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AMENDED IN SENATE FEBRUARY 9, 2006

SENATE BILL

No. 1128

Introduced by Senator Alquist

January 9, 2006

An act to amend Section 68152 of the Government Code, to amend Sections 209, 220, 269, 288.5, 290, 290.3, 290.46, 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, 311.12, 311.13, 626.83, 1203e, 1203f, 5040, and 13887.5 to, to add a heading to Chapter 5.5 (commencing with Section 290) to Title 9 of Part 2 of, and to add Chapter 7.55 (commencing with Section 312) and Chapter 7.65 (commencing with Section 313.5) to Title 9 of Part 1 of, and to repeal Section 311.9 of, and to repeal and add Chapter 7.5 (commencing with Section 311) and Chapter 7.6 (commencing with Section 313) to Title 9 of Part 1 of, the Penal Code, and to amend Sections 6600, 6601, 6604, 6604.1, and 6605 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 felony or misdemeanor actions resulting in a requirement that the defendant register as a sex offender for 75 years. The bill also would require every district attorney's office, parole office, and the Department of Justice to retain records relating to a registered sex offender for 75 years after disposition of the case. 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. The bill would make findings and declarations regarding the need for a comprehensive system of risk assessment, supervision, monitoring, and containment for registered sex offenders. The bill would require every person required to register as a sex offender to be subject to assessment using the State-Authorized Risk Assessment Tool for Sex Offenders (SARATSO). The bill would establish the SARATSO Review Committee, the purpose of which is to ensure that the SARATSO

reflects the most reliable, objective, and well-established protocols for predicting sex offender risk of recidivism. Commencing January 1, 2007, the SARATSO for adult males would be the STATIC-99 risk assessment scale. The committee would be required to research risk assessment tools for female and juvenile offenders, and to advise the Legislature and Governor of their recommendation. The committee would also periodically evaluate the SARATSO for each population and make any recommendations for changes, and develop and administer a training program for officers who would administer the SARATSO. Persons who administer the SARATSO would be required to be trained at least every 2 years.

The bill would require the Department of Corrections and Rehabilitation to assess every eligible person who is incarcerated or on parole, using the SARATSO. The bill would also require each probation department to assess every eligible person who is under their supervision.

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 modify the information to be made available to the public, and 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. The bill would require the Department of Justice to renovate the Violent Crime Information Network, as specified.

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 revise and recast provisions related to child pornography, obscenity, and harmful matter. 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, 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 SARATSO to perform a presentencing risk assessment of every person convicted of an offense that requires him or her to register as a sex offender. The bill would require each probation 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 SARATSO and to monitor registered sex offenders. The bill would require those probationers who are deemed to be a high risk to the public, as determined by the SARATSO, to be placed on an intensive and specialized probation supervision caseload. 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 SARATSO 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 high risk to the public of committing any sex crime, as determined by the SARATSO, to be placed on such a caseload, and to be required to report frequently to designated parole officers. The bill

would authorize the department to place any other parolee on an intensive and specialized caseload, as specified.

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 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.

~~The bill would provide that its provisions would be inoperative if a specified initiative measure is enacted at the November 7, 2006 General Election.~~

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: 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) Felony or misdemeanor action resulting in a requirement
33 that the defendant register as a sex offender pursuant to Section
34 290 of the Penal Code: 75 years. This paragraph shall apply to
35 records relating to a person convicted on or after the effective
36 date of Senate Bill 1128 of the 2005–06 Regular Session.

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

39 (g) Juvenile.

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

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

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

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

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

(h) Probate.

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

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

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

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

1 (j) Other records.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6 (15) Naturalization index: retain permanently.

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

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

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

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

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

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

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

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

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

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

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

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

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

24 220. (a) Except as provided in subdivision (b), any person
25 who assaults another with intent to commit mayhem, rape,
26 sodomy, oral copulation, or any violation of Section 264.1, 288,
27 or 289 shall be punished by imprisonment in the state prison for
28 two, four, or six years.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

39 288.5. (a) Any person who either resides in the same home
40 with the minor child or has recurring access to the child, who

1 over a period of time, not less than three months in duration,
2 engages in three or more acts of substantial sexual conduct with
3 a child under the age of 14 years at the time of the commission of
4 the offense, as defined in subdivision (b) of Section 1203.066, or
5 three or more acts of lewd or lascivious conduct, as defined in
6 Section 288, with a child under the age of 14 years at the time of
7 the commission of the offense is guilty of the offense of
8 continuous sexual abuse of a child and shall be punished by
9 imprisonment in the state prison for a term of 6, 12, or 16 years.

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

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

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

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

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

32
33 CHAPTER 5.5. SEX OFFENDERS
34

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

36 290. (a) (1) (A) Every person described in paragraph (2),
37 for the rest of his or her life while residing in California, or while
38 attending school or working in California, as described in
39 subparagraph (G), shall be required to register with the chief of
40 police of the city in which he or she is residing, or the sheriff of

1 the county if he or she is residing in an unincorporated area or
2 city that has no police department, and, additionally, with the
3 chief of police of a campus of the University of California, the
4 California State University, or community college if he or she is
5 residing upon the campus or in any of its facilities, within five
6 working days of coming into, or changing his or her residence
7 within, any city, county, or city and county, or campus in which
8 he or she temporarily resides.

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

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

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

1 present upon the campus or in any of its facilities. A transient
2 must reregister no less than once every 30 days regardless of the
3 length of time he or she has been physically present in the
4 particular jurisdiction in which he or she reregisters. If a transient
5 fails to reregister within any 30-day period, he or she may be
6 prosecuted in any jurisdiction in which he or she is physically
7 present.

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

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

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

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

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

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

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

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

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

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

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

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

(A) Any person who, since July 1, 1944, has been or is hereafter convicted in any court in this state or in any federal or military court of a violation of Section 207 or 209 committed with intent to violate Section 261, 286, 288, 288a, or 289, Section 220, except assault to commit mayhem, Section 243.4, paragraph (1), (2), (3), (4), or (6) of subdivision (a) of Section 261, or paragraph (1) of subdivision (a) of Section 262 involving the use of force or violence for which the person is sentenced to

1 the state prison, Section 264.1, 266, or 266c, subdivision (b) of
2 Section 266h, subdivision (b) of Section 266i, Section 266j, 267,
3 269, 285, 286, 288, 288a, 288.5, 288.7, or 289, Section 311.1,
4 subdivision (b), (c), or (d) of Section 311.2, Section 311.3, 311.4,
5 311.10, 311.11, 626.83, or 647.6, former Section 647a,
6 subdivision (c) of Section 653f, subdivision 1 or 2 of Section
7 314, any offense involving lewd or lascivious conduct under
8 Section 272, or any felony violation of Section 288.2; or any
9 statutory predecessor that includes all elements of one of the
10 above-mentioned offenses; or any person who since that date has
11 been or is hereafter convicted of the attempt to commit any of the
12 above-mentioned offenses.

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

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

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

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

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

39 (iv) Clause (iii) shall not apply to a person required to register
40 in the state of conviction if the conviction was for the equivalent

1 of one of the following offenses, and the person is not subject to
2 clause (i):

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

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

5 (III) Incest, pursuant to Section 285.

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

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

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

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

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

1 (II) The person submits to the department a declaration stating
2 that the person's conviction pursuant to either of those sections
3 was for consensual conduct between adults that has been
4 decriminalized. The declaration shall be confidential and not a
5 public record, and shall include the person's name, address,
6 telephone number, date of birth, and a summary of the
7 circumstances leading to the conviction, including the date of the
8 conviction and county of the occurrence.

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

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

1 unsuccessfully to be relieved of their duty to register under this
2 section.

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

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

37 (c) (1) Any person who is convicted in this state of the
38 commission or attempted commission of any of the offenses
39 specified in subdivision (a) and who is released on probation,
40 shall, prior to release or discharge, be informed of the duty to

1 register under this section by the probation department, and a
2 probation officer shall require the person to read and sign any
3 form that may be required by the Department of Justice, stating
4 that the duty of the person to register under this section has been
5 explained to him or her. The probation officer shall obtain the
6 address where the person expects to reside upon release or
7 discharge and shall report within three days the address to the
8 Department of Justice. The probation officer shall give one copy
9 of the form to the person, send one copy to the Department of
10 Justice, and forward one copy to the appropriate law enforcement
11 agency or agencies having local jurisdiction where the person
12 expects to reside upon his or her discharge, parole, or release.

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

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

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

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

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

14 (B) Any offense defined in paragraph (1), (2), (3), (4), or (6)
15 of subdivision (a) of Section 261, Section 264.1, 266c, or 267,
16 paragraph (1) of subdivision (b) of, or subdivision (c) or (d) of,
17 Section 286, Section 288 or 288.5, paragraph (1) of subdivision
18 (b) of, or subdivision (c) or (d) of, Section 288a, subdivision (a)
19 of Section 289, or Section 647.6.

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

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

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

39 (e) (1) On or after January 1, 1998, upon incarceration,
40 placement, or commitment, or prior to release on probation, any

1 person who is required to register under this section shall
2 preregister. The preregistering official shall be the admitting
3 officer at the place of incarceration, placement, or commitment,
4 or the probation officer if the person is to be released on
5 probation. The preregistration shall consist of all of the
6 following:

7 (A) A preregistration statement in writing, signed by the
8 person, giving information that shall be required by the
9 Department of Justice.

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

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

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

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

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

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

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

30 (E) Copies of adequate proof of residence, which shall be
31 limited to a California driver's license, California identification
32 card, recent rent or utility receipt, printed personalized checks or
33 other recent banking documents showing that person's name and
34 address, or any other information that the registering official
35 believes is reliable. If the person has no residence and no
36 reasonable expectation of obtaining a residence in the foreseeable
37 future, the person shall so advise the registering official and shall
38 sign a statement provided by the registering official stating that
39 fact. Upon presentation of proof of residence to the registering
40 official or a signed statement that the person has no residence,

1 the person shall be allowed to register. If the person claims that
2 he or she has a residence but does not have any proof of
3 residence, he or she shall be allowed to register but shall furnish
4 proof of residence within 30 days of the date he or she is allowed
5 to register.

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

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

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

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

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

1 under the agency's jurisdiction. This paragraph shall apply to
2 persons received in a department facility or state mental
3 institution on or after January 1, 1999. The Department of Justice
4 shall forward the change of address information to the agency
5 with which the person last registered.

