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SENATE BILL

No. 1128

Introduced by Senator Alquist
(Principal coauthor: Senator Poochigian)
(Coauthor: Senator Perata)
(Coauthor: Assembly Member Nunez)

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, 3072,~~ 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.

This bill would authorize the Department of Corrections and Rehabilitation, subject to an appropriation, to establish and operate a specialized sex offender treatment pilot program for inmates whom the department determines pose a high risk to the public of committing violent sex crimes.

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 $\frac{2}{3}$ of the membership of both houses of the Legislature, defines “violent felony” for purposes of various provisions of the Penal Code.

This bill would include in that definition various sex offenses committed against a child who is under 14 years of age and more than 10 years younger than the perpetrator, or committed in concert.

Existing law provides for an enhanced prison term of 5 years for a person convicted of committing any of several specified sex offenses who had a prior conviction for any of several other specified sex offenses. The enhanced term for a person with 2 or more previous convictions of any of those sex 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~~^{3/5} 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'~~ *person's* 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 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

1 retooled to ensure that law enforcement and the public have
2 access to accurate, up-to-date, and relevant information about
3 registered sex offenders.

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

6 SEC. 3. Section 68152 of the Government Code is amended
7 to read:

8 68152. The trial court clerk may destroy court records under
9 Section 68153 after notice of destruction and if there is no
10 request and order for transfer of the records, except the
11 comprehensive historical and sample superior court records
12 preserved for research under the California Rules of Court, when
13 the following times have expired after final disposition of the
14 case in the categories listed:

15 (a) Adoption: retain permanently.

16 (b) Change of name: retain permanently.

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

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

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

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

25 (4) Eminent domain: retain permanently.

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

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

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

32 (8) Paternity: retain permanently.

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

34 (10) Real property other than unlawful detainer: retain
35 permanently if the action affects title or an interest in real
36 property.

37 (11) Small claims: 10 years.

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

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

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

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

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

(e) Criminal.

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

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

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

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

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

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

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

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

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

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

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

5 (12) Felony or misdemeanor action resulting in a requirement
6 that the defendant register as a sex offender pursuant to Section
7 290 of the Penal Code: 75 years. This paragraph shall apply to
8 records relating to a person convicted on or after the effective
9 date of Senate Bill 1128 of the 2005–06 Regular Session.

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

12 (g) Juvenile.

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

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

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

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

1 (5) Marijuana misdemeanor under subdivision (e) of Section
2 11357 of the Health and Safety Code in accordance with
3 procedures specified in subdivision (a) of Section 11361.5 of the
4 Health and Safety Code: upon reaching age 18 the records shall
5 be destroyed.

6 (h) Probate.

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

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

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

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

13 (j) Other records.

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

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

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

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

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

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

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

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

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

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

5 (11) Index for cases alleging traffic violations: same period as
6 period for retention of the records in the underlying case
7 category.

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

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

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

16 (15) Naturalization index: retain permanently.

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

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

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

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

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

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

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

36 209. (a) Any person who seizes, confines, inveigles, entices,
37 decoys, abducts, conceals, kidnaps or carries away another
38 person by any means whatsoever with intent to hold or detain, or
39 who holds or detains, that person for ransom, reward or to
40 commit extortion or to exact from another person any money or

1 valuable thing, or any person who aids or abets any of those acts,
2 is guilty of a felony. Upon conviction thereof, he or she shall be
3 punished by imprisonment in the state prison for life without
4 possibility of parole in cases in which any person subjected to
5 any of those acts suffers death or bodily harm, or is intentionally
6 confined in a manner which exposes that person to a substantial
7 likelihood of death, or shall be punished by imprisonment in the
8 state prison for life with the possibility of parole if the victim
9 does not suffer death or bodily harm.

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

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

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

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

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

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

38 (b) Any person who, in the commission of a burglary of the
39 first degree, as defined in subdivision (a) of Section 460, assaults
40 another with the intent to commit rape, sodomy, oral copulation,

1 or any violation of Section 264.1, 288, or 289 shall be punished
2 by imprisonment in the state prison for life with the possibility of
3 parole.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

288.7. (a) Any person 18 years of age or older 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 a term of 25 years to life.

(b) *Any person 18 years of age or older who engages in oral copulation or sexual penetration, as defined in Section 289, with a child who is 10 years of age or younger is guilty of a felony and*

1 *shall be punished by imprisonment in the state prison for a term*
2 *of 15 years to life.*

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

6
7 CHAPTER 5.5. SEX OFFENDERS
8

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

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

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

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

34 (i) A transient must register, or reregister if the person has
35 previously registered, within five working days from release
36 from incarceration, placement or commitment, or release on
37 probation, pursuant to paragraph (1) of subdivision (a), except
38 that if the person previously registered as a transient less than 30
39 days from the date of his or her release from incarceration, he or
40 she does not need to reregister as a transient until his or her next

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

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

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

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

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

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

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

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

39 (D) Beginning on his or her first birthday following
40 registration or change of address, the person shall be required to

1 register annually, within five working days of his or her birthday,
2 to update his or her registration with the entities described in
3 subparagraph (A). At the annual update, the person shall provide
4 current information as required on the Department of Justice
5 annual update form, including the information described in
6 subparagraphs (A) to (C), inclusive, of paragraph (2) of
7 subdivision (e).

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

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

22 (G) Persons required to register in their state of residence who
23 are out-of-state residents employed, or carrying on a vocation in
24 California on a full-time or part-time basis, with or without
25 compensation, for more than 14 days, or for an aggregate period
26 exceeding 30 days in a calendar year, shall register in accordance
27 with subparagraph (A). Persons described in paragraph (2) who
28 are out-of-state residents enrolled in any educational institution
29 in California, as defined in Section 22129 of the Education Code,
30 on a full-time or part-time basis, shall register in accordance with
31 subparagraph (A). The place where the out-of-state resident is
32 located, for purposes of registration, shall be the place where the
33 person is employed, carrying on a vocation, or attending school.
34 The out-of-state resident subject to this subparagraph shall, in
35 addition to the information required pursuant to subdivision (e),
36 provide the registering authority with the name of his or her place
37 of employment or the name of the school attended in California,
38 and his or her address or location in his or her state of residence.
39 The registration requirement for persons subject to this
40 subparagraph shall become operative on November 25, 2000.

1 The terms “employed or carries on a vocation” include
2 employment whether or not financially compensated,
3 volunteered, or performed for government or educational benefit.

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

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

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

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

39 (D) (i) Any person who, since July 1, 1944, has been, or is
40 hereafter convicted in any other court, including any state,

1 federal, or military court, of any offense that, if committed or
2 attempted in this state, would have been punishable as one or
3 more of the offenses described in subparagraph (A).

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

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

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

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

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

18 (III) Incest, pursuant to Section 285.

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

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

33 (F) Any person required to register pursuant to any provision
34 of this section, regardless of whether the person's conviction has
35 been dismissed pursuant to Section 1203.4, unless the person
36 obtains a certificate of rehabilitation and is entitled to relief from
37 registration pursuant to Section 290.5.

38 (G) (i) Notwithstanding any other subdivision, a person who
39 was convicted before January 1, 1976, under subdivision (a) of
40 Section 286, or Section 288a, shall not be required to register

1 pursuant to this section for that conviction if the conviction was
2 for conduct between consenting adults that was decriminalized
3 by Chapter 71 of the Statutes of 1975 or Chapter 1139 of the
4 Statutes of 1976. The Department of Justice shall remove that
5 person from the Sex Offender Registry, and the person is
6 discharged from his or her duty to register pursuant to the
7 following procedure:

8 (I) The person submits to the Department of Justice official
9 documentary evidence, including court records or police reports,
10 that demonstrate that the person's conviction pursuant to either of
11 those sections was for conduct between consenting adults that
12 was decriminalized; or

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

21 (III) The department shall determine whether the person's
22 conviction was for conduct between consensual adults that has
23 been decriminalized. If the conviction was for consensual
24 conduct between adults that has been decriminalized, and the
25 person has no other offenses for which he or she is required to
26 register pursuant to this section, the department shall, within 60
27 days of receipt of those documents, notify the person that he or
28 she is relieved of the duty to register, and shall notify the local
29 law enforcement agency with which the person is registered that
30 he or she has been relieved of the duty to register. The local law
31 enforcement agency shall remove the person's registration from
32 its files within 30 days of receipt of notification. If the
33 documentary or other evidence submitted is insufficient to
34 establish the person's claim, the department shall, within 60 days
35 of receipt of those documents, notify the person that his or her
36 claim cannot be established, and that the person shall continue to
37 register pursuant to this section. The department shall provide,
38 upon the person's request, any information relied upon by the
39 department in making its determination that the person shall
40 continue to register pursuant to this section. Any person whose

1 claim has been denied by the department pursuant to this clause
2 may petition the court to appeal the department's denial of the
3 person's claim.

