ITEM 5

TEST CLAIM
FINAL STAFF ANALYSIS

AND

PROPOSED STATEMENT OF DECISION

Statutes 2006, Chapter 336 (SB. No. 1178), amending Section 1202.8 and adding Sections 290.04, 290.05, and 290.06 of the Penal Code;

Statutes 2006, Chapter 337 (SB 1128) amending Sections 290, 290.3, 290.46, 1203, 1203c, 1203.6, 1203.075, and adding Sections 290.03, 290.04, 290.05, 290.06, 290.07, 290.08, 1203e, 1203f of the Penal Code;

Statutes 2006, Chapter 886 (SB 1849), amending Sections 290.46, 1202.8; repealing Sections 290.04, 290.05, and 290.06 of the Penal Code;

Statutes 2007, Chapter 579 (SB. No. 172) amending Sections 290.04, 290.05, 290.3, and 1202.7; adding Sections 290.011, 290.012; and repealing and adding Section 290 to the Penal Code; and

California Department of Mental Health's Executive Order, SARATSO (State Authorized Risk Assessment Tool for Sex Offenders) Review Committee Notification, issued on February 1, 2008

State Authorized Risk Assessment Tool for Sex Offenders (SARATSO)

08-TC-03

County of Los Angeles, Claimant

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Exhibit A

COUNTY OF LOS ANGELES
DEPARTMENT OF AUDITOR-CONTROLLER

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WENDY L. WATANABE
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ASST. AUDITOR-CONTROLLERS

ROBERT A. DAVIS
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MARIA M. OMS

January 22, 2009

Ms. Paula Higashi
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, California 95814

Dear Ms. Higashi:

COUNTY OF LOS ANGELES TEST CLAIM
STATE AUTHORIZED RISK ASSESSMENT TOOL FOR SEX OFFENDERS
SEX OFFENDER'S PUNISHMENT, CONTROL, AND CONTAINMENT ACT

Enclosed is a claim to recover the costs we are incurring in implementing the landmark Sex Offender's Punishment, Control, and Containment Act of 2006.

If you have any questions concerning this submission, please contact Hasmik Yaghobyan, of my staff, at (213) 893-0792.

Very truly yours,

Wendy L. Watanabe
Acting Auditor-Controller

WLW:JN:CY:hy
H:\SB90\SB90NewTCSARATSO-Probation.doc

Enclosures

County of Los Angeles Test Claim
State Authorized Risk Assessment Tool for Sex Offenders (SARATSO): Sex Offender's Punishment, Control, and Containment Act

Statutes of 2006, Chapter 337 (SB. No. 1128) amending Sections 290, 290.3, 290.46, 1203, 1203c, 1203.6, 1203.075, to add Sections 290.03, 290.04, 290.05, 290.06, 290.07, 290.08, 1203e, 1203f; Statutes of 2006, Chapter 886 (SB. No. 1849), amending Sections, 290.46, 1202.8, and to repeal Sections 290.04, 290.05, and 290.06 of the Penal Code; Statutes of 2006, Chapter 336 (SB. No. 1178), amending Sections 1202.8 and add sections 290.04, 290.05, and 290.06 of the Penal Code; Statutes of 2007, Chapter 579 (SB. No. 172) amending Sections 290.04, 290.05, 290.3, adding Sections 290.011, 290.012, and to repeal and add Section 290 to the Penal Code, relating to Sex Offenders, and California Department of Mental Health's Executive Order, SARATSO (State Authorized Risk Assessment Tool for Sex Offenders) Review Committee Notification, issued on February 1, 2008

1. TEST CLAIM TITLE

State Authorized Risk Assessment Tool for Sex Offenders (SARATSO): Sex Offender's Punish.....

2. CLAIMANT INFORMATION

County of Los Angeles
Name of Local Agency or School District

Hasmik Yaghobyan
Claimant Contact

SB90 Administrator
Title

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3. CLAIMANT REPRESENTATIVE INFORMATION

Claimant designates the following person to act as its sole representative in this test claim. All correspondence and communications regarding this claim shall be forwarded to this representative. Any change in representation must be authorized by the claimant in writing, and sent to the Commission on State Mandates.

Wendy L. Watanabe
Claimant Representative Name

Acting Auditor-Controller
Title

Auditor-Controller
Organization

500 West Temple Street, Room 525
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For CSM Use Only
Filing Date:
Test Claim #:

4. TEST CLAIM STATUTES OR EXECUTIVE ORDERS CITED

Please identify all code sections, statutes, bill numbers, regulations, and/or executive orders that impose the alleged mandate (e.g., Penal Code Section 2045, Statutes 2004, Chapter 54 [AB 290]). When alleging regulations or executive orders, please include the effective date of each one.

Statutes of 2006, Chapter 337 (SB. No. 1128) amending Sections 290, 290.3, 290.46, 1203, 1203c, 1203.6, 1203.075, to add Sections 290.03, 290.04, 290.05, 290.06, 290.07, 290.08, 1203e, 1203f; Statutes of 2006, Chapter 886 (SB. No. 1849), amending Sections, 290.46, 1202.8, and to repeal Sections 290.04, 290.05, and 290.06 of the Penal Code; Statutes of 2006, Chapter 336 (SB. No. 1178), amending Sections 1202.8 and add sections 290.04, 290.05, and 290.06 of the Penal Code; Statutes of 2007, Chapter 579 (SB. No. 172) amending Sections 290.04, 290.05, 290.3, adding Sections 290.011, 290.012, and to repeal and add Section 290 to the Penal Code, relating to Sex Offenders, and California Department of Mental Health's Executive Order, SARATSO (State Authorized Risk Assessment Tool for Sex Offenders) Review Committee Notification, issued on February 1, 2008

☑ *Copies of all statutes and executive orders cited are attached.*

Sections 5, 6, and 7 are attached as follows:

5. Written Narrative: pages _____ to _____.
6. Declarations: pages _____ to _____.
7. Documentation: pages _____ to _____.

County of Los Angeles Test Claim
State Authorized Risk Assessment Tool for Sex Offenders (SARATSO):
Sex Offender's Punishment, Control, and Containment Act

Statutes of 2006, Chapter 337 (SB. No. 1128) amending Sections 290, 290.3, 290.46, 1203, 1203c, 1203.6, 1203.075, to add Sections 290.03, 290.04, 290.05, 290.06, 290.07, 290.08, 1203e, 1203f; Statutes of 2006, Chapter 886 (SB. No. 1849), amending Sections, 290.46, 1202.8, and to repeal Sections 290.04, 290.05, and 290.06 of the Penal Code; Statutes of 2006, Chapter 336 (SB. No. 1178), amending Sections 1202.8 and add sections 290.04, 290.05, and 290.06 of the Penal Code; Statutes of 2007, Chapter 579 (SB. No. 172) amending Sections 290.04, 290.05, 290.3, adding Sections 290.011, 290.012, and to repeal and add Section 290 to the Penal Code, relating to Sex Offenders, and California Department of Mental Health's Executive Order, SARATSO (State Authorized Risk Assessment Tool for Sex Offenders) Review Committee Notification, issued on February 1, 2008

Notice of Filing

The County of Los Angeles filed the attached State Authorized Risk Assessment Tool for Sex Offenders (SARATSO), Sex Offender's Punishment, Control, and Containment Act test claim on January 20, 2009 with the Commission on State Mandates of the State of California at the Commission's Office on 980 Ninth Street, Suite 300, Sacramento, California 95814.

Los Angeles County does herein claim full and prompt payment from the State in implementing the State-mandated local program under the referenced test claim legislation.

County of Los Angeles Test Claim
State Authorized Risk Assessment Tool for Sex Offenders(SARATSO):
Sex Offender's Punishment, Control, and Containment Act

Volume 1

County of Los Angeles Test Claim
State Authorized Risk Assessment Tool for Sex Offenders(SARATSO):
Sex Offender's Punishment, Control, and Containment Act

Volume 2

Introduction

The landmark Sex Offender's Punishment, Control and Containment Act of 2006 [the Act], Chapter 337, Statutes of 2006 [SB 1128] and related legislation[1] mandates a new approach in managing sex offenders in the community and in preventing future victimization. In this regard, the Legislature finds and declares, in Section 2 of Chapter 337, that:

> "(a) The primary public policy goal of managing sex offenders in the community is the prevention of future victimization.
>
> (b) California's tactics for monitoring registered sex offenders must be transformed into a cohesive and comprehensive system of state and local law enforcement supervision to observe, assess, and proactively respond to patterns and conduct of registered sex offenders in the community.
>
> (c) California's infrastructure for collecting, maintaining, and disseminating information about registered sex offenders must be retooled to ensure that law enforcement and the public have access to accurate, up-to-date, and relevant information about registered sex offenders.
>
> (d) In order to accomplish these goals, the Legislature hereby enacts the Sex Offender's Control and Containment Act of 2006."

Under the Act, county probation officers are directed to institute new sex offender punishment, control and containment services. This claim details the basis for

[1] In addition to Chapter 337, Statutes of 2006 [SB 1128], related legislation here includes Chapter 886, Statutes of 2006 [AB 1849], which co-joined Chapter 337 to passage of Chapter 336, Statutes of 2006, [SB1178]; Chapter 579, Statutes of 2007 [SB172], which amended provisions in Chapter 886 and also subsequently reformatted Chapter 337, and an executive order, implementing pertinent 'test claim' legislation cited herein, issued by the California Department of Mental Health on February 1, 2008 entitled "State Authorized Risk Assessment Tool for Sex Offenders [SARATSO] Review Committee Notification". The 'test claim legislation' cited herein are found in the "County Mandates" section of this test claim.

finding these new probation services to be reimbursable under Government code sections 17500 et seq. and article XIII B, section 6 of the California Constitution.

In Chapter 337, Statutes of 2006 [SB 1128], the Legislature delineates key changes that must be made to institute effective sex offender punishment, control and containment services. Specifically, the Legislature has mandated new duties for county probation officers. These new duties are compared to prior duties by the Legislative Counsel, on pages 5-6 of their Legislative Digest to SB 1128, as follows:

> "Existing law establishes a county probation system. This bill would require probation officers to be trained in the use of the SARATSO [State Authorized Risk Assessment Tool for Sex Offenders] 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. 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 intensive and specialized probation supervision.
>
> 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."