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

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

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

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

33 (3) Any person determined to be a mentally disordered sex
34 offender or who has been found guilty in the guilt phase of trial
35 for an offense for which registration is required under this
36 section, but who has been found not guilty by reason of insanity
37 in the sanity phase of the trial, or who has had a petition
38 sustained in a juvenile adjudication for an offense for which
39 registration is required under this section pursuant to subdivision
40 (d), but who has been found not guilty by reason of insanity, who

1 willfully violates any requirement of this section is guilty of a
2 misdemeanor and shall be punished by imprisonment in a county
3 jail not exceeding one year. For any second or subsequent willful
4 violation of any requirement of this section, the person is guilty
5 of a felony and shall be punished by imprisonment in the state
6 prison for 16 months, or two or three years.

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

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

25 (6) Except as otherwise provided in paragraph (5), any person
26 who is required to register or reregister pursuant to clause (i) of
27 subparagraph (C) of paragraph (1) of subdivision (a) and
28 willfully fails to comply with the requirement that he or she
29 reregister no less than every 30 days is guilty of a misdemeanor
30 and shall be punished by imprisonment in a county jail at least 30
31 days, but not exceeding six months. A person who willfully fails
32 to comply with the requirement that he or she reregister no less
33 than every 30 days shall not be charged with this violation more
34 often than once for a failure to register in any period of 90 days.
35 Any person who willfully commits a third or subsequent
36 violation of the requirements of subparagraph (C) of paragraph
37 (1) of subdivision (a) that he or she reregister no less than every
38 30 days shall be punished in accordance with either paragraph (1)
39 or (2) of this subdivision.

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

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

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

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

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

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

37 (k) As used in this section, “mentally disordered sex offender”
38 includes any person who has been determined to be a sexual
39 psychopath or a mentally disordered sex offender under any
40 provision which, on or before January 1, 1976, was contained in

1 Division 6 (commencing with Section 6000) of the Welfare and
2 Institutions Code.

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

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

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

23 (n) On or before June 1, 2010, the Department of Justice shall
24 renovate the VCIN to do the following:

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

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

30 (3) Provide all necessary data storage, processing, and search
31 capabilities.

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

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

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

39 290.03. (a) The Legislature finds and declares that a
40 comprehensive system of risk assessment, supervision,

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

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

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

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

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

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

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

1 relevant information about serious and high risk sex offenders to
2 members of the general public is a means of assuring public
3 protection and shall not be construed as punitive.

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

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

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

23 290.04. (a) (1) The sex offender risk assessment tools
24 authorized by this section for use with selected populations shall
25 be known, with respect to each population, as the
26 State-Authorized Risk Assessment Tool for Sex Offenders
27 (SARATSO). If a SARATSO has not been selected for a given
28 population pursuant to this section, no duty to administer the
29 SARATSO elsewhere in this code shall apply with respect to that
30 population. Every person required to register as a sex offender
31 shall be subject to assessment with the SARATSO as set forth in
32 this section and elsewhere in this code.

33 (2) A representative of the Department of Corrections and
34 Rehabilitation, in consultation with a representative of the
35 Department of Mental Health and a representative of the
36 Attorney General's office, shall comprise the SARATSO Review
37 Committee. The purpose of the committee shall be to ensure that
38 the SARATSO reflects the most reliable, objective and
39 well-established protocols for predicting sex offender risk of
40 recidivism, has been scientifically validated with multiple

1 cross-validations, and is widely accepted by the courts. The
2 committee shall consult with experts in the fields of risk
3 assessment and the use of actuarial instruments in predicting sex
4 offender risk, sex offending, sex offender treatment, mental
5 health, and law, as it deems appropriate.

6 (b) (1) Commencing January 1, 2007, the SARATSO for
7 adult males required to register as sex offenders shall be the
8 STATIC-99 risk assessment scale.

9 (2) On or before January 1, 2008, the SARATSO Review
10 Committee shall determine whether the STATIC-99 should be
11 supplemented with an actuarial instrument that measures
12 dynamic risk factors or whether the STATIC-99 should be
13 replaced as the SARATSO with a different risk assessment tool.
14 If the committee unanimously agrees on changes to be made to
15 the SARATSO, it shall advise the Governor and the Legislature
16 of the changes, and it shall post its decision on the Department of
17 Corrections and Rehabilitation's Internet Web site. Sixty days
18 after the decision is posted, the selected tool shall become the
19 SARATSO for adult males.

20 (c) On or before July 1, 2007, the SARATSO Review
21 Committee shall research risk assessment tools for females
22 required to register as sex offenders. If the committee
23 unanimously agrees on an appropriate risk assessment tool to be
24 used to assess this population, it shall advise the Governor and
25 the Legislature of the selected tool, and it shall post its decision
26 on the Department of Corrections and Rehabilitation's Internet
27 Web site. Sixty days after the decision is posted, the selected tool
28 shall become the SARATSO for females.

29 (d) On or before January 1, 2007, the SARATSO Review
30 Committee shall research risk assessment tools for juveniles
31 required to register as sex offenders. If the committee
32 unanimously agrees on an appropriate risk assessment tool to be
33 used to assess this population, it shall advise the Governor and
34 the Legislature of the selected tool, and it shall post its decision
35 on the Department of Corrections and Rehabilitation's Internet
36 Web site. Sixty days after the decision is posted, the selected tool
37 shall become the SARATSO for juveniles.

38 (e) The committee shall periodically evaluate the SARATSO
39 for each specified population. If the committee unanimously
40 agrees on a change to the SARATSO for any population, it shall

1 advise the Governor and the Legislature of the selected tool, and
2 it shall post its decision on the Department of Corrections and
3 Rehabilitation's Internet Web site. Sixty days after the decision is
4 posted, the selected tool shall become the SARATSO for that
5 population.

6 (f) The committee shall perform other functions as necessary
7 to carry out the provisions of this act or as may be otherwise
8 required by law. The committee shall be immune from liability
9 for good faith conduct under this act.

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

11 290.05. (a) On or before January 1, 2008, the SARATSO
12 Review Committee established pursuant to Section 290.04, in
13 consultation with probation officers and parole officers, shall
14 develop a training program for probation officers, parole officers,
15 local law enforcement personnel, and any other persons
16 authorized by this code to administer the SARATSO, as set forth
17 in Section 290.04. The Department of Corrections and
18 Rehabilitation shall be responsible for overseeing the training,
19 which shall be conducted by experts in the field of risk
20 assessment and the use of actuarial instruments in predicting sex
21 offender risk. Subject to requirements promulgated by the
22 committee, probation departments, regional parole officers, and
23 local law enforcement agencies shall designate key persons
24 within their organizations to attend training and, as authorized by
25 the department, to train others within their organizations
26 designated to perform risk assessments as required or authorized
27 by law. Any person who administers the SARATSO shall receive
28 training no less frequently than every two years.

29 (b) The SARATSO may be performed for purposes authorized
30 by statute only by persons trained pursuant to this section.

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

32 290.06. Effective on or before July 1, 2008, the SARATSO,
33 as set forth in Section 290.04, shall be administered as follows:

34 (a) (1) The Department of Corrections and Rehabilitation
35 shall assess every eligible person who is incarcerated in state
36 prison. The assessment shall take place at least four months, but
37 no sooner than 10 months, prior to release from incarceration.

38 (2) The department shall assess every eligible person who is
39 on parole. The assessment shall take place at least four months,
40 but no sooner than 10 months, prior to termination of parole.

1 (3) The Department of Mental Health shall assess every
2 eligible person who is committed to that department. The
3 assessment shall take place at least four months, but no sooner
4 than 10 months, prior to release from commitment.

5 (4) Each probation department shall assess every eligible
6 person for whom it prepares a report pursuant to Section 1203.

7 (5) Each probation department shall assess every eligible
8 person under its supervision who was not assessed pursuant to
9 paragraph (3). The assessment shall take place prior to the
10 termination of probation, but no later than January 1, 2010.

11 (b) If a person required to be assessed pursuant to subdivision
12 (a) was assessed pursuant to that subdivision within the previous
13 five years, a reassessment is permissible but not required.

14 (c) The SARATSO Review Committee established pursuant to
15 Section 290.04, in consultation with probation officers and local
16 law enforcement agencies, shall establish a plan and a schedule
17 for assessing eligible persons not assessed pursuant to
18 subdivision (a). The plan shall provide for adult males to be
19 assessed on or before January 1, 2012, and for females and
20 juveniles to be assessed on or before January 1, 2013, and it shall
21 give priority to assessing those persons most recently convicted
22 of an offense requiring registration as a sex offender. On or
23 before January 15, 2008, the committee shall introduce
24 legislation to implement the plan.

25 (d) On or before January 1, 2008, the SARATSO Review
26 Committee shall research the appropriateness and feasibility of
27 providing a means by which an eligible person subject to
28 assessment may, at his or her own expense, be assessed with the
29 SARATSO by a governmental entity prior to his or her scheduled
30 assessment. If the committee unanimously agrees that such a
31 process is appropriate and feasible, it shall advise the Governor
32 and the Legislature of the selected tool, and it shall post its
33 decision on the Department of Corrections and Rehabilitation's
34 Internet Web site. Sixty days after the decision is posted, the
35 established process shall become effective.

36 (e) For purposes of this section, "eligible person" means a
37 person who was convicted of an offense that requires him or her
38 to register as a sex offender pursuant to Section 290 and who has
39 not been assessed with the SARATSO within the previous five
40 years.

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

290.07. Notwithstanding any other provision of law, any person authorized by statute to administer the State Authorized Risk Assessment Tool for Sex Offenders and trained pursuant to Section 290.06 shall be granted access to all relevant records pertaining to a registered sex offender, including, but not limited to, criminal histories, sex offender registration records, police reports, probation and presentencing reports, judicial records and case files, juvenile records, records maintained by Child Protective Services, psychological evaluations and psychiatric hospital reports, sexually violent predator treatment program reports, and records that have been sealed by the courts or the Department of Justice. Records and information obtained under this section shall not be subject to the California Public Records Act, Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code.

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

290.08. Every district attorney's office, parole office, and the Department of Justice shall retain records relating to a person convicted of an offense for which registration is required pursuant to Section 290 for a period of 75 years after disposition of the case.

