine and imprisonment.

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

21 311.3. (a) A person is guilty of sexual exploitation of a child  
22 if he or she knowingly develops, duplicates, prints, or exchanges  
23 any matter that depicts a person under 18 years of age engaged in  
24 an act of sexual conduct.

25 (b) Every person who violates subdivision (a) shall be  
26 punished by a fine of not more than two thousand dollars  
27 (\$2,000) or by imprisonment in a county jail for not more than  
28 one year, or by both that fine and imprisonment. If the person has  
29 been previously convicted of a violation of subdivision (a) or any  
30 section of this chapter, he or she shall be punished by  
31 imprisonment in the state prison.

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

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

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

1 any of the acts described in Section 311.2, is, for a first offense,  
2 guilty of a misdemeanor. If the person has previously been  
3 convicted of any violation of this subdivision, or of a violation of  
4 Section 311.11, the person is guilty of a felony and is subject to a  
5 fine not exceeding fifty thousand dollars (\$50,000).

6 (b) Every person who, with knowledge that a person is a minor  
7 under the age of 18 years, or who, while in possession of any  
8 facts on the basis of which he or she should reasonably know that  
9 the person is a minor under 18 years of age, knowingly promotes,  
10 employs, uses, persuades, induces, or coerces a minor under 18  
11 years of age, or any parent or guardian of a minor under 18 years  
12 of age under his or her control who knowingly permits the minor,  
13 to engage in or assist others to engage in either posing or  
14 modeling alone or with others for purposes of preparing any  
15 matter, or a live performance involving, sexual conduct by a  
16 minor under 18 years of age alone or with other persons or  
17 animals, for commercial purposes, is guilty of a felony and shall  
18 be punished by imprisonment in the state prison for three, six, or  
19 eight years.

20 (c) Every person who, with knowledge that a person is a minor  
21 under 18 years of age, or who, while in possession of any facts  
22 on the basis of which he or she should reasonably know that the  
23 person is a minor under 18 years of age, knowingly promotes,  
24 employs, uses, persuades, induces, or coerces a minor under 18  
25 years of age, or any parent or guardian of a minor under 18 years  
26 of age under his or her control who knowingly permits the minor  
27 to engage in or assist others to engage in either posing or  
28 modeling alone or with others for purposes of preparing any  
29 matter, or a live performance involving, sexual conduct by a  
30 minor under 18 years of age alone or with other persons or  
31 animals, is guilty of a felony, punishable by imprisonment in the  
32 state prison for 2, 3, or 4 years. It is not necessary to prove  
33 commercial purposes in order to establish a violation of this  
34 subdivision. Prosecution under this section shall not preclude  
35 prosecution under any other provision of law, including, but not  
36 limited to, provisions that prohibit human trafficking.

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

1 the victim was under 14 years of age at the time of the offense is  
2 not a bar to prosecution under this section if it is proven that the  
3 victim was under 18 years of age at the time of the offense.

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

5 311.5. Every person who writes, creates, or solicits the  
6 publication or distribution of advertising or other promotional  
7 material, or who in any manner promotes, the sale, distribution,  
8 or exhibition of matter represented or held out by him or her to  
9 be obscene, is guilty of a misdemeanor, punishable by  
10 imprisonment in the county jail for up to one year, a fine of up to  
11 five thousand dollars (\$5,000), or both. If the person has  
12 previously been convicted of any offense in this chapter, except  
13 subdivision (b) of Section 311.2, or of a violation of Section  
14 313.1, the person shall be punished by imprisonment in the state  
15 prison.

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

17 311.7. (a) Every person who, knowingly, as a condition to a  
18 sale, allocation, consignment, or delivery for resale of any paper,  
19 magazine, book, periodical, publication or other merchandise,  
20 requires that the purchaser or consignee receive any obscene  
21 matter or who denies or threatens to deny a franchise, revokes or  
22 threatens to revoke, or imposes any penalty, financial or  
23 otherwise, by reason of the failure of any person to accept  
24 obscene matter, or by reason of the return of that matter, is guilty  
25 of a misdemeanor.

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

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

37 311.8. (a) It shall be a defense in any prosecution for a  
38 violation of this chapter that the act charged was committed in  
39 aid of legitimate medical, scientific, or educational activities, or  
40 during lawful conduct between spouses when one or both are

1 under 18 years of age, or that the matter depicts a child under 18  
2 years of age if that child is legally emancipated.

3 (b) This chapter does not apply to the activities of law  
4 enforcement and prosecuting agencies in the investigation and  
5 prosecution of criminal offenses.

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

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

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

20 (f) It shall be a defense in any prosecution for a violation of  
21 this chapter by a person who knowingly distributed any obscene  
22 matter by the use of telephones or telephone facilities to any  
23 person under 18 years of age that the defendant has taken either  
24 of the following measures to restrict access to the obscene matter  
25 by persons under 18 years of age:

26 (1) Required the person receiving the obscene matter to use an  
27 authorized access or identification code, as provided by the  
28 information provider, before transmission of the obscene matter  
29 begins, where the defendant has previously issued the code by  
30 mailing it to the applicant therefor after taking reasonable  
31 measures to ascertain that the applicant was 18 years of age or  
32 older and has established a procedure to immediately cancel the  
33 code of any person after receiving notice, in writing or by  
34 telephone, that the code has been lost, stolen, or used by persons  
35 under 18 years of age or that the code is no longer desired.