4 (ii) On or before July 1, 1998, the department shall make a
5 report to the Legislature concerning the status of persons who
6 may come under the provisions of this subparagraph, including
7 the number of persons who were convicted before January 1,
8 1976, under subdivision (a) of Section 286 or Section 288a and
9 are required to register under this section, the average age of
10 these persons, the number of these persons who have any
11 subsequent convictions for a registerable sex offense, and the
12 number of these persons who have sought successfully or
13 unsuccessfully to be relieved of their duty to register under this
14 section.

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

35 (2) The official in charge of the place of confinement or
36 hospital shall give one copy of the form to the person and shall
37 send one copy to the Department of Justice and one copy to the
38 appropriate law enforcement agency or agencies having
39 jurisdiction over the place the person expects to reside upon
40 discharge, parole, or release. If the conviction that makes the

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

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

25 (2) Any person who is convicted in this state of the
26 commission or attempted commission of any of the offenses
27 specified in subdivision (a) and who is granted conditional
28 release without supervised probation, or discharged upon
29 payment of a fine, shall, prior to release or discharge, be
30 informed of the duty to register under this section in open court
31 by the court in which the person has been convicted, and the
32 court shall require the person to read and sign any form that may
33 be required by the Department of Justice, stating that the duty of
34 the person to register under this section has been explained to
35 him or her. If the court finds that it is in the interest of the
36 efficiency of the court, the court may assign the bailiff to require
37 the person to read and sign forms under this section. The court
38 shall obtain the address where the person expects to reside upon
39 release or discharge and shall report within three days the address
40 to the Department of Justice. The court shall give one copy of the

form to the person, send one copy to the Department of Justice, and forward one copy to the appropriate law enforcement agency or agencies having local jurisdiction where the person expects to reside upon his or her discharge, parole, or release.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

33 (B) If the person does not know the new residence address or
34 location at the time of the move, the registrant shall, in person,
35 within five working days of the move, inform the last registering
36 agency or agencies that he or she is moving. The person shall
37 later notify the last registering agency or agencies, in writing,
38 sent by certified or registered mail, of the new address or location
39 within five working days of moving into the new residence
40 address or location, whether temporary or permanent.

1 (C) The law enforcement agency or agencies shall, within
2 three working days after receipt of this information, forward a
3 copy of the change of address information to the Department of
4 Justice. The Department of Justice shall forward appropriate
5 registration data to the law enforcement agency or agencies
6 having local jurisdiction of the new place of residence.

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

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

27 (g) (1) Any person who is required to register under this
28 section based on a misdemeanor conviction or juvenile
29 adjudication who willfully violates any requirement of this
30 section is guilty of a misdemeanor punishable by imprisonment
31 in a county jail not exceeding one year.

32 (2) Except as provided in paragraphs (5), (7), and (9), any
33 person who is required to register under this section based on a
34 felony conviction or juvenile adjudication who willfully violates
35 any requirement of this section or who has a prior conviction or
36 juvenile adjudication for the offense of failing to register under
37 this section and who subsequently and willfully violates any
38 requirement of this section is guilty of a felony and shall be
39 punished by imprisonment in the state prison for 16 months, or
40 two or three years.

1 If probation is granted or if the imposition or execution of
2 sentence is suspended, it shall be a condition of the probation or
3 suspension that the person serve at least 90 days in a county jail.
4 The penalty described in this paragraph shall apply whether or
5 not the person has been released on parole or has been discharged
6 from parole.

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

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

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

39 (6) Except as otherwise provided in paragraph (5), any person
40 who is required to register or reregister pursuant to clause (i) of

1 subparagraph (C) of paragraph (1) of subdivision (a) and
2 willfully fails to comply with the requirement that he or she
3 reregister no less than every 30 days is guilty of a misdemeanor
4 and shall be punished by imprisonment in a county jail at least 30
5 days, but not exceeding six months. A person who willfully fails
6 to comply with the requirement that he or she reregister no less
7 than every 30 days shall not be charged with this violation more
8 often than once for a failure to register in any period of 90 days.
9 Any person who willfully commits a third or subsequent
10 violation of the requirements of subparagraph (C) of paragraph
11 (1) of subdivision (a) that he or she reregister no less than every
12 30 days shall be punished in accordance with either paragraph (1)
13 or (2) of this subdivision.

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

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

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

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

34 (i) Except as otherwise provided by law, the statements,
35 photographs, and fingerprints required by this section shall not be
36 open to inspection by the public or by any person other than a
37 regularly employed peace officer or other law enforcement
38 officer.

39 (j) In any case in which a person who would be required to
40 register pursuant to this section for a felony conviction is to be

1 temporarily sent outside the institution where he or she is
2 confined on any assignment within a city or county including
3 firefighting, disaster control, or of whatever nature the
4 assignment may be, the local law enforcement agency having
5 jurisdiction over the place or places where the assignment shall
6 occur shall be notified within a reasonable time prior to removal
7 from the institution. This subdivision shall not apply to any
8 person who is temporarily released under guard from the
9 institution where he or she is confined.

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

16 (l) (1) Every person who, prior to January 1, 1997, is required
17 to register under this section, shall be notified whenever he or she
18 next reregisters of the reduction of the registration period from
19 14 to 5 working days. This notice shall be provided in writing by
20 the registering agency or agencies. Failure to receive this
21 notification shall be a defense against the penalties prescribed by
22 subdivision (g) if the person did register within 14 days.

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

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

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

38 (1) Correct all software deficiencies affecting data integrity
39 and include designated data fields for all mandated sex offender
40 data.

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

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

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

7 (5) Incorporate a flexible design structure to readily meet
8 future demands for enhanced system functionality, including
9 public Internet access to sex offender information pursuant to
10 Section 290.46.

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

12 290.03. (a) The Legislature finds and declares that a
13 comprehensive system of risk assessment, supervision,
14 monitoring and containment for registered sex offenders residing
15 in California communities is necessary to enhance public safety
16 and reduce the risk of recidivism posed by these offenders. The
17 Legislature further affirms and incorporates the following
18 findings and declarations, previously reflected in its enactment of
19 “Megan’s Law”:

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

24 (2) It is a compelling and necessary public interest that the
25 public have information concerning persons convicted of
26 offenses involving unlawful sexual behavior collected pursuant
27 to Sections 290 and 290.4 to allow members of the public to
28 adequately protect themselves and their children from these
29 persons.

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

33 (4) In balancing the offenders’ due process and other rights
34 against the interests of public security, the Legislature finds that
35 releasing information about sex offenders under the
36 circumstances specified in the Sex Offender Punishment,
37 Control, and Containment Act of 2006 will further the primary
38 government interest of protecting vulnerable populations from
39 potential harm.

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

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

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

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

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

290.04. (a) (1) The sex offender risk assessment tools authorized by this section for use with selected populations shall be known, with respect to each population, as the State-Authorized Risk Assessment Tool for Sex Offenders

1 (SARATSO). If a SARATSO has not been selected for a given
2 population pursuant to this section, no duty to administer the
3 SARATSO elsewhere in this code shall apply with respect to that
4 population. Every person required to register as a sex offender
5 shall be subject to assessment with the SARATSO as set forth in
6 this section and elsewhere in this code.

7 (2) A representative of the Department of Corrections and
8 Rehabilitation, in consultation with a representative of the
9 Department of Mental Health and a representative of the
10 Attorney General's office, shall comprise the SARATSO Review
11 Committee. The purpose of the committee shall be to ensure that
12 the SARATSO reflects the most reliable, objective and
13 well-established protocols for predicting sex offender risk of
14 recidivism, has been scientifically validated with multiple
15 cross-validations, and is widely accepted by the courts. The
16 committee shall consult with experts in the fields of risk
17 assessment and the use of actuarial instruments in predicting sex
18 offender risk, sex offending, sex offender treatment, mental
19 health, and law, as it deems appropriate.