Accordingly, the Legislative Counsel, finds a number of new duties imposed upon county probation officers under SB 1128. County probation officers must be trained. In this regard, Section 290.05(d), included in the test claim legislation herein, mandates, in pertinent part, that "Any person who administers the SARATSO shall receive training no less frequently than every two years". Also, county probation officers must perform SARATSO assessments on all sex offenders [as specified in the test claim legislation herein] and determine the risk of a person, convicted of a felony, for reoffending.

Further, county probation officers must compile a 'Facts of Offense Sheet' for each sex offender and provide this assessment in each sex offender's 'presentencing report'. Moreover, high risk sex offenders, as determined by the SARATSO assessment, must be placed on intensive and specialized probation supervision.

In view of all the [above] new duties for county probation officers, the Legislative Counsel concludes, on page 5 of the bill, that:

> "Because the bill would impose additional duties on probation officers, it would impose a state-mandated local program."

Counsel's conclusion, then, supports claimant's contention herein: that a new program was created under the test claim legislation, a threshold requirement for reimbursement under Government code sections 17500 et. seq. and Article XIII B, section 6 of the California Constitution.

New Program

County probation officers play a vital role in the new State-mandated program of managing sex offenders in the community and in preventing future victimization. As noted by the Legislature, in pertinent part, in Section 2(b) of SB 1128:

> "California's tactics for monitoring registered sex offenders must be transformed into a cohesive and comprehensive system of state and local law enforcement supervision to observe, assess, and proactively respond to patterns and conduct of registered sex offenders in the community." [Emphasis added.]

In California, this new program affects large numbers of registered sex offenders. Such offenders must be observed, assessed, and proactively respond to. The Senate Third Reading Report on SB 1178, as amended on August 23, 2006, provides some specifics, on pages 6-7, as follows:

> "Unfortunately, California is home to more than 85,000 registered sex offenders most of whom pose a clear and present danger to children and other innocent citizens unable to protect themselves against vicious attacks.
>
> At least 27,000 of these sex offenders are presently serving prison sentences and will eventually be paroled back into the very community

they committed their crime. 8,100 are child molesters and pedophiles, all of whom have committed unspeakable crimes against innocent children and most of whom will be released from prison before their victims graduate from high school.

In addition, more than 9,000 sex offenders are supervised on parole caseloads, all living and working in the same areas where children congregate. According to CDCR, at least 2,000 of these sex offenders are classified 'dangerous and high risk'. Recently, it was discovered that a number of these offenders were allowed to live in motels adjacent to Disneyland.

Another 11,000 sex offenders are currently on county probation and thousands more are incarcerated in county jails and will be released back into communities within one-year. Current CDCR recidivism rates indicate that up to 66% of all sex offenders released from prison will return to prison within three years for committing subsequent sex crimes.

While we have some of the toughest laws in the nation as it relates to punishing sex offenders, we do not do enough to ensure that when sex offenders are released from prison or jail they are monitored to the fullest extent possible.

GPS technology is a proven method of tracking the whereabouts of offenders who pose a threat to society. In fact, parole officials have tracked high-risk sex offenders on GPS since July 2005. These devices provide an extra set of eyes by keeping parole agents aware of every move the offender makes 24 hours per day and seven days per week.

CDCR is very pleased with the results of this program. In just 10 months, more than 100 of the 450 high-risk sex offender parolees placed on GPS have been sent back to prison for violating their conditions of parole. At least 30 of these violators were tracked on GPS chasing their next victims or in the act of committing subsequent sex crimes.

This bill will help protect and preserve the well being of our children - because they are the key to our future!"

It should be noted that the proactive approach of using GPS technology and electronic monitoring to track the whereabouts of high-risk sex offenders who pose a threat to children is a new and costly duty for county probation officers.

The total costs of observing, assessing, and proactively responding to large numbers of registered sex offenders was addressed by the Assembly Committee on Appropriations, on page 2 of their August 16, 2006 report on SB 1178. As noted by the Committee, the fiscal effect in implementing the "State Authorized Risk Assessment Tool for Sex Offenders" [SARATSO] and the electronic monitoring and other related mandates is as follows:

"FISCAL EFFECT

> 1) SARATSO. Creating a state and local scheme for assessing the risk presented by convicted sex offenders, training state and local authorities in the use of the assessment tool, assessing sex offenders, increasing state and local parole and probation staff to supervise more offenders for longer periods of time, based on risk assessment ratings, and reporting will result in state and reimbursable local costs in the tens of millions.
>
> (2) Electronic Monitoring. State and reimbursable local costs in the tens of millions of dollars to provide electronic monitoring for high risk parolees and probationers. For example, to cover the portion of CDCR's current High Risk Sex Offender parole population (about 2,000 parolees) not currently under electronic monitoring, CDCR would require about $10 million in 2007-08. To the extent the SARATSO results in additional high risk parolees, these costs would increase significantly. (Currently CDCR is budgeted to provide Global Positioning System surveillance on 1,000 high risk sex offenders on parole.)
>
> Reimbursable annual local costs would likely be somewhat less, assuming a smaller number of offenders."

In sum, the test claim legislation imposes costly mandates on counties by requiring county probation officers to receive training and administer the SARATSO, compile a 'Facts of Offense Sheet' and a 'presentencing report', provide electronic monitoring, and intensive and specialized probation supervision. Moreover, these State mandates are new, not found in prior law. Accordingly, the costs of

implementing these new mandates is subject to reimbursement under Article XIII B, section 6 of the California Constitution, as claimed herein.

County Mandates

County probation officers are now mandated to perform key functions in implementing California's landmark Sex Offender Punishment, Control and Containment Act of 2006 and related legislation. As part of a team dedicated to preventing victimization by sex offenders, county probation officers are explicitly directed to institute new punishment, control and containment services in managing sex offenders. In order, to determine which of these services is subject to reimbursement under article XIII B, section 6 of the California Constitution, pertinent provisions are examined herein. These provisions are encompassed in the 'test claim' legislation[2] as enumerated below.

Section 290.03

The new requirements for the identification, assessment, monitoring and containment of sex offenders, including those new duties for county probation officers are first explained by the Legislature in penal code section [section] 290.03, as added by the Statutes of 2006, Chapter 337 [SB 1128]. The Legislature's purpose in enacting a new 'statewide system' is found in section 290.03(b):

> "(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." [Emphasis added.]

[2] The test claim legislation is penal code sections [Sections] 290.04, 290.05, 290.06 as added by the Statutes of 2006, Chapter 337 [Senate Bill (SB) 1128] and by Chapter 336 [SB 1178] and repealed by Chapter 886 [Assembly Bill 1849]; Sections 290.03, 290.07, 290.08 as added by Chapter 337; Sections 1203 (c), (e), (f) as added by Chapter 337; Sections 1202.8, 3004 as amended by Chapter 337 and Chapter 886; Section 290.011 as added by the Statutes of 2007, Chapter 579 [SB 172]; Sections 290.04, 290.05, 1202.7 as amended by the Statutes of 2007, Chapter 579 [SB 172]; and the February 1, 2008 California Mental Health Department "State Authorized Risk Assessment Tool for Sex Offenders" [SARATSO] Committee Notification

The duties of county probation officers to 'identify, assess, monitor and contain known sex offenders' for the purpose of reducing the risk of recidivism are explicitly defined under other penal code sections included herein as the test claim legislation.

Section 290.04

Section 290.04, as added by the Statutes of 2006, Chapter 337 [SB1128], effective September 20, 2006 and amended by the Statutes of 2007, Chapter 579 [SB172], effective October 13, 2007, mandates requirements for the development and implementation of the State Authorized Risk Assessment Tool for Sex Offenders [SARATSO], as follows:

> (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 Mental Health, in consultation with a representative of the Department of 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 Department of Mental Health, shall be to ensure that the SARATSO reflects the most reliable, objective and well-established protocols for predicting sex offender risk of recidivism, has been scientifically validated and cross validated, and is, or is reasonably likely to be, widely accepted by the courts. The committee shall consult with experts in the fields of risk assessment and the use of actuarial instruments in predicting sex offender risk, sex offending, sex offender treatment, mental health, and law, as it deems appropriate.
>
> (b)(1) Commencing January 1, 2007, the SARATSO for adult males required to register as sex offenders shall be the STATIC-99 risk

assessment scale.

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

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

(d) On or before July 1, 2007, the SARATSO Review Committee shall research risk assessment tools for male juveniles required to register as sex offenders. If the committee unanimously agrees on an appropriate risk assessment tool to be used to assess this population, it shall advise the Governor and the Legislature of the selected tool, and the State Department of Mental Health shall post the decision on its Internet Web site. Sixty days after the decision is posted, the selected tool shall become the SARATSO for male juveniles.

(e) On or before July 1, 2007, the SARATSO Review Committee shall research risk assessment tools for female juveniles required to register as sex offenders. If the committee unanimously agrees on an appropriate risk assessment tool to be used to assess this population, it shall advise the Governor and the Legislature of the selected tool, and the State Department of Mental Health shall post the decision on its Internet Web site. Sixty days after the decision is posted, the selected tool shall become the SARATSO for female juveniles.

(f) The committee shall periodically evaluate the SARATSO for each specified population. If the committee unanimously agrees on a change to the SARATSO for any population, it shall advise the Governor and the Legislature of the selected tool, and the State Department of Mental Health shall post the decision on its Internet Web site. Sixty days after the decision is posted, the selected tool shall become the SARATSO for that population.

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

It should be noted that section 290.04 is modified by Section 1202.8, added by (Added by Stats.1981, c. 1142, § 6.5. Amended by Stats.1986, c. 47, § 2; Stats.1996, c. 629 (S.B.1685), § 4; Stats.2006, c. 336 (S.B.1178), § 4, eff. Sept. 20, 2006; Stats.2006, c. 886 (A.B.1849), § 5, eff. Sept. 30, 2006.), regarding supervision of county probation officers, assessment and electronic monitoring of sex offenders and reports on monitoring of offenders, as follows:

"(a) Persons placed on probation by a court shall be under the supervision of the county probation officer who shall determine both the level and type of supervision consistent with the court-ordered conditions of probation.

"(b) Commencing January 1, 2009, every person who has been assessed with the State Authorized Risk Assessment Tool for Sex Offenders (SARATSO) pursuant to Sections 290.04 to 290.06, inclusive, and who has a SARATSO risk level of high shall be continuously electronically monitored while on probation, unless the court determines that such monitoring is unnecessary for a particular person. The monitoring device used for these purposes shall be identified as one that employs the latest available proven effective monitoring technology. Nothing in this section prohibits probation authorities from using electronic monitoring technology pursuant to any other provision of law.

