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SENATE BILL

No. 1128

Introduced by Senator Alquist

(Principal coauthor: Senator Poochigian)

(Coauthor: Senator Perata)

*(Coauthor: Assembly Member Nunez Coauthors: Assembly Members
Nunez, Cohn, Frommer, Leslie, and Lieu)*

January 9, 2006

An act to amend Section 68152 of the Government Code, to amend Sections 209, 220, 269, 288.5, 290, 290.3, 290.46, 311.2, 311.4, 311.9, 311.11, 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 amend and renumber Section 653g of*, to add Sections 288.3, 288.7, 290.03, 290.04, 290.05, 290.06, 290.07, 290.08, ~~626.83~~, ~~626.81~~, 653c, 801.2, 1203e, 1203f, 3072, and 13887.5 to, *and 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 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. *Records relating to felonies are required to be kept for 75 years.*

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, *and that any adult who engages in oral copulation or sexual penetration with a child who is 10 years of age or younger is guilty of a felony punishable by imprisonment in the*

state prison for 15 years to life. Because the bill would create new crimes, the bill would impose a state-mandated local program.

Existing law requires a person convicted of any specified sex offense to register as a sex offender.

This bill would add the above new crimes to the list of crimes that require a person to register as a sex offender, *and would also add murder in the perpetuation of or attempt to commit certain sex crimes to the list, and would add conspiracy to commit any of the offenses to the list.* 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~~ *Governor's Office of Emergency Services* 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, a person who possesses, prepares, publishes, produces, develops, duplicates, or prints any data or image with the intent to distribute, exhibit, or exchange the data or image with a person 18 years of age or older, knowing the data or image depicts a person under 18 years of age personally engaging in or personally simulating sexual conduct is guilty of a misdemeanor.

This bill would increase the punishment for that crime to a misdemeanor or felony.

Under existing law, a person who uses a minor to assist in the production or distribution of child pornography is guilty of a misdemeanor upon a first offense.

This bill would increase the punishment for the first conviction of that crime to a misdemeanor or felony.

Under existing law, the first conviction for possession of child pornography is punished as a misdemeanor.

This bill would make the punishment for a conviction either a misdemeanor or a felony and would provide for additional punishment for a person previously convicted of certain crimes.

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~~ *increase the penalties for a violation of that crime if the person is a registered sex offender, and would make related changes.* 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~~ *enter or remain on the grounds of a day care facility* where elderly or dependent persons reside or regularly are present, without lawful business thereon or written permission from the ~~director of the facility~~ *administrator*.

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 *and for using a minor in the production of a representation of sexual conduct* to 10 years from the date of production.

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

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

Existing law establishes a county probation system.

This bill would require probation officers trained in the use of the 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 ~~case load~~. 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 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.

Under existing law relating to sexually violent predators, parole tolls from evaluation through the period of commitment, if any.

This bill would provide that parole tolls through any period of commitment and conditional release under court monitoring.

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 ~~on such a caseload~~ *intensive and specialized supervision*, 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~~ *supervision*, 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~~ *Office of Emergency Services* 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.

This bill would incorporate additional changes made in AB 1849, to be operative only if this bill and AB 1849 are enacted and this bill is enacted last.

This bill would provide that its provisions are severable.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. Appropriation: yes. Fiscal committee: yes.

State-mandated local program: yes.

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

1 SECTION 1. This act shall be known as the Sex Offender
2 Punishment, Control, and Containment Act of 2006.

3 SEC. 2. The Legislature finds and declares all of the
4 following:

5 (a) The primary public policy goal of managing sex offenders
6 in the community is the prevention of future victimization.

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

12 (c) California's infrastructure for collecting, maintaining, and
13 disseminating information about registered sex offenders must be
14 retooled to ensure that law enforcement and the public have

1 access to accurate, up-to-date, and relevant information about
2 registered sex offenders.

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

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

7 68152. The trial court clerk may destroy court records under
8 Section 68153 after notice of destruction and if there is no
9 request and order for transfer of the records, except the
10 comprehensive historical and sample superior court records
11 preserved for research under the California Rules of Court, when
12 the following times have expired after final disposition of the
13 case in the categories listed:

14 (a) Adoption: retain permanently.

15 (b) Change of name: retain permanently.

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

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

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

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

24 (4) Eminent domain: retain permanently.

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

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

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

31 (8) Paternity: retain permanently.

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

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

36 (11) Small claims: 10 years.

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

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

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

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

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

8 (e) Criminal.

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

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

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

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

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

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

24 (7) Misdemeanor alleging a violation of Section 14601,
25 14601.1, 20002, 23104, or 23109 of the Vehicle Code: five years.

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

33 (9) Misdemeanor, infraction, or civil action alleging a
34 violation of the regulation and licensing of dogs under Sections
35 30951 to 30956, inclusive, of the Food and Agricultural Code or
36 violation of any other local ordinance: three years.

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

38 (11) Parking infractions, including alleged violations under the
39 stopping, standing, and parking provisions set forth in Chapter 9

(commencing with Section 22500) of Division 11 of the Vehicle Code: two years.

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

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

(g) Juvenile.

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

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

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

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

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

(h) Probate.

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

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

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

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

(j) Other records.

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

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

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

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

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

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

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

(8) Electronic recordings made as the official record of the oral proceedings under the California Rules of Court: any time after final disposition of the case in infraction and misdemeanor proceedings, 10 years in all other criminal proceedings, and five 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~~ *Nothing in* this section shall ~~not~~ *preclude or* 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

1 a child who is 10 years of age or younger is guilty of a felony and
2 shall be punished by imprisonment in the state prison for a term
3 of 15 years to life.

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

7
8 CHAPTER 5.5. SEX OFFENDERS
9

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

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

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

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

35 (i) A transient must register, or reregister if the person has
36 previously registered, within five working days from release
37 from incarceration, placement or commitment, or release on
38 probation, pursuant to paragraph (1) of subdivision (a), except
39 that if the person previously registered as a transient less than 30
40 days from the date of his or her release from incarceration, he or

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

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

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

paragraph (2) of subdivision (e), and the information specified in clause (iv).

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

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

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

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

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

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

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

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

(G) Persons required to register in their state of residence who are out-of-state residents employed, or carrying on a vocation in California on a full-time or part-time basis, with or without compensation, for more than 14 days, or for an aggregate period exceeding 30 days in a calendar year, shall register in accordance with subparagraph (A). Persons described in paragraph (2) who are out-of-state residents enrolled in any educational institution in California, as defined in Section 22129 of the Education Code, on a full-time or part-time basis, shall register in accordance with subparagraph (A). The place where the out-of-state resident is located, for purposes of registration, shall be the place where the person is employed, carrying on a vocation, or attending school. The out-of-state resident subject to this subparagraph shall, in addition to the information required pursuant to subdivision (e), provide the registering authority with the name of his or her place of employment or the name of the school attended in California, and his or her address or location in his or her state of residence.

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

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

8 (A) Any person who, since July 1, 1944, has been or is
9 hereafter convicted in any court in this state or in any federal or
10 military court of a violation of Section 187 *committed in the*
11 *perpetration, or an attempt to perpetrate, rape or any act*
12 *punishable under Section 286, 288, 288a, or 289, Section 207 or*
13 *209 committed with intent to violate Section 261, 286, 288, 288a,*
14 *or 289, Section 220, except assault to commit mayhem, Section*
15 *243.4, paragraph (1), (2), (3), (4), or (6) of subdivision (a) of*
16 *Section 261, or paragraph (1) of subdivision (a) of Section 262*
17 *involving the use of force or violence for which the person is*
18 *sentenced to the state prison, Section 264.1, 266, or 266c,*
19 *subdivision (b) of Section 266h, subdivision (b) of Section 266i,*
20 *Section 266j, 267, 269, 285, 286, 288, 288a, 288.3, 288.5, 288.7,*
21 *or 289, Section 311.1, subdivision (b), (c), or (d) of Section*
22 *311.2, Section 311.3, 311.4, 311.10, 311.11, ~~626.83~~, or 647.6,*
23 *former Section 647a, subdivision (c) of Section 653f, subdivision*
24 *1 or 2 of Section 314, any offense involving lewd or lascivious*
25 *conduct under Section 272, or any felony violation of Section*
26 *288.2; or any statutory predecessor that includes all elements of*
27 *one of the above-mentioned offenses; or any person who since*
28 *that date has been or is hereafter convicted of the attempt or*
29 *conspiracy to commit any of the above-mentioned offenses.*

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

35 (C) Any person who, since July 1, 1944, has been or hereafter
36 is determined to be a mentally disordered sex offender under
37 Article 1 (commencing with Section 6300) of Chapter 2 of Part 2
38 of Division 6 of the Welfare and Institutions Code or any person
39 who has been found guilty in the guilt phase of a trial for an
40 offense for which registration is required by this section but who

1 has been found not guilty by reason of insanity in the sanity
2 phase of the trial.

3 (D) (i) Any person who, since July 1, 1944, has been, or is
4 hereafter convicted in any other court, including any state,
5 federal, or military court, of any offense that, if committed or
6 attempted in this state, would have been punishable as one or
7 more of the offenses described in subparagraph (A), *including*
8 *offenses in which the person was a principal, as defined in*
9 *Section 31.*

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

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

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

22 (II) *Notwithstanding subclause (I), a person convicted in*
23 *another state of an offense similar to one of the following*
24 *offenses who is required to register in the state of conviction*
25 *shall not be required to register in California unless the*
26 *out-of-state offense contains all of the elements of a registerable*
27 *California offense described in subparagraph (A):*

28 ~~(I)~~

29 (aa) Indecent exposure, pursuant to Section 314.

30 ~~(II)~~

31 (ab) Unlawful sexual intercourse, pursuant to Section 261.5.

32 ~~(III)~~

33 (ac) Incest, pursuant to Section 285.

34 ~~(IV)~~

35 (ad) Sodomy, pursuant to Section 286, or oral copulation,
36 pursuant to Section 288a, provided that the offender notifies the
37 Department of Justice that the sodomy or oral copulation
38 conviction was for conduct between consenting adults, as
39 ~~described in subparagraph (F) of paragraph (2) of subdivision (a),~~

1 *described in subparagraph (G) and the department is able, upon*
2 *the exercise of reasonable diligence, to verify that fact.*

3 *(ae) Pimping, pursuant to Section 266h, or pandering,*
4 *pursuant to Section 266i.*

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

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

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

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

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

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

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

(b) (1) Any person who is released, discharged, or paroled from a jail, state or federal prison, school, road camp, or other institution where he or she was confined because of the commission or attempted commission of one of the offenses specified in subdivision (a) or is released from a state hospital to which he or she was committed as a mentally disordered sex

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7 (2) A person described in paragraph (2) of subdivision (a)
8 shall register, or reregister if the person has previously registered,
9 upon release from incarceration, placement, commitment, or
10 release on probation pursuant to paragraph (1) of subdivision (a).
11 *This paragraph shall not apply to a person who is incarcerated*
12 *for less than 30 days if he or she has registered as required by*
13 *paragraph (1) of subdivision (a), he or she returns after*
14 *incarceration to the last registered address, and the annual*
15 *update of registration that is required to occur within five*
16 *working days of his or her birthday, pursuant to subparagraph*
17 *(D) of paragraph (1) of subdivision (a), did not fall within that*
18 *incarceration period.* The registration shall consist of all of the
19 following:

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

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

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

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

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

fact. Upon presentation of proof of residence to the registering official or a signed statement that the person has no residence, the person shall be allowed to register. If the person claims that he or she has a residence but does not have any proof of residence, he or she shall be allowed to register but shall furnish proof of residence within 30 days of the date he or she is allowed to register.