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

23 (2) On or before January 1, 2008, the SARATSO Review
24 Committee shall determine whether the STATIC-99 should be
25 supplemented with an actuarial instrument that measures
26 dynamic risk factors or whether the STATIC-99 should be
27 replaced as the SARATSO with a different risk assessment tool.
28 If the committee unanimously agrees on changes to be made to
29 the SARATSO, it shall advise the Governor and the Legislature
30 of the changes, and it shall post its decision on the Department of
31 Corrections and Rehabilitation's Internet Web site. Sixty days
32 after the decision is posted, the selected tool shall become the
33 SARATSO for adult males.

34 (c) On or before July 1, 2007, the SARATSO Review
35 Committee shall research risk assessment tools for females
36 required to register as sex offenders. If the committee
37 unanimously agrees on an appropriate risk assessment tool to be
38 used to assess this population, it shall advise the Governor and
39 the Legislature of the selected tool, and it shall post its decision
40 on the Department of Corrections and Rehabilitation's Internet

1 Web site. Sixty days after the decision is posted, the selected tool
2 shall become the SARATSO for females.

3 (d) On or before January 1, 2007, the SARATSO Review
4 Committee shall research risk assessment tools for juveniles
5 required to register as sex offenders. If the committee
6 unanimously agrees on an appropriate risk assessment tool to be
7 used to assess this population, it shall advise the Governor and
8 the Legislature of the selected tool, and it shall post its decision
9 on the Department of Corrections and Rehabilitation's Internet
10 Web site. Sixty days after the decision is posted, the selected tool
11 shall become the SARATSO for juveniles.

12 (e) The committee shall periodically evaluate the SARATSO
13 for each specified population. If the committee unanimously
14 agrees on a change to the SARATSO for any population, it shall
15 advise the Governor and the Legislature of the selected tool, and
16 it shall post its decision on the Department of Corrections and
17 Rehabilitation's Internet Web site. Sixty days after the decision is
18 posted, the selected tool shall become the SARATSO for that
19 population.

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

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

25 290.05. (a) On or before January 1, 2008, the SARATSO
26 Review Committee established pursuant to Section 290.04, in
27 consultation with probation officers and parole officers, shall
28 develop a training program for probation officers, parole officers,
29 local law enforcement personnel, and any other persons
30 authorized by this code to administer the SARATSO, as set forth
31 in Section 290.04. The Department of Corrections and
32 Rehabilitation shall be responsible for overseeing the training,
33 which shall be conducted by experts in the field of risk
34 assessment and the use of actuarial instruments in predicting sex
35 offender risk. Subject to requirements promulgated by the
36 committee, probation departments, regional parole officers, and
37 local law enforcement agencies shall designate key persons
38 within their organizations to attend training and, as authorized by
39 the department, to train others within their organizations
40 designated to perform risk assessments as required or authorized

1 by law. Any person who administers the SARATSO shall receive
2 training no less frequently than every two years.

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

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

6 290.06. Effective on or before July 1, 2008, the SARATSO,
7 as set forth in Section 290.04, shall be administered as follows:

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

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

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

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

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

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

28 (c) The SARATSO Review Committee established pursuant to
29 Section 290.04, in consultation with probation officers and local
30 law enforcement agencies, shall establish a plan and a schedule
31 for assessing eligible persons not assessed pursuant to
32 subdivision (a). The plan shall provide for adult males to be
33 assessed on or before January 1, 2012, and for females and
34 juveniles to be assessed on or before January 1, 2013, and it shall
35 give priority to assessing those persons most recently convicted
36 of an offense requiring registration as a sex offender. On or
37 before January 15, 2008, the committee shall introduce
38 legislation to implement the plan.

39 (d) On or before January 1, 2008, the SARATSO Review
40 Committee shall research the appropriateness and feasibility of

1 providing a means by which an eligible person subject to
2 assessment may, at his or her own expense, be assessed with the
3 SARATSO by a governmental entity prior to his or her scheduled
4 assessment. If the committee unanimously agrees that such a
5 process is appropriate and feasible, it shall advise the Governor
6 and the Legislature of the selected tool, and it shall post its
7 decision on the Department of Corrections and Rehabilitation's
8 Internet Web site. Sixty days after the decision is posted, the
9 established process shall become effective.

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

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

16 290.07. Notwithstanding any other provision of law, any
17 person authorized by statute to administer the State Authorized
18 Risk Assessment Tool for Sex Offenders and trained pursuant to
19 Section 290.06 shall be granted access to all relevant records
20 pertaining to a registered sex offender, including, but not limited
21 to, criminal histories, sex offender registration records, police
22 reports, probation and presentencing reports, judicial records and
23 case files, juvenile records, ~~records maintained by Child~~
24 ~~Protective Services~~, psychological evaluations and psychiatric
25 hospital reports, sexually violent predator treatment program
26 reports, and records that have been sealed by the courts or the
27 Department of Justice. Records and information obtained under
28 this section shall not be subject to the California Public Records
29 Act, Chapter 3.5 (commencing with Section 6250) of Division 7
30 of Title 1 of the Government Code.

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

32 290.08. Every district attorney's office, parole office, and the
33 Department of Justice shall retain records relating to a person
34 convicted of an offense for which registration is required
35 pursuant to Section 290 for a period of 75 years after disposition
36 of the case.

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

38 290.3. (a) Every person who is convicted of any offense
39 specified in subdivision (a) of Section 290 shall, in addition to
40 any imprisonment or fine, or both, imposed for violation of the

1 underlying offense, be punished by a fine of three hundred
2 dollars (\$300) upon the first conviction or a fine of five hundred
3 dollars (\$500) upon the second and each subsequent conviction,
4 unless the court determines that the defendant does not have the
5 ability to pay the fine.

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

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

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

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

1 shall be available for expenditure upon appropriation by the
2 Legislature.

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

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

21 (d) An amount equal to one hundred dollars (\$100) for every
22 fine imposed pursuant to subdivision (a) in excess of one
23 hundred dollars (\$100) shall be transferred to the Department of
24 Corrections and Rehabilitation to fund SAFE teams pursuant to
25 Chapter 9.7 (commencing with Section 13887) of Title 6 of Part
26 4.

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

29 290.46. (a) (1) On or before the dates specified in this
30 section, the Department of Justice shall make available
31 information concerning persons who are required to register
32 pursuant to Section 290 to the public via an Internet Web site as
33 specified in this section. The department shall update the Internet
34 Web site on an ongoing basis. All information identifying the
35 victim by name, birth date, address, or relationship to the
36 registrant shall be excluded from the Internet Web site. The name
37 or address of the person's employer and the listed person's
38 criminal history other than the specific crimes for which the
39 person is required to register shall not be included on the Internet

1 Web site. The Internet Web site shall be translated into languages
2 other than English, as determined by the department.

3 (2) (A) On or before June 1, 2010, the Department of Justice
4 shall make available to the public, as to any person described in
5 subdivisions (b), (c), or (d), the year of conviction of his or her
6 most recent offense requiring registration pursuant to Section
7 290, and the year he or she was released from incarceration for
8 that crime. However, no year of conviction shall be made
9 available to the public unless the Department of Justice also is
10 able to display the year of release from incarceration.

11 (B) (i) Any state or local facility that release from
12 incarceration a person who was incarcerated because of a crime
13 for which he or she was required to register as a sex offender
14 pursuant to Section 290 shall, within 30 days of that person's
15 release, provide the year of conviction and year of release from
16 incarceration for that crime to the Department of Justice, in a
17 manner and format approved by the Department of Justice.

18 (ii) Any state or local facility that, prior to January 1, 2007,
19 released from incarceration a person described in ~~subparagraph~~
20 *clause* (i), shall provide to the Department of Justice the year of
21 conviction and year of release for that person's most recent
22 offense that required registration.

23 (3) The Department of Mental Health shall provide to the
24 Department of Justice Sex Offender Tracking Program the names
25 of all persons committed to its custody pursuant to Article 4
26 (commencing with Section 6600) of Chapter 2 of Part 2 of
27 Division 6 of the Welfare and Institutions Code, within 30 days
28 of commitment, and shall provide the names of all of those
29 persons released from its custody within five working days of
30 release.