(c) Within 30 days of a court making an order to provide restitution to a victim or to the Restitution Fund, the probation officer shall establish

an account into which any restitution payments that are not deposited into the Restitution Fund shall be deposited.

(d) Beginning January 1, 2009, and every two years thereafter, each probation department shall report to the Corrections Standard Authority all relevant statistics and relevant information regarding on the effectiveness of continuous electronic monitoring of offenders pursuant to subdivision (b). The report shall include the costs of monitoring and the recidivism rates of those persons who have been monitored. The Corrections Standard Authority shall compile the reports and submit a single report to the Legislature and the Governor every two years through 2017."

In Chapter 886, Statutes of 2006 (A.B.1849), subdivisions (b) and (d), were rewritten. These subdivisions had read:

"(b) Commencing July 1, 2008, every adult male who is convicted of an offense that requires him to register as a sex offender pursuant to Section 290 shall be assessed for the risk of reoffending consistent with Section 290.06. The assessment shall be performed by a probation officer who has been trained pursuant to Section 290.05. Every adult male who has a risk assessment of high shall be continuously electronically monitored while on probation, unless the court determines that such monitoring is unnecessary for a particular person. The monitoring device used for these purposes shall be identified as one that employs the latest available proven effective monitoring technology. Nothing in this section prohibits probation authorities from using electronic monitoring technology pursuant to any other provision of law."

"(d) Beginning January 1, 2009, each probation department shall report every two years to the Legislature and to the Governor on the effectiveness of continuous electronic monitoring of offenders pursuant to subdivision (b). The report shall include the costs of monitoring and the recidivism rates of those persons who have been monitored."

Accordingly, the current version of 1202.08(b) indicates that the start date of electronic monitoring is as follows:

"b) Commencing January 1, 2009, every person who has been assessed

with the State Authorized Risk Assessment Tool for Sex Offenders (SARATSO) pursuant to Sections 290.04 ... "

Also, the current version of 1202.8(d) adds new duties for probation officers, as underlined below, to their prior duties:

> "(d) Beginning January 1, 2009, and every two years thereafter, each probation department shall report to the Corrections Standard Authority all relevant statistics and relevant information regarding on the effectiveness of continuous electronic monitoring of offenders pursuant to subdivision (b). The report shall include the costs of monitoring and the recidivism rates of those persons who have been monitored. The Corrections Standard Authority shall compile the reports and submit a single report to the Legislature and the Governor every two years through 2017." [Emphasis added.]

Accordingly, the current version of Section 1202.8 specifies a new January 1, 2009 start date for the [above] SARATSO assessments and reports required of county probation officers.

Section 290.05

Section 290.05, as added by the Statutes of 2006, Chapter 337 [SB 1128], effective September 20, 2006 and amended by the Statutes of 2007, Chapter 579 [SB 172], effective October 13, 2007, details requirements for the development and implementation of the SARATSO training program, as follows:

> "(a) The SARATSO Training Committee shall be comprised of a representative of the State Department of Mental Health, a representative of the Department of Corrections and Rehabilitation, a representative of the Attorney General's Office, and a representative of the Chief Probation Officers of California.
>
> (b) On or before January 1, 2008, the SARATSO Training Committee, in consultation with the Corrections Standards Authority and the Commission on Peace Officer Standards and Training, shall develop a training program for persons authorized by this code to administer the SARATSO, as set forth in Section 290.04.
>
> (c)(1) The Department of Corrections and Rehabilitation shall be

responsible for overseeing the training of persons who will administer the SARATSO pursuant to paragraph (1) or (2) of subdivision (a) of Section 290.06.

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

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

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

(d) The training shall be conducted by experts in the field of risk assessment and the use of actuarial instruments in predicting sex offender risk. Subject to requirements established by the committee, the Department of Corrections and Rehabilitation, the State Department of Mental Health, probation departments, and authorized local law enforcement agencies shall designate key persons within their organizations to attend training and, as authorized by the department, to train others within their organizations designated to perform risk assessments as required or authorized by law. Any person who administers the SARATSO shall receive training no less frequently than every two years.

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

It should be noted that section 290.05 is modified by Section 1202.8, added by (Added by Stats.1981, c. 1142, § 6.5. Amended by Stats.1986, c. 47, § 2; Stats.1996, c. 629 (S.B.1685), § 4; Stats.2006, c. 336 (S.B.1178), § 4, eff. Sept. 20, 2006; Stats.2006, c. 886 (A.B.1849), § 5, eff. Sept. 30, 2006.). Regarding supervision of sex offenders by county probation officers, sections 1202.8(a)&(b) mandates that assessment, electronic monitoring and reporting be conducted as follows:

"(a) Persons placed on probation by a court shall be under the supervision of the county probation officer who shall determine both the level and type of supervision consistent with the court-ordered conditions of probation.

"(b) Commencing January 1, 2009, every person who has been assessed with the State Authorized Risk Assessment Tool for Sex Offenders (SARATSO) pursuant to Sections 290.04 to 290.06, inclusive, and who has a SARATSO risk level of high shall be continuously electronically monitored while on probation, unless the court determines that such monitoring is unnecessary for a particular person. The monitoring device used for these purposes shall be identified as one that employs the latest available proven effective monitoring technology. Nothing in this section prohibits probation authorities from using electronic monitoring technology pursuant to any other provision of law." [Emphasis added.]

Accordingly, the current version of Section 290.05 specifies a new January 1, 2009 start date for the [above] assessment, electronic monitoring and reporting certain new mandates.

Section 290.06

Section 290.06, as added by the Statutes of 2006, Chapter 337 [SB 1128], effective September 20, 2006, details requirements for administration of the SARATSO, as follows:

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

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

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

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

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

(5) Each probation department shall assess every eligible person under its supervision who was not assessed pursuant to paragraph (4). The assessment shall take place prior to the termination of probation, but no later than January 1, 2010.

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

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

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

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

It should be noted that section 290.06 is modified by Section 1202.8, added by (Added by Stats.1981, c. 1142, § 6.5. Amended by Stats.1986, c. 47, § 2; Stats.1996, c. 629 (S.B.1685), § 4; Stats.2006, c. 336 (S.B.1178), § 4, eff. Sept. 20, 2006; Stats.2006, c. 886 (A.B.1849), § 5, eff. Sept. 30, 2006.), regarding supervision of county probation officers, assessment and electronic monitoring of sex offenders and reports on monitoring of offenders, in pertinent part as follows:

> "(a) Persons placed on probation by a court shall be under the supervision of the county probation officer who shall determine both the level and type of supervision consistent with the court-ordered conditions of probation.
>
> "(b) Commencing January 1, 2009, every person who has been assessed with the State Authorized Risk Assessment Tool for Sex Offenders (SARATSO) pursuant to Sections 290.04 to 290.06, inclusive, and who has a SARATSO risk level of high shall be continuously electronically monitored while on probation, unless the court determines that such monitoring is unnecessary for a particular person. The monitoring device used for these purposes shall be identified as one that employs the latest available proven effective monitoring technology. Nothing in this section prohibits probation authorities from using electronic monitoring technology pursuant to any other provision of law." [Emphasis added.]

Accordingly, the current version of Section 290.06 specifies a new January 1, 2009 start date for the [above] SARATSO assessment and, if a high risk assessment is made, the start date for the [above specified] monitoring mandates.

Executive Order

On February 1, 2008, the California Mental Health Department issued an executive order implementing provisions of Penal Code Section 290.06. The order is entitled "State Authorized Risk Assessment Tool for Sex Offenders [SARATSO] Review Committee Notification" and provides, in pertinent part, as follows:

"For adults, the Committee has selected the Static-99 designed and cross-validated by Dr. Karl Hanson and Dr. David Thornton. This instrument is currently in use by CDCR as a tool to designate a parolee as a High Risk Sex Offender (HRSO). This instrument will become the only statewide risk assessment tool for adult males, which is mandated to be used by CDCR to assess every eligible inmate prior to parole and every eligible inmate on parole. This tool is further mandated for use by the Department of Mental Health (DMH) to assess every eligible individual prior to release and by Probation for every eligible individual for whom there is a probation report. (Pen. Code, § 290.06)"

"For juveniles the Committee has selected the J-SORAT II designed and cross-validated by Dr. Douglas Epperson. This instrument will become the only state-authorized risk assessment tool for juveniles, which is mandated to be used by probation when assessing a juvenile sex offender at adjudication, and by CDCR/DJJ both prior to release from DJJ and while on supervision. (Pen. Code, § 290.06)"

"On July 1, 2008, the Static-99 is mandated for use by the DMH, CDCR Parole and County Probation. Training-for-Trainers sessions will take place in the Winter/Spring of 2008."

"This training shall be conducted by experts in the field of risk assessment and the use of actuarial instruments in predicting sex offender risk. Subject to requirements established by the committee, CDCR, DMH, County Probation Departments, and authorized local law enforcement agencies shall designate the appropriate persons within their organizations to attend training and, as authorized by the department, to train others within their organizations. Any person who administers the SARATSO shall receive training no less frequently than every two years."

"The time factor is immediate. All agencies need to be fully trained for the July 1, 2008 implementation date." [Emphasis added.]

Therefore, the "State Authorized Risk Assessment Tool for Sex Offenders [SARATSO] Review Committee Notification" specifies that the Static-99 shall be used for adult sex offenders and the J-SORAT II for juvenile sex offenders. Implementation deadlines are set. Training requirements, including the frequency of training, are explicitly mandated. California Department of Mental Health,

State Authorized Risk Assessment Tool for Sex Offenders(SARATSO), Static-99, Train the trainer, Amy Phenix, Ph.D, manual.

Section 290.07

Section 290.07, as added by the Statutes of 2006, Chapter 337 [SB 1128], effective September 20, 2006, details requirements for access to sex offender records by persons authorized to administer SARATSO, as follows:

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

It should be noted that when authorized persons request that probation officers provide criminal histories, sex offender registration records, police reports, probation and presentencing reports, judicial records and case files, juvenile records, psychological evaluations and psychiatric hospital reports, sexually violent predator treatment program reports in their custody, access must be granted. The probation officer's duty to provide such reports is mandated. Otherwise authorized persons requesting the reports have no rights to access them – precisely the result this legislation was intended to avoid. Consequently, Section 290.07 mandates that probation officers provide specified report when requested by authorized persons.