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

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

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

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

(2) If the person's new address is in a Department of Corrections and Rehabilitation facility or state mental institution, an official of the place of incarceration, placement, or commitment shall, within 90 days of receipt of the person, forward the registrant's change of address information to the Department of Justice. The agency need not provide a physical

1 address for the registrant but shall indicate that he or she is
2 serving a period of incarceration or commitment in a facility
3 under the agency's jurisdiction. This paragraph shall apply to
4 persons received in a department facility or state mental
5 institution on or after January 1, 1999. The Department of Justice
6 shall forward the change of address information to the agency
7 with which the person last registered.

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

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

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

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

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

1 registration is required under this section pursuant to subdivision
2 (d), but who has been found not guilty by reason of insanity, who
3 willfully violates any requirement of this section is guilty of a
4 misdemeanor and shall be punished by imprisonment in a county
5 jail not exceeding one year. For any second or subsequent willful
6 violation of any requirement of this section, the person is guilty
7 of a felony and shall be punished by imprisonment in the state
8 prison for 16 months, or two or three years.

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

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

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

1 30 days shall be punished in accordance with either paragraph (1)
2 or (2) of this subdivision.

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

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

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

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

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

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

39 (k) As used in this section, “mentally disordered sex offender”
40 includes any person who has been determined to be a sexual

1 psychopath or a mentally disordered sex offender under any
2 provision which, on or before January 1, 1976, was contained in
3 Division 6 (commencing with Section 6000) of the Welfare and
4 Institutions Code.

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

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

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

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

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

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

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

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

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

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

1 290.03. (a) The Legislature finds and declares that a
2 comprehensive system of risk assessment, supervision,
3 monitoring and containment for registered sex offenders residing
4 in California communities is necessary to enhance public safety
5 and reduce the risk of recidivism posed by these offenders. The
6 Legislature further affirms and incorporates the following
7 findings and declarations, previously reflected in its enactment of
8 “Megan’s Law”:

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

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

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

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

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

36 (6) To protect the safety and general welfare of the people of
37 this state, it is necessary to provide for continued registration of
38 sex offenders, for the public release of specified information
39 regarding certain more serious sex offenders, and for community
40 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 (SARATSO). If a SARATSO has not been selected for a given population pursuant to this section, no duty to administer the SARATSO elsewhere in this code shall apply with respect to that population. Every person required to register as a sex offender shall be subject to assessment with the SARATSO as set forth in this section and elsewhere in this code.

(2) A representative of the ~~State Department of Corrections and Rehabilitation~~ *Mental Health*, in consultation with a representative of the Department of ~~Mental Health Corrections and Rehabilitation~~ and a representative of the Attorney General's office, shall comprise the SARATSO Review Committee. The purpose of the committee, *which shall be staffed by the State*

1 *Department of Mental Health*, shall be to ensure that the
2 SARATSO reflects the most reliable, objective and
3 well-established protocols for predicting sex offender risk of
4 recidivism, has been scientifically validated with multiple
5 cross-validations, and is widely accepted by the courts. The
6 committee shall consult with experts in the fields of risk
7 assessment and the use of actuarial instruments in predicting sex
8 offender risk, sex offending, sex offender treatment, mental
9 health, and law, as it deems appropriate.

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

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

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

36 (d) On or before January 1, 2007, the SARATSO Review
37 Committee shall research risk assessment tools for juveniles
38 required to register as sex offenders. If the committee
39 unanimously agrees on an appropriate risk assessment tool to be
40 used to assess this population, it shall advise the Governor and

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

6 (e) The committee shall periodically evaluate the SARATSO
7 for each specified population. If the committee unanimously
8 agrees on a change to the SARATSO for any population, it shall
9 advise the Governor and the Legislature of the selected tool, and
10 it shall post its decision on the Department of Corrections and
11 Rehabilitation's the State Department of Mental Health shall
12 post the decision on its Internet Web site. Sixty days after the
13 decision is posted, the selected tool shall become the SARATSO
14 for that population.

15 (f) The committee shall perform other functions as necessary
16 to carry out consistent with the provisions of this act or as may be
17 otherwise required by law, including, but not limited to, defining
18 tiers of risk based on the SARATSO. The committee shall be
19 immune from liability for good faith conduct under this act.

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

21 290.05. (a) On or before January 1, 2008, the SARATSO
22 Review Committee established pursuant to Section 290.04, in
23 consultation with probation officers and parole officers the
24 entities specified in subdivision (b), shall develop a training
25 program for probation officers, parole officers, local law
26 enforcement personnel, and any other persons persons authorized
27 by this code to administer the SARATSO, as set forth in Section
28 290.04. The

29 (b) (1) The Department of Corrections and Rehabilitation
30 shall be responsible for overseeing the training, which of persons
31 who will administer the SARATSO pursuant to paragraph (1) or
32 (2) of subdivision (a) of Section 290.06.

33 (2) The State Department of Mental Health shall be
34 responsible for overseeing the training of persons who will
35 administer the SARATSO pursuant to paragraph (3) of
36 subdivision (a) of Section 290.06.

37 (3) The Correction Standards Authority shall be responsible
38 for developing standards for the training of persons who will
39 administer the SARATSO pursuant to paragraph (4) or (5) of
40 subdivision (a) of Section 290.06.

1 (4) *The Commission on Peace Officer Standards and Training*
2 *shall be responsible for developing standards for the training of*
3 *persons who will administer the SARATSO pursuant to*
4 *subdivision (c) of Section 290.06.*

5 (c) *The training shall be conducted by experts in the field of*
6 *risk assessment and the use of actuarial instruments in predicting*
7 *sex offender risk. Subject to requirements—promulgated*
8 *established by the committee, the Department of Corrections and*
9 *Rehabilitation, the State Department of Mental Health, probation*
10 *departments, regional parole officers, and and authorized local*
11 *law enforcement agencies shall designate key persons within*
12 *their organizations to attend training and, as authorized by the*
13 *department, to train others within their organizations designated*
14 *to perform risk assessments as required or authorized by law.*
15 *Any person who administers the SARATSO shall receive*
16 *training no less frequently than every two years.*

17 (b)

18 (d) *The SARATSO may be performed for purposes authorized*
19 *by statute only by persons trained pursuant to this section.*

20 SEC. 15. Section 290.06 is added to the Penal Code, to read:
21 290.06. Effective on or before July 1, 2008, the SARATSO,
22 as set forth in Section 290.04, shall be administered as follows:

23 (a) (1) *The Department of Corrections and Rehabilitation*
24 *shall assess every eligible person who is incarcerated in state*
25 *prison. The Whenever possible, the assessment shall take place at*
26 *least four months, but no sooner than 10 months, prior to release*
27 *from incarceration.*

28 (2) *The department shall assess every eligible person who is*
29 *on parole. The Whenever possible, the assessment shall take*
30 *place at least four months, but no sooner than 10 months, prior to*
31 *termination of parole.*

32 (3) *The Department of Mental Health shall assess every*
33 *eligible person who is committed to that department. The*
34 *Whenever possible, the assessment shall take place at least four*
35 *months, but no sooner than 10 months, prior to release from*
36 *commitment.*

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

39 (5) *Each probation department shall assess every eligible*
40 *person under its supervision who was not assessed pursuant to*

1 paragraph~~(3)~~ (4). The assessment shall take place prior to the
2 termination of probation, but no later than January 1, 2010.

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

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

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

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

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

34 290.07. Notwithstanding any other provision of law, any
35 person authorized by statute to administer the State Authorized
36 Risk Assessment Tool for Sex Offenders and trained pursuant to
37 Section 290.06 shall be granted access to all relevant records
38 pertaining to a registered sex offender, including, but not limited
39 to, criminal histories, sex offender registration records, police
40 reports, probation and presentencing reports, judicial records and

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

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

9 290.08. Every district attorney's office, ~~parole office~~, and the
10 Department of Justice shall retain records relating to a person
11 convicted of an offense for which registration is required
12 pursuant to Section 290 for a period of 75 years after disposition
13 of the case.

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

15 ~~290.3. (a) Every person who is convicted of any offense~~
16 ~~specified in subdivision (a) of Section 290 shall, in addition to~~
17 ~~any imprisonment or fine, or both, imposed for violation of the~~
18 ~~underlying offense, be punished by a fine of three hundred~~
19 ~~dollars (\$300) upon the first conviction or a fine of five hundred~~
20 ~~dollars (\$500) upon the second and each subsequent conviction;~~
21 ~~unless the court determines that the defendant does not have the~~
22 ~~ability to pay the fine.~~

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

32 ~~(b) Out of the moneys deposited pursuant to subdivision (a) as~~
33 ~~a result of second and subsequent convictions of Section 290,~~
34 ~~one-third shall first be transferred to the Department of Justice~~
35 ~~Sexual Habitual Offender Fund, as provided in paragraph (1) of~~
36 ~~this subdivision. Out of the remainder of all moneys deposited~~
37 ~~pursuant to subdivision (a), 50 percent shall be transferred to the~~
38 ~~Department of Justice Sexual Habitual Offender Fund, as~~
39 ~~provided in paragraph (1), 25 percent shall be transferred to the~~
40 ~~Department of Justice DNA Testing Fund, as provided in~~

1 paragraph (2), and 25 percent shall be allocated equally to
2 counties that maintain a local DNA testing laboratory, as
3 provided in paragraph (3):

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

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

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

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

37 (d) An amount equal to one hundred dollars (\$100) for every
38 fine imposed pursuant to subdivision (a) in excess of one
39 hundred dollars (\$100) shall be transferred to the Department of
40 Corrections and Rehabilitation to fund SAFE teams pursuant to

1 ~~Chapter 9.7 (commencing with Section 13887) of Title 6 of Part~~
2 ~~4.~~

3 *SEC. 18. Section 290.3 of the Penal Code, as amended by*
4 *Chapter 69 of the Statutes of 2006, is amended to read:*

5 290.3. (a) Every person who is convicted of any offense
6 specified in subdivision (a) of Section 290 shall, in addition to
7 any imprisonment or fine, or both, imposed for violation of the
8 underlying offense, be punished by a fine of ~~two~~ three hundred
9 dollars ~~(\$200)~~ (\$300) upon the first conviction or a fine of ~~three~~
10 ~~five~~ hundred dollars ~~(\$300)~~ (\$500) upon the second and each
11 subsequent conviction, unless the court determines that the
12 defendant does not have the ability to pay the fine.

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

22 (b) ~~(1)~~ Out of the moneys deposited pursuant to subdivision
23 (a) as a result of second and subsequent convictions of Section
24 290, one-third shall first be transferred to the Department of
25 Justice Sexual Habitual Offender Fund, as provided in paragraph
26 ~~(2)~~ (1) of this subdivision. Out of the remainder of all moneys
27 deposited pursuant to subdivision (a), 50 percent shall be
28 transferred to the Department of Justice Sexual Habitual
29 Offender Fund, as provided in paragraph ~~(2)~~, and 50 (1), and 25
30 percent shall be transferred to the ~~DNA Identification Fund, as~~
31 ~~established by Section 76104.6 of the Government Code~~
32 *Department of Justice DNA Testing Fund, as provided in*
33 *paragraph (2), and 25 percent shall be allocated equally to*
34 *counties that maintain a local DNA testing laboratory, as*
35 *provided in paragraph (3).*

36 (2)

37 (1) Those moneys so designated shall be transferred to the
38 Department of Justice Sexual Habitual Offender Fund created
39 pursuant to paragraph (5) of subdivision (b) of Section 11170
40 and, when appropriated by the Legislature, shall be used for the

purposes of Chapter 9.5 (commencing with Section 13885) and Chapter 10 (commencing with Section 13890) of Title 6 of Part 4 for the purpose of monitoring, apprehending, and prosecuting sexual habitual offenders.