31 (b) (1) On or before July 1, 2005, with respect to a person
32 who has been convicted of the commission or the attempted
33 commission of any of the offenses listed in, or who is described
34 in, paragraph (2), the Department of Justice shall make available
35 to the public via the Internet Web site his or her name and known
36 aliases, a photograph, a physical description, including gender
37 and race, date of birth, criminal history, prior adjudication as a
38 sexually violent predator, the address at which the person resides,
39 and any other information that the Department of Justice deems

1 relevant, but not the information excluded pursuant to
2 subdivision (a).

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

5 (A) Section 207 committed with intent to violate Section 261,
6 286, 288, 288a, or 289.

7 (B) Section 209 committed with intent to violate Section 261,
8 286, 288, 288a, or 289.

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

10 (D) Section 264.1.

11 (E) Section 269.

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

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

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

16 (I) Section 288.5 or 288.7.

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

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

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

1 of an offense listed in paragraph (2) of subdivision (a) of Section
2 290, subject to this subdivision.

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

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

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

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

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

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

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

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

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

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

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

29 (D) Section 266j.

30 (E) Section 267.

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

33 (G) Section 626.83 or 647.6.

34 (H) Any person required to register pursuant to Section 290
35 based upon an out-of-state conviction, unless that person is
36 excluded from the Internet Web site pursuant to subdivision (e).
37 However, if the Department of Justice has determined that the
38 out-of-state crime, if committed or attempted in this state, would
39 have been punishable in this state as a crime described in
40 subparagraph (A) of paragraph (2) of subdivision (a) of Section

1 290, the person shall be placed on the Internet Web site as
2 provided in subdivision (b) or (c), as applicable to the crime.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

39 (2) The law enforcement entity may make available by way of
40 an Internet Web site the information described in subdivision (c)

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

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

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

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

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

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

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

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

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

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

- 3 (A) Health insurance.
- 4 (B) Insurance.
- 5 (C) Loans.
- 6 (D) Credit.
- 7 (E) Employment.
- 8 (F) Education, scholarships, or fellowships.
- 9 (G) Housing or accommodations.
- 10 (H) Benefits, privileges, or services provided by any business
11 establishment.

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

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

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

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

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

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

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

22 SEC. 21. Chapter 7.5 (commencing with Section 311) of Title
23 9 of Part 1 of the Penal Code is repealed.

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

26
27 CHAPTER 7.5. CHILD PORNOGRAPHY
28

29 311. For purposes of this chapter, the following definitions
30 apply:

31 (a) "Matter" means any picture, drawing, photograph, film,
32 filmstrip, negative, slide, photocopy, videotape, video laser disc,
33 computer hardware, computer software, computer floppy disc,
34 data storage media, CD-ROM, or computer-generated equipment,
35 or any other computer-generated image, motion picture, or other
36 pictorial representation, or any statue or other figure, or any
37 recording, transcription, or mechanical, chemical, or electrical
38 reproduction, or any other article, equipment, machine, or
39 material.

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

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

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

(e) “Exhibit” means show.

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

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

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

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

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

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

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

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

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

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

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

311.1. (a) Any person who knows or reasonably should know that a person is a minor under 18 years of age, who knowingly promotes, employs, uses, persuades, induces, or

1 coerces the minor, or any parent or guardian of a minor under his
2 or her control who knowingly permits the minor, to engage in or
3 assist others to engage in either posing or modeling alone or with
4 others for purposes of preparing any matter, or a live
5 performance involving, sexual conduct by the minor alone or
6 with other persons or animals, for commercial purposes, is guilty
7 of a felony and shall be punished by imprisonment in the state
8 prison for three, six, or eight years. Where the crime does not
9 involve commercial consideration, the defendant shall be
10 punished in state prison for two, three, or four years. Commercial
11 consideration may include barter or exchange.

12 (b) In every prosecution under this section involving a minor
13 under 14 years of age at the time of the offense, the age of the
14 victim shall be pled and proven for the purpose of the enhanced
15 penalty provided in Section 647.6. Failure to plead and prove that
16 the victim was under 14 years of age at the time of the offense is
17 not a bar to prosecution under this section if it is proven that the
18 victim was under 18 years of age at the time of the offense.

19 311.2. (a) Any person who knowingly possesses or controls
20 any matter; *that depicts a minor* personally engaging in or
21 simulating sexual conduct, as defined in this chapter, is guilty of
22 a crime. The specific offenses, penalties and additional
23 definitions applicable to this section are described in the
24 following paragraphs. It is an element of each offense described
25 in this section that the defendant knew or should have known that
26 the child depicted is under the age specified in the definition of
27 each particular crime.

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

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

36 (b) Any person who commits a violation of subdivision (a) and
37 who has been previously convicted of a violation of this section,
38 of an offense described in subparagraph (A) of paragraph (2) of
39 subdivision (a) of Section 290, any offense for which he or she
40 was required to register pursuant to Section 290, of a violation of

1 Section 311.1, or of subdivision (b) or (d) of former Section
2 311.2, Section 311.3, subdivision (b) or (c) of former Section
3 311.4, or of an attempt to commit any of those offenses, or any
4 person who has been found to be a sexually violent predator
5 pursuant to Article 4 (commencing with Section 6600) of
6 Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions
7 Code, is guilty of a felony and shall be punished by
8 imprisonment for two, four, or six years.

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

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

13 311.3. Any person who knowingly sends or causes to be sent,
14 or brings or causes to be brought, into this state for sale or
15 distribution, or *who* distributes, exhibits, ~~exchanges, possesses,~~
16 ~~prepares, publishes, produces, develops, duplicates, or prints, any~~
17 ~~matter, or has or exchanges any matter, or who possesses,~~
18 *prepares, produces, develops, duplicates, or prints that matter,*
19 *with the intent to distribute, exhibit, or exchange that matter with*
20 *another person, is guilty of an offense as specified in this section.*

21 It is an element of each offense described in this section that the
22 defendant knew or should have known that the child depicted is
23 under the age specified in the definition of each particular crime.

24 (a) If the matter depicts a child who is under 16 years of age
25 engaged in sexual conduct, the crime is a felony. If the matter
26 depicts a child under 16 years of age engaged in explicit sexual
27 conduct, as defined in subdivision (h) of Section 311, the person
28 is punishable by incarceration in the state prison for two, three, or
29 four years.

30 (b) If the matter depicts a child who is 16 or 17 years of age,
31 the crime may be charged as a misdemeanor or felony. If the
32 matter depicts a child who is 16 or 17 years of age engaged in
33 explicit sexual conduct, the crime is a felony.

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

38 (d) For purposes of this section, distribution, exchange,
39 exhibition and related conduct can be accomplished by means
40 that include, but are not limited to, postal delivery, delivery or

1 shipping services, personal transport, electronic mail; the
2 Internet, as defined in paragraph (6) of subdivision (f) of Section
3 17538 of the Business and Professions Code; a commercial
4 online service; or peer-to-peer file sharing, or any equivalent
5 means or manner.

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

17 311.5. When a conviction under this chapter becomes final,
18 the court shall order any matter that is the subject of the
19 conviction which remains in the possession or under the control
20 of the district attorney or any law enforcement agency, to be
21 destroyed, and the court shall also cause any such material in its
22 possession or under its control to be destroyed.

23 311.6. *Every person who knowingly engages or participates*
24 *in, manages, produces, sponsors, presents or exhibits obscene*
25 *live conduct to or before an assembly or audience consisting of*
26 *at least one person or spectator in any public place or in any*
27 *place exposed to public view, or in any place open to the public*
28 *or to a segment thereof, whether or not an admission fee is*
29 *charged, or whether or not attendance is conditioned upon the*
30 *presentation of a membership card or other token, is guilty of a*
31 *misdemeanor.*

32 311.7. (a) It shall be a defense in any prosecution for a
33 violation of this chapter that the act charged was committed in
34 aid of legitimate medical, scientific, or educational activities, or
35 during lawful conduct between spouses when one or both are
36 under 18 years of age, or that the matter depicts a child under 18
37 years of age if that child is legally emancipated.

38 (b) This chapter does not apply to the activities of law
39 enforcement and prosecuting agencies in the investigation and
40 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.~~

311.8. 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:

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

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

(2) In prosecutions under this chapter, if circumstances of production, presentation, sale, dissemination, distribution, or

1 publicity indicate that matter is being commercially exploited by
2 the defendant for the sake of its prurient appeal, this evidence is
3 probative with respect to the nature of the matter and may justify
4 the conclusion that the matter lacks serious literary, artistic,
5 political, or scientific value.