SEC. 18. Section 290.3 of the Penal Code is amended to read:

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

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

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

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

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

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

36 (c) Notwithstanding any other provision of this section, the
37 Department of Corrections and Rehabilitation may collect a fine
38 imposed pursuant to this section from a person convicted of a
39 violation of any offense listed in subdivision (a) of Section 290
40 that results in incarceration in a facility under the jurisdiction of

1 the department. All moneys collected by the department under
2 this subdivision shall be transferred, once a month, to the
3 Controller for deposit in the General Fund, as provided in
4 subdivision (a), for transfer by the Controller, as provided in
5 subdivision (b).

6 (d) An amount equal to one hundred dollars (\$100) for every
7 fine imposed pursuant to subdivision (a) in excess of one
8 hundred dollars (\$100) shall be transferred to the Department of
9 Corrections and Rehabilitation to fund SAFE teams pursuant to
10 Chapter 9.7 (commencing with Section 13887) of Title 6 of Part
11 4.

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

14 290.46. (a) (1) On or before the dates specified in this
15 section, the Department of Justice shall make available
16 information concerning persons who are required to register
17 pursuant to Section 290 to the public via an Internet Web site as
18 specified in this section. The department shall update the Internet
19 Web site on an ongoing basis. All information identifying the
20 victim by name, birth date, address, or relationship to the
21 registrant shall be excluded from the Internet Web site. The name
22 or address of the person's employer and the listed person's
23 criminal history other than the specific crimes for which the
24 person is required to register shall not be included on the Internet
25 Web site. The Internet Web site shall be translated into languages
26 other than English, as determined by the department.

27 (2) (A) On or before June 1, 2010, the Department of Justice
28 shall make available to the public, as to any person described in
29 subdivisions (b), (c), or (d), the year of conviction of his or her
30 most recent offense requiring registration pursuant to Section
31 290, and the year he or she was released from incarceration for
32 that crime. However, no year of conviction shall be made
33 available to the public unless the Department of Justice also is
34 able to display the year of release from incarceration.

35 (B) (i) Any state or local facility that release from
36 incarceration a person who was incarcerated because of a crime
37 for which he or she was required to register as a sex offender
38 pursuant to Section 290 shall, within 30 days of that person's
39 release, provide the year of conviction and year of release from

1 incarceration for that crime to the Department of Justice, in a
2 manner and format approved by the Department of Justice.

3 (ii) Any state or local facility that, prior to January 1, 2007,
4 released from incarceration a person described in subparagraph
5 (i), shall provide to the Department of Justice the year of
6 conviction and year of release for that person's most recent
7 offense that required registration.

8 (3) The Department of Mental Health shall provide to the
9 Department of Justice Sex Offender Tracking Program the names
10 of all persons committed to its custody pursuant to Article 4
11 (commencing with Section 6600) of Chapter 2 of Part 2 of
12 Division 6 of the Welfare and Institutions Code, within 30 days
13 of commitment, and shall provide the names of all of those
14 persons released from its custody within five working days of
15 release.

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

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

29 (A) Section 207 committed with intent to violate Section 261,
30 286, 288, 288a, or 289.

31 (B) Section 209 committed with intent to violate Section 261,
32 286, 288, 288a, or 289.

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

34 (D) Section 264.1.

35 (E) Section 269.

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

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

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

40 (I) Section 288.5 or 288.7.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13 (D) Section 266j.

14 (E) Section 267.

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

17 (G) Section 626.83 or 647.6.

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

27 (e) (1) If a person has been convicted of the commission or
28 the attempted commission of any of the offenses listed in this
29 subdivision, and he or she has been convicted of no other offense
30 listed in subdivision (b), (c), or (d) other than those listed in this
31 subdivision, that person may file an application with the
32 Department of Justice, on a form approved by the department, for
33 exclusion from the Internet Web site. If the department
34 determines that the person meets the requirements of this
35 subdivision, the department shall grant the exclusion and no
36 information concerning the person shall be made available via
37 the Internet Web site described in this section. He or she bears
38 the burden of proving the facts that make him or her eligible for
39 exclusion from the Internet Web site. However, a person who has
40 filed for or been granted an exclusion from the Internet Web site

1 is not relieved of his or her duty to register as a sex offender
2 pursuant to Section 290 nor from any otherwise applicable
3 provision of law.

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

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

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

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

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

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

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

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

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

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

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

39 (3) If the department determines that a person who was
40 granted an exclusion under a former version of this subdivision

1 would not qualify for an exclusion under the current version of
2 this subdivision, the department shall rescind the exclusion, make
3 a reasonable effort to provide notification to the person that the
4 exclusion has been rescinded, and, no sooner than 30 days after
5 notification is attempted, make information about the offender
6 available to the public on the Internet Web site as provided in
7 this section.

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

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

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

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

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

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

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

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

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

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

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

- (A) Health insurance.
- (B) Insurance.
- (C) Loans.
- (D) Credit.
- (E) Employment.
- (F) Education, scholarships, or fellowships.
- (G) Housing or accommodations.
- (H) Benefits, privileges, or services provided by any business establishment.

(3) This section shall not affect authorized access to, or use of, information pursuant to, among other provisions, Sections 11105 and 11105.3, Section 8808 of the Family Code, Sections 777.5 and 14409.2 of the Financial Code, Sections 1522.01 and

1 1596.871 of the Health and Safety Code, and Section 432.7 of
2 the Labor Code.

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

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

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

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

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

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

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

6 SEC. 21. Chapter 7.5 (commencing with Section 311) of Title
7 9 of Part 1 of the Penal Code is repealed.

8 SEC. 22. Chapter 7.5 (commencing with Section 311) is
9 added to Title 9 of Part 1 of the Penal Code, to read:

10
11 CHAPTER 7.5. CHILD PORNOGRAPHY
12

13 311. For purposes of this chapter, the following definitions
14 apply:

15 (a) “Matter” means any picture, drawing, photograph, film,
16 filmstrip, negative, slide, photocopy, videotape, video laser disc,
17 computer hardware, computer software, computer floppy disc,
18 data storage media, CD-ROM, or computer-generated equipment,
19 or any other computer-generated image, motion picture, or other
20 pictorial representation, or any statue or other figure, or any
21 recording, transcription, or mechanical, chemical, or electrical
22 reproduction, or any other article, equipment, machine, or
23 material.

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

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

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

31 (e) “Exhibit” means show.

32 (f) “Matter that depicts a person under 18 years of age
33 personally engaging in or personally simulating sexual conduct”
34 is limited to visual works that depict that conduct.

35 (g) “Sexual conduct” means any of the following, whether
36 actual or simulated:

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

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

1 (3) Sadomasochistic abuse for the purpose of sexual
2 stimulation of the viewer.

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

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

7 (6) Any lewd or lascivious sexual act, as defined in Section
8 288.

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

11 (h) “Explicit sexual conduct” means any of the conduct
12 described in subparagraphs (1) through (3) of subdivision (g),
13 masturbation on bare skin, bestiality, graphic and explicit display
14 of the genitals or pubic or rectal area of an overtly sexual
15 character, or excretory functions performed in a lewd or
16 lascivious manner, whether or not any of the above conduct is
17 performed alone or between members of the same or opposite
18 sex or between humans and animals.

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

21 311.1. (a) Any person who knows or reasonably should
22 know that a person is a minor under 18 years of age, who
23 knowingly promotes, employs, uses, persuades, induces, or
24 coerces the minor, or any parent or guardian of a minor under his
25 or her control who knowingly permits the minor, to engage in or
26 assist others to engage in either posing or modeling alone or with
27 others for purposes of preparing any matter, or a live
28 performance involving, sexual conduct by the minor alone or
29 with other persons or animals, for commercial purposes, is guilty
30 of a felony and shall be punished by imprisonment in the state
31 prison for three, six, or eight years. Where the crime does not
32 involve commercial consideration, the defendant shall be
33 punished in state prison for two, three, or four years. Commercial
34 consideration may include barter or exchange.

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

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

311.2. (a) Any person who knowingly possesses or controls any matter, personally engaging in or simulating sexual conduct, as defined in this chapter, is guilty of a crime. The specific offenses, penalties and additional definitions applicable to this section are described in the following paragraphs. It is an element of each offense described in this section that the defendant knew or should have known that the child depicted is under the age specified in the definition of each particular crime.

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

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

(b) Any person who commits a violation of subdivision (a) and who has been previously convicted of a violation of this section, of an offense described in subparagraph (A) of paragraph (2) of subdivision (a) of Section 290, any offense for which he or she was required to register pursuant to Section 290, of a violation of Section 311.1, or of subdivision (b) or (d) of former Section 311.2, Section 311.3, subdivision (b) or (c) of former Section 311.4, or of an attempt to commit any of those offenses, or any person who has been found to be a sexually violent predator pursuant to Article 4 (commencing with Section 6600) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code, is guilty of a felony and shall be punished by imprisonment for two, four, or six years.

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

(d) This section does not apply to drawings, figurines, statues, or any film rated by the Motion Picture Association of America.

311.3. Any person who knowingly sends or causes to be sent, or brings or causes to be brought, into this state for sale or distribution, or distributes, exhibits, exchanges, possesses, prepares, publishes, produces, develops, duplicates, or prints, any matter, or has the intent to distribute, exhibit, or exchange that

1 matter with another person, is guilty of an offense as specified in
2 this section. It is an element of each offense described in this
3 section that the defendant knew or should have known that the
4 child depicted is under the age specified in the definition of each
5 particular crime.

6 (a) If the matter depicts a child who is under 16 years of age
7 engaged in sexual conduct, the crime is a felony. If the matter
8 depicts a child under 16 years of age engaged in explicit sexual
9 conduct, as defined in subdivision (h) of Section 311, the person
10 is punishable by incarceration in the state prison for two, three, or
11 four years.

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

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

20 (d) For purposes of this section, distribution, exchange,
21 exhibition and related conduct can be accomplished by means
22 that include, but are not limited to, postal delivery, delivery or
23 shipping services, personal transport, electronic mail; the
24 Internet, as defined in paragraph (6) of subdivision (f) of Section
25 17538 of the Business and Professions Code; a commercial
26 online service; or peer to peer file sharing, or any equivalent
27 means or manner.