36 (2) Required payment by credit card before transmission of the  
37 matter.

38 (g) Any list of applicants or recipients compiled or maintained  
39 by an information-access service provider for purposes of

1 compliance with subdivision (f) is confidential and shall not be  
2 sold or otherwise disseminated except upon order of the court.

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

4 SEC. 30. Section 311.10 of the Penal Code is amended to  
5 read:

6 311.10. Any person who advertises for sale or distribution  
7 any obscene matter knowing that it depicts a person under 18  
8 years of age engaged in an act of sexual conduct, is guilty of a  
9 felony and is punishable by imprisonment in the state prison for  
10 two, three, or four years, or in a county jail not exceeding one  
11 year, or by a fine not exceeding fifty thousand dollars (\$50,000),  
12 or by both that fine and imprisonment.

13 SEC. 31. Section 311.11 of the Penal Code is amended to  
14 read:

15 311.11. (a) Every person who knowingly possesses or  
16 controls any matter, knowing that the matter depicts a person  
17 under 18 years of age personally engaging in or simulating  
18 sexual conduct, is guilty of a crime. The specific offenses,  
19 penalties and additional definitions applicable to this section are  
20 described in the following paragraphs. If the offense includes an  
21 element that the child is under a specified age, it is an element of  
22 the crime that the person knew the age of the child.

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

27 (2) If the matter depicts a child of 16 or 17 years of age, the  
28 person is guilty of a misdemeanor. If the matter depicts a child  
29 who is 16 or 17 years of age engaging in explicit sexual conduct,  
30 the crime may be charged as a misdemeanor or felony.

31 (b) For purposes of this section, “explicit sexual conduct”  
32 means any of the following, whether actual or simulated: sexual  
33 intercourse, oral copulation, anal intercourse, anal-oral  
34 copulation, masturbation on bare skin, bestiality, sexual sadism,  
35 sexual masochism, penetration of the vagina or rectum by any  
36 object in a lewd or lascivious manner, graphic and explicit  
37 display of the genitals or pubic or rectal area of an overtly sexual  
38 character, or excretory functions performed in a lewd or  
39 lascivious manner, whether or not any of the above conduct is

1 performed alone or between members of the same or opposite  
2 sex or between humans and animals.

3 (c) As used in this chapter, “matter that depicts a person under  
4 18 years of age personally engaging in or personally simulating  
5 sexual conduct” is limited to visual works that depict that  
6 conduct.

7 (d) Every person who commits a violation of subdivision (a)  
8 and who has been previously convicted of a violation of this  
9 section, of an offense described in subparagraph (A) of paragraph  
10 (2) of subdivision (a) of Section 290, any offense for which he or  
11 she was required to register pursuant to Section 290, a violation  
12 of subdivision (b) or (d) of Section 311.2, subdivision (b) or (c)  
13 of Section 311.4, or an attempt to commit any of those offenses,  
14 or any person who has been found to be a sexually violent  
15 predator pursuant to Article 4 (commencing with Section 6600)  
16 of Chapter 2 of Part 2 of Division 6 of the Welfare and  
17 Institutions Code, is guilty of a felony and shall be punished by  
18 imprisonment for two, four, or six years.

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

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

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

27 311.12. Every person who knowingly sends or causes to be  
28 sent, or brings or causes to be brought, into this state for sale or  
29 distribution, or distributes, exhibits, exchanges, possesses,  
30 prepares, publishes, produces, develops, duplicates, or prints, any  
31 matter, or has the intent to distribute, exhibit, or exchange that  
32 matter with another person, is guilty of an offense as specified in  
33 this section.

34 (a) If the matter depicts a child under 16 years of age engaged  
35 in sexual conduct, the crime is a felony. If the matter depicts a  
36 child under 16 years of age engaged in explicit sexual conduct, as  
37 defined in subdivision (d) of Section 311.11, the person is  
38 punishable by incarceration in the state prison for two, three, or  
39 four years.

1 (b) If the matter depicts a child who is 16 or 17 years of age,  
2 the crime may be charged as a misdemeanor or felony. If the  
3 matter depicts a child who is 16 or 17 years of age engaged in  
4 explicit sexual conduct, the crime is a felony.

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

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

10 311.13. Any monetary assets gained from the production,  
11 publication, sale, distribution, exchange, or control of any matter  
12 that depicts a minor under 18 years of age that is unlawful  
13 pursuant to Section 311.1, 311.2, 311.3, 311.4, 311.5, 311.10,  
14 311.11, or 311.12, is subject to forfeiture, upon conviction for a  
15 violation of one of those sections. Upon petition by the  
16 prosecuting attorney, at any time following sentencing for a  
17 violation of one of those sections, the court shall conduct a  
18 hearing to determine the amount of monetary assets that are  
19 subject to forfeiture. The Civil Discovery Act of 1986 (Article 3  
20 (commencing with Section 2016) of Chapter 3 of Title 3 of Part  
21 4 of the Code of Civil Procedure) applies to that hearing.