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

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

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

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

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

32 (f) “Exhibit” means show.

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

1 way and that, taken as a whole, lacks serious literary, artistic,
2 political, or scientific value.

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

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

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

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

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

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

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

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

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

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

36 (7) Any lewd or lascivious sexual act as defined in Section
37 288.

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

1 312.1. (a) Any person who knowingly sends or causes to be
2 sent, or brings or causes to be brought, into this state for sale or
3 distribution, or in this state possesses, prepares, publishes,
4 produces, or prints, with intent to distribute or to exhibit to
5 others, or who offers to distribute, distributes, or exhibits to
6 others, any obscene matter is, for a first offense, guilty of a
7 misdemeanor, punishable by imprisonment in a county jail and a
8 fine of up to five thousand dollars (\$5,000). If the person has
9 previously been convicted of any violation of this section, or of a
10 crime in Chapter 7.5 (commencing with Section 311) the person
11 is guilty of a felony, punishable by imprisonment in the state
12 prison and a fine of up to fifty thousand dollars (\$50,000).

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

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

25 312.3. Any person who writes, creates, or solicits the
26 publication or distribution of advertising or other promotional
27 material, or who in any manner promotes, the sale, distribution,
28 or exhibition of matter represented or held out by him or her to
29 be obscene, is guilty of a misdemeanor, punishable by
30 imprisonment in the county jail for up to one year, a fine of up to
31 five thousand dollars (\$5,000), or both. If the person has
32 previously been convicted of any offense in this chapter, or of a
33 violation of Section 313.1, the person shall be punished by
34 imprisonment in the state prison.

35 312.4. (a) Any person who, knowingly, as a condition to a
36 sale, allocation, consignment, or delivery for resale of any paper,
37 magazine, book, periodical, publication or other merchandise,
38 requires that the purchaser or consignee receive any obscene
39 matter, or who denies or threatens to deny a franchise, revokes or
40 threatens to revoke, or imposes any penalty, financial or

1 otherwise, by reason of the failure of any person to accept
2 obscene matter, or by reason of the return of that matter, is guilty
3 of a misdemeanor.

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

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

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

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

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

36 312.5. (a) In any prosecution for a violation of the provisions
37 of this chapter or of Chapter 7.6 (commencing with Section 313),
38 neither the prosecution nor the defense shall be required to
39 introduce expert witness testimony concerning the obscene or

1 harmful character of the matter or live conduct that is the subject
2 of the prosecution.

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

11 312.6. When a conviction under this chapter becomes final,
12 the court shall order any matter that is the subject of the
13 conviction which remains in the possession or under the control
14 of the district attorney or any law enforcement agency, to be
15 destroyed, and the court shall also cause any such material in its
16 possession or under its control to be destroyed.

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

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

21
22 CHAPTER 7.6. HARMFUL MATTER
23

24 313. As used in this chapter:

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

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

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

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

3 (b) “Matter” means any book, magazine, newspaper, video
4 recording, or other printed or written material or any picture,
5 drawing, photograph, motion picture, or other pictorial
6 representation or any statue or other figure, or any recording,
7 transcription, or mechanical, chemical, or electrical reproduction
8 or any other articles, equipment, machines, or materials. “Matter”
9 also includes live or recorded telephone messages when
10 transmitted, disseminated, or distributed as part of a commercial
11 transaction.

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

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

17 (e) “Knowingly” means being aware of the character of the
18 matter.

19 (f) “Exhibit” means to show.

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

21 313.1. (a) (1) Any person who, with knowledge that a
22 person is a minor, or who fails to exercise reasonable care in
23 ascertaining the true age of a minor, knowingly sells, rents,
24 distributes, sends, causes to be sent, exhibits, or offers to
25 distribute or exhibit by any means, including, but not limited to,
26 live or recorded telephone messages, any harmful matter to the
27 minor shall be punished as specified in Section 313.5.

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

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

37 (c) (1) Any person who knowingly displays, sells, or offers to
38 sell in any coin-operated or slug-operated vending machine or
39 mechanically or electronically controlled vending machine that is
40 located in a public place, other than a public place from which

minors are excluded, any harmful matter displaying to the public view photographs or pictorial representations of the commission of any of the following acts shall be punished as specified in Section 313.5: sodomy, oral copulation, sexual intercourse, masturbation, bestiality, or a photograph of an exposed penis in an erect and turgid state.

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

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

(e) Any person who sells or rents video recordings of harmful matter shall create an area within his or her business establishment for the placement of video recordings of harmful matter and for any material that advertises the sale or rental of these video recordings. This area shall be labeled “adults only.” The failure to create and label the area is an infraction, punishable by a fine not to exceed one hundred dollars (\$100). The failure to place a video recording or advertisement, regardless of its content, in this area shall not constitute an infraction. Any person who sells or distributes video recordings of harmful matter to others for resale purposes shall inform the purchaser of the requirements of this section. This subdivision shall not apply to public libraries, as defined in Section 18710 of the Education Code.

(f) Any person who rents a video recording and alters the video recording by adding harmful material, and who then returns the video recording to a video rental store, shall be guilty of a misdemeanor. It shall be a defense in any prosecution for a violation of this subdivision that the video rental store failed to

1 post a sign, reasonably visible to all customers, delineating the
2 provisions of this subdivision.

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

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

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

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

25 (1) Required the person receiving the harmful matter to use an
26 authorized access or identification card to the vending machine
27 after taking reasonable measures to ascertain that the applicant
28 was 18 years of age or older and has established a procedure to
29 immediately cancel the card of any person after receiving notice,
30 in writing or by telephone, that the code has been lost, stolen, or
31 used by persons under 18 years of age or that the card is no
32 longer desired.

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

37 (i) Any list of applicants or recipients compiled or maintained
38 by an information-access service provider for purposes of
39 compliance with paragraph (1) of subdivision (g) is confidential

1 and shall not be sold or otherwise disseminated except upon
2 order of the court.

3 313.2. (a) Nothing in this chapter shall prohibit any parent or
4 guardian from distributing any harmful matter to his or her child
5 or ward or permitting his or her child or ward to attend an
6 exhibition of any harmful matter if the child or ward is
7 accompanied by him or her.

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

10 (1) A minor who is accompanied by his or her parent or
11 guardian.

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

16 313.3. It shall be a defense in any prosecution for a violation
17 of this chapter that the act charged was committed in aid of
18 legitimate scientific or educational purposes.

19 313.4. When a conviction under this chapter becomes final,
20 the court shall order any matter that is the subject of the
21 conviction which remains in the possession or under the control
22 of the district attorney or any law enforcement agency, to be
23 destroyed, and the court shall also cause any such material in its
24 possession or under its control to be destroyed.

25 313.5. Any person who violates Section 313.1, other than
26 subdivision (e), is punishable by a fine of not more than two
27 thousand dollars (\$2,000), by imprisonment in the county jail for
28 not more than one year, or by both that fine and imprisonment.
29 However, if the person has been previously convicted of a
30 violation of Section 313.1, other than subdivision (e), or of any
31 section of Chapter 7.5 (commencing with Section 311), the
32 person shall be punished by imprisonment in the state prison.

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

35
36 CHAPTER 7.65. GENERAL PROVISIONS RELATED TO
37 PROHIBITED MATERIAL
38

39 313.5. If any phrase, clause, sentence, section or provision of
40 ~~Chapters~~ Chapter 7.5 (commencing with Section 311), Chapter

1 7.55 (commencing with Section 312), or Chapter 7.6
2 (commencing with Section 313) or application thereof to any
3 person or circumstance is held invalid, that invalidity shall not
4 affect any other phrase, clause, sentence, section, provision or
5 application of this chapter, which can be given effect without the
6 invalid phrase, clause, sentence, section, provision or application
7 and to this end the provisions of this chapter are declared to be
8 severable.

9 313.6. (a) It does not constitute a violation of the crimes
10 defined in the aforementioned chapters for a person or entity
11 solely to provide access or connection to or from a facility,
12 system, or network over which that person or entity has no
13 control, including related capabilities that are incidental to
14 providing access or connection. This subdivision does not apply
15 to an individual or entity that is owned or controlled by, or a
16 conspirator with, an entity actively involved in the creation,
17 editing, or knowing distribution of communications that violate
18 this chapter.