28 311.4. Any monetary assets gained from the production,
29 publication, sale, distribution, exchange, or control of any matter
30 that depicts a minor under 18 years of age that is unlawful
31 pursuant to this chapter is subject to forfeiture, upon conviction
32 for a violation of one of those sections. Upon petition by the
33 prosecuting attorney, at any time following sentencing for a
34 violation of one of those sections, the court shall conduct a
35 hearing to determine the amount of monetary assets that are
36 subject to forfeiture. The Civil Discovery Act of 1986 (Article 3
37 (commencing with Section 2016) of Chapter 3 of Title 3 of Part
38 4 of the Code of Civil Procedure) applies to that hearing.

39 311.5. When a conviction under this chapter becomes final,
40 the court shall order any matter that is the subject of the

conviction which remains in the possession or under the control of the district attorney or any law enforcement agency, to be destroyed, and the court shall also cause any such material in its possession or under its control to be destroyed.

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

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

(c) An employee of a commercial film developer, Internet service provider or equivalent or similar entity who is acting within the scope of his or her employment and in accordance with the instructions of his or her employer, is not guilty of the crime described in Section 311.3 if the employee has no financial interest in the commercial developer by whom he or she is employed. A person is not in possession of material described in this chapter if the person held the material through acts done within the scope of his or her employment and took no action to exercise personal dominion and control over the material.

(d) Sections 311.2 and 311.3 do not apply to matter that is unsolicited and is received without knowledge or consent through a facility, system, or network over which the person or entity has no control, unless the person intentionally exerts dominion and control over the matter, or the person intentionally commits any act described in one of those sections.

311.7. Any act described in any section of this chapter that is committed on a separate occasion or is committed such that the person had time to reflect on his or her conduct may be separately charged and punished.

SEC. 23. Chapter 7.55 (commencing with Section 312) is added to Title 9 of Part 1 of the Penal Code, to read:

CHAPTER 7.55. OBSCENITY

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

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

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

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

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

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

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

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

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

5 (f) “Exhibit” means show.

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

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

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

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

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

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

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

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

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

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

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

9 (7) Any lewd or lascivious sexual act as defined in Section
10 288.

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

13 312.1. (a) Any person who knowingly sends or causes to be
14 sent, or brings or causes to be brought, into this state for sale or
15 distribution, or in this state possesses, prepares, publishes,
16 produces, or prints, with intent to distribute or to exhibit to
17 others, or who offers to distribute, distributes, or exhibits to
18 others, any obscene matter is, for a first offense, guilty of a
19 misdemeanor, punishable by imprisonment in a county jail and a
20 fine of up to five thousand dollars (\$5,000). If the person has
21 previously been convicted of any violation of this section, or of a
22 crime in Chapter 7.5 (commencing with Section 311) the person
23 is guilty of a felony, punishable by imprisonment in the state
24 prison and a fine of up to fifty thousand dollars (\$50,000).

25 (b) Any person who, with knowledge that a person is a minor,
26 or who, while in possession of any facts on the basis of which he
27 or she should reasonably know that the person is a minor, hires,
28 employs, or uses the minor to do or assist in doing any of the
29 described in subdivision (a) is guilty of a felony.

30 312.2. Any person who advertises for sale or distribution any
31 obscene matter knowing that it depicts a person under 18 years of
32 age engaged in an act of sexual conduct, is guilty of a felony and
33 is punishable by imprisonment in the state prison for two, three,
34 or four years, or in a county jail not exceeding one year, or by a
35 fine not exceeding fifty thousand dollars (\$50,000), or by both
36 that fine and imprisonment.

37 312.3. Any person who writes, creates, or solicits the
38 publication or distribution of advertising or other promotional
39 material, or who in any manner promotes, the sale, distribution,
40 or exhibition of matter represented or held out by him or her to

1 be obscene, is guilty of a misdemeanor, punishable by
2 imprisonment in the county jail for up to one year, a fine of up to
3 five thousand dollars (\$5,000), or both. If the person has
4 previously been convicted of any offense in this chapter, or of a
5 violation of Section 313.1, the person shall be punished by
6 imprisonment in the state prison.

7 312.4. (a) Any person who, knowingly, as a condition to a
8 sale, allocation, consignment, or delivery for resale of any paper,
9 magazine, book, periodical, publication or other merchandise,
10 requires that the purchaser or consignee receive any obscene
11 matter, or who denies or threatens to deny a franchise, revokes or
12 threatens to revoke, or imposes any penalty, financial or
13 otherwise, by reason of the failure of any person to accept
14 obscene matter, or by reason of the return of that matter, is guilty
15 of a misdemeanor.

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

26 (c) It shall be a defense in any prosecution for a violation of
27 this chapter by a person who knowingly distributed any obscene
28 matter by the use of telephones or telephone facilities to any
29 person under 18 years of age that the defendant has taken either
30 of the following measures to restrict access to the obscene matter
31 by persons under 18 years of age:

32 (1) Required the person receiving the obscene matter to use an
33 authorized access or identification code, as provided by the
34 information provider, before transmission of the obscene matter
35 begins, where the defendant has previously issued the code by
36 mailing it to the applicant therefor after taking reasonable
37 measures to ascertain that the applicant was 18 years of age or
38 older and has established a procedure to immediately cancel the
39 code of any person after receiving notice, in writing or by

1 telephone, that the code has been lost, stolen, or used by persons
2 under 18 years of age or that the code is no longer desired.

3 (2) Required payment by credit card before transmission of the
4 matter.

5 (d) Any list of applicants or recipients compiled or maintained
6 by an information-access service provider for purposes of
7 compliance with subdivision (c) is confidential and shall not be
8 sold or otherwise disseminated except upon order of the court.

9 312.5. (a) In any prosecution for a violation of the provisions
10 of this chapter or of Chapter 7.6 (commencing with Section 313),
11 neither the prosecution nor the defense shall be required to
12 introduce expert witness testimony concerning the obscene or
13 harmful character of the matter or live conduct that is the subject
14 of the prosecution.

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

23 312.6. When a conviction under this chapter becomes final,
24 the court shall order any matter that is the subject of the
25 conviction which remains in the possession or under the control
26 of the district attorney or any law enforcement agency, to be
27 destroyed, and the court shall also cause any such material in its
28 possession or under its control to be destroyed.

29 SEC. 23.5. Chapter 7.6 (commencing with Section 313) of
30 Title 9 of Part 1 of the Penal Code is repealed.

31 SEC. 24. Chapter 7.6 (commencing with Section 313) is
32 added to Title 9 of Part 1 of the Penal Code, to read:

33
34 CHAPTER 7.6. HARMFUL MATTER
35

36 313. As used in this chapter:

37 (a) “Harmful matter” means matter, taken as a whole, which to
38 the average person, applying contemporary statewide standards,
39 appeals to the prurient interest, and is matter which, taken as a
40 whole, depicts or describes in a patently offensive way sexual

1 conduct and which, taken as a whole, lacks serious literary,
2 artistic, political, or scientific value for minors.

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

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

15 (b) “Matter” means any book, magazine, newspaper, video
16 recording, or other printed or written material or any picture,
17 drawing, photograph, motion picture, or other pictorial
18 representation or any statue or other figure, or any recording,
19 transcription, or mechanical, chemical, or electrical reproduction
20 or any other articles, equipment, machines, or materials. “Matter”
21 also includes live or recorded telephone messages when
22 transmitted, disseminated, or distributed as part of a commercial
23 transaction.

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

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

29 (e) “Knowingly” means being aware of the character of the
30 matter.

31 (f) “Exhibit” means to show.

32 (g) “Minor” means any natural person under 18 years of age.

33 313.1. (a) (1) Any person who, with knowledge that a
34 person is a minor, or who fails to exercise reasonable care in
35 ascertaining the true age of a minor, knowingly sells, rents,
36 distributes, sends, causes to be sent, exhibits, or offers to
37 distribute or exhibit by any means, including, but not limited to,
38 live or recorded telephone messages, any harmful matter to the
39 minor shall be punished as specified in Section 313.5.

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

6 (b) Any person who misrepresents himself or herself to be the
7 parent or guardian of a minor and thereby causes the minor to be
8 admitted to an exhibition of any harmful matter shall be punished
9 as specified in Section 313.5.

10 (c) (1) Any person who knowingly displays, sells, or offers to
11 sell in any coin-operated or slug-operated vending machine or
12 mechanically or electronically controlled vending machine that is
13 located in a public place, other than a public place from which
14 minors are excluded, any harmful matter displaying to the public
15 view photographs or pictorial representations of the commission
16 of any of the following acts shall be punished as specified in
17 Section 313.5: sodomy, oral copulation, sexual intercourse,
18 masturbation, bestiality, or a photograph of an exposed penis in
19 an erect and turgid state.

20 (2) Any person who knowingly displays, sells, or offers to sell
21 in any coin-operated vending machine that is not supervised by
22 an adult and that is located in a public place, other than a public
23 place from which minors are excluded, any harmful matter, as
24 defined in subdivision (a) of Section 313, shall be punished as
25 specified in Section 313.5.

26 (d) Nothing in this section invalidates or prohibits the adoption
27 of an ordinance by a city, county, or city and county that restricts
28 the display of material that is harmful to minors, as defined in
29 this chapter, in a public place, other than a public place from
30 which minors are excluded, by requiring the placement of
31 devices commonly known as blinder racks in front of the
32 material, so that the lower two-thirds of the material is not
33 exposed to view.

34 (e) Any person who sells or rents video recordings of harmful
35 matter shall create an area within his or her business
36 establishment for the placement of video recordings of harmful
37 matter and for any material that advertises the sale or rental of
38 these video recordings. This area shall be labeled “adults only.”
39 The failure to create and label the area is an infraction,
40 punishable by a fine not to exceed one hundred dollars (\$100).

1 The failure to place a video recording or advertisement,
2 regardless of its content, in this area shall not constitute an
3 infraction. Any person who sells or distributes video recordings
4 of harmful matter to others for resale purposes shall inform the
5 purchaser of the requirements of this section. This subdivision
6 shall not apply to public libraries, as defined in Section 18710 of
7 the Education Code.

8 (f) Any person who rents a video recording and alters the
9 video recording by adding harmful material, and who then
10 returns the video recording to a video rental store, shall be guilty
11 of a misdemeanor. It shall be a defense in any prosecution for a
12 violation of this subdivision that the video rental store failed to
13 post a sign, reasonably visible to all customers, delineating the
14 provisions of this subdivision.

15 (g) It shall be a defense in any prosecution for a violation of
16 subdivision (a) by a person who knowingly distributed any
17 harmful matter by the use of telephones or telephone facilities to
18 any person under 18 years of age that the defendant has taken
19 either of the following measures to restrict access to the harmful
20 matter by persons under 18 years of age:

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

31 (2) Required payment by credit card before transmission of the
32 matter.