Section 290.08

Section 290.08, as added by the Statutes of 2006, Chapter 337 [SB 1128], effective September 20, 2006, details requirements for retention of registered sex offender records, as follows:

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

Here, county district attorneys have an explicit mandate to retain specified records for 75 years after disposition of the case.

Section 1202.8

Section 1202.8, as added by the Statutes of 1981, Chapter 1142 and amended by the Statutes of 1996, Chapter 629, and of importance here, as subsequently amended by the Statutes of 2006, Chapters 336 [SB 1178] and 886 [AB 1849], details the exclusive duties of county probation officers in sex offender supervision, assessment, electronic monitoring, and reporting, as follows:

> "(a) Persons placed on probation by a court shall be under the supervision of the county probation officer who shall determine both the level and type of supervision consistent with the court-ordered conditions of probation.
>
> (b) Commencing January 1, 2009, every person who has been assessed with the State Authorized Risk Assessment Tool for Sex Offenders (SARATSO) pursuant to Sections 290.04 to 290.06, inclusive, and who has a SARATSO risk level of high shall be continuously electronically monitored while on probation, unless the court determines that such monitoring is unnecessary for a particular person. The monitoring device used for these purposes shall be identified as one that employs the latest available proven effective monitoring technology. Nothing in this section prohibits probation authorities from using electronic monitoring technology pursuant to any other provision of law.
>
> (c) Within 30 days of a court making an order to provide restitution to a victim or to the Restitution Fund, the probation officer shall establish an account into which any restitution payments that are not deposited into the Restitution Fund shall be deposited.

> (d) Beginning January 1, 2009, and every two years thereafter, each probation department shall report to the Corrections Standard Authority all relevant statistics and relevant information regarding on the effectiveness of continuous electronic monitoring of offenders pursuant to subdivision (b). The report shall include the costs of monitoring and the recidivism rates of those persons who have been monitored. The Corrections Standard Authority shall compile the reports and submit a single report to the Legislature and the Governor every two years through 2017." [Emphasis added.]

It should be noted that Chapter 336, Statutes of 2006 (S.B.1178), added subdivisions (b) and (d); and re-designated former subdivision (b) as subdivision (c). Chapter 886, Statutes of 2006 (A.B.1849), rewrote section five, subdivisions (b)&(d), which had read:

> "(b) Commencing July 1, 2008, every adult male who is convicted of an offense that requires him to register as a sex offender pursuant to Section 290 shall be assessed for the risk of reoffending consistent with Section 290.06. The assessment shall be performed by a probation officer who has been trained pursuant to Section 290.05. Every adult male who has a risk assessment of high shall be continuously electronically monitored while on probation, unless the court determines that such monitoring is unnecessary for a particular person. The monitoring device used for these purposes shall be identified as one that employs the latest available proven effective monitoring technology. Nothing in this section prohibits probation authorities from using electronic monitoring technology pursuant to any other provision of law."
>
> "(d) Beginning January 1, 2009, each probation department shall report every two years to the Legislature and to the Governor on the effectiveness of continuous electronic monitoring of offenders pursuant to subdivision (b). The report shall include the costs of monitoring and the recidivism rates of those persons who have been monitored." [Emphasis added.]

Accordingly, Section 1202.8 presently requires that beginning January 1, 2009, and every two years thereafter, each probation department shall report to the Corrections Standard Authority all relevant statistics and relevant information regarding on the effectiveness of continuous electronic monitoring of offenders

including the costs of monitoring and the recidivism rates of those persons who have been monitored.

Section 1203(c)

Under Section 1203(c), as added by Chapter 491, Statutes of 1935, and amended by Chapter 1785, Statutes of 1963 and Chapter 337, Statutes of 2006, county probation officers now have duties to include additional information in their reports to the State Department of Corrections and Rehabilitation:

> "(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 Corrections and Rehabilitation a report of the circumstances surrounding the offense and the prior record and history of the defendant, as may be required by the Secretary of the Department of Corrections and Rehabilitation.
>
> (2) If the person is being committed to the jurisdiction of the department for a conviction of an offense that requires him or her to register as a sex offender pursuant to Section 290, the probation officer shall include in the report the results of the State-Authorized Risk Assessment Tool for Sex Offenders (SARATSO) administered pursuant to Sections 290.04 to 290.06, inclusive, if applicable.
>
> (b) These reports shall accompany the commitment papers. The reports shall be prepared in the form prescribed by the administrator following consultation with the Corrections Standards Authority, except that if the defendant is ineligible for probation, a report of the circumstances surrounding the offense and the prior record and history of the defendant, prepared by the probation officer on request of the court and filed with the court before sentence, shall be deemed to meet the requirements of paragraph (1) of subdivision (a).
>
> (c) In order to allow the probation officer an opportunity to interview, for the purpose of preparation of these reports, the defendant shall be held in the county jail for 48 hours, excluding Saturdays, Sundays and

> holidays, subsequent to imposition of sentence and prior to delivery to the custody of the Secretary of the Department of Corrections and Rehabilitation, unless the probation officer has indicated the need for a different period of time." [Emphasis added.]

Chapter 337, Statutes of 2006 rewrote section 1203(c), which had read:

> "Notwithstanding any other provisions of law, whenever a person is committed to an institution under the jurisdiction of the Department of Corrections, 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 Corrections a report upon the circumstances surrounding the offense and the prior record and history of the defendant as may be required by the Administrator of the Youth and Adult Corrections Agency. These reports shall accompany the commitment papers. The reports shall be prepared in the form prescribed by the administrator following consultation with the Board of Corrections, except that in a case in which defendant is ineligible for probation, a report upon the circumstances surrounding the offense and the prior record and history of defendant, prepared by the probation officer on request of the court and filed with the court before sentence, shall be deemed to meet any such requirements of form. In order to allow the probation officer opportunity to interview, for the purpose of preparation of these reports, the prisoner shall be held in the county jail for 48 hours, excluding Saturdays, Sundays and holidays, subsequent to imposition of sentence and prior to delivery to the custody of the Director of Corrections, unless the probation officer shall have indicated need for a lesser period of time."

Accordingly, under the present version of section 1203(c), the probation officer shall now include in the report the results of the State-Authorized Risk Assessment Tool for Sex Offenders (SARATSO) administered pursuant to Sections 290.04 to 290.06, inclusive, if applicable.

Section 1203(e)

Section 1203(e), added by Chapter 337, Statutes of 2007, now requires probation officers to compile a 'Facts of Offense Sheet' and perform related duties as

follows:

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

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

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

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

release." [Emphasis added.]

Accordingly, under the present version of section 1203(e), county probation officers must spend substantial time in collecting and reporting information concerning the offender's name; CII number; criminal history, including all arrests and convictions for any registerable sex offenses or any violent offense; circumstances of the offense for which registration is required, including, but not limited to, weapons used and victim pattern; and results of the State-Authorized Risk Assessment Tool for Sex Offenders (SARATSO), as set forth in Section 290.04.

Section 1203(f)

Section 1203(f), added by Chapter 337, Statutes of 2007, now requires probation officers to place high risk sex offenders under intensive and specialized probation services as follows:

> "Every probation department shall ensure that all probationers under active supervision who are deemed to pose a high risk to the public of committing sex crimes, as determined by the State-Authorized Risk Assessment Tool for Sex Offenders, as set forth in Sections 290.04 to 290.06, inclusive, are placed on intensive and specialized probation supervision and are required to report frequently to designated probation officers. The probation department may place any other probationer convicted of an offense that requires him or her to register as a sex offender who is on active supervision to be placed on intensive and specialized supervision and require him or her to report frequently to designated probation officers. [Emphasis added.]

Accordingly, under the present version of section 1203(f), county probation officers must spend substantial time in having probationers report to them frequently.

Section 1202.7

Section 1202.7, as added by Chapter 1142, Statutes of 1981, and amended by Chapter 47, Statutes of 1986, Chapter 485, Statutes of 2001, Chapter 579, Statutes of 2007, specifies that probation officers attempt to provide treatment for specified sex offenders as follows:

> "The Legislature finds and declares that the provision of probation services is an essential element in the administration of criminal justice. The safety of the public, which shall be a primary goal through the enforcement of court-ordered conditions of probation; the nature of the offense; the interests of justice, including punishment, reintegration of the offender into the community, and enforcement of conditions of probation; the loss to the victim; and the needs of the defendant shall be the primary considerations in the granting of probation. It is the intent of the Legislature that efforts be made with respect to persons who are subject to Section 290.011 who are on probation to engage them in treatment. [Emphasis added.]

Accordingly, county probation officers are required to make special efforts in treating persons subject to section 290.011.

Section 290.011

Section 290.011, added Chapter 579, Statutes of 2007, requires county probation officers to follow a detailed protocol in determining if persons are subject to identification as 'transient individuals' and sex offenders and therefore require special 'treatment' efforts. Specifically, Section 290.001 defines such persons as follows:

> "290.011. Every person who is required to register pursuant to the Act who is living as a transient shall be required to register for the rest of his or her life as follows:
>
> (a) He or she shall register, or reregister if the person has previously registered, within five working days from release from incarceration, placement or commitment, or release on probation, pursuant to subdivision (b) of Section 290, except that if the person previously registered as a transient less than 30 days from the date of his or her release from incarceration, he or she does not need to reregister as a transient until his or her next required 30-day update of registration. If a transient is not physically present in any one jurisdiction for five consecutive working days, he or she shall register in the jurisdiction in which he or she is physically present on the fifth working day following release, pursuant to subdivision (b) of Section 290. Beginning on or before the 30th day following initial registration upon

release, a transient shall reregister no less than once every 30 days thereafter. A transient shall register with the chief of police of the city in which he or she is physically present within that 30-day period, or the sheriff of the county if he or she is physically present in an unincorporated area or city that has no police department, and additionally, with the chief of police of a campus of the University of California, the California State University, or community college if he or she is physically present upon the campus or in any of its facilities. A transient shall reregister no less than once every 30 days regardless of the length of time he or she has been physically present in the particular jurisdiction in which he or she reregisters. If a transient fails to reregister within any 30-day period, he or she may be prosecuted in any jurisdiction in which he or she is physically present.

(b) A transient who moves to a residence shall have five working days within which to register at that address, in accordance with subdivision (b) of Section 290. A person registered at a residence address in accordance with that provision who becomes transient shall have five working days within which to reregister as a transient in accordance with subdivision (a).