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

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

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

(d) *An amount equal to one hundred dollars (\$100) for every fine imposed pursuant to subdivision (a) in excess of one hundred dollars (\$100) shall be transferred to the Governor's Office of Emergency Services to fund SAFE teams pursuant to Chapter 9.7 (commencing with Section 13887) of Title 6 of Part 4.*

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

290.46. (a) (1) On or before the dates specified in this section, the Department of Justice shall make available information concerning persons who are required to register pursuant to Section 290 to the public via an Internet Web site as

1 specified in this section. The department shall update the Internet
2 Web site on an ongoing basis. All information identifying the
3 victim by name, birth date, address, or relationship to the
4 registrant shall be excluded from the Internet Web site. The name
5 or address of the person's employer and the listed person's
6 criminal history other than the specific crimes for which the
7 person is required to register shall not be included on the Internet
8 Web site. The Internet Web site shall be translated into languages
9 other than English, as determined by the department.

10 ~~(2) (A) On or before June 1, 2010, the Department of Justice~~
11 ~~shall make available to the public, as to any person described in~~
12 ~~subdivisions (b), (c), or (d), the year of conviction of his or her~~
13 ~~most recent offense requiring registration pursuant to Section~~
14 ~~290, and the year he or she was released from incarceration for~~
15 ~~that crime. However, no year of conviction shall be made~~
16 ~~available to the public unless the Department of Justice also is~~
17 ~~able to display the year of release from incarceration.~~

18 ~~(B) (i) Any state or local facility that release from~~
19 ~~incarceration a person who was incarcerated because of a crime~~
20 ~~for which he or she was required to register as a sex offender~~
21 ~~pursuant to Section 290 shall, within 30 days of that person's~~
22 ~~release, provide the year of conviction and year of release from~~
23 ~~incarceration for that crime to the Department of Justice, in a~~
24 ~~manner and format approved by the Department of Justice.~~

25 ~~(ii) Any state or local facility that, prior to January 1, 2007,~~
26 ~~released from incarceration a person described in clause (i), shall~~
27 ~~provide to the Department of Justice the year of conviction and~~
28 ~~year of release for that person's most recent offense that required~~
29 ~~registration.~~

30 ~~(3)~~

31 (2) The Department of Mental Health shall provide to the
32 Department of Justice Sex Offender Tracking Program the names
33 of all persons committed to its custody pursuant to Article 4
34 (commencing with Section 6600) of Chapter 2 of Part 2 of
35 Division 6 of the Welfare and Institutions Code, within 30 days
36 of commitment, and shall provide the names of all of those
37 persons released from its custody within five working days of
38 release.

39 (b) (1) On or before July 1, 2005, with respect to a person
40 who has been convicted of the commission or the attempted

1 commission of any of the offenses listed in, or who is described
2 in, paragraph (2), the Department of Justice shall make available
3 to the public via the Internet Web site his or her name and known
4 aliases, a photograph, a physical description, including gender
5 and race, date of birth, criminal history, prior adjudication as a
6 sexually violent predator, the address at which the person resides,
7 and any other information that the Department of Justice deems
8 relevant, but not the information excluded pursuant to
9 subdivision (a).

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

12 (A) Section 207 committed with intent to violate Section 261,
13 286, 288, 288a, or 289.

14 (B) Section 209 committed with intent to violate Section 261,
15 286, 288, 288a, or 289.

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

17 (D) Section 264.1.

18 (E) Section 269.

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

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

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

23 (I) ~~Section 288.5 or 288.7.~~ 288.3, *provided that the offense is a*
24 *felony.*

25 (J) Section 288.5.

26 (K) Section 288.7.

27 ~~(J)~~

28 (L) Subdivision (a) or (j) of Section 289.

29 ~~(K)~~

30 (M) Any person who has ever been adjudicated a sexually
31 violent predator as defined in Section 6600 of the Welfare and
32 Institutions Code.

33 (c) (1) On or before July 1, 2005, with respect to a person
34 who has been convicted of the commission or the attempted
35 commission of any of the offenses listed in paragraph (2), the
36 Department of Justice shall make available to the public via the
37 Internet Web site his or her name and known aliases, a
38 photograph, a physical description, including gender and race,
39 date of birth, criminal history, the community of residence and
40 ZIP Code in which the person resides or the county in which the

1 person is registered as a transient, and any other information that
2 the Department of Justice deems relevant, but not the information
3 excluded pursuant to subdivision (a). On or before July 1, 2006,
4 the Department of Justice shall determine whether any person
5 convicted of an offense listed in paragraph (2) also has one or
6 more prior or subsequent convictions of an offense listed in
7 paragraph (2) of subdivision (a) of Section 290, and, for those
8 persons, the Department of Justice shall make available to the
9 public via the Internet Web site the address at which the person
10 resides. However, the address at which the person resides shall
11 not be disclosed until a determination is made that the person is,
12 by virtue of his or her additional prior or subsequent conviction
13 of an offense listed in paragraph (2) of subdivision (a) of Section
14 290, subject to this subdivision.

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

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

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

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

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

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

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

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

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

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

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

1 (D) Section 266j.

2 (E) Section 267.

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

5 (G) ~~Section 626.83 or 647.6.~~ 288.3, *provided that the offense*
6 *is a misdemeanor.*

7 (H) Section 626.81.

8 (I) Section 647.6.

9 (J) Section 653c.

10 ~~(H)~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 available to the public on the Internet Web site as provided in
2 this section.

3 *(4) Effective January 1, 2012, no person shall be excluded*
4 *pursuant to this subdivision unless the offender has submitted to*
5 *the department documentation sufficient for the department to*
6 *determine that he or she has a SARATSO risk level of low or*
7 *moderate-low.*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10
11 ~~CHAPTER 7.5. CHILD PORNOGRAPHY~~
12

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

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

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

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

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

31 ~~(e) "Exhibit" means show.~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3 ~~311.2. (a) Any person who knowingly possesses or controls~~
4 ~~any matter that depicts a minor personally engaging in or~~
5 ~~simulating sexual conduct, as defined in this chapter, is guilty of~~
6 ~~a crime. The specific offenses, penalties and additional~~
7 ~~definitions applicable to this section are described in the~~
8 ~~following paragraphs. It is an element of each offense described~~
9 ~~in this section that the defendant knew or should have known that~~
10 ~~the child depicted is under the age specified in the definition of~~
11 ~~each particular crime.~~

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

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

20 ~~(b) Any person who commits a violation of subdivision (a) and~~
21 ~~who has been previously convicted of a violation of this section,~~
22 ~~of an offense described in subparagraph (A) of paragraph (2) of~~
23 ~~subdivision (a) of Section 290, any offense for which he or she~~
24 ~~was required to register pursuant to Section 290, of a violation of~~
25 ~~Section 311.1, or of subdivision (b) or (d) of former Section~~
26 ~~311.2, Section 311.3, subdivision (b) or (c) of former Section~~
27 ~~311.4, or of an attempt to commit any of those offenses, or any~~
28 ~~person who has been found to be a sexually violent predator~~
29 ~~pursuant to Article 4 (commencing with Section 6600) of~~
30 ~~Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions~~
31 ~~Code, is guilty of a felony and shall be punished by~~
32 ~~imprisonment for two, four, or six years.~~

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

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

37 ~~311.3. Any person who knowingly sends or causes to be sent,~~
38 ~~or brings or causes to be brought, into this state for sale or~~
39 ~~distribution, or who distributes, exhibits, or exchanges any~~
40 ~~matter, or who possesses, prepares, produces, develops,~~

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

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

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

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

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

29 ~~311.4. Any monetary assets gained from the production,~~
30 ~~publication, sale, distribution, exchange, or control of any matter~~
31 ~~that depicts a minor under 18 years of age that is unlawful~~
32 ~~pursuant to this chapter is subject to forfeiture, upon conviction~~
33 ~~for a violation of one of those sections. Upon petition by the~~
34 ~~prosecuting attorney, at any time following sentencing for a~~
35 ~~violation of one of those sections, the court shall conduct a~~
36 ~~hearing to determine the amount of monetary assets that are~~
37 ~~subject to forfeiture. The Civil Discovery Act of 1986 (Article 3~~
38 ~~(commencing with Section 2016) of Chapter 3 of Title 3 of Part~~
39 ~~4 of the Code of Civil Procedure) applies to that hearing.~~

1 ~~311.5.—When a conviction under this chapter becomes final,~~
2 ~~the court shall order any matter that is the subject of the~~
3 ~~conviction which remains in the possession or under the control~~
4 ~~of the district attorney or any law enforcement agency, to be~~
5 ~~destroyed, and the court shall also cause any such material in its~~
6 ~~possession or under its control to be destroyed.~~

7 ~~311.6.—Every person who knowingly engages or participates~~
8 ~~in, manages, produces, sponsors, presents or exhibits obscene~~
9 ~~live conduct to or before an assembly or audience consisting of at~~
10 ~~least one person or spectator in any public place or in any place~~
11 ~~exposed to public view, or in any place open to the public or to a~~
12 ~~segment thereof, whether or not an admission fee is charged, or~~
13 ~~whether or not attendance is conditioned upon the presentation of~~
14 ~~a membership card or other token, is guilty of a misdemeanor.~~

15 ~~311.7.—(a) It shall be a defense in any prosecution for a~~
16 ~~violation of this chapter that the act charged was committed in~~
17 ~~aid of legitimate medical, scientific, or educational activities, or~~
18 ~~during lawful conduct between spouses when one or both are~~
19 ~~under 18 years of age, or that the matter depicts a child under 18~~
20 ~~years of age if that child is legally emancipated.~~

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

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

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

1 ~~311.8.— Any act described in any section of this chapter that is~~
2 ~~committed on a separate occasion or is committed such that the~~
3 ~~person had time to reflect on his or her conduct may be~~
4 ~~separately charged and punished.~~

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

7
8 ~~CHAPTER 7.55. OBSCENITY~~
9

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

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

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

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

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

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

1 equipment, or any other computer-generated image, motion
2 picture, or other pictorial representation, or any statue or other
3 figure, or any recording, transcription, or mechanical, chemical,
4 or electrical reproduction, or any other article, equipment,
5 machine, or material. “Matter” also means live or recorded
6 telephone messages if transmitted, disseminated, or distributed as
7 part of a commercial transaction.

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

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

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

15 (f) “Exhibit” means show.

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

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

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

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

1 ~~years of age engaged in sexual conduct, as defined in this~~
2 ~~chapter, is a factor that may be considered in making that~~
3 ~~determination.~~

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

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

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

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

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

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

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

18 (7) ~~Any lewd or lascivious sexual act as defined in Section~~
19 ~~288.~~

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

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

34 (b) ~~Any person who, with knowledge that a person is a minor,~~
35 ~~or who, while in possession of any facts on the basis of which he~~
36 ~~or she should reasonably know that the person is a minor, hires,~~
37 ~~employs, or uses the minor to do or assist in doing any of the~~
38 ~~described in subdivision (a) is guilty of a felony.~~

39 312.2. ~~Any person who advertises for sale or distribution any~~
40 ~~obscene matter knowing that it depicts a person under 18 years of~~

1 age engaged in an act of sexual conduct, is guilty of a felony and
2 is punishable by imprisonment in the state prison for two, three,
3 or four years, or in a county jail not exceeding one year, or by a
4 fine not exceeding fifty thousand dollars (\$50,000), or by both
5 that fine and imprisonment.