33 (h) It shall be a defense in any prosecution for a violation of
34 paragraph (2) of subdivision (c) that the defendant has taken
35 either of the following measures to restrict access to the harmful
36 matter by persons under 18 years of age:

37 (1) Required the person receiving the harmful matter to use an
38 authorized access or identification card to the vending machine
39 after taking reasonable measures to ascertain that the applicant
40 was 18 years of age or older and has established a procedure to

1 immediately cancel the card of any person after receiving notice,
2 in writing or by telephone, that the code has been lost, stolen, or
3 used by persons under 18 years of age or that the card is no
4 longer desired.

5 (2) Required the person receiving the harmful matter to use a
6 token in order to utilize the vending machine after taking
7 reasonable measures to ascertain that the person was 18 years of
8 age or older.

9 (i) Any list of applicants or recipients compiled or maintained
10 by an information-access service provider for purposes of
11 compliance with paragraph (1) of subdivision (g) is confidential
12 and shall not be sold or otherwise disseminated except upon
13 order of the court.

14 313.2. (a) Nothing in this chapter shall prohibit any parent or
15 guardian from distributing any harmful matter to his or her child
16 or ward or permitting his or her child or ward to attend an
17 exhibition of any harmful matter if the child or ward is
18 accompanied by him or her.

19 (b) Nothing in this chapter shall prohibit any person from
20 exhibiting any harmful matter to any of the following:

21 (1) A minor who is accompanied by his or her parent or
22 guardian.

23 (2) A minor who is accompanied by an adult who represents
24 himself or herself to be the parent or guardian of the minor and
25 whom the person, by the exercise of reasonable care, does not
26 have reason to know is not the parent or guardian of the minor.

27 313.3. It shall be a defense in any prosecution for a violation
28 of this chapter that the act charged was committed in aid of
29 legitimate scientific or educational purposes.

30 313.4. When a conviction under this chapter becomes final,
31 the court shall order any matter that is the subject of the
32 conviction which remains in the possession or under the control
33 of the district attorney or any law enforcement agency, to be
34 destroyed, and the court shall also cause any such material in its
35 possession or under its control to be destroyed.

36 313.5. Any person who violates Section 313.1, other than
37 subdivision (e), is punishable by fine of not more than two
38 thousand dollars (\$2,000), by imprisonment in the county jail for
39 not more than one year, or by both that fine and imprisonment.
40 However, if the person has been previously convicted of a

1 violation of Section 313.1, other than subdivision (e), or of any
2 section of Chapter 7.5 (commencing with Section 311), the
3 person shall be punished by imprisonment in the state prison.

4 SEC. 25. Chapter 7.65 (commencing with Section 313.5) is
5 added to Title 9 of Part 1 of the Penal Code, to read:

6
7 CHAPTER 7.65. GENERAL PROVISIONS RELATED TO
8 PROHIBITED MATERIAL
9

10 313.5. If any phrase, clause, sentence, section or provision of
11 Chapters 7.5 (commencing with Section 311), Chapter 7.55
12 (commencing with Section 312), or Chapter 7.6 (commencing
13 with Section 313) or application thereof to any person or
14 circumstance is held invalid, that invalidity shall not affect any
15 other phrase, clause, sentence, section, provision or application
16 of this chapter, which can be given effect without the invalid
17 phrase, clause, sentence, section, provision or application and to
18 this end the provisions of this chapter are declared to be
19 severable.

20 313.6. (a) It does not constitute a violation of the crimes
21 defined in the aforementioned chapters for a person or entity
22 solely to provide access or connection to or from a facility,
23 system, or network over which that person or entity has no
24 control, including related capabilities that are incidental to
25 providing access or connection. This subdivision does not apply
26 to an individual or entity that is owned or controlled by, or a
27 conspirator with, an entity actively involved in the creation,
28 editing, or knowing distribution of communications that violate
29 this chapter.

30 (b) An employer is not liable under the aforementioned
31 chapters for the actions of an employee or agent unless the
32 employee's or agent's conduct is within the scope of his or her
33 employment or agency and the employer has knowledge of,
34 authorizes, or ratifies the employee's or agent's conduct.

35 (c) It is a defense to prosecution under the aforementioned
36 chapters and in any civil action that may be instituted based on a
37 violation of any of those chapters that a person has taken
38 reasonable, effective, and appropriate actions in good faith to
39 restrict or prevent the transmission of, or access to, a
40 communication specified in that chapter.

1 313.7. Nothing in the aforementioned chapters shall be
2 construed to apply to interstate services or to any other activities
3 or actions for which states are prohibited from imposing liability
4 pursuant to paragraph (4) of subsection (g) of Section 223 of
5 Title 47 of the United States Code.

6 SEC. 26. Section 626.8 of the Penal Code is amended to read:

7 626.8. (a) Any person who comes into any school building or
8 upon any school ground, or street, sidewalk, or public way
9 adjacent thereto, without lawful business thereon, and whose
10 presence or acts interfere with the peaceful conduct of the
11 activities of the school or disrupt the school or its pupils or
12 school activities, unless the person is a parent or guardian of a
13 child attending that school, or is a student at the school or has
14 prior written permission for the entry from the chief
15 administrative officer of that school, is guilty of a misdemeanor
16 if he or she does any of the following:

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

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

26 (3) Has otherwise established a continued pattern of
27 unauthorized entry.

28 This section shall not be utilized to impinge upon the lawful
29 exercise of constitutionally protected rights of freedom of speech
30 or assembly.

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

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

36 (2) If the defendant has been previously convicted once of a
37 violation of any offense defined in this chapter or Section 415.5,
38 by imprisonment in the county jail for a period of not less than 10
39 days or more than six months, or by both imprisonment and a
40 fine of not exceeding five hundred dollars (\$500), and shall not

1 be released on probation, parole, or any other basis until he or
2 she has served not less than 10 days.

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

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

11 (1) "Lawful business" means a reason for being present upon
12 school property which is not otherwise prohibited by statute, by
13 ordinance, or by any regulation adopted pursuant to statute or
14 ordinance.

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

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

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

30 SEC. 27. Section 626.83 is added to the Penal Code, to read:

31 626.83. (a) Any person who has been convicted of a crime
32 listed in subparagraph (A) of paragraph (2) of subdivision (a) of
33 Section 290, who comes into any school building or upon any
34 school ground, without lawful business thereon or written
35 permission from the chief administrative official of that school,
36 or who loiters about any street, sidewalk, or public way adjacent
37 to any school building, school grounds, public playground, or
38 other youth recreational facility where minors are present without
39 lawful business thereon, is guilty of a misdemeanor.

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

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

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

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

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

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

SEC. 28. Section 647.6 of the Penal Code is amended to read:

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

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

1 (b) Every person who violates this section after having
2 entered, without consent, an inhabited dwelling house, or trailer
3 coach as defined in Section 635 of the Vehicle Code, or the
4 inhabited portion of any other building, shall be punished by
5 imprisonment in the state prison, or in a county jail not exceeding
6 one year, and by a fine not exceeding five thousand dollars
7 (\$5,000).

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

11 (2) Every person who violates this section after a previous
12 felony conviction under Section 261, 264.1, 269, 285, 286, 288a,
13 288.5, or 289, any of which involved a minor under 16 years of
14 age, or a previous felony conviction under this section, a
15 conviction under Section 288, or a felony conviction under
16 Section 311.4 involving a minor under 14 years of age shall be
17 punished by imprisonment in the state prison for two, four, or six
18 years.

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

24 (2) In any case in which a person is convicted of violating this
25 section, and as a condition of probation, the court prohibits the
26 defendant from having contact with the victim, the court order
27 prohibiting contact shall not be modified except upon the request
28 of the victim and a finding by the court that the modification is in
29 the best interest of the victim. As used in this paragraph, "contact
30 with the victim" includes all physical contact, being in the
31 presence of the victim, communication by any means, any
32 communication by a third party acting on behalf of the defendant,
33 and any gifts.

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

36 SEC. 29. Section 667.1 of the Penal Code is amended to read:

37 667.1. Notwithstanding subdivision (h) of Section 667, for all
38 offenses committed on or after the effective date of this act, all
39 references to existing statutes in subdivisions (c) to (g), inclusive,
40 of Section 667, are to those statutes as they existed on the

1 effective date of this act, including amendments made to those
2 statutes by the act enacted during the 2005–06 Regular Session
3 that amended this section.

4 SEC. 30. Section 667.5 of the Penal Code is amended to read:

5 667.5. Enhancement of prison terms for new offenses because
6 of prior prison terms shall be imposed as follows:

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

17 (b) Except where subdivision (a) applies, where the new
18 offense is any felony for which a prison sentence is imposed, in
19 addition and consecutive to any other prison terms therefor, the
20 court shall impose a one-year term for each prior separate prison
21 term served for any felony; provided that no additional term shall
22 be imposed under this subdivision for any prison term served
23 prior to a period of five years in which the defendant remained
24 free of both prison custody and the commission of an offense
25 which results in a felony conviction.

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

28 (1) Murder or voluntary manslaughter.

29 (2) Mayhem.

30 (3) Rape, as defined in paragraph (2) or (6) of subdivision (a)
31 of Section 261 or paragraph (1) or (4) of subdivision (a) of
32 Section 262.

33 (4) Sodomy, as defined in subdivision (c) or (d) of Section
34 286.

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

37 (6) A lewd or lascivious act, as defined in subdivision (a) or
38 (b) of Section 288.

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

(8) Any felony in which the defendant inflicts great bodily injury on any person other than an accomplice which has been charged and proved as provided for in Section 12022.7, 12022.8, or 12022.9 on or after July 1, 1977, or as specified prior to July 1, 1977, in Sections 213, 264, and 461, or any felony in which the defendant uses a firearm which use has been charged and proved as provided in subdivision (a) of Section 12022.3, or Section 12022.5 or 12022.55.

(9) Any robbery.

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

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

(12) Attempted murder.

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

(14) Kidnapping.

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

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

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

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

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

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

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

(22) Any violation of Section 12022.53.

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

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

(d) For the purposes of this section, the defendant shall be deemed to remain in prison custody for an offense until the

1 official discharge from custody or until release on parole,
2 whichever first occurs, including any time during which the
3 defendant remains subject to reimprisonment for escape from
4 custody or is reimprisoned on revocation of parole. The
5 additional penalties provided for prior prison terms shall not be
6 imposed unless they are charged and admitted or found true in
7 the action for the new offense.