(c) Beginning on his or her first birthday following registration, a transient shall register annually, within five working days of his or her birthday, to update his or her registration with the entities described in subdivision (a). A transient shall register in whichever jurisdiction he or she is physically present on that date. At the 30-day updates and the annual update, a transient shall provide current information as required on the Department of Justice annual update form, including the information described in paragraphs (1) to (3), inclusive of subdivision (a) of Section 290.015, and the information specified in subdivision (d).

(d) 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.

(e) Failure to comply with the requirement of reregistering every 30 days following initial registration pursuant to subdivision (a) shall be punished in accordance with subdivision (g) of Section 290.018. Failure to comply with any other requirement of this section shall be punished in accordance with either subdivision (a) or (b) of Section 290.018.

(f) 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.

(g) 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.

(h) 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 section became effective." [Emphasis added.]

In sum, the Legislature in the test claim legislation has mandated that county probation officers play a critical role in implementing the landmark Sex Offender Punishment, Control and Containment Act of 2006, Chapter 337, Statutes of 2006 [SB 1128] and related legislation.

Scope of Work

County probation officers, have been complying with the mandatory provisions of the Sex Offender Punishment, Control and Containment Act of 2006, Chapter 337, Statutes of 2006 [SB 1128] and related legislation, as specified above, and incurring costs in doing so since February of 2008. In implementing this Act, county probation officers have found the following activities to be necessary:

Training

County probation officers must be trained. In this regard, Section 290.05(d), included in the test claim legislation herein, mandates, in pertinent part, that:

Section 290.05

> (d) The training shall be conducted by experts in the field of risk assessment and the use of actuarial instruments in predicting sex offender risk. Subject to requirements established by the committee, the Department of Corrections and Rehabilitation, the State Department of Mental Health, probation departments, and authorized local law enforcement agencies shall designate key persons within their organizations to attend training and, as authorized by the department, to train others within their organizations designated to perform risk assessments as required or authorized by law. Any person who administers the SARATSO shall receive training no less frequently than every two years. [Emphasis added.]

On February 1, 2008 the California Mental Health Department issued an executive order implementing provisions of Penal Code Section 290.06. The order is entitled "State Authorized Risk Assessment Tool for Sex Offenders [SARATSO] Review Committee Notification" and provides, in pertinent part, as follows:

> "For adults, the Committee has selected the Static-99 designed and cross-validated by Dr. Karl Hanson and Dr. David Thornton. This instrument is currently in use by CDCR as a tool to designate a parolee as a High Risk Sex Offender (HRSO)....."

Essentially anyone that will be administering the STATIC-99 in the County must be trained through the process per statute. Six SDPOs from County took training provided by the state, Training Manual, Static-99, Train the Trainer. This was

training-for-trainers. It was a one-day (8 hour) training class. Additionally, two of the SDPOs were received a day's training in Northern California (cost involved air fare, car rental, meals in addition to salary). These trainers then trained six Investigator Aides (IAs) and five DPO II's. This was a half-day training.

The total cost for initial training is itemized in the attached Statewide Cost Survey Schedule for both the County of Los Angeles ($80,884) and Statewide cost ($635,926).

Sex Offender Records/Investigation

California Department of Mental Health's Training Manual, State Authorized Risk Assessment Tool for Sex Offenders (SARATSO), Static-99, Train the Trainer Manual on page 11, specifies the Information Required to Score the STATIC-99 as:

> "Three basic types of information are required to score the STATIC-99, Demographic information, an official Criminal Record, and Victim information:
>
> **Demographic Information**
>
> Two of the STATIC-99 items required demographic information. The first item is "Young?". The offender's date of birth is required in order to determine whether the offender is between 18 and 25 years of age at the time of the release or at time of exposure to risk in the community. The second item that requires knowledge of demographic information is "Ever lived with an inmate partner - 2 years?". To answer this question the evaluator must know if the offender has ever lived in an intimate (sexual) relationship with another adult, continuously, for at least two years.
>
> **Official Criminal Record**
>
> In order to score the STATIC-99, the evaluator must have access to an official criminal record as recorded by police, court, or correctional officials. From this official criminal record you score five of the STATIC-99's items: "Index non-sexual violence – Any convictions", "Prior non-sexual violence – Any convictions", "Prior sex offences", "Prior sentencing dates", and "Non-contact sex offenses – Any convictions". Self-report is generally not acceptable to score these five

items – in the Introduction section, see sub-section – "Self-report and the STATIC-99".

Victim Information

The STATIC-99 contains three victim information items" "Any unrelated victims", Any stranger victims" and " Any male victims". To score these items the evaluator may use any credible information at their disposal except polygraph examination. For each of the offender's sexual offences the evaluator must know the pre-offense degree of relationship between the victim and the offender.

County of Los Angeles uses the following procedure for checking probationers' records:

1. Use of multiple automated criminal record systems. Cost for access involves computers and date lines. Estimated cost, $2,000 per year.
2. Cases that fall under the general 290 PC section (Registerable Sex Offenders) are assessed. New cases are referred by the courts. Existing, active probation cases will be assessed over time. This will be accomplished by running automated reports that identify the cases based upon the charges. Cost estimated at $5,000 per year for producing, distributing this data.
3. Delivery of assessment/report to court @ $20.00 per report. This includes paper, currier, and assistance from court deputies (ASCOT) plus probation file copy. Estimated per month @ $200.00. We provide only one copy and that is to the court. Additional cost will incur as a result of supplying information to DOJ.

The total cost for records/investigation is itemized in the Statewide Cost Survey Schedule for both the County of Los Angeles ($80,974) and Statewide ($304,239).

Assessment

Section 290.06, as added by the Statutes of 2006, Chapter 337 [SB 1128], effective September 20, 2006, details requirements for administration of the SARATSO, as follows:

(4) Each probation department shall assess every eligible person for

whom it prepares a report pursuant to Section 1203.

(5) Each probation department shall assess every eligible person under its supervision who was not assessed pursuant to paragraph (4). The assessment shall take place prior to the termination of probation, but no later than January 1, 2010.

On February 1, 2008 the California Mental Health Department issued an executive order implementing provisions of Penal Code Section 290.06. The order is entitled "State Authorized Risk Assessment Tool for Sex Offenders [SARATSO] Review Committee Notification" and provides, in pertinent part, as follows:

> "For adults, the Committee has selected the Static-99 designed and cross-validated by Dr. Karl Hanson and Dr. David Thornton. This instrument is currently in use by CDCR as a tool to designate a parolee as a High Risk Sex Offender (HRSO). This instrument will become the only statewide risk assessment tool for adult males, which is mandated to be used by CDCR to assess every eligible inmate prior to parole and every eligible inmate on parole....."
>
> "For juveniles the Committee has selected the J-SORAT II designed and cross-validated by Dr. Douglas Epperson. This instrument will become the only state-authorized risk assessment tool for juveniles,....."

For County Probation Department, preparation of the assessment is rated at two hours per case for an Investigator Aid(IA). The assessment consists of a record check and a rating based upon the history. The series of questions are scored and the form is attached to a brief court report which rates the cases as Low, Medium or High Risk. Cost is estimated at two hours for an IA plus $20.00 in processing and additional cost in supplying information to DOJ.

The total cost for assessment is itemized in the Statewide Cost Survey Schedule for both the County of Los Angeles ($213,039) and Statewide ($361,302). Cost for adult females and juveniles would be the same per case.

Reporting

Pursuant to Penal Code Section 290.04:

> (d) Beginning January 1, 2009, and every two years thereafter, each probation department shall report to the Corrections Standard Authority all relevant statistics and relevant information regarding on the effectiveness of continuous electronic monitoring of offenders pursuant to subdivision (b). The report shall include the costs of monitoring and the recidivism rates of those persons who have been monitored. The Corrections Standard Authority shall compile the reports and submit a single report to the Legislature and the Governor every two years through 2017."

For County Probation Department, this is a brief court report that states the risk score for each offender. It is sent to court and the cost is included under the Assessment.

It should be noted that when authorized persons request that probation officers provide criminal histories, sex offender registration records, police reports, probation and presentencing reports, judicial records and case files, juvenile records, psychological evaluations and psychiatric hospital reports, sexually violent predator treatment program reports in their custody, access must be granted. The probation officer's duty to provide such reports is mandated. Consequently, Section 290.07 mandates that probation officers provide specified report when requested by authorized persons.

Supervision

Pursuant to Penal Code Sections 290.04, modified by Section 1202.8, added by (Added by Stats.1981, c. 1142, § 6.5. Amended Stats.1996, c. 629 (S.B.1685), ..., as follows:

> "(a) Persons placed on probation by a court shall be under the supervision of the county probation officer who shall determine both the level and type of supervision consistent with the court-ordered conditions of probation.

High Risk

Section 290.04 further states that:

> "(b) Commencing January 1, 2009, every person who has been assessed with the State Authorized Risk Assessment Tool for Sex

> Offenders (SARATSO) pursuant to Sections 290.04 to 290.06, inclusive, and who has a SARATSO risk level of high shall be continuously electronically monitored while on probation, unless the court determines that such monitoring is unnecessary for a particular person. The monitoring device used for these purposes shall be identified as one that employs the latest available proven effective monitoring technology. Nothing in this section prohibits probation authorities from using electronic monitoring technology pursuant to any other provision of law."

Accordingly, the County Probation Department has divided the increased supervision in two sub-categories:

1. Specialized caseloads with higher contact requirements.
2. GPS monitoring for High Risk offenders and higher service level.

The County currently has over 1,000 registered sex offenders on active probation. The GPS is required by statute on High Risk and represents additional ongoing cost for the period of probation. GPS is rated (per existing contract cost) at $9.60 per day per probationer. One DPO will be assigned to no more than 20 High Risk cases; we would like to keep it at 15. This would be a DPO II.

The total cost for supervision is itemized in the Statewide Cost Survey Schedule for both the County of Los Angeles ($842,582) and Statewide ($4,124,906).

Treatment

Pursuant to Penal Code Section 1202.7, County probation officers require to provide treatment for specified sex offenders as follows:

> "..... the interests of justice, including punishment, reintegration of the offender into the community, and enforcement of conditions of probation; the loss to the victim; and the needs of the defendant shall be the primary considerations in the granting of probation. It is the intent of the Legislature that efforts be made with respect to persons who are subject to Section 290.011 who are on probation to engage them in treatment. [Emphasis added.]

Accordingly, county probation officers are required to make special efforts in treating persons subject to section 290.011:

> "290.011. Every person who is required to register pursuant to the Act who is living as a transient shall be required to register for the rest of his or her life as follows....."