19 (b) An employer is not liable under the aforementioned
20 chapters for the actions of an employee or agent unless the
21 employee's or agent's conduct is within the scope of his or her
22 employment or agency and the employer has knowledge of,
23 authorizes, or ratifies the employee's or agent's conduct.

24 (c) It is a defense to prosecution under the aforementioned
25 chapters and in any civil action that may be instituted based on a
26 violation of any of those chapters that a person has taken
27 reasonable, effective, and appropriate actions in good faith to
28 restrict or prevent the transmission of, or access to, a
29 communication specified in that chapter.

30 313.7. Nothing in the aforementioned chapters shall be
31 construed to apply to interstate services or to any other activities
32 or actions for which states are prohibited from imposing liability
33 pursuant to paragraph (4) of subsection (g) of Section 223 of
34 Title 47 of the United States Code.

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

36 626.8. (a) Any person who comes into any school building or
37 upon any school ground, or street, sidewalk, or public way
38 adjacent thereto, without lawful business thereon, and whose
39 presence or acts interfere with the peaceful conduct of the
40 activities of the school or disrupt the school or its pupils or

1 school activities, unless the person is a parent or guardian of a
2 child attending that school, or is a student at the school or has
3 prior written permission for the entry from the chief
4 administrative officer of that school, is guilty of a misdemeanor
5 if he or she does any of the following:

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

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

15 (3) Has otherwise established a continued pattern of
16 unauthorized entry.

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

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

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

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

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

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

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

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

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

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

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

21 626.83. (a) Any person who has been convicted of a crime
22 listed in subparagraph (A) of paragraph (2) of subdivision (a) of
23 Section 290, who comes into any school building or upon any
24 school ground, without lawful business thereon or written
25 permission from the chief administrative official of that school,
26 or who loiters about any street, sidewalk, or public way adjacent
27 to any school building, school grounds, public playground, or
28 other youth recreational facility where minors are present without
29 lawful business thereon, is guilty of a misdemeanor.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) Where one of the new offenses is one of the violent felonies specified in subdivision (c), in addition to and consecutive to any other prison terms therefor, the court shall impose a three-year term for each prior separate prison term

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

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

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

18 (1) Murder or voluntary manslaughter.

19 (2) Mayhem.

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

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

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

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

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

31 (8) Any felony in which the defendant inflicts great bodily
32 injury on any person other than an accomplice which has been
33 charged and proved as provided for in Section 12022.7, 12022.8,
34 or 12022.9 on or after July 1, 1977, or as specified prior to July
35 1, 1977, in Sections 213, 264, and 461, or any felony in which
36 the defendant uses a firearm which use has been charged and
37 proved as provided in subdivision (a) of Section 12022.3, or
38 Section 12022.5 or 12022.55.

39 (9) Any robbery.

1 (10) Arson, in violation of subdivision (a) or (b) of Section
2 451.

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

5 (12) Attempted murder.

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

7 (14) Kidnapping.

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

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

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

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

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

17 (20) Threats to victims or witnesses, as defined in Section
18 136.1, which would constitute a felony violation of Section
19 186.22 of the Penal Code.

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

24 (22) Any violation of Section 12022.53.

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

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

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

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

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

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

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

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

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

35 (k) Notwithstanding subdivisions (d) and (g) or any other
36 provision of law, where one of the new offenses is committed
37 while the defendant is temporarily removed from prison pursuant
38 to Section 2690 or while the defendant is transferred to a
39 community facility pursuant to Section 3416, 6253, or 6263, or
40 while the defendant is on furlough pursuant to Section 6254, the

1 defendant shall be subject to the full enhancements provided for
2 in this section.

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

6 SEC. 31. Section 667.51 of the Penal Code is amended to
7 read:

8 667.51. (a) Any person who is convicted of violating Section
9 288 or 288.5 shall receive a five-year enhancement for a prior
10 conviction of an offense specified in subdivision (b).

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

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

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

20 667.6. (a) Any person who is convicted of an offense
21 specified in subdivision (e) and who has been convicted
22 previously of any of those offenses shall receive a five-year
23 enhancement for each of those prior convictions.

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

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

shall not be merged therein but shall commence at the time the person otherwise would have been released from prison.

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

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

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

(e) This section applies to the following offenses:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) Except as provided in subdivision (a), any person who is convicted of an offense specified in subdivision (c) under one of the circumstances specified in subdivision (e) shall be punished by imprisonment in the state prison for 15 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 (b) of Section 288.

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

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

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

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

9 (9)

10 (8) A lewd or lascivious act, in violation of subdivision (a) of
11 Section 288.

12 ~~(10)~~

13 (9) Continuous sexual abuse of a child, in violation of Section
14 288.5.

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

17 (1) The defendant has been previously convicted of an offense
18 specified in subdivision (c), including an offense committed in
19 another jurisdiction that includes all of the elements of an offense
20 specified in subdivision (c).

21 (2) The defendant kidnapped the victim of the present offense
22 and the movement of the victim substantially increased the risk
23 of harm to the victim over and above that level of risk necessarily
24 inherent in the underlying offense in subdivision (c).

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

28 (4) The defendant committed the present offense during the
29 commission of a burglary of the first degree, as defined in
30 subdivision (a) of Section 460, with intent to commit an offense
31 specified in subdivision (c).

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

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

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

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

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

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

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

16 (6) The defendant engaged in the tying or binding of the
17 victim or another person in the commission of the present
18 offense.

19 (7) The defendant administered a controlled substance to the
20 victim in the commission of the present offense in violation of
21 Section 12022.75.

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

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

29 ~~(10) The victim of sexual penetration was a child 10 years of~~
30 ~~age or younger and the adult penetrated or caused the penetration~~
31 ~~of the vagina or rectum of the child.~~

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

1 addition to the punishment provided by this section. However, if
2 any additional circumstance or circumstances specified in
3 subdivision (d) or (e) have been pled and proved, the minimum
4 number of circumstances shall be used as the basis for imposing
5 the term provided in subdivision (a), and any other additional
6 circumstance or circumstances shall be used to impose any
7 punishment or enhancement authorized under any other provision
8 of law.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

38 (b) Notwithstanding subdivision (a), prosecution for a
39 violation of subdivision (b) of Section 311.4 shall commence

1 within 10 years of the date of production of the pornographic
2 material.

3 SEC. 36. Section 1170.125 of the Penal Code is amended to
4 read:

5 1170.125. Notwithstanding Section 2 of Proposition 184, as
6 adopted at the November 8, 1994, general election, for all
7 offenses committed on or after the effective date of this act, all
8 references to existing statutes in Section 1170.12 are to those
9 statutes as they existed on the effective date of this act, including
10 amendments made to those statutes by the act enacted during the
11 2005–06 Regular Session that amended this section.

12 SEC. 37. Section 1192.7 of the Penal Code is amended to
13 read:

14 1192.7. (a) (1) It is the intent of the Legislature that district
15 attorneys prosecute violent sex crimes under statutes that provide
16 sentencing under a “one strike,” “three strikes” or habitual sex
17 offender statute instead of engaging in plea bargaining over those
18 offenses.

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

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

39 (b) As used in this section “plea bargaining” means any
40 bargaining, negotiation, or discussion between a criminal

1 defendant, or his or her counsel, and a prosecuting attorney or
2 judge, whereby the defendant agrees to plead guilty or nolo
3 contendere, in exchange for any promises, commitments,
4 concessions, assurances, or consideration by the prosecuting
5 attorney or judge relating to any charge against the defendant or
6 to the sentencing of the defendant.

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

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

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

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

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

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

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

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

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

SEC. 38. Section 1202.8 of the Penal Code is amended to read:

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

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

SEC. 39. Section 1203 of the Penal Code is amended to read:

1203. (a) As used in this code, “probation” means the suspension of the imposition or execution of a sentence and the order of conditional and revocable release in the community under the supervision of a probation officer. As used in this code, “conditional sentence” means the suspension of the imposition or execution of a sentence and the order of revocable release in the community subject to conditions established by the court without the supervision of a probation officer. It is the intent of the Legislature that both conditional sentence and probation are authorized whenever probation is authorized in any code as a sentencing option for infractions or misdemeanors.