6 ~~312.3.—Any person who writes, creates, or solicits the~~
7 ~~publication or distribution of advertising or other promotional~~
8 ~~material, or who in any manner promotes, the sale, distribution,~~
9 ~~or exhibition of matter represented or held out by him or her to~~
10 ~~be obscene, is guilty of a misdemeanor, punishable by~~
11 ~~imprisonment in the county jail for up to one year, a fine of up to~~
12 ~~five thousand dollars (\$5,000), or both. If the person has~~
13 ~~previously been convicted of any offense in this chapter, or of a~~
14 ~~violation of Section 313.1, the person shall be punished by~~
15 ~~imprisonment in the state prison.~~

16 ~~312.4.—(a) Any person who, knowingly, as a condition to a~~
17 ~~sale, allocation, consignment, or delivery for resale of any paper,~~
18 ~~magazine, book, periodical, publication or other merchandise,~~
19 ~~requires that the purchaser or consignee receive any obscene~~
20 ~~matter, or who denies or threatens to deny a franchise, revokes or~~
21 ~~threatens to revoke, or imposes any penalty, financial or~~
22 ~~otherwise, by reason of the failure of any person to accept~~
23 ~~obscene matter, or by reason of the return of that matter, is guilty~~
24 ~~of a misdemeanor.~~

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

35 ~~(c) It shall be a defense in any prosecution for a violation of~~
36 ~~this chapter by a person who knowingly distributed any obscene~~
37 ~~matter by the use of telephones or telephone facilities to any~~
38 ~~person under 18 years of age that the defendant has taken either~~
39 ~~of the following measures to restrict access to the obscene matter~~
40 ~~by persons under 18 years of age:~~

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

11 ~~(2) Required payment by credit card before transmission of the~~
12 ~~matter.~~

13 ~~(d) Any list of applicants or recipients compiled or maintained~~
14 ~~by an information access service provider for purposes of~~
15 ~~compliance with subdivision (c) is confidential and shall not be~~
16 ~~sold or otherwise disseminated except upon order of the court.~~

17 ~~312.5. (a) In any prosecution for a violation of the provisions~~
18 ~~of this chapter or of Chapter 7.6 (commencing with Section 313),~~
19 ~~neither the prosecution nor the defense shall be required to~~
20 ~~introduce expert witness testimony concerning the obscene or~~
21 ~~harmful character of the matter or live conduct that is the subject~~
22 ~~of the prosecution.~~

23 ~~(b) Any evidence that tends to establish contemporary~~
24 ~~community standards of appeal to prurient interest or of~~
25 ~~customary limits of candor in the description or representation of~~
26 ~~nudity, sex, or excretion, or which bears upon the question of~~
27 ~~significant literary, artistic, political, educational, or scientific~~
28 ~~value shall, subject to the provisions of the Evidence Code, be~~
29 ~~admissible when offered by either the prosecution or by the~~
30 ~~defense.~~

31 ~~312.6. When a conviction under this chapter becomes final,~~
32 ~~the court shall order any matter that is the subject of the~~
33 ~~conviction which remains in the possession or under the control~~
34 ~~of the district attorney or any law enforcement agency, to be~~
35 ~~destroyed, and the court shall also cause any such material in its~~
36 ~~possession or under its control to be destroyed.~~

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

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

CHAPTER 7.6. HARMFUL MATTER

313. As used in this chapter:

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

(1) When 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, where circumstances of production, presentation, sale, dissemination, distribution, or publicity indicate that matter is being commercially exploited by the defendant for the sake of its prurient appeal, that evidence is probative with respect to the nature of the matter and can justify the conclusion that the matter lacks serious literary, artistic, political, or scientific value for minors.

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

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

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

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

(f) “Exhibit” means to show.

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

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

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

13 ~~(b) Any person who misrepresents himself or herself to be the~~
14 ~~parent or guardian of a minor and thereby causes the minor to be~~
15 ~~admitted to an exhibition of any harmful matter shall be punished~~
16 ~~as specified in Section 313.5.~~

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

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

33 ~~(d) Nothing in this section invalidates or prohibits the adoption~~
34 ~~of an ordinance by a city, county, or city and county that restricts~~
35 ~~the display of material that is harmful to minors, as defined in~~
36 ~~this chapter, in a public place, other than a public place from~~
37 ~~which minors are excluded, by requiring the placement of~~
38 ~~devices commonly known as blinder racks in front of the~~
39 ~~material, so that the lower two-thirds of the material is not~~
40 ~~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 post a sign, reasonably visible to all customers, delineating the provisions of this subdivision.~~

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

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

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

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

5 ~~(1) Required the person receiving the harmful matter to use an~~
6 ~~authorized access or identification card to the vending machine~~
7 ~~after taking reasonable measures to ascertain that the applicant~~
8 ~~was 18 years of age or older and has established a procedure to~~
9 ~~immediately cancel the card of any person after receiving notice,~~
10 ~~in writing or by telephone, that the code has been lost, stolen, or~~
11 ~~used by persons under 18 years of age or that the card is no~~
12 ~~longer desired.~~

13 ~~(2) Required the person receiving the harmful matter to use a~~
14 ~~token in order to utilize the vending machine after taking~~
15 ~~reasonable measures to ascertain that the person was 18 years of~~
16 ~~age or older.~~

17 ~~(i) Any list of applicants or recipients compiled or maintained~~
18 ~~by an information access service provider for purposes of~~
19 ~~compliance with paragraph (1) of subdivision (g) is confidential~~
20 ~~and shall not be sold or otherwise disseminated except upon~~
21 ~~order of the court.~~

22 ~~313.2. (a) Nothing in this chapter shall prohibit any parent or~~
23 ~~guardian from distributing any harmful matter to his or her child~~
24 ~~or ward or permitting his or her child or ward to attend an~~
25 ~~exhibition of any harmful matter if the child or ward is~~
26 ~~accompanied by him or her.~~

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

29 ~~(1) A minor who is accompanied by his or her parent or~~
30 ~~guardian.~~

31 ~~(2) A minor who is accompanied by an adult who represents~~
32 ~~himself or herself to be the parent or guardian of the minor and~~
33 ~~whom the person, by the exercise of reasonable care, does not~~
34 ~~have reason to know is not the parent or guardian of the minor.~~

35 ~~313.3. It shall be a defense in any prosecution for a violation~~
36 ~~of this chapter that the act charged was committed in aid of~~
37 ~~legitimate scientific or educational purposes.~~

38 ~~313.4. When a conviction under this chapter becomes final,~~
39 ~~the court shall order any matter that is the subject of the~~
40 ~~conviction which remains in the possession or under the control~~

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

4 313.5. Any person who violates Section 313.1, other than
5 subdivision (e), is punishable by a fine of not more than two
6 thousand dollars (\$2,000), by imprisonment in the county jail for
7 not more than one year, or by both that fine and imprisonment.
8 However, if the person has been previously convicted of a
9 violation of Section 313.1, other than subdivision (e), or of any
10 section of Chapter 7.5 (commencing with Section 311), the
11 person shall be punished by imprisonment in the state prison.

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

14
15 CHAPTER 7.65. GENERAL PROVISIONS RELATED TO
16 PROHIBITED MATERIAL
17

18 313.5. If any phrase, clause, sentence, section or provision of
19 Chapter 7.5 (commencing with Section 311), Chapter 7.55
20 (commencing with Section 312), or Chapter 7.6 (commencing
21 with Section 313) or application thereof to any person or
22 circumstance is held invalid, that invalidity shall not affect any
23 other phrase, clause, sentence, section, provision or application
24 of this chapter, which can be given effect without the invalid
25 phrase, clause, sentence, section, provision or application and to
26 this end the provisions of this chapter are declared to be
27 severable.

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

38 (b) An employer is not liable under the aforementioned
39 chapters for the actions of an employee or agent unless the
40 employee's or agent's conduct is within the scope of his or her

1 employment or agency and the employer has knowledge of,
2 authorizes, or ratifies the employee's or agent's conduct.

3 (c) ~~It is a defense to prosecution under the aforementioned~~
4 ~~chapters and in any civil action that may be instituted based on a~~
5 ~~violation of any of those chapters that a person has taken~~
6 ~~reasonable, effective, and appropriate actions in good faith to~~
7 ~~restrict or prevent the transmission of, or access to, a~~
8 ~~communication specified in that chapter.~~

9 ~~313.7. Nothing in the aforementioned chapters shall be~~
10 ~~construed to apply to interstate services or to any other activities~~
11 ~~or actions for which states are prohibited from imposing liability~~
12 ~~pursuant to paragraph (4) of subsection (g) of Section 223 of~~
13 ~~Title 47 of the United States Code.~~

14 *SEC. 19.5. Section 290.46 of the Penal Code is amended to*
15 *read:*

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

29 (2) (A) *On or before July 1, 2010, the Department of Justice*
30 *shall make available to the public, via an Internet Web site as*
31 *specified in this section, as to any person described in*
32 *subdivision (b), (c), or (d), the following information:*

33 (i) *The year of conviction of his or her most recent offense*
34 *requiring registration pursuant to Section 290.*

35 (ii) *The year he or she was released from incarceration for*
36 *that offense.*

37 (iii) *Whether he or she was subsequently incarcerated for any*
38 *other felony, if that fact is reported to the department. If the*
39 *department has no information about a subsequent incarceration*
40 *for any felony, that fact shall be noted on the Internet Web site.*

1 *However, no year of conviction shall be made available to the*
2 *public unless the department also is able to make available the*
3 *corresponding year of release of incarceration for that offense,*
4 *and the required notation regarding any subsequent felony.*

5 *(B) (i) Any state or local facility that releases from*
6 *incarceration a person who was incarcerated because of a crime*
7 *for which he or she is required to register as a sex offender*
8 *pursuant to Section 290 shall, within 30 days of release, provide*
9 *the year of conviction and year of release for his or her most*
10 *recent offense requiring registration to the Department of Justice*
11 *in a manner and format approved by the department.*

12 *(ii) Any state or local facility that releases a person who is*
13 *required to register pursuant to Section 290 from incarceration*
14 *whose incarceration was for a felony committed subsequently to*
15 *the offense for which he or she is required to register shall,*
16 *within 30 days of release, advise the Department of Justice of*
17 *that fact.*

18 *(iii) Any state or local facility that, prior to January 1, 2007,*
19 *released from incarceration a person who was incarcerated*
20 *because of a crime for which he or she is required to register as*
21 *a sex offender pursuant to Section 290 shall provide the year of*
22 *conviction and year of release for his or her most recent offense*
23 *requiring registration to the Department of Justice in a manner*
24 *and format approved by the department.*

25 *(iv) Any state or local facility that, prior to January 1, 2007,*
26 *released a person who is required to register pursuant to Section*
27 *290 from incarceration whose incarceration was for a felony*
28 *committed subsequently to the offense for which he or she is*
29 *required to register shall advise the Department of Justice of that*
30 *fact in a manner and format approved by the department.*

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~~ 288.3, *provided that the offense is a felony.*

17 (J) ~~Subdivision~~ Section 288.5.

18 (K) Section 288.7.

19 (L) Subdivision (a) or (j) of Section 289.

20 ~~(K)~~

21 (M) Any person who has ever been adjudicated a sexually
22 violent predator as defined in Section 6600 of the Welfare and
23 Institutions Code.

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

1 resides. However, the address at which the person resides shall
2 not be disclosed until a determination is made that the person is,
3 by virtue of his or her additional prior or subsequent conviction
4 of an offense listed in paragraph (2) of subdivision (a) of Section
5 290, subject to this subdivision.

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

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

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

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

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

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

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

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

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

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

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

32 (D) Section 266j.

33 (E) Section 267.

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

36 (G) ~~Section 647.6~~ 288.3, *provided that the offense is a*
37 *misdemeanor.*

38 (H) ~~Section 626.81.~~ *Any*

39 (I) *Section 647.6.*

40 (J) *Section 653c.*

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

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

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

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

(B) Section 647.6, provided the offense is a misdemeanor.