For the purpose of providing services pursuant to Chapter 337[SB1128], Statutes of 2006, transients will cost about the same except that there is a more frequent reporting condition. In terms of caseload, they will likely be considered High Risk and placed on a caseload of 15 to 20.

Facts of Offense Sheet

Under Section 1203(c), as added by Chapter 491, Statutes of 1935, and amended by Chapter 1785, Statutes of 1963 and Chapter 337, Statutes of 2006, county probation officers now have duties to include additional information in their reports to the State Department of Corrections and Rehabilitation:

> "(a)(1) ....., it shall be the duty of the probation officer of the county from which the person is committed to send to the Department of Corrections and Rehabilitation a report of the circumstances surrounding the offense and the prior record and history of the defendant, as may be required by the Secretary of the Department of Corrections and Rehabilitation.
>
> (2) .....the probation officer shall include in the report the results of the State-Authorized Risk Assessment Tool for Sex Offenders (SARATSO) administered pursuant to Sections 290.04 to 290.06, inclusive, if applicable.
>
> (b) These reports shall accompany the commitment papers. The reports shall be prepared in the form prescribed by the administrator following consultation with the Corrections Standards Authority, except that if the defendant is ineligible for probation, a report of the circumstances surrounding .....
>
> (c) In order to allow the probation officer an opportunity to interview, for the purpose of preparation of these reports, the defendant shall be held in the county jail for 48 hours, excluding Saturdays, Sundays and

holidays, subsequent to imposition of sentence and prior to delivery to the custody of the Secretary of the Department of Corrections and Rehabilitation, unless the probation officer has indicated the need for a different period of time."

Chapter 337, Statutes of 2006 rewrote section 1203(c), which had read:

"Notwithstanding any other provisions of law, whenever a person is committed to an institution under the jurisdiction of the Department of Corrections, 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 Corrections a report upon the circumstances surrounding the offense and the prior record and history of the defendant as may be required by the Administrator of the Youth and Adult Corrections Agency. These reports shall accompany the commitment papers. The reports shall be prepared in the form prescribed by the administrator following consultation with the Board of Corrections, ..."

Section 1203(e)

Section 1203(e), added by Chapter 337, Statutes of 2007, now requires probation officers to compile a 'Facts of Offense Sheet' and perform related duties as follows:

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

The Facts of Offense Sheet shall contain the following information concerning the offender:

- Name
- CII number
- Criminal history, including all arrests and convictions for any registerable sex offenses or any violent offenses.
- Circumstances of the offense for which registration is required, including, but not limited to weapons used and victim pattern.
- Results of the SARATSO as set forth in PC 290.04, if required.

Accordingly, under the present version of section 1203(e), county probation officers must spend substantial time in collecting and reporting information concerning the offender's name; CII number; criminal history, including all arrests and convictions for any registerable sex offenses or any violent offense; circumstances of the offense for which registration is required, including, but not limited to, weapons used and victim pattern; and results of the State-Authorized Risk Assessment Tool for Sex Offenders (SARATSO), as set forth in Section 290.04.

Costs Mandated by the State

This application for State reimbursement or test claim, details the specific provisions of the landmark Sex Offender Punishment, Control and Containment Act of 2006 [the Act], Chapter 337, Statutes of 2006 [SB 1128] and related legislation[3] with which county probation officers must now comply. These

[3] In addition to Chapter 337, Statutes of 2006 [SB 1128], related legislation here includes Chapter 886, Statutes of 2006 [AB 1849], which co-joined Chapter 337 to passage of Chapter 336, Statutes of 2006, [SB1178]; Chapter 579, Statutes of 2007 [SB172], which amended provisions in Chapter 886 and also subsequently reformatted Chapter 337, and an executive order, implementing pertinent 'test claim' legislation cited herein, issued by the California Department of Mental Health on February 1, 2008 entitled "State Authorized Risk Assessment Tool for Sex Offenders [SARATSO] Review Committee Notification". The 'test claim legislation' cited herein are found in the "County Mandates" section of this test claim.

specific provisions or test claim legislation[4], qualify for State reimbursement under article XIII B, section 6 of the California Constitution, which requires, in pertinent part, that:

> "Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the State shall provide a subvention of funds to reimburse that local government for the costs of the program or increased level of service, except that the Legislature may, but need not, provide a subvention of funds for the following mandates:
>
> (1) Legislative mandates requested by the local agency affected.
>
> (2) Legislation defining a new crime or changing an existing definition of a crime.
>
> (3) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975." [Emphasis added.]

Here, the test claim legislation meets the requirements [above]. It was not requested by local government. The provisions of the test claim legislation cited herein did not define a new crime or change an existing definition of a crime. It was enacted in 2006, well after January 1, 1975. And, it constitutes a new State mandated program ... not required under prior law.

County probation officers must now implement sweeping reforms in implementing the SARATSO sex offender program, as previously detailed herein. A program not found under prior law.

---

[4] The test claim legislation is penal code sections [Sections] 290.04, 290.05, 290.06 as added by the Statutes of 2006, Chapter 337 [Senate Bill (SB) 1128] and by Chapter 336 [SB 1178] and repealed by Chapter 886 [Assembly Bill 1849]; Sections 290.03, 290.07, 290.08 as added by Chapter 337; Sections 1203 (c), (e), (f) as added by Chapter 337; Sections 1202.8, 3004 as amended by Chapter 337 and Chapter 886; Section 290.011 as added by the Statutes of 2007, Chapter 579 [SB 172]; Sections 290.04, 290.05, 1202.7 as amended by the Statutes of 2007, Chapter 579 [SB 172]; and the February 1, 2008 California Mental Health Department "State Authorized Risk Assessment Tool for Sex Offenders" [SARATSO] Committee Notification

County probation officers began incurring SARATSO costs during February 2008 and, so this test claim, filed on January 9, 2009, within one year of the date the County began incurring such costs is timely filed in accordance with Government Code Section 17553.

The costs claimed herein in for Los Angeles County's SARATSO program are detailed in the attached Statewide Cost Estimate Survey Schedule, such costs are far in excess of $1,000 per annum, the minimum cost that must be incurred to file a claim in accordance with Government Code Section 17564(a).

> It should be noted that the costs claimed herein for Los Angeles County are based on recent caseloads. These may dramatically increase depending on the in increase in the number of new cases and/or number of cases with a "High-Risk" status.

Accordingly, counties require reimbursement for the costs claimed herein in order to implement the test claim legislation.

Further, there are no funding disclaimers that would bar reimbursement for the costs claimed herein which are incurred in serving the populations defined in sections 1920(a)(1) and 2920(b).

There are seven disclaimers specified in GC Section 17556 which could serve to bar recovery of "costs mandated by the State", as defined in GC Section 17514. These seven disclaimers do not apply to the instant claim, as shown, in seriatim, for pertinent sections of GC Section 17556.

(a) "The claim is submitted by a local agency or school district which requested legislative authority for that local agency or school district to implement the Program specified in the statute, and that statute imposes costs upon that local agency or school district requesting the legislative authority. A resolution from the governing body or a letter from a delegated representative of the governing body of a local agency or school district which requests authorization for that local agency to implement a given program shall constitute a request within the meaning of this paragraph.

(a) is not applicable as the subject law was not requested by the County claimant or any local agency or school district.

(b) The statute or executive order affirmed for the State that which had been declared existing law or regulation by action of the courts.

(b) is not applicable because the subject law did not affirm what had been declared existing law or regulation by action of the courts.

(c) The statute or executive order implemented a federal law or regulation and resulted in costs mandated by the federal government, unless the statute or executive order mandates costs which exceed the mandate in that federal law or regulation.

(c) is not applicable as no federal law or regulation is implemented in the subject law.

(d) The local agency or school district has the authority to levy service charges, fees or assessments sufficient to pay for the mandated program or increased level of service.

(d) is not applicable because the subject law did not provide or include any authority to levy any service charges, fees, or assessments from the probationers which are sufficient to reimbursement the county for all costs necessarily incurred in complying with the test claim legislation.

(e) The statute or executive order provides for offsetting savings to local agencies or school districts which result in no net costs to the local agencies or school districts, or includes additional revenue that was specifically intended to fund the costs of the State mandate in an amount sufficient to fund the cost of the State mandate.

(e) is not applicable as no offsetting savings are provided in the subject law and no revenue to fund the subject law was provided by the legislature. It should be noted that Los Angeles County receives no federal funds and no state funds for conducting the SARATSO program. If federal or state funds for the SARATSO program are received, such payment for duplicative activities claimed herein will be deducted from reimbursements claimed herein.

(f) The statute or executive order imposes duties that are necessary to implement, reasonably within the scope of, or expressly included in,

a ballot measure approved by the voters in a statewide or local election. This subdivision applies regardless of whether the statute or executive order was enacted or adopted before or after the date on which the ballot measure was approved by the voters.

(f) is not applicable as the duties imposed in the subject law were not included in a ballot measure.

(g) The statute created a new crime or infraction, eliminated a crime or infraction, or changed the penalty for a crime or infraction, but only for that portion of the statute relating directly to the enforcement of the crime or infraction.

(g) is not applicable as the portions of the subject law claimed herein did not create or eliminate a crime or infraction and did not change that portion of the statute not relating directly to the penalty enforcement of the crime or infraction."

Therefore, the above seven disclaimers will not bar local governments' reimbursement of its costs in implementing the requirements set forth in the captioned test claim legislation as these disclaimers are all not applicable to the subject claim.

Similar Reimbursable Duties

Similar reimbursable duties to those claimed herein have been found in prior decisions of the Commission on State Mandates [Commission] and its predecessor agency, the State Board of Control [Board].

For example, Chapters 183/92, 184/92, 28X/94, 641195, "Domestic Violence Treatment Services – Authorization and Case Management", program was found to be a reimbursable program by the Commission on November 30, 2008. A key component was the mandate to assess the probability of the defendant committing murder [Penal Code section 1203.097(b)(3)(1)]. In part IV, Reimbursable Activities, subsection C, it specifically stated that:

C. Assessing future possibility of the defendant committing murder. (Pen. Code Sec. 1203.097, subd. (b)(3)(1).)

1. Evaluation and selection of a homicidal risk assessment instrument.

2. Purchasing or developing a homicidal risk assessment instrument.

3. Training staff on the use of homicidal risk assessment instrument.

4. Evaluation of the defendant using homicidal risk assessment instrument, interviews and investigation, to assess the future probability of the defendant committing murder.