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

23 312.1. (a) In any prosecution for a violation of the provisions  
24 of this chapter or of Chapter 7.6 (commencing with Section 313),  
25 neither the prosecution nor the defense shall be required to  
26 introduce expert witness testimony concerning the obscene or  
27 harmful character of the matter or live conduct which is the  
28 subject of the prosecution.

29 (b) Any evidence which tends to establish contemporary  
30 community standards of appeal to prurient interest or of  
31 customary limits of candor in the description or representation of  
32 nudity, sex, or excretion, or which bears upon the question of  
33 significant literary, artistic, political, educational, or scientific  
34 value shall, subject to the provisions of the Evidence Code, be  
35 admissible when offered by either the prosecution or by the  
36 defense.

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

38 626.8. (a) Any person who comes into any school building or  
39 upon any school ground, or street, sidewalk, or public way  
40 adjacent thereto, without lawful business thereon, and whose

1 presence or acts interfere with the peaceful conduct of the  
2 activities of the school or disrupt the school or its pupils or  
3 school activities, unless the person is a parent or guardian of a  
4 child attending that school, or is a student at the school or has  
5 prior written permission for the entry from the chief  
6 administrative officer of that school, is guilty of a misdemeanor  
7 if he or she does any of the following:

8 (1) Remains there after being asked to leave by the chief  
9 administrative official of that school or his or her designated  
10 representative, or by a person employed as a member of a  
11 security or police department of a school district pursuant to  
12 Section 39670 of the Education Code, or a city police officer, or  
13 sheriff or deputy sheriff, or a Department of the California  
14 Highway Patrol peace officer.

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

17 (3) Has otherwise established a continued pattern of  
18 unauthorized entry.

19 This section shall not be utilized to impinge upon the lawful  
20 exercise of constitutionally protected rights of freedom of speech  
21 or assembly.

22 (b) 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 the 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 any offense defined in this chapter or Section 415.5,  
29 by imprisonment in the county jail for a period of not less than 10  
30 days or more than six months, or by both imprisonment and a  
31 fine of not exceeding five hundred dollars (\$500), and shall not  
32 be released on probation, parole, or any other basis until he or  
33 she has served not less than 10 days.

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

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

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

6 (2) “Continued pattern of unauthorized entry” means that on at  
7 least two prior occasions in the same school year the defendant  
8 came into any school building or upon any school ground, or  
9 street, sidewalk, or public way adjacent thereto, without lawful  
10 business thereon, and his or her presence or acts interfered with  
11 the peaceful conduct of the activities of the school or disrupted  
12 the school or its pupils or school activities, and the defendant was  
13 asked to leave by a person specified in paragraph (1) of  
14 subdivision (a).

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

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

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

22 626.83. (a) Any person who has been convicted of a crime  
23 listed in subparagraph (A) of paragraph (2) of subdivision (a) of  
24 Section 290, who comes into any school building or upon any  
25 school ground, without lawful business thereon or written  
26 permission from the chief administrative official of that school,  
27 or who loiters about any street, sidewalk, or public way adjacent  
28 to any school building, school grounds, public playground, or  
29 other youth recreational facility where minors are present without  
30 lawful business thereon, is guilty of a misdemeanor.

31 (b) Any person who has been convicted of a crime listed in  
32 subparagraph (A) of paragraph (2) of subdivision (a) of Section  
33 290 where the victim was an elderly or dependent person, as  
34 defined in Section 288, who comes onto any property where  
35 elderly or dependent persons reside without lawful business  
36 thereon or written permission from the director of the facility, is  
37 guilty of a misdemeanor.

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

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

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

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

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

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

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

19 647.6. (a) (1) Every person who annoys or molests any child  
20 under 18 years of age shall be punished by a fine not exceeding  
21 five thousand dollars (\$5,000), by imprisonment in a county jail  
22 not exceeding one year, or by both the fine and imprisonment.

23 (2) Every person who, motivated by an unnatural or abnormal  
24 sexual interest in children, engages in conduct with an adult  
25 whom he or she believes to be a child under 18 years of age,  
26 which conduct, if directed toward a child under 18 years of age,  
27 would be a violation of this section, shall be punished by a fine  
28 not exceeding five thousand dollars (\$5,000), by imprisonment in  
29 a county jail for up to one year, or by both that fine and  
30 imprisonment.

31 (b) Every person who violates this section after having  
32 entered, without consent, an inhabited dwelling house, or trailer  
33 coach as defined in Section 635 of the Vehicle Code, or the  
34 inhabited portion of any other building, shall be punished by  
35 imprisonment in the state prison, or in a county jail not exceeding  
36 one year, and by a fine not exceeding five thousand dollars  
37 (\$5,000).

38 (c) (1) Every person who violates this section shall be  
39 punished upon the second and each subsequent conviction by  
40 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 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 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

1 served by the defendant where the prior offense was one of the  
2 violent felonies specified in subdivision (c). However, no  
3 additional term shall be imposed under this subdivision for any  
4 prison term served prior to a period of 10 years in which the  
5 defendant remained free of both prison custody and the  
6 commission of an offense which results in a felony conviction.