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

11 (f) A prior conviction of a felony shall include a conviction in
12 another jurisdiction for an offense which, if committed in
13 California, is punishable by imprisonment in the state prison if
14 the defendant served one year or more in prison for the offense in
15 the other jurisdiction. A prior conviction of a particular felony
16 shall include a conviction in another jurisdiction for an offense
17 which includes all of the elements of the particular felony as
18 defined under California law if the defendant served one year or
19 more in prison for the offense in the other jurisdiction.

20 (g) A prior separate prison term for the purposes of this
21 section shall mean a continuous completed period of prison
22 incarceration imposed for the particular offense alone or in
23 combination with concurrent or consecutive sentences for other
24 crimes, including any reimprisonment on revocation of parole
25 which is not accompanied by a new commitment to prison, and
26 including any reimprisonment after an escape from incarceration.

27 (h) Serving a prison term includes any confinement time in
28 any state prison or federal penal institution as punishment for
29 commission of an offense, including confinement in a hospital or
30 other institution or facility credited as service of prison time in
31 the jurisdiction of the confinement.

32 (i) For the purposes of this section, a commitment to the State
33 Department of Mental Health as a mentally disordered sex
34 offender following a conviction of a felony, which commitment
35 exceeds one year in duration, shall be deemed a prior prison
36 term.

37 (j) For the purposes of this section, when a person subject to
38 the custody, control, and discipline of the Secretary of the
39 Department of Corrections and Rehabilitation is incarcerated at a

1 facility operated by the Division of Juvenile Facilities, that
2 incarceration shall be deemed to be a term served in state prison.

3 (k) Notwithstanding subdivisions (d) and (g) or any other
4 provision of law, where one of the new offenses is committed
5 while the defendant is temporarily removed from prison pursuant
6 to Section 2690 or while the defendant is transferred to a
7 community facility pursuant to Section 3416, 6253, or 6263, or
8 while the defendant is on furlough pursuant to Section 6254, the
9 defendant shall be subject to the full enhancements provided for
10 in this section.

11 This subdivision shall not apply when a full, separate, and
12 consecutive term is imposed pursuant to any other provision of
13 law.

14 SEC. 31. Section 667.51 of the Penal Code is amended to
15 read:

16 667.51. (a) Any person who is convicted of violating Section
17 288 or 288.5 shall receive a five-year enhancement for a prior
18 conviction of an offense specified in subdivision (b).

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

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

27 SEC. 32. Section 667.6 of the Penal Code is amended to read:

28 667.6. (a) Any person who is convicted of an offense
29 specified in subdivision (e) and who has been convicted
30 previously of any of those offenses shall receive a five-year
31 enhancement for each of those prior convictions.

32 (b) Any person who is convicted of an offense specified in
33 subdivision (e) and who has served two or more prior prison
34 terms as defined in Section 667.5 for any of those offenses, shall
35 receive a 10-year enhancement for each of those prior terms.

36 (c) In lieu of the term provided in Section 1170.1, a full,
37 separate, and consecutive term may be imposed for each
38 violation of an offense specified in subdivision (e) if the crimes
39 involved the same victim on the same occasion. A term may be
40 imposed consecutively pursuant to this subdivision if a person is

1 convicted of at least one offense specified in subdivision (e). If
2 the term is imposed consecutively pursuant to this subdivision, it
3 shall be served consecutively to any other term of imprisonment,
4 and shall commence from the time the person otherwise would
5 have been released from imprisonment. The term shall not be
6 included in any determination pursuant to Section 1170.1. Any
7 other term imposed subsequent to that term shall not be merged
8 therein but shall commence at the time the person otherwise
9 would have been released from prison.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15 (f) (1) In addition to any enhancement imposed pursuant to
16 subdivision (a) or (b), the court may also impose a fine not to
17 exceed twenty thousand dollars (\$20,000) for anyone sentenced
18 under those provisions. The fine imposed and collected pursuant
19 to this subdivision shall be deposited in the Victim-Witness
20 Assistance Fund to be available for appropriation to fund child
21 sexual exploitation and child sexual abuse victim counseling
22 centers and prevention programs established pursuant to Section
23 13837.

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

29 SEC. 33. Section 667.61 of the Penal Code is amended to
30 read:

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

36 (b) Except as provided in subdivision (a), any person who is
37 convicted of an offense specified in subdivision (c) under one of
38 the circumstances specified in subdivision (e) shall be punished
39 by imprisonment in the state prison for 15 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) A lewd or lascivious act, in violation of subdivision (b) of
- 8 Section 288.
- 9 (5) Sexual penetration, in violation of subdivision (a) of
- 10 Section 289.
- 11 (6) Sodomy, in violation of paragraph (2) or (3) of subdivision
- 12 (c), or subdivision (d), of Section 286.
- 13 (7) Oral copulation, in violation of paragraph (2) or (3) of
- 14 subdivision (c), or subdivision (d), of Section 288a.
- 15 (8) Oral copulation or sexual penetration by a perpetrator who
- 16 is an adult and the victim is 10 years of age or younger.
- 17 (9) A lewd or lascivious act, in violation of subdivision (a) of
- 18 Section 288.
- 19 (10) Continuous sexual abuse of a child, in violation of
- 20 Section 288.5.
- 21 (d) The following circumstances shall apply to the offenses
- 22 specified in subdivision (c):
- 23 (1) The defendant has been previously convicted of an offense
- 24 specified in subdivision (c), including an offense committed in
- 25 another jurisdiction that includes all of the elements of an offense
- 26 specified in subdivision (c).
- 27 (2) The defendant kidnapped the victim of the present offense
- 28 and the movement of the victim substantially increased the risk
- 29 of harm to the victim over and above that level of risk necessarily
- 30 inherent in the underlying offense in subdivision (c).
- 31 (3) The defendant inflicted aggravated mayhem or torture on
- 32 the victim or another person in the commission of the present
- 33 offense in violation of Section 205 or 206.
- 34 (4) The defendant committed the present offense during the
- 35 commission of a burglary of the first degree, as defined in
- 36 subdivision (a) of Section 460, with intent to commit an offense
- 37 specified in subdivision (c).
- 38 (5) The defendant committed the present offense in violation
- 39 of Section 264.1, subdivision (d) of Section 286, or subdivision
- 40 (d) of Section 288a, and, in the commission of that offense, any

1 person committed any act described in paragraph (2), (3), or (4)
2 of this subdivision.

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

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

8 (2) Except as provided in paragraph (4) of subdivision (d), the
9 defendant committed the present offense during the commission
10 of a burglary, in violation of Section 459.

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

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

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

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

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

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

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

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

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

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

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

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

22 (i) For any offense specified in paragraph (1) to (7), inclusive,
23 of subdivision (c), the court shall impose a consecutive sentence
24 for each offense that results in a conviction under this section if
25 the crimes involve separate victims or involve the same victim on
26 separate occasions, as defined in subdivision (d) of Section
27 667.6.

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

33 SEC. 34. Section 667.71 of the Penal Code is amended to
34 read:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SEC. 36. 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. 37. 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. 38. 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. 39. 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 was convicted of an offense that requires him
24 or her to register as a sex offender pursuant to Section 290, the
25 probation officer's report shall include the results of the
26 State-Authorized Risk Assessment Tool for Sex Offenders
27 (SARATSO) administered pursuant to Sections 290.04 to 290.06,
28 inclusive, if applicable.

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

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

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

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

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

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

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

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

32 (d) If a person is convicted of a misdemeanor, the court may
33 either refer the matter to the probation officer for an investigation
34 and a report or summarily pronounce a conditional sentence. If
35 the person was convicted of an offense that requires him or her to
36 register as a sex offender pursuant to Section 290, the court shall
37 refer the matter to the probation officer for the purpose of
38 obtaining a report on the results of the State-Authorized Risk
39 Assessment Tool for Sex Offenders administered pursuant to
40 Sections 290.04 to 290.06, inclusive, if applicable, which the

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13 SEC. 40. Section 1203c of the Penal Code is amended to
14 read:

15 1203c. (a) (1) Notwithstanding any other provisions of law,
16 whenever a person is committed to an institution under the
17 jurisdiction of the Department of Corrections and Rehabilitation,
18 whether probation has been applied for or not, or granted and
19 revoked, it shall be the duty of the probation officer of the county
20 from which the person is committed to send to the Department of
21 Corrections and Rehabilitation a report of the circumstances
22 surrounding the offense and the prior record and history of the
23 defendant, as may be required by the Secretary of the Department
24 of Corrections and Rehabilitation.

25 (2) If the person is being committed to the jurisdiction of the
26 department for a conviction of an offense that requires him or her
27 to register as a sex offender pursuant to Section 290, the
28 probation officer shall include in the report the results of the
29 State-Authorized Risk Assessment Tool for Sex Offenders
30 (SARATSO) administered pursuant to Sections 290.4 to 290.06,
31 inclusive, if applicable.

32 (b) These reports shall accompany the commitment papers.
33 The reports shall be prepared in the form prescribed by the
34 administrator following consultation with the Corrections
35 Standards Authority, except that if the defendant is ineligible for
36 probation, a report of the circumstances surrounding the offense
37 and the prior record and history of the defendant, prepared by the
38 probation officer on request of the court and filed with the court
39 before sentence, shall be deemed to meet the requirements of
40 paragraph (1) of subdivision (a).

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

SEC. 41. Section 1203e is added to the Penal Code, to read:

1203e. (a) Commencing June 1, 2010, the probation department shall compile a Facts of Offense Sheet for every person convicted of an offense that requires him or her to register as a sex offender pursuant to Section 290 who is referred to the department pursuant to Section 1203. The Facts of Offense Sheet shall contain the following information concerning the offender: 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 and victim pattern; and results of the State-Authorized Risk Assessment Tool for Sex Offenders (SARATSO), as set forth in Section 290.04, if required. The Facts of Offense Sheet shall be included in the probation officer's report.

(b) The defendant may move the court to correct the Facts of Offense Sheet. Any corrections to that sheet shall be made consistent with procedures set forth in Section 1204.