A final example of similar investigation and reporting reimbursable activities to those claimed herein is the one found in Commission's decision on Chapter 1017, Statutes of 1986, Guardianships, adopted on March 31, 2000. Here the Commissioners concluded that:

> "The Commission on State Mandates concludes that the costs of investigations, and reports required by Chapter 1017, Statues of 1986, which exceed the amount of the allowable assessment, as determined by the State Controller, are costs mandated by the state and such are reimbursable costs."

Accordingly, the "costs mandated by the state" claimed herein meet all the [above] constitutional and statutory requirements and are similar to those found to be reimbursable in the past.

Finally, it should be noted that cost was not a determinative factor in requiring county probation officers to undertake the SARATSO program. As previously noted the Legislature was informed that this program could cost "tens of millions of dollars". We agree and find that prompt payment of the services claimed herein is now required.

COUNTY OF LOS ANGELES
PROBATION DEPARTMENT
9150 EAST IMPERIAL HIGHWAY — DOWNEY, CALIFORNIA 90242
(562) 940-2501

ROBERT B. TAYLOR
Chief Probation Officer

County of Los Angeles Test Claim
State Authorized Risk Assessment Tool for Sex Offenders (SARATSO): Sex Offender's Punishment, Control, and Containment Act

Declaration of Reaver Bingham

Reaver Bingham makes the following declaration and statement under oath:

I, Reaver Bingham , Adult field Services Bureau Chief, Los Angeles County Probation Department , am responsible for implementing provisions of the SARATSO, Sex Offender's Punishment , Control, and Containment Act including the test claim legislation as detailed in the attached test claim.

I declare that, it is my information or belief that the Probation Department is mandated to perform services for sex offenders pursuant to the test claim legislation, not required under prior law.

I declare that, it is my information or belief that, under the act, county probation officers are directed to institute new sex offender punishment, control and containment services.

I declare that, it is my information or belief that, Chapter 337, Statutes of 2006 [SB 1128], the Legislature delineates key changes that must be made to institute effective sex offender punishment, control and containment services.

I declare that, it is my information or belief that, the Legislature has mandated new duties for county probation officers as follows:

> "Existing law establishes a county probation system. This bill would require probation officers to be trained in the use of the SARATSO [State Authorized Risk Assessment Tool for Sex Offenders] 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. 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 intensive and specialized probation supervision, including electronic monitoring for the duration of the grant of probation.

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 perform 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 and to supply the SARATSO assessment, along with the Facts of Offense Sheet, to the Department of Justice. The bill would require the results of that assessment to be considered by the court in determining suitability for probation. Furthermore, the bill requires that probation officers administer the SARATSO assessment on all persons currently on active probation for offenses that require them to register as sex offenders."

I declare that, it is my information or belief that, Section 290.05(c), included in the test claim legislation herein, mandates, in pertinent part, that "Any person who administers the SARATSO shall receive training no less frequently than every two years". Also, county probation officers must perform SARATSO assessments on all sex offenders [as specified in the test claim legislation herein] determine the risk of a person, convicted of a felony, reoffending.

I declare that, it is my information or belief that, county probation officers must compile a 'Facts of Offense Sheet' for each sex offender and provide this document, along with the SARATSO assessment, to the Department of Justice on all persons who are required to register as sex offenders and who are granted probation by the court. Moreover, high risk sex offenders, as determined by the SARATSO assessment, must be placed on intensive and specialized probation supervision which includes electronic monitoring.

New Program

I declare that, it is my information or belief that, County probation officers play a vital role in the new State-mandated program of managing sex offenders in the community and in preventing future victimization. As noted by the Legislature, in pertinent part, in Section 2 of SB 1128:

> "California's tactics for monitoring registered sex offenders must be transformed into a cohesive and comprehensive system of state and local law enforcement supervision to observe, assess, and proactively respond to patterns and conduct of registered sex offenders in the community." [Emphasis added.]

I declare that I have conducted the attached statewide cost survey.

I declare that it is my information or belief that the attached description of activities are reasonably necessary in implementing the test claim legislation in a cost efficient manner.

Specifically, I declare that it is my information and belief that the County's State mandated duties and resulting costs in implementing the test claim legislation are, in my opinion, reimbursable "costs mandated by the State", as defined in Government Code section 17514:

> " ' Costs mandated by the State' means any increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution."

I am personally conversant with the foregoing facts and if required, I could and would testify to the statements made herein.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct of my own knowledge, except as to matters, which are stated as information and belief, and as to those matters I believe them to be true.

1.6.09
Date and Place

Reaver Bingham, Bureau Chief

County of Los Angeles Test Claim
Summary Statewidde Cost Estimate From 1/1/08 through 12/31/08
State Authorized Risk Assessment Tool for Sex Offenders (SARATSO):
Sex Offender's Punishment, Control, and Containment Act

Activities	County of Los Angeles	Statewide (2) Total
1. TRAINING		
a. Initial costs for training provided by the state		
(1) Staff costs	$19,432	$79,788
(2) Travel	$897	$25,754
b. Subsequent initial training for newly assigned training staff		
(1) Staff costs		$46,059
(2) Travel		$5,821
c. In-house training--certify other staff to do assessments (6-8 hrs)	$4,033	$235,018
d. Specialized supervision deputies (6-8 hrs every two years)	$25,045	$53,643
e. Subsequent training of the staff (every two years)	$31,477	$189,843
SUBTOTAL TRAINING	**$80,884**	**$635,926**
2. PERFORMING ASSESSMENTS		
a. New cases (avg # per month):	(1) 55	(1) 213
(1) Staff costs	$42,110	$103,444
(2) Clerical handling staff costs	$7,780	$10,925
(3) Materials	$7,020	$10,764
(4) Deliver (to Court, attaching to post-sentence reports)	$0	$423
b. Existing cases (including registered females/juveniles; # of new cases	(1) 1050	(1) 3148
(1) Staff costs	$99,649	$164,788
(2) Clerical handling staff costs	$45,500	$52,688
(3) Materials	$10,980	$16,062
(4) Deliver (to Court), attaching to post-sentence reports	$0	$2,208
SUBTOTAL PERFORMING ASSESSMENTS	**$213,039**	**$361,302**
3. INVESTIGATION		
a. Estimated # of new cases per year requiring SARATSO:	(1) 720	(1) 1,666
(1) Estimated staff costs	$45,938	$205,692
(2) Estimated clerical handling staff costs	$8,487	$40,461
(3) Estimated materials	$18,000	$29,438
(4) Estimated deliver (to Court), attaching to post-sentence reports	$0	$4,755
SUBTOTAL ESTIMATED COSTS FOR NEW CASES	**$72,425**	**$280,346**
b. Estimated # of addl female and juvenile cases:	(1) 60	(1) 258
(1) Estimated staff costs	$5,694	$17,710
(2) Estimated clerical handling staff costs	$1,415	$3,771
(3) Estimated materials	$1,440	$1,853
(4) Estimated deliver (to Court), attaching to post-sentence reports	$0	$561
SUBTOTAL ESTIMATED COSTS FOR ADDL FEMALE/JUVENILE CASES	**$8,549**	**$23,895**
TOTAL ESTIMATED NUMBER OF CASES (a. + b.)(1)	**780**	**1,924**
TOTAL ESTIMATED COSTS	**$80,974**	**$304,241**

(1) the number of cases are excluded from the total cost.

County of Los Angeles Test Claim
Summary Statewidde Cost Estimate From 1/1/08 through 12/31/08
State Authorized Risk Assessment Tool for Sex Offenders (SARATSO):
Sex Offender's Punishment, Control, and Containment Act

Activities	County of Los Angeles	Statewide (2) Total
ESTIMATED COST PER CASE FOR ALL QUALIFYING CASES	**$104**	**$5,554**
4. SUPERVISION		
a. Estimated number of High Risk Cases	(1) 44	(1) 758
b. Estimated cost for Electronic Monitoring of high risk cases		
(1) Staff costs	$100,218	$654,148
(2) Equipment	$154,818	$622,563
(3) Clerical support	$1,037	$56,885
(4) Other materials	$0	$14,557
SUBTOTAL ESTIMATED COSTS FOR ELECTRONIC MONITORING	**$256,073**	**$1,348,153**
PER PROBATIONER/PER DAY COST	**16**	**5**
c. Estimated cost for "specialized, intensive" supervision of high risk cases		
(1) Staff costs	$399,734	$2,158,902
(2) Equipment	$0	$20,530
(3) Clerical support	$1,037	$64,739
(4) Other materials	$31,215	$46,870
SUBTOTAL ESTIMATED COSTS FOR SUPERVISION OF HIGH RISK CASES	**$431,986**	**$2,291,041**
d. Est. cost for "specialized, intensive" supervision of additional female/juvenile high risk offenders:		
(1) Staff costs		$223,547
(2) Equipment		$8,970
(3) Clerical support		$7,307
(4) Other materials		$3,171
SUBTOTAL EST. COSTS FOR SUPERVISION OF JUVE/FEMALE HIGH RISK OFFENDERS	**$0**	**$242,995**
e. Estimated cost for any specialized treatment and/or special surveillance for high	$126,088	$193,136
f. Estimated cost for addl info on child victims (review and process of psych evaluations)		$5,337
g. Estimated cost for preparation and distribution of the Facts of Offense Sheet	$28,435	$44,243
SUBTOTAL SUPERVISION COSTS	**$842,582**	**$4,124,905**
TOTAL COSTS (ACTUAL & ESTIMATED)		
1. Training	**$80,884**	**$635,925**
2. Performing Assessments	**$213,039**	**$361,302**
3. Investigation	**$80,974**	**$304,241**
4. Supervision	**$842,582**	**$4,124,905**
GRAND TOTAL	**$1,217,479**	**$5,426,373**

(1) the number of cases are excluded from the total cost.

(2) see pages a-f for detail.