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

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

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

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

7 ~~(I) The that the~~ offender was the victim's parent, stepparent,
8 sibling, or grandparent-

9 ~~(II) The and that the~~ crime did not involve either oral
10 copulation or penetration of the vagina or rectum of either the
11 victim or the offender by the penis of the other or by any foreign
12 object.

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

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

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

32 (4) *Effective January 1, 2012, no person shall be excluded*
33 *pursuant to this subdivision unless the offender has submitted to*
34 *the department documentation sufficient for the department to*
35 *determine that he or she has a SARATSO risk level of low or*
36 *moderate-low.*

37 (f) The Department of Justice shall make a reasonable effort to
38 provide notification to persons who have been convicted of the
39 commission or attempted commission of an offense specified in
40 subdivision (b), (c), or (d), that on or before July 1, 2005, the

1 department is required to make information about specified sex
2 offenders available to the public via an Internet Web site as
3 specified in this section. The Department of Justice shall also
4 make a reasonable effort to provide notice that some offenders
5 are eligible to apply for exclusion from the Internet Web site.

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

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

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

23 (h) For purposes of this section, "offense" includes the
24 statutory predecessors of that offense, or any offense committed
25 in another jurisdiction that, if committed or attempted to be
26 committed in this state, would have been punishable in this state
27 as an offense listed in subparagraph (A) of paragraph (2) of
28 subdivision (a) of Section 290.

29 (i) Notwithstanding Section 6254.5 of the Government Code,
30 disclosure of information pursuant to this section is not a waiver
31 of exemptions under Chapter 3.5 (commencing with Section
32 6250) of Title 1 of Division 7 of the Government Code and does
33 not affect other statutory restrictions on disclosure in other
34 situations.

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

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

5 (k) Any person who is required to register pursuant to Section
6 290 who enters an Internet Web site established pursuant to this
7 section shall be punished by a fine not exceeding one thousand
8 dollars (\$1,000), imprisonment in a county jail for a period not to
9 exceed six months, or by both that fine and imprisonment.

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

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

16 (A) Health insurance.

17 (B) Insurance.

18 (C) Loans.

19 (D) Credit.

20 (E) Employment.

21 (F) Education, scholarships, or fellowships.

22 (G) Housing or accommodations.

23 (H) Benefits, privileges, or services provided by any business
24 establishment.

25 (3) This section shall not affect authorized access to, or use of,
26 information pursuant to, among other provisions, Sections 11105
27 and 11105.3, Section 8808 of the Family Code, Sections 777.5
28 and 14409.2 of the Financial Code, Sections 1522.01 and
29 1596.871 of the Health and Safety Code, and Section 432.7 of
30 the Labor Code.

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

39 (B) Whenever there is reasonable cause to believe that any
40 person or group of persons is engaged in a pattern or practice of

1 misuse of the information available via an Internet Web site
2 established pursuant to this section in violation of paragraph (2),
3 the Attorney General, any district attorney, or city attorney, or
4 any person aggrieved by the misuse is authorized to bring a civil
5 action in the appropriate court requesting preventive relief,
6 including an application for a permanent or temporary injunction,
7 restraining order, or other order against the person or group of
8 persons responsible for the pattern or practice of misuse. The
9 foregoing remedies shall be independent of any other remedies or
10 procedures that may be available to an aggrieved party under
11 other provisions of law, including Part 2 (commencing with
12 Section 43) of Division 1 of the Civil Code.

13 (m) The public notification provisions of this section are
14 applicable to every person described in this section, without
15 regard to when his or her crimes were committed or his or her
16 duty to register pursuant to Section 290 arose, and to every
17 offense described in this section, regardless of when it was
18 committed.

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

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

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

34 SEC. 20. *Section 311.2 of the Penal Code is amended to*
35 *read:*

36 311.2. (a) Every person who knowingly sends or causes to be
37 sent, or brings or causes to be brought, into this state for sale or
38 distribution, or in this state possesses, prepares, publishes,
39 produces, or prints, with intent to distribute or to exhibit to
40 others, or who offers to distribute, distributes, or exhibits to

1 others, any obscene matter is for a first offense, guilty of a
2 misdemeanor. If the person has previously been convicted of any
3 violation of this section, the court may, in addition to the
4 punishment authorized in Section 311.9, impose a fine not
5 exceeding fifty thousand dollars (\$50,000).

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

27 (c) Every person who knowingly sends or causes to be sent, or
28 brings or causes to be brought, into this state for sale or
29 distribution, or in this state possesses, prepares, publishes,
30 produces, develops, duplicates, or prints any representation of
31 information, data, or image, including, but not limited to, any
32 film, filmstrip, photograph, negative, slide, photocopy, videotape,
33 video laser disc, computer hardware, computer software,
34 computer floppy disc, data storage media, CD-ROM, or
35 computer-generated equipment or any other computer-generated
36 image that contains or incorporates in any manner, any film or
37 filmstrip, with intent to distribute or exhibit to, or to exchange
38 with, a person 18 years of age or older, or who offers to
39 distribute, distributes, or exhibits to, or exchanges with, a person
40 18 years of age or older any matter, knowing that the matter

depicts a person under the age of 18 years personally engaging in or personally simulating sexual conduct, as defined in Section 311.4, ~~is guilty of a misdemeanor and~~ shall be punished by imprisonment in the county jail for up to one year, or by a fine not exceeding two thousand dollars (\$2,000), or by both that fine and imprisonment, *or by imprisonment in the state prison*. It is not necessary to prove commercial consideration or that the matter is obscene in order to establish a violation of this subdivision. If a person has been previously convicted of a violation of this subdivision, he or she is guilty of a felony.

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

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

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

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

1 chapter or to perform related activities in providing telephone
2 services.

3 *SEC. 21. Section 311.4 of the Penal Code is amended to*
4 *read:*

5 311.4. (a) Every person who, with knowledge that a person is
6 a minor, or who, while in possession of any facts on the basis of
7 which he or she should reasonably know that the person is a
8 minor, hires, employs, or uses the minor to do or assist in doing
9 any of the acts described in Section 311.2, ~~is, for a first offense,~~
10 ~~guilty of a misdemeanor shall be punished by imprisonment in~~
11 ~~the county jail for up to one year, or by a fine not exceeding two~~
12 ~~thousand dollars (\$2,000), or by both that fine and~~
13 ~~imprisonment, or by imprisonment in the state prison.~~ If the
14 person has previously been convicted of any violation of this
15 section, the court may, in addition to the punishment authorized
16 in Section 311.9, impose a fine not exceeding fifty thousand
17 dollars (\$50,000).

18 (b) Every person who, with knowledge that a person is a minor
19 under the age of 18 years, or who, while in possession of any
20 facts on the basis of which he or she should reasonably know that
21 the person is a minor under the age of 18 years, knowingly
22 promotes, employs, uses, persuades, induces, or coerces a minor
23 under the age of 18 years, or any parent or guardian of a minor
24 under the age of 18 years under his or her control who knowingly
25 permits the minor, to engage in or assist others to engage in
26 either posing or modeling alone or with others for purposes of
27 preparing any representation of information, data, or image,
28 including, but not limited to, any film, filmstrip, photograph,
29 negative, slide, photocopy, videotape, video laser disc, computer
30 hardware, computer software, computer floppy disc, data storage
31 media, CD-ROM, or computer-generated equipment or any other
32 computer-generated image that contains or incorporates in any
33 manner, any film, filmstrip, or a live performance involving,
34 sexual conduct by a minor under the age of 18 years alone or
35 with other persons or animals, for commercial purposes, is guilty
36 of a felony and shall be punished by imprisonment in the state
37 prison for three, six, or eight years.

38 (c) Every person who, with knowledge that a person is a minor
39 under the age of 18 years, or who, while in possession of any
40 facts on the basis of which he or she should reasonably know that

1 the person is a minor under the age of 18 years, knowingly
2 promotes, employs, uses, persuades, induces, or coerces a minor
3 under the age of 18 years, or any parent or guardian of a minor
4 under the age of 18 years under his or her control who knowingly
5 permits the minor, to engage in or assist others to engage in
6 either posing or modeling alone or with others for purposes of
7 preparing any representation of information, data, or image,
8 including, but not limited to, any film, filmstrip, photograph,
9 negative, slide, photocopy, videotape, video laser disc, computer
10 hardware, computer software, computer floppy disc, data storage
11 media, CD-ROM, or computer-generated equipment or any other
12 computer-generated image that contains or incorporates in any
13 manner, any film, filmstrip, or a live performance involving,
14 sexual conduct by a minor under the age of 18 years alone or
15 with other persons or animals, is guilty of a felony. It is not
16 necessary to prove commercial purposes in order to establish a
17 violation of this subdivision.

18 (d) (1) As used in subdivisions (b) and (c), “sexual conduct”
19 means any of the following, whether actual or simulated: sexual
20 intercourse, oral copulation, anal intercourse, anal oral
21 copulation, masturbation, bestiality, sexual sadism, sexual
22 masochism, penetration of the vagina or rectum by any object in
23 a lewd or lascivious manner, exhibition of the genitals or pubic
24 or rectal area for the purpose of sexual stimulation of the viewer,
25 any lewd or lascivious sexual act as defined in Section 288, or
26 excretory functions performed in a lewd or lascivious manner,
27 whether or not any of the above conduct is performed alone or
28 between members of the same or opposite sex or between
29 humans and animals. An act is simulated when it gives the
30 appearance of being sexual conduct.

31 (2) As used in subdivisions (b) and (c), “matter” means any
32 film, filmstrip, photograph, negative, slide, photocopy, videotape,
33 video laser disc, computer hardware, computer software,
34 computer floppy disc, or any other computer-related equipment
35 or computer-generated image that contains or incorporates in any
36 manner, any film, filmstrip, photograph, negative, slide,
37 photocopy, videotape, or video laser disc.

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

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

SEC. 22. Section 311.9 of the Penal Code is amended to read:

311.9. (a) Every person who violates *subdivision (a) of* Section 311.2 or *Section 311.5*, ~~except subdivision (b) of Section 311.2~~, is punishable by fine of not more than one thousand dollars (\$1,000) plus five dollars (\$5) for each additional unit of material coming within the provisions of this chapter, which is involved in the offense, not to exceed ten thousand dollars (\$10,000), or by imprisonment in the county jail for not more than six months plus one day for each additional unit of material coming within the provisions of this chapter, and which is involved in the offense, ~~such basic maximum and additional days~~ not to exceed *a total of 360 days* in the county jail, or by both ~~such that~~ fine and imprisonment. If ~~such that~~ person has previously been convicted of any offense in this chapter, or of a violation of Section 313.1, a violation of *subdivision (a) of* Section 311.2 or *Section 311.5*, ~~except subdivision (b) of Section 311.2~~, is punishable as a felony.

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

(c) Every person who violates Section 311.7 is punishable by fine of not more than one thousand dollars (\$1,000) or by imprisonment in the county jail for not more than six months, or by both ~~such that~~ fine and imprisonment. For a second and subsequent offense he *or she* shall be punished by a fine of not more than two thousand dollars (\$2,000), or by imprisonment in

1 the county jail for not more than one year, or by both ~~such that~~
2 fine and imprisonment. If ~~such the~~ person has been twice
3 convicted of a violation of this chapter, a violation of Section
4 311.7 is punishable as a felony.