(c) The probation officer shall send a copy of the Facts of Offense Sheet to the Department of Justice Sex Offender Tracking Program within 30 days of the person's sex offense conviction, and it shall be made part of the registered sex offender's file maintained by the Sex Offender Tracking Program. The Facts of Offense Sheet shall thereafter be made available to law enforcement by the Department of Justice, which shall post it with the offender's record on the Department of Justice Internet Web site maintained pursuant to Section 290.46, and shall be accessible only to law enforcement.

(b) If the registered sex offender is sentenced to a period of incarceration, at either the state prison or a county jail, the Facts of Offense Sheet shall be sent by the Department of Corrections and Rehabilitation or the county sheriff to the registering law

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

9 SEC. 42. Section 1203f is added to the Penal Code, to read:

10 1203f. Every probation department shall ensure that all
11 probationers under active supervision who are deemed to pose a
12 high risk to the public of committing sex crimes, as determined
13 by the State-Authorized Risk Assessment Tool for Sex
14 Offenders, as set forth in Sections 290.04 to 290.06, inclusive,
15 are placed on an intensive and specialized probation supervision
16 caseload and are required to report frequently to designated
17 probation officers. The probation department may place any
18 other probationer convicted of an offense that requires him or her
19 to register as a sex offender who is on active supervision to be
20 placed on an intensive and specialized caseload and require him
21 or her to report frequently to designated probation officers.

22 SEC. 43. Section 1203.06 of the Penal Code is amended to
23 read:

24 1203.06. (a) Notwithstanding any other provision of law,
25 probation shall not be granted to, nor shall the execution or
26 imposition of sentence be suspended for, any of the following
27 persons:

28 (1) Any person who personally used a firearm during the
29 commission or attempted commission of any of the following
30 crimes:

- 31 (A) Murder.
- 32 (B) Robbery, in violation of Section 211.
- 33 (C) Kidnapping, in violation of Section 207, 209, or 209.5.
- 34 (D) A lewd or lascivious act, in violation of Section 288.
- 35 (E) Burglary of the first degree, as defined in Section 460.
- 36 (F) Rape, in violation of Section 261, 262, or 264.1.
- 37 (G) Assault with intent to commit a specified sexual offense,
38 in violation of Section 220.
- 39 (H) Escape, in violation of Section 4530 or 4532.
- 40 (I) Carjacking, in violation of Section 215.

1 (J) Aggravated mayhem, in violation of Section 205.

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

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

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

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

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

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

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

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

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

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

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

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

30 SEC. 44. Section 1203.065 of the Penal Code is amended to
31 read:

32 1203.065. (a) Notwithstanding any other provision of law,
33 probation shall not be granted to, nor shall the execution or
34 imposition of sentence be suspended for, any person who is
35 convicted of violating paragraph (2) or (6) of subdivision (a) of
36 Section 261, Section 264.1, 266h, 266i, 266j, or 269, or
37 paragraph (2) or (3) of subdivision (c), or subdivision (d), of
38 Section 286 or 288a, or subdivision (a) of Section 289, or
39 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, subdivision (g) of Section 289, 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.

SEC. 45. Section 1203.075 of the Penal Code is amended to read:

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

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

(b) The existence of any fact that would make a person ineligible for probation under subdivision (a) shall be alleged in

1 the accusatory pleading, and either admitted by the defendant in
2 open court, or found to be true by the trier of fact.

3 SEC. 46. Section 3000 of the Penal Code is amended to read:

4 3000. (a) (1) The Legislature finds and declares that the
5 period immediately following incarceration is critical to
6 successful reintegration of the offender into society and to
7 positive citizenship. It is in the interest of public safety for the
8 state to provide for the supervision of and surveillance of
9 parolees, including the judicious use of revocation actions, and to
10 provide educational, vocational, family and personal counseling
11 necessary to assist parolees in the transition between
12 imprisonment and discharge. A sentence pursuant to Section
13 1168 or 1170 shall include a period of parole, unless waived, as
14 provided in this section.

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

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

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

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

1 (1) At the expiration of a term of imprisonment of one year
2 and one day, or a term of imprisonment imposed pursuant to
3 Section 1170 or at the expiration of a term reduced pursuant to
4 Section 2931 or 2933, if applicable, the inmate shall be released
5 on parole for a period not exceeding three years, unless the
6 parole authority, for good cause, waives parole and discharges
7 the inmate from the custody of the department. However, an
8 inmate sentenced for an offense specified in paragraph (3), (4),
9 (5), (6), (15), (16), (11), or (18) of subdivision (c) of Section
10 667.5 shall be released on parole for a period not exceeding 10
11 years.

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

22 (3) Notwithstanding paragraphs (1) and (2), in the case of any
23 offense for which the inmate has received a life sentence
24 pursuant to subdivision (b) of Section 209, Section 269, 288.7,
25 667.51, 667.61, or 667.71, the period of parole shall be 10 years.

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

29 (5) Upon successful completion of parole, or at the end of the
30 maximum statutory period of parole specified for the inmate
31 under paragraph (1), (2), or (3), whichever is earlier, the inmate
32 shall be discharged from custody. The date of the maximum
33 statutory period of parole under this subdivision and paragraphs
34 (1), (2), or (3), shall be computed from the date of initial parole
35 and shall be a period chronologically determined. Time during
36 which parole is suspended because the prisoner has absconded or
37 has been returned to custody as a parole violator shall not be
38 credited toward any period of parole unless the prisoner is found
39 not guilty of the parole violation. However, the period of parole
40 is subject to the following:

1 (A) Except as provided in Section 3064, an inmate subject to
2 three years on parole may not be retained under parole
3 supervision or in custody for a period longer than four years from
4 the date of his or her initial parole.

5 (B) Except as provided in Section 3064, an inmate subject to
6 five years on parole may not be retained under parole supervision
7 or in custody for a period longer than seven years from the date
8 of his or her initial parole.

9 (C) Except as provided in Section 3064, an inmate subject to
10 10 years on parole may not be retained under parole supervision
11 or in custody for a period longer than 15 years from the date of
12 his or her initial parole.

13 (6) The Department of Corrections and Rehabilitation shall
14 meet with each inmate at least 30 days prior to his or her good
15 time release date and shall provide, under guidelines specified by
16 the parole authority, the conditions of parole and the length of
17 parole up to the maximum period of time provided by law. The
18 inmate has the right to reconsideration of the length and
19 conditions of parole by the parole authority. The department or
20 the board may impose as a condition of parole that an inmate
21 make payments on the inmate's outstanding restitution fines or
22 orders imposed pursuant to subdivision (a) or (c) of Section
23 13967 of the Government Code, as operative prior to September
24 28, 1994, or subdivision (b) or (f) of Section 1202.4.

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

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

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

35 SEC. 47. Section 3001 of the Penal Code is amended to read:

36 3001. (a) (1) Notwithstanding any other provision of law,
37 when any person referred to in paragraph (1) of subdivision (b)
38 of Section 3000 who was not imprisoned for committing a
39 violent felony, as defined in subdivision (c) of Section 667.5, has
40 been released on parole from the state prison, and has been on

1 parole continuously for one year since release from confinement,
2 within 30 days, that person shall be discharged from parole,
3 unless the Department of Corrections and Rehabilitation
4 recommends to the Board of Parole Hearings that the person be
5 retained on parole and the board, for good cause, determines that
6 the person will be retained.

7 (2) Notwithstanding any other provision of law, when any
8 person referred to in paragraph (1) of subdivision (b) of Section
9 3000 who was imprisoned for committing a violent felony, as
10 defined in subdivision (c) of Section 667.5, has been released on
11 parole from the state prison for a period not exceeding three
12 years and has been on parole continuously for two years since
13 release from confinement, or has been released on parole from
14 the state prison for a period not exceeding 10 years and has been
15 on parole continuously for six years since release from
16 confinement, the department shall discharge, within 30 days, that
17 person from parole, unless the department recommends to the
18 board that the person be retained on parole and the board, for
19 good cause, determines that the person will be retained. The
20 board shall make a written record of its determination and the
21 department shall transmit a copy thereof to the parolee.

22 (b) Notwithstanding any other provision of law, when any
23 person referred to in paragraph (2) of subdivision (b) of Section
24 3000 has been released on parole from the state prison, and has
25 been on parole continuously for three years since release from
26 confinement, the board shall discharge, within 30 days, the
27 person from parole, unless the board, for good cause, determines
28 that the person will be retained on parole. The board shall make a
29 written record of its determination and the department shall
30 transmit a copy thereof to the parolee.

31 (c) Notwithstanding any other provision of law, when any
32 person referred to in paragraph (3) of subdivision (b) of Section
33 3000 has been released on parole from the state prison, and has
34 been on parole continuously for six years since release from
35 confinement, the board shall discharge, within 30 days, the
36 person from parole, unless the board, for good cause, determines
37 that the person will be retained on parole. The board shall make a
38 written record of its determination and the department shall
39 transmit a copy thereof to the parolee.

1 (d) In the event of a retention on parole, the parolee shall be
2 entitled to a review by the parole authority each year thereafter
3 until the maximum statutory period of parole has expired.

4 (e) The amendments to this section made during the 2005–06
5 Regular Session of the Legislature shall only be applied
6 prospectively and shall not extend the parole period for any
7 person whose eligibility for discharge from parole was fixed as
8 of the effective date of those amendments.

9 SEC. 48. Section 3005 of the Penal Code is amended to read:

10 3005. (a) The Department of Corrections and Rehabilitation
11 shall ensure that all parolees under active supervision who are
12 deemed to pose a high risk to the public of committing sex
13 crimes, as determined by the State-Authorized Risk Assessment
14 Tool for Sex Offenders, as set forth in Section 290.04 to 290.06,
15 inclusive, are placed on an intensive and specialized parole
16 supervision caseload and are required to report frequently to
17 designated parole officers. The department may place any other
18 parolee convicted of an offense that requires him or her to
19 register as a sex offender pursuant to Section 290 who is on
20 active supervision on an intensive and specialized caseload and
21 require him or her to report frequently to designated parole
22 officers.

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

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

34 SEC. 49. Section 5040 is added to the Penal Code, to read:

35 5040. (a) Inmates who are deemed to pose a high risk to the
36 public of committing sex crimes, as determined by the
37 State-Authorized Risk Assessment Tool for sex Offenders,
38 pursuant to Section 290.04 to 290.06, inclusive, shall participate
39 in sex offender control and containment programming while
40 incarcerated and while on parole, as developed and specified by

1 the department. The programming shall be based on current,
2 evidence-based correctional standards and proven to reduce the
3 risk of reoffending.