7 (b) Except where subdivision (a) applies, where the new  
8 offense is any felony for which a prison sentence is imposed, in  
9 addition and consecutive to any other prison terms therefor, the  
10 court shall impose a one-year term for each prior separate prison  
11 term served for any felony; provided that no additional term shall  
12 be imposed under this subdivision for any prison term served  
13 prior to a period of five years in which the defendant remained  
14 free of both prison custody and the commission of an offense  
15 which results in a felony conviction.

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

18 (1) Murder or voluntary manslaughter.

19 (2) Mayhem.

20 (3) Rape, as defined in paragraph (2) or (6) of subdivision (a)  
21 of Section 261 or paragraph (1) or (4) of subdivision (a) of  
22 Section 262.

23 (4) Sodomy, as defined in subdivision (c) or (d) of Section  
24 286.

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

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

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

31 (8) Any felony in which the defendant inflicts great bodily  
32 injury on any person other than an accomplice which has been  
33 charged and proved as provided for in Section 12022.7 or  
34 12022.9 on or after July 1, 1977, or as specified prior to July 1,  
35 1977, in Sections 213, 264, and 461, or any felony in which the  
36 defendant uses a firearm which use has been charged and proved  
37 as provided in Section 12022.5 or 12022.55.

38 (9) Any robbery.

39 (10) Arson, in violation of subdivision (a) or (b) of Section  
40 451.

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

3 (12) Attempted murder.

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

5 (14) Kidnapping.

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

8 (16) Continuous sexual abuse of a child, in violation of  
9 Section 288.5.

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

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

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

15 (20) Threats to victims or witnesses, as defined in Section  
16 136.1, which would constitute a felony violation of Section  
17 186.22 of the Penal Code.

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

22 (22) Any violation of Section 12022.53.

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

24 The Legislature finds and declares that these specified crimes  
25 merit special consideration when imposing a sentence to display  
26 society's condemnation for these extraordinary crimes of  
27 violence against the person.

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

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

1 (f) A prior conviction of a felony shall include a conviction in  
2 another jurisdiction for an offense which, if committed in  
3 California, is punishable by imprisonment in the state prison if  
4 the defendant served one year or more in prison for the offense in  
5 the other jurisdiction. A prior conviction of a particular felony  
6 shall include a conviction in another jurisdiction for an offense  
7 which includes all of the elements of the particular felony as  
8 defined under California law if the defendant served one year or  
9 more in prison for the offense in the other jurisdiction.

10 (g) A prior separate prison term for the purposes of this  
11 section shall mean a continuous completed period of prison  
12 incarceration imposed for the particular offense alone or in  
13 combination with concurrent or consecutive sentences for other  
14 crimes, including any reimprisonment on revocation of parole  
15 which is not accompanied by a new commitment to prison, and  
16 including any reimprisonment after an escape from incarceration.

17 (h) Serving a prison term includes any confinement time in  
18 any state prison or federal penal institution as punishment for  
19 commission of an offense, including confinement in a hospital or  
20 other institution or facility credited as service of prison time in  
21 the jurisdiction of the confinement.

22 (i) For the purposes of this section, a commitment to the State  
23 Department of Mental Health as a mentally disordered sex  
24 offender following a conviction of a felony, which commitment  
25 exceeds one year in duration, shall be deemed a prior prison  
26 term.

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

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

1 This subdivision shall not apply when a full, separate, and  
2 consecutive term is imposed pursuant to any other provision of  
3 law.

4 SEC. 40. Section 667.51 of the Penal Code is amended to  
5 read:

6 667.51. (a) Any person who is convicted of violating Section  
7 288 or 288.5 shall receive a five-year enhancement for a prior  
8 conviction of an offense specified in subdivision (b).

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

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

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

18 667.6. (a) Any person who is convicted of an offense  
19 specified in subdivision (e) and who has been convicted  
20 previously of any of those offenses shall receive a five-year  
21 enhancement for each of those prior convictions. In addition to  
22 the five-year enhancement imposed under this subdivision, the  
23 court also may impose a fine not to exceed twenty thousand  
24 dollars (\$20,000) for anyone sentenced under these provisions.  
25 The fine imposed and collected pursuant to this subdivision shall  
26 be deposited in the Victim-Witness Assistance Fund to be  
27 available for appropriation to fund child sexual exploitation and  
28 child sexual abuse victim counseling centers and prevention  
29 programs established pursuant to Section 13837.

30 (b) Any person who is convicted of an offense specified in  
31 subdivision (e) and who has served two or more prior prison  
32 terms as defined in Section 667.5 for any of those offenses, shall  
33 receive a 10-year enhancement for each of those prior terms. In  
34 addition to the 10-year enhancement imposed under this  
35 subdivision, the court also may impose a fine not to exceed  
36 twenty thousand dollars (\$20,000) for any person sentenced  
37 under this subdivision. The fine imposed and collected pursuant  
38 to this subdivision shall be deposited in the Victim-Witness  
39 Assistance Fund to be available for appropriation to fund child  
40 sexual exploitation and child sexual abuse victim counseling

1 centers and prevention programs established pursuant to Section  
2 13837.