5 *SEC. 23. Section 311.11 of the Penal Code is amended to*
6 *read:*

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

23 (b) ~~If a person has been previously convicted of a violation of~~
24 ~~this section, or of a violation of subdivision (b) of Section 311.2,~~
25 ~~or subdivision (b) of Section 311.4, he or she~~ *Any person who*
26 *commits a violation of subdivision (a) and who has been*
27 *previously convicted of a crime for which registration is required*
28 *pursuant to Section 290, or any person who has ever been*
29 *adjudicated as a sexually violent predator pursuant to Article 4*
30 *(commencing with Section 6600) of Chapter 2 of Part 2 of*
31 *Division 6 of the Welfare and Institutions Code, is guilty of a*
32 *felony and shall be punished by imprisonment for two, four, or*
33 *six years.*

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

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

1 ~~SEC. 26.~~

2 ~~SEC. 24.~~ Section 626.8 of the Penal Code is amended to read:

3 626.8. (a) Any person who comes into any school building or
4 upon any school ground, or street, sidewalk, or public way
5 adjacent thereto, without lawful business thereon, and whose
6 presence or acts interfere with the peaceful conduct of the
7 activities of the school or disrupt the school or its pupils or
8 ~~school activities, unless the person is a parent or guardian of a~~
9 ~~child attending that school, or is a student at the school or has~~
10 ~~prior written permission for the entry from the chief~~
11 ~~administrative officer of that school, is guilty of a misdemeanor~~
12 ~~school activities, is guilty of a misdemeanor~~ if he or she does any
13 of the following:

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

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

23 (3) Has otherwise established a continued pattern of
24 unauthorized entry.

25 This section shall not be utilized to impinge upon the lawful
26 exercise of constitutionally protected rights of freedom of speech
27 or assembly.

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

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

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

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

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

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

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

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

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

SEC. 27.

SEC. 25. Section 626.83626.81 is added to the Penal Code, to read:

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

~~626.81. (a) Any person who is required to register as a sex offender pursuant to Section 290, who comes into any school building or upon any school ground; without lawful business thereon or and 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~~

1 minors are present without lawful business thereon, is guilty of a
2 misdemeanor.

3 ~~(b) Any person who has been convicted of a crime listed in~~
4 ~~subparagraph (A) of paragraph (2) of subdivision (a) of Section~~
5 ~~290 where the victim was an elderly or dependent person, as~~
6 ~~defined in Section 288, who comes onto any property where~~
7 ~~elderly or dependent persons reside without lawful business~~
8 ~~thereon or written permission from the director of the facility, is~~
9 ~~guilty of a misdemeanor.~~ *is guilty of a misdemeanor.*

10 (e)

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

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

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

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

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

31 *(c) Nothing in this section shall preclude or prohibit*
32 *prosecution under any other provision of law.*

33 ~~SEC. 28.~~

34 *SEC. 26.* Section 647.6 of the Penal Code is amended to read:

35 647.6. (a) (1) Every person who annoys or molests any child
36 under 18 years of age shall be punished by a fine not exceeding
37 five thousand dollars (\$5,000), by imprisonment in a county jail
38 not exceeding one year, or by both the fine and imprisonment.

39 (2) Every person who, motivated by an unnatural or abnormal
40 sexual interest in children, engages in conduct with an adult

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

7 (b) Every person who violates this section after having
8 entered, without consent, an inhabited dwelling house, or trailer
9 coach as defined in Section 635 of the Vehicle Code, or the
10 inhabited portion of any other building, shall be punished by
11 imprisonment in the state prison, or in a county jail not exceeding
12 one year, and by a fine not exceeding five thousand dollars
13 (\$5,000).

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

17 (2) Every person who violates this section after a previous
18 felony conviction under Section 261, 264.1, 269, 285, 286, 288a,
19 288.5, or 289, any of which involved a minor under 16 years of
20 age, or a previous felony conviction under this section, a
21 conviction under Section 288, or a felony conviction under
22 Section 311.4 involving a minor under 14 years of age shall be
23 punished by imprisonment in the state prison for two, four, or six
24 years.

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

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

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

3 *SEC. 27. Section 653g of the Penal Code is amended and*
4 *renumbered to read:*

5 ~~653g. Every~~

6 *653b. (a) Except as provided in subdivision (b), every person*
7 *who loiters about any school or public place at or near which*
8 *children attend or normally congregate and who remains at any*
9 *school or public place at or near which children attend or*
10 *normally congregate, or who reenters or comes upon a school or*
11 *place within 72 hours, after being asked to leave by the chief*
12 *administrative official of that school or, in the absence of the*
13 *chief administrative official, the person acting as the chief*
14 *administrative official, or by a member of the security patrol of*
15 *the school district who has been given authorization, in writing,*
16 *by the chief administrative official of that school to act as his or*
17 *her agent in performing this duty, or a city police officer, or*
18 *sheriff or deputy sheriff, or Department of the California*
19 *Highway Patrol peace officer is a vagrant, and is punishable by a*
20 *fine of not exceeding one thousand dollars (\$1,000) or by*
21 *imprisonment in the county jail for not exceeding six months, or*
22 *by both the fine and the imprisonment.*

23 *(b) Every person required to register as a sex offender who*
24 *violates subdivision (a) shall be punished as follows:*

25 *(1) Upon a first conviction, by a fine not exceeding two*
26 *thousand (\$2,000), by imprisonment in a county jail for a period*
27 *of not more than six months, or by both that fine and*
28 *imprisonment.*

29 *(2) If the defendant has been previously convicted once of a*
30 *violation of this section or former Section 653g, by imprisonment*
31 *in a county jail for a period of not less than 10 days or more than*
32 *six months, or by both imprisonment and a fine of not exceeding*
33 *two thousand dollars (\$2,000), and shall not be released on*
34 *probation, parole, or any other basis until he or she has served*
35 *at least 10 days.*

36 *(3) If the defendant has been previously convicted two or more*
37 *times of a violation of this section or former Section 653g, by*
38 *imprisonment in a county jail for a period of not less than 90*
39 *days or more than six months, or by both imprisonment and a*
40 *fine of not exceeding two thousand dollars (\$2,000), and shall*

1 *not be released on probation, parole, or any other basis until he*
2 *or she has served at least 90 days.*

3 (c) As used in this section, “loiter” means to delay, to linger,
4 or to idle about a school or public place without lawful business
5 for being present.

6 (d) *Nothing in this section shall preclude or prohibit*
7 *prosecution under any other provision of law.*

8 SEC. 28. Section 653c is added to the Penal Code, to read:

9 653c. (a) No person required to register as a sex offender
10 pursuant to Section 290 for an offense committed against an
11 elder or dependent adult, as defined in Section 368, other than a
12 resident of the facility, shall enter or remain on the grounds of a
13 day care or residential facility where elders or dependent adults
14 are regularly present or living, without having registered with
15 the facility administrator or his or her designees, except to
16 proceed expeditiously to the office of the facility administrator or
17 designee for the purpose of registering.

18 (b) In order to register pursuant to subdivision (a), a sex
19 offender shall advise the facility administrator or designee that
20 he or she is a sex offender; provide his or her name, address, and
21 purpose for entering the facility; and provide proof of identity.

22 (c) The facility administrator may refuse to register, impose
23 restrictions on registration, or revoke the registration of a sex
24 offender if he or she has a reasonable basis for concluding that
25 the offender’s presence or acts would disrupt, or have disrupted,
26 the facility, any resident, employee, volunteer, or visitor; would
27 result, or has resulted, in damage to property; the offender’s
28 presence at the facility would interfere, or has interfered, with
29 the peaceful conduct of the activities of the facility; or would
30 otherwise place at risk the facility, or any employee, volunteer or
31 visitor.

32 (d) Punishment for any violation of this section shall be as
33 follows:

34 (1) Upon a first conviction by a fine of not exceeding two
35 thousand dollars (\$2,000), by imprisonment in a county jail for a
36 period of not more than six months, or by both that fine and
37 imprisonment.

38 (2) If the defendant has been previously convicted once of a
39 violation of this section, by imprisonment in a county jail for a
40 period of not less than 10 days or more than six months, or by

1 both imprisonment and a fine of not exceeding two thousand
2 dollars (\$2,000), and shall not be released on probation, parole,
3 or any other basis until he or she has served at least 10 days.

4 (3) If the defendant has been previously convicted two or more
5 times of a violation of this section, by imprisonment in a county
6 jail for a period of not less than 90 days or more than six months,
7 or by both imprisonment and a fine of not exceeding two
8 thousand dollars (\$2,000), and shall not be released on
9 probation, parole, or any other basis until he or she has served
10 at least 90 days.

11 (e) Nothing in this section shall preclude or prohibit
12 prosecution under any other provision of law.

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

14 667.1. Notwithstanding subdivision (h) of Section 667, for all
15 offenses committed on or after the effective date of this act, all
16 references to existing statutes in subdivisions (c) to (g), inclusive,
17 of Section 667, are to those statutes as they existed on the
18 effective date of this act, including amendments made to those
19 statutes by the act enacted during the 2005–06 Regular Session
20 that amended this section.

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

22 667.5. Enhancement of prison terms for new offenses because
23 of prior prison terms shall be imposed as follows:

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

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

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

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

5 (1) Murder or voluntary manslaughter.

6 (2) Mayhem.

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

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

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

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

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

18 (8) Any felony in which the defendant inflicts great bodily
19 injury on any person other than an accomplice which has been
20 charged and proved as provided for in Section 12022.7, 12022.8,
21 or 12022.9 on or after July 1, 1977, or as specified prior to July
22 1, 1977, in Sections 213, 264, and 461, or any felony in which
23 the defendant uses a firearm which use has been charged and
24 proved as provided in subdivision (a) of Section 12022.3, or
25 Section 12022.5 or 12022.55.

26 (9) Any robbery.

27 (10) Arson, in violation of subdivision (a) or (b) of Section
28 451.

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

31 (12) Attempted murder.

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

33 (14) Kidnapping.

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

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

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

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

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

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

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

10 (22) Any violation of Section 12022.53.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

39 (c) A violation of Section 288 or 288.5 by a person who has
40 been previously convicted two or more times of an offense

1 specified in subdivision (b) shall be punished by imprisonment in
2 the state prison for 15 years to life.

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

4 667.6. (a) Any person who is convicted of an offense
5 specified in subdivision (e) and who has been convicted
6 previously of any of those offenses shall receive a five-year
7 enhancement for each of those prior convictions.

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

12 (c) In lieu of the term provided in Section 1170.1, a full,
13 separate, and consecutive term may be imposed for each
14 violation of an offense specified in subdivision (e) if the crimes
15 involve the same victim on the same occasion. A term may be
16 imposed consecutively pursuant to this subdivision if a person is
17 convicted of at least one offense specified in subdivision (e). If
18 the term is imposed consecutively pursuant to this subdivision, it
19 shall be served consecutively to any other term of imprisonment,
20 and shall commence from the time the person otherwise would
21 have been released from imprisonment. The term shall not be
22 included in any determination pursuant to Section 1170.1. Any
23 other term imposed subsequent to that term shall not be merged
24 therein but shall commence at the time the person otherwise
25 would have been released from prison.

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

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

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

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

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

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

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

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

(1) The defendant has been previously convicted of an offense specified in subdivision (c), including an offense committed in

1 another jurisdiction that includes all of the elements of an offense
2 specified in subdivision (c).

3 (2) The defendant kidnapped the victim of the present offense
4 and the movement of the victim substantially increased the risk
5 of harm to the victim over and above that level of risk necessarily
6 inherent in the underlying offense in subdivision (c).

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

10 (4) The defendant committed the present offense during the
11 commission of a burglary of the first degree, as defined in
12 subdivision (a) of Section 460, with intent to commit an offense
13 specified in subdivision (c).

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

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

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

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

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

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

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

36 (6) The defendant engaged in the tying or binding of the
37 victim or another person in the commission of the present
38 offense.

1 (7) The defendant administered a controlled substance to the
2 victim in the commission of the present offense in violation of
3 Section 12022.75.