4 (b) Notwithstanding any other provision of law, inmates who
5 are sentenced to a life term shall not be eligible to earn any
6 credits pursuant to Article 2.5 (commencing with Section 2930)
7 of Chapter 7 of Title 1.

8 (c) Notwithstanding subdivision (c), an inmate serving a life
9 term may be excluded from sex offender programming until he
10 or she receives a parole date and is within five years of that date,
11 unless the department determines that the programming for that
12 inmate is necessary for the public safety.

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

16 SEC. 50. Section 12022.75 of the Penal Code is amended to
17 read:

18 12022.75. (a) Except as provided in subdivision (b), any
19 person who, for the purpose of committing a felony, administers
20 by injection, inhalation, ingestion, or any other means, any
21 controlled substance listed in Section 11054, 11055, 11056,
22 11057, or 11058 of the Health and Safety Code, against the
23 victim's will by means of force, violence, or fear of immediate
24 and unlawful bodily injury to the victim or another person, shall,
25 in addition and consecutive to the penalty provided for the felony
26 or attempted felony of which he or she has been convicted, be
27 punished by an additional term of three years.

28 (b) (1) Any person who, in the commission or attempted
29 commission of any offense specified in paragraph (2),
30 administers any controlled substance listed in Section 11054,
31 11055, 11056, 11057, or 11058 of the Health and Safety Code to
32 the victim shall be punished by an additional and consecutive
33 term of imprisonment in the state prison for five years.

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

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

37 (B) Sodomy, in violation of subdivision (f) or (i) of Section
38 286.

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

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

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

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

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

9 SEC. 51. Section 13887.1 of the Penal Code is amended to
10 read:

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

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

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

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

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

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

32 SEC. 52. Section 13887.5 is added to the Penal Code, to 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. 53. Section 6600 of the Welfare and Institutions Code is
39 amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 SEC. 54. Section 6601 of the Welfare and Institutions Code is
26 amended to read:

27 6601. (a) (1) Whenever the Secretary of the Department of
28 Corrections and Rehabilitation determines that an individual who
29 is in custody under the jurisdiction of that department, and who is
30 either serving a determinate prison sentence or whose parole has
31 been revoked, may be a sexually violent predator, the secretary
32 shall, at least six months prior to that individual's scheduled date
33 for release from prison, refer the person for evaluation in
34 accordance with this section. However, if the inmate was
35 received by the department with less than nine months of his or
36 her sentence to serve, or if the inmate's release date is modified
37 by judicial or administrative action, the director may refer the
38 person for evaluation in accordance with this section at a date
39 that is less than six months prior to the inmate's scheduled
40 release date.

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

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

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

(d) Pursuant to subdivision (c), the person shall be evaluated by two practicing psychiatrists or psychologists, or one practicing psychiatrist and one practicing psychologist, designated by the Director of Mental Health. If both evaluators concur that the person has a diagnosed mental disorder so that he or she is likely to engage in acts of sexual violence without appropriate

1 treatment and custody, the Director of Mental Health shall
2 forward a request for a petition for commitment under Section
3 6602 to the county designated in subdivision (i). Copies of the
4 evaluation reports and any other supporting documents shall be
5 made available to the attorney designated by the county pursuant
6 to subdivision (i) who may file a petition for commitment.

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

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

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

35 (h) If the State Department of Mental Health determines that
36 the person is a sexually violent predator as defined in this article,
37 the Director of Mental Health shall forward a request for a
38 petition to be filed for commitment under this article to the
39 county designated in subdivision (i). Copies of the evaluation
40 reports and any other supporting documents shall be made

1 available to the attorney designated by the county pursuant to
2 subdivision (i) who may file a petition for commitment in the
3 superior court.

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

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

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

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

27 SEC. 55. Section 6604 of the Welfare and Institutions Code is
28 amended to read:

29 6604. The court or jury shall determine whether, beyond a
30 reasonable doubt, the person is a sexually violent predator. If the
31 court or jury is not satisfied beyond a reasonable doubt that the
32 person is a sexually violent predator, the court shall direct that
33 the person be released at the conclusion of the term for which he
34 or she was initially sentenced, or that the person be
35 unconditionally released at the end of parole, whichever is
36 applicable. If the court or jury determines that the person is a
37 sexually violent predator, the person shall be committed for an
38 indeterminate term to the custody of the State Department of
39 Mental Health for appropriate treatment and confinement in a
40 secure facility designated by the Director of Mental Health. Time

1 spent on conditional release shall not count toward the term of
2 commitment, unless the person is placed in a locked facility by
3 the conditional release program, in which case the time in a
4 locked facility shall count toward the term of commitment. The
5 facility shall be located on the grounds of an institution under the
6 jurisdiction of the Department of Corrections and Rehabilitation.

7 SEC. 56. Section 6604.1 of the Welfare and Institutions Code
8 is amended to read:

9 6604.1. (a) The indeterminate term of commitment provided
10 for in Section 6604 shall commence on the date upon which the
11 court issues the initial order of commitment pursuant to that
12 section.

13 (b) The person shall be evaluated by two practicing
14 psychologists or psychiatrists, or by one practicing psychologist
15 and one practicing psychiatrist, designated by the State
16 Department of Mental Health. The provisions of subdivisions (c)
17 to (i), inclusive, of Section 6601 shall apply to evaluations
18 performed pursuant to a trial conducted pursuant to subdivision
19 (f) of Section 6605. The rights, requirements, and procedures set
20 forth in Section 6603 shall apply to all commitment proceedings.

21 SEC. 57. Section 6605 of the Welfare and Institutions Code is
22 amended to read:

23 6605. (a) A person found to be a sexually violent predator
24 and committed to the custody of the State Department of Mental
25 Health shall have a current examination of his or her mental
26 condition made at least once every year. The person may retain,
27 or if he or she is indigent and so requests, the court may appoint,
28 a qualified expert or professional person to examine him or her,
29 and the expert or professional person shall have access to all
30 records concerning the person.

31 (b) The director shall provide the committed person with an
32 annual written notice of his or her right to petition the court for
33 conditional release under Section 6608. The notice shall contain
34 a waiver of rights. The director shall forward the notice and
35 waiver form to the court with the annual report. If the person
36 does not affirmatively waive his or her right to petition the court
37 for conditional release, the court shall set a show cause hearing to
38 determine whether facts exist that warrant a hearing on whether
39 the person's condition has so changed that he or she would not be
40 a danger to the health and safety of others if discharged. The

1 committed person shall have the right to be present and to have
2 an attorney represent him or her at the show cause hearing.

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

9 (d) At the hearing, the committed person shall have the right to
10 be present and shall be entitled to the benefit of all constitutional
11 protections that were afforded to him or her at the initial
12 commitment proceeding. The attorney designated by the county
13 pursuant to subdivision (i) of Section 6601 shall represent the
14 state and shall have the right to demand a jury trial and to have
15 the committed person evaluated by experts chosen by the state.
16 The committed person also shall have the right to demand a jury
17 trial and to have experts evaluate him or her on his or her behalf.
18 The court shall appoint an expert if the person is indigent and
19 requests an appointment. The burden of proof at the hearing shall
20 be on the state to prove beyond a reasonable doubt that the
21 committed person's diagnosed mental disorder remains such that
22 he or she is a danger to the health and safety of others and is
23 likely to engage in sexually violent criminal behavior if
24 discharged. The committed person's failure to engage in
25 treatment shall be considered evidence that his or her condition
26 has not changed, for purposes of any court proceeding held
27 pursuant to this section, and a jury shall be so instructed.
28 Completion of treatment programs shall be a condition of release.

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

35 (f) In the event that the State Department of Mental Health has
36 reason to believe that a person committed to it as a sexually
37 violent predator is no longer a sexually violent predator, it shall
38 seek judicial review of the person's commitment pursuant to the
39 procedures set forth in Section 7250 in the superior court from
40 which the commitment was made. If the superior court

1 determines that the person is no longer a sexually violent
2 predator, he or she shall be unconditionally released and
3 unconditionally discharged.

4 SEC. 58. (a) The sum of four hundred ninety-five thousand
5 dollars (\$495,000) is hereby appropriated from the General Fund
6 to the Office of Emergency Services, Division of Criminal
7 Justice Programs for child abuse and abduction programs that
8 provide prevention education to children in schools, and parents,
9 teachers, and service providers. The objective of the programs
10 shall be to increase awareness of the problem of child abduction,
11 and basic knowledge of how children can help to protect
12 themselves from being abducted. The programs may include a
13 media component to build awareness of the problem within
14 communities.

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

19 ~~SEC. 59. The Legislature finds and declares that the changes~~
20 ~~to the law proposed by this act and the changes proposed by~~
21 ~~Jessica's Law, a proposed initiative statute, would both impose~~
22 ~~costs on the state. If both measures are enacted, the impact on the~~
23 ~~state's General Fund would be substantial due to both one-time~~
24 ~~and ongoing costs, costs that would be incurred to serve the same~~
25 ~~primary purpose of preventing sex offenses. Accordingly, this act~~
26 ~~shall be inoperative if the initiative measure commonly known as~~
27 ~~"Jessica's Law" is enacted by the voters at the November 7, 2006~~
28 ~~General Election.~~

29 ~~SEC. 60~~

30 SEC. 59. No reimbursement is required by this act pursuant to
31 Section 6 of Article XIII B of the California Constitution for
32 certain costs that may be incurred by a local agency or school
33 district because, in that regard, this act creates a new crime or
34 infraction, eliminates a crime or infraction, or changes the
35 penalty for a crime or infraction, within the meaning of Section
36 17556 of the Government Code, or changes the definition of a
37 crime within the meaning of Section 6 of Article XIII B of the
38 California Constitution.

39 However, if the Commission on State Mandates determines
40 that this act contains other costs mandated by the state,

1 reimbursement to local agencies and school districts for those
2 costs shall be made pursuant to Part 7 (commencing with Section
3 17500) of Division 4 of Title 2 of the Government Code.

4 ~~SEC. 61.~~

5 *SEC. 60.* This act is an urgency statute necessary for the
6 immediate preservation of the public peace, health, or safety
7 within the meaning of Article IV of the Constitution and shall go
8 into immediate effect. The facts constituting the necessity are::

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

11
12
13 **CORRECTIONS:** _____

14 **Text-Pages 53 and 54.** _____