3 (c) In lieu of the term provided in Section 1170.1, a full,  
4 separate, and consecutive term may be imposed for each  
5 violation of an offense specified in subdivision (e) if the crimes  
6 involved the same victim on the same occasion. A term may be  
7 imposed consecutively pursuant to this subdivision if a person is  
8 convicted of at least one offense specified in subdivision (e). If  
9 the term is imposed consecutively pursuant to this subdivision, it  
10 shall be served consecutively to any other term of imprisonment,  
11 and shall commence from the time the person otherwise would  
12 have been released from imprisonment. The term shall not be  
13 included in any determination pursuant to Section 1170.1. Any  
14 other term imposed subsequent to that term shall not be merged  
15 therein but shall commence at the time the person otherwise  
16 would have been released from prison.

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

21 In determining whether crimes against a single victim were  
22 committed on separate occasions under this subdivision, the court  
23 shall consider whether, between the commission of one sex crime  
24 and another, the defendant had a reasonable opportunity to reflect  
25 upon his or her actions and nevertheless resumed sexually  
26 assaultive behavior. Neither the duration of time between crimes,  
27 nor whether or not the defendant lost or abandoned his or her  
28 opportunity to attack, shall be, in and of itself, determinative on  
29 the issue of whether the crimes in question occurred on separate  
30 occasions.

31 The term shall be served consecutively to any other term of  
32 imprisonment and shall commence from the time the person  
33 otherwise would have been released from imprisonment. The  
34 term shall not be included in any determination pursuant to  
35 Section 1170.1. Any other term imposed subsequent to that term  
36 shall not be merged therein but shall commence at the time the  
37 person otherwise would have been released from prison.

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

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

1 (2) Spousal rape, in violation of paragraph (1), (4), or (5) 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) Sodomy, in violation of paragraph (2) or (3) of subdivision  
6 (c), or subdivision (d) or (k), of Section 286.

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

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

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

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

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

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

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

26 SEC. 42. Section 667.61 of the Penal Code is amended to  
27 read:

28 667.61. (a) A person who is convicted of an offense specified  
29 in subdivision (c) under one or more of the circumstances  
30 specified in subdivision (d) or under two or more of the  
31 circumstances specified in subdivision (e) shall be punished by  
32 imprisonment in the state prison for 25 years to life.

33 (b) Except as provided in subdivision (a), a person who is  
34 convicted of an offense specified in subdivision (c) under one of  
35 the circumstances specified in subdivision (e) shall be punished  
36 by imprisonment in the state prison for 15 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) A lewd or lascivious act, in violation of subdivision (b) of  
6 Section 288.

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

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

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

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

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

17 (10) Continuous sexual abuse of a child, in violation of  
18 Section 288.5.

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

21 (1) The defendant has been previously convicted of an offense  
22 specified in subdivision (c), including an offense committed in  
23 another jurisdiction that includes all of the elements of an offense  
24 specified in subdivision (c).

25 (2) The defendant kidnapped the victim of the present offense  
26 and the movement of the victim substantially increased the risk  
27 of harm to the victim over and above that level of risk necessarily  
28 inherent in the underlying offense in subdivision (c).

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

32 (4) The defendant committed the present offense during the  
33 commission of a burglary, as defined in subdivision (a) of  
34 Section 460, with intent to commit an offense specified in  
35 subdivision (c).

36 (5) The defendant committed the present offense in violation  
37 of Section 264.1, subdivision (d) of Section 286, or subdivision  
38 (d) of Section 288a, and, in the commission of that offense, any  
39 person committed any act described in paragraph (2), (3), or (4)  
40 of this subdivision.

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

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

6 (2) Except as provided in paragraph (4) of subdivision (d), the  
7 defendant committed the present offense during the commission  
8 of a burglary, as defined in subdivision (a) of Section 460, or  
9 during the commission of a burglary of a building, including any  
10 commercial establishment, which was then closed to the public,  
11 in violation of Section 459.

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

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

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

21 (6) The defendant engaged in the tying or binding of the  
22 victim or another person in the commission of the present  
23 offense.

24 (7) The defendant administered a controlled substance to the  
25 victim in the commission of the present offense in violation of  
26 Section 12022.75.

27 (8) The defendant committed the present offense in violation  
28 of Section 264.1, subdivision (d) of Section 286, or subdivision  
29 (d) of Section 288a, and, in the commission of that offense, any  
30 person committed any act described in paragraph (1), (2), (3),  
31 (4), (6), or (7) of this subdivision.

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

34 (10) The victim of sexual penetration was a child 10 years of  
35 age or younger and the adult penetrated or caused the penetration  
36 of the vagina or rectum of the child.

37 (f) If only the minimum number of circumstances specified in  
38 subdivision (d) or (e) that are required for the punishment  
39 provided in subdivision (a) or (b) to apply have been pled and  
40 proved, that circumstance or those circumstances shall be used as

1 the basis for imposing the term provided in subdivision (a) or (b),  
2 whichever is greater, rather than being used to impose the  
3 punishment authorized under any other provision of law, unless  
4 another provision of law provides for a greater penalty, or the  
5 punishment under another provision of law may be imposed in  
6 addition to the punishment provided by this section. However, if  
7 any additional circumstance or circumstances specified in  
8 subdivision (d) or (e) have been pled and proved, the minimum  
9 number of circumstances shall be used as the basis for imposing  
10 the term provided in subdivision (a), and any other additional  
11 circumstance or circumstances shall be used to impose any  
12 punishment or enhancement authorized under any other provision  
13 of law.