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

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

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

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

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

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

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

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

1 by written stipulation of the prosecuting and defense attorneys
2 that is filed with the court or an oral stipulation in open court that
3 is made and entered upon the minutes of the court.

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

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

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

30 (d) If a person is convicted of a misdemeanor, the court may
31 either refer the matter to the probation officer for an investigation
32 and a report or summarily pronounce a conditional sentence. If
33 the person was convicted of an offense that requires him or her to
34 register as a sex offender pursuant to Section 290, the court shall
35 refer the matter to the probation officer for the purpose of
36 obtaining a report on the results of the State-Authorized Risk
37 Assessment Tool for Sex Offenders administered pursuant to
38 Sections 290.04 to 290.06, inclusive, if applicable, which the
39 court shall consider. If the case is not referred to the probation
40 officer, in sentencing the person, the court may consider any

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10 SEC. 40. Section 1203c of the Penal Code is amended to
11 read:

12 1203c. (a) (1) Notwithstanding any other provisions of law,
13 whenever a person is committed to an institution under the
14 jurisdiction of the Department of Corrections and Rehabilitation,
15 whether probation has been applied for or not, or granted and
16 revoked, it shall be the duty of the probation officer of the county
17 from which the person is committed to send to the Department of
18 Corrections and Rehabilitation a report of the circumstances
19 surrounding the offense and the prior record and history of the
20 defendant, as may be required by the Secretary of the Department
21 of Corrections and Rehabilitation.

22 (2) If the person is being committed to the jurisdiction of the
23 department for a conviction of an offense that requires him or her
24 to register as a sex offender pursuant to Section 290, the
25 probation officer shall include in the report the results of the
26 State-Authorized Risk Assessment Tool for Sex Offenders
27 (SARATSO) administered pursuant to Sections ~~290.4~~ 290.04 to
28 290.06, inclusive, if applicable.

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

38 (c) In order to allow the probation officer an opportunity to
39 interview, for the purpose of preparation of these reports, the
40 defendant shall be held in the county jail for 48 hours, excluding

1 Saturdays, Sundays and holidays, subsequent to imposition of
2 sentence and prior to delivery to the custody of the Secretary of
3 the Department of Corrections and Rehabilitation, unless the
4 probation officer has indicated the need for a different period of
5 time.

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

7 1203e. (a) Commencing June 1, 2010, the probation
8 department shall compile a Facts of Offense Sheet for every
9 person convicted of an offense that requires him or her to register
10 as a sex offender pursuant to Section 290 who is referred to the
11 department pursuant to Section 1203. The Facts of Offense Sheet
12 shall contain the following information concerning the offender:
13 name; CII number; criminal history, including all arrests and
14 convictions for any registerable sex offenses or any violent
15 offense; circumstances of the offense for which registration is
16 required, including, but not limited to, weapons used and victim
17 pattern; and results of the State-Authorized Risk Assessment
18 Tool for Sex Offenders (SARATSO), as set forth in Section
19 290.04, if required. The Facts of Offense Sheet shall be included
20 in the probation officer's report.

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

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

34 ~~(b)~~

35 (d) If the registered sex offender is sentenced to a period of
36 incarceration, at either the state prison or a county jail, the Facts
37 of Offense Sheet shall be sent by the Department of Corrections
38 and Rehabilitation or the county sheriff to the registering law
39 enforcement agency in the jurisdiction where the registered sex
40 offender will be paroled or will live on release, within three days

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

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

8 1203f. Every probation department shall ensure that all
9 probationers under active supervision who are deemed to pose a
10 high risk to the public of committing sex crimes, as determined
11 by the State-Authorized Risk Assessment Tool for Sex
12 Offenders, as set forth in Sections 290.04 to 290.06, inclusive,
13 are placed on an intensive and specialized probation supervision
14 caseload and are required to report frequently to designated
15 probation officers. The probation department may place any
16 other probationer convicted of an offense that requires him or her
17 to register as a sex offender who is on active supervision to be
18 placed on an intensive and specialized caseload and require him
19 or her to report frequently to designated probation officers.

20 SEC. 43. Section 1203.06 of the Penal Code is amended to
21 read:

22 1203.06. (a) Notwithstanding any other provision of law,
23 probation shall not be granted to, nor shall the execution or
24 imposition of sentence be suspended for, any of the following
25 persons:

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

29 (A) Murder.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7 (Q) Aggravated sexual assault of a child, in violation of
8 Section 269.

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

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

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

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

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

28 SEC. 44. Section 1203.065 of the Penal Code is amended to
29 read:

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

38 (b) (1) Except in unusual cases where the interests of justice
39 would best be served if the person is granted probation, probation
40 shall not be granted to any person who is convicted of violating

1 paragraph (7) of subdivision (a) of Section 261, subdivision (k)
2 of Section 286, subdivision (k) of Section 288a, subdivision (g)
3 of Section 289, or Section 220 for assault with intent to commit a
4 specified sexual offense.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18 (3) Notwithstanding paragraphs (1) and (2), in the case of any
19 offense for which the inmate has received a life sentence
20 pursuant to subdivision (b) of Section 209, *with the intent to*
21 *commit a specified offense*, Section 269, 288.7, 667.51, 667.61,
22 or 667.71, the period of parole shall be 10 years.

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

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

38 (A) Except as provided in Section 3064, an inmate subject to
39 three years on parole may not be retained under parole

1 supervision or in custody for a period longer than four years from
2 the date of his or her initial parole.

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

7 (C) Except as provided in Section 3064, an inmate subject to
8 10 years on parole may not be retained under parole supervision
9 or in custody for a period longer than 15 years from the date of
10 his or her initial parole.

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

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

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

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

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

34 3001. (a) (1) Notwithstanding any other provision of law,
35 when any person referred to in paragraph (1) of subdivision (b)
36 of Section 3000 who was not imprisoned for committing a
37 violent felony, as defined in subdivision (c) of Section 667.5, has
38 been released on parole from the state prison, and has been on
39 parole continuously for one year since release from confinement,
40 within 30 days, that person shall be discharged from parole,

1 unless the Department of Corrections and Rehabilitation
2 recommends to the Board of Parole Hearings that the person be
3 retained on parole and the board, for good cause, determines that
4 the person will be retained.

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

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

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

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

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

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

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

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

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

SEC. 49. Section 3072 is added to the Penal Code, to read:

3072. (a) *The Department of Corrections and Rehabilitation, subject to the legislative appropriation of the necessary funds, may establish and operate, after January 1, 2007, a specialized sex offender treatment pilot program for inmates whom the department determines pose a high risk to the public of committing violent sex crimes.*

(b) (1) *The program shall be based upon the relapse prevention model and shall include referral to specialized*

1 services, such as substance abuse treatment, for offenders
2 needing those specialized services.

3 (2) Except as otherwise required under Section 645, the
4 department may provide medication treatments for selected
5 offenders, as determined by medical protocols, and only on a
6 voluntary basis and with the offender's informed consent.

7 (c) (1) The program shall be targeted primarily at adult sex
8 offenders who meet the following conditions:

9 (A) The offender is within five years of being released on
10 parole. An inmate serving a life term may be excluded from
11 treatment until he or she receives a parole date and is within five
12 years of that parole date, unless the department determines that
13 the treatment is necessary for the public safety.

14 (B) The offender has been clinically assessed.

15 (C) A review of the offender's criminal history indicates that
16 the offender poses a high risk of committing new sex offenses
17 upon his or her release on parole.

18 (D) Based upon the clinical assessment, the offender may be
19 amenable to treatment.

20 (2) The department may include other appropriate offenders in
21 the treatment program if doing so facilitates the effectiveness of
22 the treatment program.

23 (3) Notwithstanding any other provision of law, inmates who
24 are condemned to death or sentenced to life without the
25 possibility of parole are ineligible to participate in treatment.

26 (d) The program under this section shall be established with
27 the assistance and supervision of the staff of the department
28 primarily by obtaining the services of specially trained sex
29 offender treatment providers, as determined by the secretary of
30 the department and the Director of the Department of Mental
31 Health.

32 (e) (1) The program under this section, upon full
33 implementation, shall provide for the treatment of inmates who
34 are deemed to pose a high risk to the public of committing sex
35 crimes, as determined by the State-Authorized Risk Assessment
36 Tool for Sex Offenders, pursuant to Sections 290.04 to 290.06,
37 inclusive.