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

9 (f) If only the minimum number of circumstances specified in
10 subdivision (d) or (e) that are required for the punishment
11 provided in subdivision (a) or (b) to apply have been pled and
12 proved, that circumstance or those circumstances shall be used as
13 the basis for imposing the term provided in subdivision (a) or (b),
14 whichever is greater, rather than being used to impose the
15 punishment authorized under any other provision of law, unless
16 another provision of law provides for a greater penalty, or the
17 punishment under another provision of law may be imposed in
18 addition to the punishment provided by this section. However, if
19 any additional circumstance or circumstances specified in
20 subdivision (d) or (e) have been pled and proved, the minimum
21 number of circumstances shall be used as the basis for imposing
22 the term provided in subdivision (a), and any other additional
23 circumstance or circumstances shall be used to impose any
24 punishment or enhancement authorized under any other provision
25 of law.

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

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

35 (i) For any offense specified in paragraphs (1) to (7), inclusive,
36 of subdivision (c), the court shall impose a consecutive sentence
37 for each offense that results in a conviction under this section if
38 the crimes involve separate victims or involve the same victim on
39 separate occasions, as defined in subdivision (d) of Section
40 667.6.

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

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

8 667.71. (a) For the purpose of this section, a habitual sexual
9 offender is a person who has been previously convicted of one or
10 more of the offenses specified in subdivision (c) and who is
11 convicted in the present proceeding of one of those offenses.

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

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

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

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

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

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

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

25 (6) Continuous sexual abuse of a child, in violation of Section
26 288.5.

27 (7) Sodomy, in violation of subdivision (c) or (d) of Section
28 286.

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

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

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

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

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

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

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

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

SEC. 35. Section 801.2 is added to the Penal Code, to read:

801.2. Notwithstanding any other limitation of time prescribed in this chapter, prosecution for a violation of subdivision (b) of Section 311.4 shall commence within 10 years of the date of production of the pornographic material.

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

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

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

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

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

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

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

(2) Plea bargaining in any case in which the indictment or information charges any serious felony, any felony in which it is

alleged that a firearm was personally used by the defendant, or any offense of driving while under the influence of alcohol, drugs, narcotics, or any other intoxicating substance, or any combination thereof, is prohibited, unless there is insufficient evidence to prove the people's case, or testimony of a material witness cannot be obtained, or a reduction or dismissal would not result in a substantial change in sentence.

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

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

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

(1) Murder or voluntary manslaughter; (2) mayhem; (3) rape; (4) sodomy by force, violence, duress, menace, threat of great bodily injury, or fear of immediate and unlawful bodily injury on the victim or another person; (5) oral copulation by force, violence, duress, menace, threat of great bodily injury, or fear of immediate and unlawful bodily injury on the victim or another person; (6) lewd or lascivious act on a child under 14 years of age; (7) any felony punishable by death or imprisonment in the state prison for life; (8) any felony in which the defendant personally inflicts great bodily injury on any person, other than an accomplice, or any felony in which the defendant personally uses a firearm; (9) attempted murder; (10) assault with intent to

1 commit rape or robbery; (11) assault with a deadly weapon or
2 instrument on a peace officer; (12) assault by a life prisoner on a
3 noninmate; (13) assault with a deadly weapon by an inmate; (14)
4 arson; (15) exploding a destructive device or any explosive with
5 intent to injure; (16) exploding a destructive device or any
6 explosive causing bodily injury, great bodily injury, or mayhem;
7 (17) exploding a destructive device or any explosive with intent
8 to murder; (18) any burglary of the first degree; (19) robbery or
9 bank robbery; (20) kidnapping; (21) holding of a hostage by a
10 person confined in a state prison; (22) attempt to commit a felony
11 punishable by death or imprisonment in the state prison for life;
12 (23) any felony in which the defendant personally used a
13 dangerous or deadly weapon; (24) selling, furnishing,
14 administering, giving, or offering to sell, furnish, administer, or
15 give to a minor any heroin, cocaine, phencyclidine (PCP), or any
16 methamphetamine-related drug, as described in paragraph (2) of
17 subdivision (d) of Section 11055 of the Health and Safety Code,
18 or any of the precursors of methamphetamines, as described in
19 subparagraph (A) of paragraph (1) of subdivision (f) of Section
20 11055 or subdivision (a) of Section 11100 of the Health and
21 Safety Code; (25) any violation of subdivision (a) of Section 289
22 where the act is accomplished against the victim's will by force,
23 violence, duress, menace, or fear of immediate and unlawful
24 bodily injury on the victim or another person; (26) grand theft
25 involving a firearm; (27) carjacking; (28) any felony offense,
26 which would also constitute a felony violation of Section 186.22;
27 (29) assault with the intent to commit mayhem, rape, sodomy, or
28 oral copulation, in violation of Section 220; (30) throwing acid or
29 flammable substances, in violation of Section 244; (31) assault
30 with a deadly weapon, firearm, machinegun, assault weapon, or
31 semiautomatic firearm or assault on a peace officer or firefighter,
32 in violation of Section 245; (32) assault with a deadly weapon
33 against a public transit employee, custodial officer, or school
34 employee, in violation of Sections 245.2, 245.3, or 245.5; (33)
35 discharge of a firearm at an inhabited dwelling, vehicle, or
36 aircraft, in violation of Section 246; (34) commission of rape or
37 sexual penetration in concert with another person, in violation of
38 Section 264.1; (35) continuous sexual abuse of a child, in
39 violation of Section 288.5; (36) shooting from a vehicle, in
40 violation of subdivision (c) or (d) of Section 12034; (37)

1 intimidation of victims or witnesses, in violation of Section
2 136.1; (38) criminal threats, in violation of Section 422; (39) any
3 attempt to commit a crime listed in this subdivision other than an
4 assault; (40) any violation of Section 12022.53; (41) a violation
5 of subdivision (b) or (c) of Section 11418; and (42) any
6 conspiracy to commit an offense described in this subdivision.

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

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

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

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

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

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

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

35 ~~1202.8. (a) Persons placed on probation by a court shall be~~
36 ~~under the supervision of the county probation officer who shall~~
37 ~~determine both the level and type of supervision consistent with~~
38 ~~the court-ordered conditions of probation. Each county shall~~
39 ~~designate certain probation officers to monitor registered sex~~
40 ~~offenders, as specified in subdivision (b) of Section 290.08.~~

1 Those probationers shall be subject to active and intense
2 supervision by that designated officer.

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

8 ~~SEC. 39.~~

9 *SEC. 38.* Section 1203 of the Penal Code is amended to read:

10 1203. (a) As used in this code, “probation” means the
11 suspension of the imposition or execution of a sentence and the
12 order of conditional and revocable release in the community
13 under the supervision of a probation officer. As used in this code,
14 “conditional sentence” means the suspension of the imposition or
15 execution of a sentence and the order of revocable release in the
16 community subject to conditions established by the court without
17 the supervision of a probation officer. It is the intent of the
18 Legislature that both conditional sentence and probation are
19 authorized whenever probation is authorized in any code as a
20 sentencing option for infractions or misdemeanors.

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

28 (2) (A) The probation officer shall immediately investigate
29 and make a written report to the court of his or her findings and
30 recommendations, including his or her recommendations as to
31 the granting or denying of probation and the conditions of
32 probation, if granted.

33 (B) Pursuant to Section 828 of the Welfare and Institutions
34 Code, the probation officer shall include in his or her report any
35 information gathered by a law enforcement agency relating to the
36 taking of the defendant into custody as a minor, which shall be
37 considered for purposes of determining whether adjudications of
38 commissions of crimes as a juvenile warrant a finding that there
39 are circumstances in aggravation pursuant to Section 1170 or to
40 deny probation.

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

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

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

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

14 (E) The report shall be made available to the court and the
15 prosecuting and defense attorneys at least five days, or upon
16 request of the defendant or prosecuting attorney nine days, prior
17 to the time fixed by the court for the hearing and determination
18 of the report, and shall be filed with the clerk of the court as a
19 record in the case at the time of the hearing. The time within
20 which the report shall be made available and filed may be waived
21 by written stipulation of the prosecuting and defense attorneys
22 that is filed with the court or an oral stipulation in open court that
23 is made and entered upon the minutes of the court.

24 (3) At a time fixed by the court, the court shall hear and
25 determine the application, if one has been made, or, in any case,
26 the suitability of probation in the particular case. At the hearing,
27 the court shall consider any report of the probation officer,
28 including the results of the SARATSO, if applicable, and shall
29 make a statement that it has considered the report, which shall be
30 filed with the clerk of the court as a record in the case. If the
31 court determines that there are circumstances in mitigation of the
32 punishment prescribed by law or that the ends of justice would be
33 served by granting probation to the person, it may place the
34 person on probation. If probation is denied, the clerk of the court
35 shall immediately send a copy of the report to the Department of
36 Corrections and Rehabilitation at the prison or other institution to
37 which the person is delivered.

38 (4) The preparation of the report or the consideration of the
39 report by the court may be waived only by a written stipulation
40 of the prosecuting and defense attorneys that is filed with the

1 court or an oral stipulation in open court that is made and entered
2 upon the minutes of the court, except that there shall be no
3 waiver unless the court consents thereto. However, if the
4 defendant is ultimately sentenced and committed to the state
5 prison, a probation report shall be completed pursuant to Section
6 1203c.

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

10 (d) If a person is convicted of a misdemeanor, the court may
11 either refer the matter to the probation officer for an investigation
12 and a report or summarily pronounce a conditional sentence. If
13 the person was convicted of an offense that requires him or her to
14 register as a sex offender pursuant to Section 290, the court shall
15 refer the matter to the probation officer for the purpose of
16 obtaining a report on the results of the State-Authorized Risk
17 Assessment Tool for Sex Offenders administered pursuant to
18 Sections 290.04 to 290.06, inclusive, if applicable, which the
19 court shall consider. If the case is not referred to the probation
20 officer, in sentencing the person, the court may consider any
21 information concerning the person that could have been included
22 in a probation report. The court shall inform the person of the
23 information to be considered and permit him or her to answer or
24 controvert the information. For this purpose, upon the request of
25 the person, the court shall grant a continuance before the
26 judgment is pronounced.

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

30 (1) Unless the person had a lawful right to carry a deadly
31 weapon, other than a firearm, at the time of the perpetration of
32 the crime or his or her arrest, any person who has been convicted
33 of arson, robbery, carjacking, burglary, burglary with explosives,
34 rape with force or violence, torture, aggravated mayhem, murder,
35 attempt to commit murder, trainwrecking, kidnapping, escape
36 from the state prison, or a conspiracy to commit one or more of
37 those crimes and who was armed with the weapon at either of
38 those times.

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

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

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

11 (5) Unless the person has never been previously convicted
12 once in this state of a felony or in any other place of a public
13 offense which, if committed in this state, would have been
14 punishable as a felony, any person who has been convicted of
15 burglary with explosives, rape with force or violence, torture,
16 aggravated mayhem, murder, attempt to commit murder,
17 trainwrecking, extortion, kidnapping, escape from the state
18 prison, a violation of Section 286, 288, 288a, or 288.5, or a
19 conspiracy to commit one or more of those crimes.

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

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

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

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

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

38 (8) Any person who knowingly furnishes or gives away
39 phencyclidine.

1 (9) Any person who intentionally inflicted great bodily injury
2 in the commission of arson under subdivision (a) of Section 451
3 or who intentionally set fire to, burned, or caused the burning of,
4 an inhabited structure or inhabited property in violation of
5 subdivision (b) of Section 451.

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

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

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

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

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

21 (g) If a person is not eligible for probation, the judge shall
22 refer the matter to the probation officer for an investigation of the
23 facts relevant to determination of the amount of a restitution fine
24 pursuant to subdivision (b) of Section 1202.4 in all cases where
25 the determination is applicable. The judge, in his or her
26 discretion, may direct the probation officer to investigate all facts
27 relevant to the sentencing of the person. Upon that referral, the
28 probation officer shall immediately investigate the circumstances
29 surrounding the crime and the prior record and history of the
30 person and make a written report to the court of his or her
31 findings. The findings shall include a recommendation of the
32 amount of the restitution fine as provided in subdivision (b) of
33 Section 1202.4.