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

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

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

32 SEC. 43. Section 667.71 of the Penal Code is amended to  
33 read:

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

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

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

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

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

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

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

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

11 (6) Continuous sexual abuse of a child, in violation of Section  
12 288.5.

13 (7) Sodomy, in violation of subdivision (c) or (d) of Section  
14 286.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

37 (1) "Bank" means any member of the Federal Reserve System,  
38 and any bank, banking association, trust company, savings bank,  
39 or other banking institution organized or operating under the laws

1 of the United States, and any bank the deposits of which are  
2 insured by the Federal Deposit Insurance Corporation.

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

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

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

16 SEC. 47. Section 1202.8 of the Penal Code is amended to  
17 read:

18 1202.8. (a) Persons placed on probation by a court shall be  
19 under the supervision of the county probation officer who shall  
20 determine both the level and type of supervision consistent with  
21 the court-ordered conditions of probation. Each county shall  
22 designate certain probation officers to monitor registered sex  
23 offenders, as specified in subdivision (b) of Section 290.08.  
24 Those probationers shall be subject to active and intense  
25 supervision by that designated officer.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15 SEC. 49. Section 1203c of the Penal Code is amended to  
16 read:

17 1203c. (a) (1) Notwithstanding any other provisions of law,  
18 whenever a person is committed to an institution under the  
19 jurisdiction of the Department of Corrections and Rehabilitation,  
20 whether probation has been applied for or not, or granted and  
21 revoked, it shall be the duty of the probation officer of the county  
22 from which the person is committed to send to the Department of  
23 Corrections and Rehabilitation a report of the circumstances  
24 surrounding the offense and the prior record and history of the  
25 defendant, as may be required by the Secretary of the Department  
26 of Corrections and Rehabilitation.

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

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

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

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

11 SEC. 50. Section 1203.06 of the Penal Code is amended to  
12 read:

13 1203.06. (a) Notwithstanding any other provision of law,  
14 probation shall not be granted to, nor shall the execution or  
15 imposition of sentence be suspended for, any of the following  
16 persons:

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

- 20 (A) Murder.
- 21 (B) Robbery, in violation of Section 211.
- 22 (C) Kidnapping, in violation of Section 207, 209, or 209.5.
- 23 (D) A lewd or lascivious act, in violation of Section 288.
- 24 (E) Burglary of the first degree, as defined in Section 460.
- 25 (F) Rape, in violation of Section 261, 262, or 264.1.
- 26 (G) Assault with intent to commit a specified sexual offense,  
27 in violation of Section 220.
- 28 (H) Escape, in violation of Section 4530 or 4532.
- 29 (I) Carjacking, in violation of Section 215.
- 30 (J) Aggravated mayhem in violation of Section 205.
- 31 (K) Torture, in violation of Section 206.
- 32 (L) Continuous sexual abuse of a child, in violation of Section  
33 288.5.
- 34 (M) A felony violation of Section 136.1 or 137.
- 35 (N) Sodomy, in violation of Section 286.
- 36 (O) Oral copulation, in violation of Section 288a.
- 37 (P) Sexual penetration, in violation of Section 264.1 or 289.
- 38 (Q) Aggravated sexual assault of a child, in violation of  
39 Section 269.

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

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

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

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

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

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

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

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

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

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

3 1203.075. (a) Notwithstanding any other provision of law,  
4 probation shall not be granted to, nor shall the execution or  
5 imposition of sentence be suspended for, any person who  
6 personally inflicts great bodily injury, as defined in Section  
7 12022.7, on the person of another in the commission or  
8 attempted commission of any of the following crimes:

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

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

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

32 3000. (a) (1) The Legislature finds and declares that the  
33 period immediately following incarceration is critical to  
34 successful reintegration of the offender into society and to  
35 positive citizenship. It is in the interest of public safety for the  
36 state to provide for the supervision of and surveillance of  
37 parolees, including the judicious use of revocation actions, and to  
38 provide educational, vocational, family and personal counseling  
39 necessary to assist parolees in the transition between  
40 imprisonment and discharge. A sentence pursuant to Section

1 1168 or 1170 shall include a period of parole, unless waived, as  
2 provided in this section.

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

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

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

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

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

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

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

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

(5) The Department of Corrections and Rehabilitation shall meet with each inmate at least 30 days prior to his or her good time release date and shall provide, under guidelines specified by the parole authority, the conditions of parole and the length of parole up to the maximum period of time provided by law. The inmate has the right to reconsideration of the length and

conditions of parole by the parole authority. The department or the board may impose as a condition of parole that an inmate make payments on the inmate's outstanding restitution fines or orders imposed pursuant to subdivision (a) or (c) of Section 13967 of the Government Code, as operative prior to September 28, 1994, or subdivision (b) or (f) of Section 1202.4.