38 (2) To the maximum extent that is practical and feasible,
39 offenders participating in the treatment program shall be held in
40 a separate area of the prison facility, segregated from any non

1 *sex offenders held at the same prison, and treatment in the pilot*
2 *program shall be provided in program space segregated to the*
3 *maximum extent that is practical and feasible from program*
4 *space for any non sex offenders held at the same prison.*

5 *(f) (1) The Department of Mental Health, by January 1, 2012,*
6 *shall provide a report evaluating the program to the fiscal and*
7 *public safety policy committees of both houses of the Legislature,*
8 *and to the Joint Legislative Budget Committee.*

9 *(2) The report shall initially evaluate whether the program*
10 *under this section is operating effectively, is having a positive*
11 *clinical effect on participating sex offenders, and is cost-effective*
12 *for the state.*

13 *(3) In conducting its evaluation, the Department of Mental*
14 *Health shall consider the effects of treatment of offenders while*
15 *in prison and while subsequently on parole.*

16 *(4) The Department of Mental Health shall advise the*
17 *Legislature as to whether the program should be continued past*
18 *its expiration date, expanded, or concluded.*

19 SEC. 50. Section 12022.75 of the Penal Code is amended to
20 read:

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

31 (b) (1) Any person who, in the commission or attempted
32 commission of any offense specified in paragraph (2),
33 administers any controlled substance listed in Section 11054,
34 11055, 11056, 11057, or 11058 of the Health and Safety Code to
35 the victim shall be punished by an additional and consecutive
36 term of imprisonment in the state prison for five years.

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

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

1 (B) Sodomy, in violation of subdivision (f) or (i) of Section
2 286.

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

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

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

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

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

13 SEC. 51. Section 13887.1 of the Penal Code is amended to
14 read:

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

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

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

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

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

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

36 SEC. 52. Section 13887.5 is added to the Penal Code, to read:

37 13887.5. The Corrections Standards Authority shall establish
38 standards by which grants are awarded on a competitive basis to
39 counties for SAFE teams. The grants shall be awarded to

1 innovative teams designed to promote the purposes of this
2 chapter.

3 SEC. 53. Section 6600 of the Welfare and Institutions Code is
4 amended to read:

5 6600. As used in this article, the following terms have the
6 following meanings:

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

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

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

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

20 (C) A prior conviction in another jurisdiction for an offense
21 that includes all of the elements of an offense described in
22 subdivision (b).

23 (D) A conviction for an offense under a predecessor statute
24 that includes all of the elements of an offense described in
25 subdivision (b).

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

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

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

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

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

38 (3) Conviction of one or more of the crimes enumerated in this
39 section shall constitute evidence that may support a court or jury
40 determination that a person is a sexually violent predator, but

1 shall not be the sole basis for the determination. The existence of
2 any prior convictions may be shown with documentary evidence.
3 The details underlying the commission of an offense that led to a
4 prior conviction, including a predatory relationship with the
5 victim, may be shown by documentary evidence, including, but
6 not limited to, preliminary hearing transcripts, trial transcripts,
7 probation and sentencing reports, and evaluations by the State
8 Department of Mental Health. Jurors shall be admonished that
9 they may not find a person a sexually violent predator based on
10 prior offenses absent relevant evidence of a currently diagnosed
11 mental disorder that makes the person a danger to the health and
12 safety of others in that it is likely that he or she will engage in
13 sexually violent criminal behavior.

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

17 (b) “Sexually violent offense” means the following acts when
18 committed by force, violence, duress, menace, fear of immediate
19 and unlawful bodily injury on the victim or another person, or
20 threatening to retaliate in the future against the victim or any
21 other person, and that are committed on, before, or after the
22 effective date of this article and result in a conviction or a finding
23 of not guilty by reason of insanity, as defined in subdivision (a):
24 a felony violation of Section 261, 262, 264.1, 269, 286, 288,
25 288a, 288.5, or 289 of the Penal Code, or any felony violation of
26 Section 207, 209, or 220 of the Penal Code, committed with the
27 intent to commit a violation of Section 261, 262, 264.1, 269, 286,
28 288, 288a, or 289 of the Penal Code.

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

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

37 (e) “Predatory” means an act is directed toward a stranger, a
38 person of casual acquaintance with whom no substantial
39 relationship exists, or an individual with whom a relationship has

1 been established or promoted for the primary purpose of
2 victimization.

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

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

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

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

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

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

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

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

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

1 her sentence to serve, or if the inmate's release date is modified
2 by judicial or administrative action, the director may refer the
3 person for evaluation in accordance with this section at a date
4 that is less than six months prior to the inmate's scheduled
5 release date.

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

15 (b) The person shall be screened by the Department of
16 Corrections and Rehabilitation and the Board of Parole Hearings
17 based on whether the person has committed a sexually violent
18 predatory offense and on a review of the person's social,
19 criminal, and institutional history. This screening shall be
20 conducted in accordance with a structured screening instrument
21 developed and updated by the State Department of Mental Health
22 in consultation with the Department of Corrections and
23 Rehabilitation. If as a result of this screening it is determined that
24 the person is likely to be a sexually violent predator, the
25 Department of Corrections and Rehabilitation shall refer the
26 person to the State Department of Mental Health for a full
27 evaluation of whether the person meets the criteria in Section
28 6600.

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

1 (d) Pursuant to subdivision (c), the person shall be evaluated
2 by two practicing psychiatrists or psychologists, or one practicing
3 psychiatrist and one practicing psychologist, designated by the
4 Director of Mental Health. If both evaluators concur that the
5 person has a diagnosed mental disorder so that he or she is likely
6 to engage in acts of sexual violence without appropriate
7 treatment and custody, the Director of Mental Health shall
8 forward a request for a petition for commitment under Section
9 6602 to the county designated in subdivision (i). Copies of the
10 evaluation reports and any other supporting documents shall be
11 made available to the attorney designated by the county pursuant
12 to subdivision (i) who may file a petition for commitment.

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

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

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

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

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

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

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

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

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

6604. The court or jury shall determine whether, beyond a reasonable doubt, the person is a sexually violent predator. If the court or jury is not satisfied beyond a reasonable doubt that the person is a sexually violent predator, the court shall direct that the person be released at the conclusion of the term for which he or she was initially sentenced, or that the person be

1 unconditionally released at the end of parole, whichever is
2 applicable. If the court or jury determines that the person is a
3 sexually violent predator, the person shall be committed for an
4 indeterminate term to the custody of the State Department of
5 Mental Health for appropriate treatment and confinement in a
6 secure facility designated by the Director of Mental Health. Time
7 spent on conditional release shall not count toward the term of
8 commitment, unless the person is placed in a locked facility by
9 the conditional release program, in which case the time in a
10 locked facility shall count toward the term of commitment. The
11 facility shall be located on the grounds of an institution under the
12 jurisdiction of the Department of Corrections and Rehabilitation.

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

15 6604.1. (a) The indeterminate term of commitment provided
16 for in Section 6604 shall commence on the date upon which the
17 court issues the initial order of commitment pursuant to that
18 section.

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

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

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

37 (b) The director shall provide the committed person with an
38 annual written notice of his or her right to petition the court for
39 conditional release under Section 6608. The notice shall contain
40 a waiver of rights. The director shall forward the notice and

1 waiver form to the court with the annual report. If the person
2 does not affirmatively waive his or her right to petition the court
3 for conditional release, the court shall set a show cause hearing to
4 determine whether facts exist that warrant a hearing on whether
5 the person's condition has so changed that he or she would not be
6 a danger to the health and safety of others if discharged. The
7 committed person shall have the right to be present and to have
8 an attorney represent him or her at the show cause hearing.

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

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

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

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

SEC. 58. (a) The sum of four hundred ninety-five thousand dollars (\$495,000) is hereby appropriated 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, and parents, teachers, and service providers. The objective of the programs shall be to increase awareness of the problem of child abduction, and basic knowledge of how children can help to protect themselves from being abducted. The programs may include a media component to build awareness of the problem within communities.

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

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

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

SEC. 60. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety

- 1 within the meaning of Article IV of the Constitution and shall go
- 2 into immediate effect. The facts constituting the necessity are::
- 3 In order to protect the health and safety of the children of
- 4 California, it is necessary that this act take effect immediately.