34 (h) If a defendant is convicted of a felony and a probation
35 report is prepared pursuant to subdivision (b) or (g), the
36 probation officer may obtain and include in the report a statement
37 of the comments of the victim concerning the offense. The court
38 may direct the probation officer not to obtain a statement if the
39 victim has in fact testified at any of the court proceedings
40 concerning the offense.

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

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

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

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

~~SEC. 40.~~

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

1203c. (a) (1) Notwithstanding any other provisions of law, whenever a person is committed to an institution under the jurisdiction of the Department of Corrections and Rehabilitation, whether probation has been applied for or not, or granted and revoked, it shall be the duty of the probation officer of the county from which the person is committed to send to the Department of

1 Corrections and Rehabilitation a report of the circumstances
2 surrounding the offense and the prior record and history of the
3 defendant, as may be required by the Secretary of the Department
4 of Corrections and Rehabilitation.

5 (2) If the person is being committed to the jurisdiction of the
6 department for a conviction of an offense that requires him or her
7 to register as a sex offender pursuant to Section 290, the
8 probation officer shall include in the report the results of the
9 State-Authorized Risk Assessment Tool for Sex Offenders
10 (SARATSO) administered pursuant to Sections 290.04 to 290.06,
11 inclusive, if applicable.

12 (b) These reports shall accompany the commitment papers.
13 The reports shall be prepared in the form prescribed by the
14 administrator following consultation with the Corrections
15 Standards Authority, except that if the defendant is ineligible for
16 probation, a report of the circumstances surrounding the offense
17 and the prior record and history of the defendant, prepared by the
18 probation officer on request of the court and filed with the court
19 before sentence, shall be deemed to meet the requirements of
20 paragraph (1) of subdivision (a).

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

29 ~~SEC. 41.~~

30 *SEC. 40.* Section 1203e is added to the Penal Code, to read:

31 1203e. (a) Commencing June 1, 2010, the probation
32 department shall compile a Facts of Offense Sheet for every
33 person convicted of an offense that requires him or her to register
34 as a sex offender pursuant to Section 290 who is referred to the
35 department pursuant to Section 1203. The Facts of Offense Sheet
36 shall contain the following information concerning the offender:
37 name; CII number; criminal history, including all arrests and
38 convictions for any registerable sex offenses or any violent
39 offense; circumstances of the offense for which registration is
40 required, including, but not limited to, weapons used and victim

1 pattern; and results of the State-Authorized Risk Assessment
2 Tool for Sex Offenders (SARATSO), as set forth in Section
3 290.04, if required. The Facts of Offense Sheet shall be included
4 in the probation officer's report.

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

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

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

30 ~~SEC. 42.~~

31 *SEC. 41.* Section 1203f is added to the Penal Code, to read:

32 1203f. Every probation department shall ensure that all
33 probationers under active supervision who are deemed to pose a
34 high risk to the public of committing sex crimes, as determined
35 by the State-Authorized Risk Assessment Tool for Sex
36 Offenders, as set forth in Sections 290.04 to 290.06, inclusive,
37 are placed on an intensive and specialized probation supervision
38 ~~case load~~ and are required to report frequently to designated
39 probation officers. The probation department may place any
40 other probationer convicted of an offense that requires him or her

1 to register as a sex offender who is on active supervision to be
2 placed on ~~an intensive and specialized caseload~~ *intensive and*
3 *specialized supervision* and require him or her to report
4 frequently to designated probation officers.

5 ~~SEC. 43.~~

6 *SEC. 42.* Section 1203.06 of the Penal Code is amended to
7 read:

8 1203.06. (a) Notwithstanding any other provision of law,
9 probation shall not be granted to, nor shall the execution or
10 imposition of sentence be suspended for, *nor shall a finding*
11 *bringing the defendant within this section be stricken pursuant to*
12 *Section 1385 for*, any of the following persons:

13 (1) Any person who personally used a firearm during the
14 commission or attempted commission of any of the following
15 crimes:

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

36 (2) Any person previously convicted of a felony specified in
37 paragraph (1), or assault with intent to commit murder under
38 former Section 217, who is convicted of a subsequent felony and
39 who was personally armed with a firearm at any time during its
40 commission or attempted commission or was unlawfully armed

1 with a firearm at the time of his or her arrest for the subsequent
2 felony.

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

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

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

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

15 ~~SEC. 44.~~

16 *SEC. 43.* Section 1203.065 of the Penal Code is amended to
17 read:

18 1203.065. (a) Notwithstanding any other provision of law,
19 probation shall not be granted to, nor shall the execution or
20 imposition of sentence be suspended for, any person who is
21 convicted of violating paragraph (2) or (6) of subdivision (a) of
22 Section 261, Section 264.1, 266h, 266i, 266j, or 269, or
23 paragraph (2) or (3) of subdivision (c), or subdivision (d), of
24 Section 286 or 288a, or subdivision (a) of Section 289, or
25 subdivision (c) of Section 311.4.

26 (b) (1) Except in unusual cases where the interests of justice
27 would best be served if the person is granted probation, probation
28 shall not be granted to any person who is convicted of violating
29 paragraph (7) of subdivision (a) of Section 261, subdivision (k)
30 of Section 286, subdivision (k) of Section 288a, subdivision (g)
31 of Section 289, or Section 220 for assault with intent to commit a
32 specified sexual offense.

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

37 ~~SEC. 45.~~

38 *SEC. 44.* Section 1203.075 of the Penal Code is amended to
39 read:

1 1203.075. (a) Notwithstanding any other provision of law,
2 probation shall not be granted to, nor shall the execution or
3 imposition of sentence be suspended for, nor shall a finding
4 bringing the defendant within this section be stricken pursuant to
5 Section 1385 for, any person who personally inflicts great bodily
6 injury, as defined in Section 12022.7, on the person of another in
7 the commission or attempted commission of any of the following
8 crimes:

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

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

30 ~~SEC. 46.~~

31 *SEC. 45.* Section 3000 of the Penal Code is amended to read:

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

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, *including conditional release under court monitoring*, 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, *and any time spent on conditional release under court monitoring*. 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.~~ *actual commitment, and any time spent on conditional release under the supervision of the court shall be subtracted from the person's 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 on parole for a period not exceeding three years, unless the parole authority, for good cause, waives parole and discharges the inmate from the custody of the department. However, an inmate sentenced for an offense specified in paragraph (3), (4),

1 (5), (6), (11), (15), (16), or (18) of subdivision (c) of Section
2 667.5 shall be released on parole for a period not exceeding 10
3 years.

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

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

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

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

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

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

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

3 (C) Except as provided in Section 3064, an inmate subject to
4 10 years on parole may not be retained under parole supervision
5 or in custody for a period longer than 15 years from the date of
6 his or her initial parole.

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

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

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

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

29 ~~SEC. 47.~~

30 *SEC. 46.* Section 3001 of the Penal Code is amended to read:

31 3001. (a) (1) Notwithstanding any other provision of law,
32 when any person referred to in paragraph (1) of subdivision (b)
33 of Section 3000 who was not imprisoned for committing a
34 violent felony, as defined in subdivision (c) of Section 667.5, has
35 been released on parole from the state prison, and has been on
36 parole continuously for one year since release from confinement,
37 within 30 days, that person shall be discharged from parole,
38 unless the Department of Corrections and Rehabilitation
39 recommends to the Board of Parole Hearings that the person be

1 retained on parole and the board, for good cause, determines that
2 the person will be retained.

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

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

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

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

39 (e) The amendments to this section made during the 2005–06
40 Regular Session of the Legislature shall only be applied

1 prospectively and shall not extend the parole period for any
2 person whose eligibility for discharge from parole was fixed as
3 of the effective date of those amendments.

4 ~~SEC. 48.~~

5 *SEC. 47.* Section 3005 of the Penal Code is amended to read:

6 3005. (a) The Department of Corrections and Rehabilitation
7 shall ensure that all parolees under active supervision who are
8 deemed to pose a high risk to the public of committing sex
9 crimes, as determined by the State-Authorized Risk Assessment
10 Tool for Sex Offenders, as set forth in Sections 290.04 to 290.06,
11 inclusive, are placed on ~~an~~ intensive and specialized parole
12 supervision ~~caseload~~ and are required to report frequently to
13 designated parole officers. The department may place any other
14 parolee convicted of an offense that requires him or her to
15 register as a sex offender pursuant to Section 290 who is on
16 active supervision on ~~an intensive and specialized caseload~~
17 *intensive and specialized supervision* and require him or her to
18 report frequently to designated parole officers.

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

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

30 ~~SEC. 49.~~

31 *SEC. 48.* Section 3072 is added to the Penal Code, to read:

32 3072. (a) The Department of Corrections and Rehabilitation,
33 subject to the legislative appropriation of the necessary funds,
34 may establish and operate, after January 1, 2007, a specialized
35 sex offender treatment pilot program for inmates whom the
36 department determines pose a high risk to the public of
37 committing violent sex crimes.

38 (b) (1) The program shall be based upon the relapse
39 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

1 non-sex offenders held at the same prison, and treatment in the
2 pilot program shall be provided in program space segregated, to
3 the 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
8 Legislature, 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.~~

20 *SEC. 49.* Section 12022.75 of the Penal Code is amended to
21 read:

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

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

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

39 (A) Rape, in violation of paragraph (3) or (4) of subdivision
40 (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.~~

9 *SEC. 50.* Section 13887 of the Penal Code is amended to
10 read:

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

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

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

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

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

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

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

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

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

38 13887.5. ~~The Corrections Standards Authority~~ *Office of*
39 *Emergency Services* shall establish standards by which grants are
40 awarded on a competitive basis to counties for SAFE teams. The

1 grants shall be awarded to innovative teams designed to promote
2 the purposes of this 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 an indeterminate period
38 from the date of this ruling. If the court or jury rules for the
39 committed person, he or she shall be unconditionally released
40 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. *The provisions of this act are severable. If any provision of this act or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.*

SEC. 60. *Section 19.5 of this bill incorporates amendments to Section 290.46 of the Penal Code proposed by both this bill and Assembly Bill 1849. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2007, but this bill becomes operative first, (2) each bill amends Section 290.46 of the Penal Code, and (3) this bill is enacted after Assembly Bill 1849, in which case Section 290.46 of the Penal Code, as amended by Section 19 of this bill, shall remain operative only until the operative date of Assembly Bill 1849, at which time Section 19.5 of this bill shall become operative.*

1 ~~SEC. 59.~~

2 *SEC. 61.* No reimbursement is required by this act pursuant to
3 Section 6 of Article XIII B of the California Constitution for
4 certain costs that may be incurred by a local agency or school
5 district because, in that regard, this act creates a new crime or
6 infraction, eliminates a crime or infraction, or changes the
7 penalty for a crime or infraction, within the meaning of Section
8 17556 of the Government Code, or changes the definition of a
9 crime within the meaning of Section 6 of Article XIII B of the
10 California Constitution.

11 However, if the Commission on State Mandates determines
12 that this act contains other costs mandated by the state,
13 reimbursement to local agencies and school districts for those
14 costs shall be made pursuant to Part 7 (commencing with Section
15 17500) of Division 4 of Title 2 of the Government Code.

16 ~~SEC. 60.~~

17 *SEC. 62.* This act is an urgency statute necessary for the
18 immediate preservation of the public peace, health, or safety
19 within the meaning of Article IV of the Constitution and shall go
20 into immediate effect. The facts constituting the necessity are::

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