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

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

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

*SEC. 54. Section 3001 of the Penal Code is amended to read:*

3001. (a) (1) Notwithstanding any other provision of law, when any person referred to in paragraph (1) of subdivision (b) of Section 3000 who was not imprisoned for committing a violent felony, as defined in subdivision (c) of Section 667.5, has been released on parole from the state prison, and has been on parole continuously for one year since release from confinement, within 30 days, that person shall be discharged from parole, unless the Department of Corrections *and Rehabilitation* recommends to the Board of ~~Prison Terms~~ *Parole Hearings* that the person be retained on parole and the board, for good cause, determines that the person will be retained.

(2) *Notwithstanding* any other provision of law, when any person referred to in paragraph (1) of subdivision (b) of Section 3000 who was imprisoned for committing a violent felony, as defined in subdivision (c) of Section 667.5, has been released on parole from the state prison for a period not exceeding three years and has been on parole continuously for two years since release from confinement, ~~or~~ *has been released on parole from the state prison for a period not exceeding five years and has been on parole continuously for three years since release from confinement, or has been released on parole from the state prison for a period not exceeding 10 years and has been on parole continuously for six years since release from confinement,*

1 the department shall discharge, within 30 days, that person from  
2 parole, unless the department recommends to the board that the  
3 person be retained on parole and the board, for good cause,  
4 determines that the person will be retained. The board shall make  
5 a written record of its determination and the department shall  
6 transmit a copy thereof to the parolee.

7 (b) Notwithstanding any other provision of law, when any  
8 person referred to in paragraph (2) or (3) of subdivision (b) of  
9 Section 3000 has been released on parole from the state prison,  
10 and has been on parole continuously for three years since release  
11 from confinement or since extension of parole, the board shall  
12 discharge, within 30 days, the person from parole, unless the  
13 board, for good cause, determines that the person will be retained  
14 on parole. The board shall make a written record of its  
15 determination and the department shall transmit a copy thereof to  
16 the parolee.

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

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

25 ~~SEC. 54.~~

26 *SEC. 55.* Section 3005 of the Penal Code is amended to read:

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

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

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

5 ~~SEC. 55.~~

6 SEC. 56. Chapter 1.5 (commencing with Section 5040) is  
7 added to Title 7 of Part 3 of the Penal Code, to read:

8  
9 CHAPTER 1.5. RISK ASSESSMENT OF SEX OFFENDERS

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

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

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

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

36 (e) Notwithstanding subdivision (c), an inmate serving a life  
37 term may be excluded from sex offender programming until he  
38 or she receives a parole date and is within five years of that date,  
39 unless the department determines that the programming for that  
40 inmate is necessary for the public safety.

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

~~SEC. 56.~~

SEC. 57. Section 12022.75 of the Penal Code is amended to 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 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

1 ~~the person is living; a period of 75 years after final disposition of~~  
2 ~~the case.~~

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

5 ~~13887. Every county shall~~ *Any county may* establish and  
6 implement a sexual assault felony enforcement (SAFE) team  
7 program pursuant to the provisions of this chapter.

8 SEC. 60. Section 13887.1 of the Penal Code is amended to  
9 read:

10 13887.1. (a) The mission of this program shall be to reduce  
11 violent sexual assault offenses in the county through proactive  
12 surveillance and arrest of habitual sexual offenders, as defined in  
13 Section 667.71, and strict enforcement of registration  
14 requirements for sex offenders pursuant to Section 290.

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

18 (c) The mission of this program shall also be to provide  
19 community education regarding the purposes of Chapter 5.5  
20 (commencing with Section 290) of Title 9 of Part 2. The goal of  
21 community education is to do all of the following:

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

24 (2) Emphasize the importance of using the knowledge of the  
25 presence of registered sex offenders in the community to enhance  
26 public safety.

27 (3) Explain that harassment or vigilantism against registrants  
28 may cause them to disappear and attempt to live without  
29 supervision, or to register as transients, which would defeat the  
30 purpose of sex offender registration.

31 SEC. 61. *Section 13887.5 is added to the Penal Code, to*  
32 *read:*

33 *13887.5. The Corrections Standards Authority shall establish*  
34 *standards by which grants are awarded on a competitive basis to*  
35 *counties for SAFE teams. The grants shall be awarded to*  
36 *innovative teams designed to promote the purposes of this*  
37 *chapter.*

38 ~~SEC. 61.~~

39 SEC. 62. Section 6600 of the Welfare and Institutions Code is  
40 amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~SEC. 62.~~

SEC. 63. Section 6601 of the Welfare and Institutions Code is amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

29 ~~SEC. 63.~~

30 *SEC. 64.* Section 6604 of the Welfare and Institutions Code is  
31 amended to read:

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

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

10 ~~SEC. 63.5.~~

11 *SEC. 64.5.* Section 6604 of the Welfare and Institutions Code  
12 is amended to read:

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

37 ~~SEC. 64.~~

38 *SEC. 65.* Section 6604.1 of the Welfare and Institutions Code  
39 is amended to read:

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

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

13     ~~SEC. 64.5.~~

14     SEC. 65.5. Section 6604.1 of the Welfare and Institutions  
15 Code is amended to read:

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

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

32     ~~SEC. 65.~~

33     SEC. 66. Section 6605 of the Welfare and Institutions Code is  
34 amended to read:

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

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

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

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

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

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

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

38 (e) If the court has not previously considered the issue of  
39 release to a less restrictive alternative, either through a trial on  
40 the merits or through the procedures set forth in subdivision (d),

1 the court shall consider whether release to a less restrictive  
2 alternative would be in the best interests of the person and  
3 conditions can be imposed that would adequately protect the  
4 community, without considering whether the person's condition  
5 has changed.

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

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

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

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

39 (j) A new trial proceeding under subdivision (f) may be  
40 ordered or held only when there is current evidence from a

1 licensed professional of one of the following and the evidence  
2 presents a change in condition since the person's last  
3 commitment trial proceeding:

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

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

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

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

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

25 (1) The person will be treated by a treatment provider who is  
26 qualified to provide that treatment in this state.

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

33 (3) Housing exists that is sufficiently secure to protect the  
34 community, and the person or agency providing housing to the  
35 conditionally released person has agreed in writing to accept the  
36 person, to provide the level of security required by the court, and  
37 immediately to report to the court, the prosecutor, the community  
38 program director, the department, and the superintendent of the  
39 special commitment center if the person leaves the housing to  
40 which he or she has been assigned without authorization.

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

4 (5) The person is willing to comply with supervision  
5 requirements imposed by the Department of Mental Health, or  
6 the Department of Corrections and Rehabilitation at the direction  
7 of the Department of Mental Health.

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

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

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

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

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

25 Yes or No.

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

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

39 (r) If the service provider designated by the court to provide  
40 inpatient or outpatient treatment or to monitor or supervise any

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

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

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

36 (u) Each person released to a less restrictive alternative shall  
37 have his or her case reviewed by the court that released him or  
38 her no later than one year after that release and annually  
39 thereafter until the person is unconditionally discharged. Review  
40 may occur in a shorter time or more frequently, if the court, in its

1 discretion on its own motion, or on motion of the person, the  
2 secretary, or the prosecuting attorney so determines. The sole  
3 question to be determined by the court is whether the person shall  
4 continue to be conditionally released to a less restrictive  
5 alternative. The court in making its determination shall be aided  
6 by the annual reports filed pursuant to subdivision (a) of this  
7 section and the opinions of the secretary and other experts or  
8 professional persons.

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

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

28 (x) If the court rules against the committed person at the trial  
29 for unconditional release from commitment, the court may place  
30 the committed person on outpatient status in accordance with the  
31 procedures described in Title 15 (commencing with Section  
32 1600) of Part 2 of the Penal Code and this section.

33 ~~SEC. 66.~~

34 ~~SEC. 67.~~ Section 6608 of the Welfare and Institutions Code is  
35 repealed.

36 ~~SEC. 67.~~

37 ~~SEC. 68.~~ If it is finally determined that the indeterminate term  
38 set forth in Sections ~~63 and 64~~ 64 and 65 is unconstitutional,  
39 those sections shall not be operative, and Sections ~~63.5 and 64.5~~  
40 64.5 and 65.5 shall be operative.

1     *SEC. 69. (a) The sum of four hundred ninety-five thousand*  
2     *dollars (\$495,000) is hereby appropriated from the General*  
3     *Fund to the Office of Emergency Services, Division of Criminal*  
4     *Justice Programs for child abuse and abduction programs that*  
5     *provide prevention education to children in schools, and parents,*  
6     *teachers, and service providers. The objective of the programs*  
7     *shall be to increase awareness of the problem of child abduction,*  
8     *and basic knowledge of how children can help to protect*  
9     *themselves from being abducted. The programs may include a*  
10    *media component to build awareness of the problem within*  
11    *communities.*

12    *(b) The sum of six million dollars (\$6,000,000) is hereby*  
13    *appropriated from the General Fund to the Corrections*  
14    *Standards Authority for grants to counties for SAFE teams,*  
15    *pursuant to Section 13887.5 of the Penal Code.*

16    ~~SEC. 68.~~

17    *SEC. 70.* No reimbursement is required by this act pursuant to  
18    Section 6 of Article XIII B of the California Constitution for  
19    certain costs that may be incurred by a local agency or school  
20    district because, in that regard, this act creates a new crime or  
21    infraction, eliminates a crime or infraction, or changes the  
22    penalty for a crime or infraction, within the meaning of Section  
23    17556 of the Government Code, or changes the definition of a  
24    crime within the meaning of Section 6 of Article XIII B of the  
25    California Constitution.

26    However, if the Commission on State Mandates determines  
27    that this act contains other costs mandated by the state,  
28    reimbursement to local agencies and school districts for those  
29    costs shall be made pursuant to Part 7 (commencing with Section  
30    17500) of Division 4 of Title 2 of the Government Code.

31    ~~SEC. 69.~~

32    *SEC. 71.* This act is an urgency statute necessary for the  
33    immediate preservation of the public peace, health, or safety  
34    within the meaning of Article IV of the Constitution and shall go  
35    into immediate effect. The facts constituting the necessity are:

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