County of Los Angeles Test Claim
Statwide Cost Estimate
State Authorized Risk Assessment Tool for Sex Offenders (SARATSO)
Sex Offender's Punishment, Control, and Containment Act

Activities	Monterey	Tuolumne	San Benito	Sonoma	Tehama	Alameda	Placer	Del Norte	Stanislaus	Tulare	Humboldt	Santa Barbara	Nevada
1. TRAINING													
a. Initial costs for training provided by the state													
(1) Staff costs	$3,433	$2,700	$8,206	$2,901	$265	$2,921	$500	$683	$409	$734	$3,774	$3,176	$726
(2) Travel	6,072	425	373	855	250	1,904	25	425	289	580	623	1,888	150
b. Subsequent initial training for newly assigned training staff													
(1) Staff costs	1,910	0	1,049	20,095	265	340	0	0	0	1,467	4,227	0	0
(2) Travel	0	0	200	0	250	0	0	0	0	1,519	700	0	0
c. In-house training--certify other staff to do assessments	8,075	365	429	2,024	1,800	38,801	0	897	2,454	9,431	8,403	13,170	605
d. Specialized supervision deputies (6-8 hrs every two ye	1,604	4,200	769	0	600	4,016	0	0	613	3,222		1,148	0
e. Subsequent training of the staff (every two years)	9,763	5,000	2,345	0	1,800	38,801	0	59	2,454	12,653	9,412	13,170	0
SUBTOTAL TRAINING	**$30,858**	**$12,690**	**$13,370**	**$25,875**	**$5,230**	**$86,783**	**$525**	**$2,064**	**$6,219**	**$29,606**	**$27,139**	**$32,552**	**$1,481**
2. PERFORMING ASSESSMENTS													
a. New cases (avg # per month):	$21	$1	$1	$7		$5	$0		$5	$5	$1	$7	$1
(1) Staff costs	12,475	185	177	183	300	20,800	0	439	64	45	5,259	916	44
(2) Clerical handling staff costs	0	50	37	0	60	20	0	249	16	0	89	679	0
(3) Materials	0	10	10	0	25	100	0	113	50	0	104	160	24
(4) Deliver (to Court, attaching to post-sentence repor	0	0	7	59	20	120	0	37	16	45	89		0
b. Existing cases (including registered females/juveniles;	128	16	1	17		0	0	5	75	109	30	163	1
(1) Staff costs	5,671	1,500	177	445	200	0	0	965	959	954	974	3,556	22
(2) Clerical handling staff costs	0	400	37	0	30	0	0	547	131	0	0	2,637	0
(3) Materials	0	160	10	0	25	0	0	248	50	0	0	619	24
(4) Deliver (to Court), attaching to post-sentence repo	0	0	7	142	25	0	0	81	131	981	0		0
SUBTOTAL PERFORMING ASSESSMENTS	**$18,145**	**$2,305**	**$463**	**$829**	**$685**	**$21,040**	**$0**	**$2,678**	**$1,417**	**$2,025**	**$6,515**	**$8,567**	**$114**
3. INVESTIGATION													
a. Estimated # of new cases per year requiring SARATS	$114	$6	$6	$84	$24	$65		$24	$8	$1	$21	$84	$4

County of Los Angeles Test Claim
Statwide Cost Estimate
State Authorized Risk Assessment Tool for Sex Offenders (SARATSO)
Sex Offender's Punishment, Control, and Containment Act

Activities	Monterey	Tuolumne	San Benito	Sonoma	Tehama	Alameda	Placer	Del Norte	Stanislaus	Tulare	Humboldt	Santa Barbara	Nevada
(1) Estimated staff costs	10,233	600	1,063	2,198	3,600	15,000	5,000	5,616	102	6,849	14,190	49,476	176
(2) Estimated clerical handling staff costs	0	125	223	0	720	100	0	1,194	65	373	467	10,870	0
(3) Estimated materials	0	50	60	0	300	30	0	540	50	0	59	6,035	96
(4) Estimated deliver (to Court), attaching to post-sent	0	0	45	703	240	1,500	0	176	65	639	467		0
SUBTOTAL ESTIMATED COSTS FOR NEW CASES	**$10,233**	**$775**	**$1,390**	**$2,901**	**$4,860**	**$16,630**	**$5,000**	**$7,526**	**$283**	**$7,861**	**$15,183**	**$66,381**	**$272**
b. Estimated # of addl female and juvenile cases:	0	5	4	12	10		25	1	24	32	1		0
(1) Estimated staff costs	0	500	791	314	1,500		0	234	307	4,070	25		0
(2) Estimated clerical handling staff costs	0	125	208	0	150		0	50	33	882	0		0
(3) Estimated materials	0	50	40	0	100		0	23	50	0	0		0
(4) Estimated deliver (to Court), attaching to post-sent	0	0	30	100	100		0	15	33	183	0		0
SUBTOTAL ESTIMATED COSTS FOR ADDL FEMA	**$0**	**$675**	**$1,069**	**$414**	**$1,850**	**$0**	**$0**	**$321**	**$422**	**$5,135**	**$25**	**$0**	**$0**
TOTAL ESTIMATED NUMBER OF CASES (a. + b.)	**$114**	**$11**	**$10**	**$96**	**$34**	**$65**		**$25**	**$32**	**$33**	**$22**	**$84**	**$4**
TOTAL ESTIMATED COSTS	**10,233**	**1,450**	**2,459**	**3,316**	**6,710**	**16,630**	**5,000**	**7,847**	**705**	**12,995**	**15,208**	**66,381**	**272**
ESTIMATED COST PER CASE FOR ALL QUALIFYI	**$90**	**$132**	**$246**	**$35**	**$197**	**$256**	**$0**	**$314**	**$22**	**$394**	**$691**	**$790**	**$68**
4. SUPERVISION													
a. Estimated number of High Risk Cases	$8	$2	$2	$1	$10	$432	$94	$8	$5	$3	$3	$4	$5
b. Estimated cost for Electronic Monitoring of high risk cases													
(1) Staff costs	24,651	8,500	5,128	2,026	0	0	0	3,189	26,582		10,518	36,300	2,875
(2) Equipment	18,980	0	4,636	1,734	0	0	0	7,358	16,200	9,800	9,855	8,760	18,250
(3) Clerical support	0	250	3,092	0	0	0	0	195	33	0	0	13,458	100
(4) Other materials	1,920	150	0	0	0	0	0	0	1,936	0	0	4,976	0
SUBTOTAL ESTIMATED COSTS FOR ELECTRONI	**$45,551**	**$8,900**	**$12,855**	**$3,760**	**$0**	**$0**	**$0**	**$10,742**	**$44,751**	**$9,800**	**$20,373**	**$63,494**	**$21,225**
PER PROBATIONER/PER DAY COST	**16**	**12**	**18**	**10**	**0**	**0**	**0**	**4**	**25**	**9**	**19**	**43**	**12**
c. Estimated cost for "specialized, intensive" supervision of high risk cases													

County of Los Angeles Test Claim
Statwide Cost Estimate
State Authorized Risk Assessment Tool for Sex Offenders (SARATSO)
Sex Offender's Punishment, Control, and Containment Act

Activities	Monterey	Tuolumne	San Benito	Sonoma	Tehama	Alameda	Placer	Del Norte	Stanislaus	Tulare	Humboldt	Santa Barbara	Nevada
(1) Staff costs	$28,096	$8,000	$3,330	$18,502	$10,400	$822,000	$70,000	$1,053	$6,643	$60,362	$9,074	$18,150	$0
(2) Equipment	0	500	0	0	1,000	6,500	500	0	2,000	0	0	8,760	0
(3) Clerical support	0	250	1,546	0	3,000	7,200	0	299	33	0	1,513	6,729	0
(4) Other materials	0	150	144	0	500	7,224	0	25	0	1,305	0	2,488	0
SUBTOTAL ESTIMATED COSTS FOR SUPERVISIC	$28,096	$8,900	$5,020	$18,502	$14,900	$842,924	$70,500	$1,377	$8,676	$61,667	$10,587	$36,127	$0
d. Est. cost for "specialized, intensive" supervision of addl female/juvenile high risk offenders													
(1) Staff costs	$0	$11,000	$8,122	$0	$10,400	$0	$0	$712	$31,886	$60,362	$0		$0
(2) Equipment	0	5,000	0	0	1,000	0	0	920	2,000	0	0		0
(3) Clerical support	0	1,000	2,319	0	3,000	0	0	305	33	0	0		0
(4) Other materials	0	1,000	216	0	500	0	0	0	0	1,305	0		0
SUBTOTAL EST. COSTS FOR SUPERVISION OF J	0	18,000	10,657	0	14,900	0	0	1,937	33,919	61,667	0	0	0
e. Estimated cost for any specialized treatment and/or sp	0	2,700	0	0	2,400	0	0	7,342	0	0	10,000		0
f. Estimated cost for addl info on child victims (review an	0	2,200	232	0	1,200	0	0	0	0	0	605		0
g. Estimated cost for preparation and distribution of the F	7,699	1,800	3	0	500	0	0	351	204	1,790	530	153	0
SUBTOTAL SUPERVISION COSTS	$81,347	$42,500	$28,767	$22,262	$33,900	$842,924	$70,500	$21,748	$87,550	$134,924	$42,095	$99,774	$21,225
TOTAL COSTS (ACTUAL & ESTIMATED)													
1. Training	$30,858	$12,690	$13,370	$25,875	$5,230	$86,783	$525	$2,064	$6,219	$29,606	$27,139	$32,552	$1,481
2. Performing Assessments	18,145	2,305	463	829	685	21,040	0	2,678	1,417	2,025	6,515	8,567	114
3. Investigation	10,233	1,450	2,459	3,316	6,710	16,630	5,000	7,847	705	12,995	15,208	66,381	272
4. Supervision	81,347	42,500	28,767	22,262	33,900	842,924	70,500	21,748	87,550	134,924	42,095	99,774	21,225
TOTAL	$140,583	$58,945	$45,059	$52,282	$46,525	$967,377	$76,025	$34,336	$95,891	$179,550	$90,957	$207,274	$23,092

San Mateo	Imperial	Orange	Amador	San Luis Obispo	Sierra	El Dorado	El Dorado	Inyo	Santa Cruz	Riverside	Solano	SF Adult	Sacto.	Marin	Santa Clarita	Napa	Los Angeles	TOTAL
$1,676	$5,296	$4,023	$778	$2,164	$1,952	$989	$2,444	$200	$1,323	$1,742	$1,508	$1,266	$1,709	$740	$1,611	$507	$19,432	$79,788
1,025	2,988	39	0	30	325	179	348	500	718	1,111	305	1,260		1,440	640	90	897	25,754
3,377	0	4,035	258	270					1,040	4,242		791		454	1,707	532		46,059
0	0	293	0	0					477	1,507		145			640	90		5,821
1,530	5,250	32,991	156	6,657		2,912	4,714		594	37,114	3,393	0	15,647	1,032	28,381	4,160	4,033	235,018
0	0	8,655	0	860					628		566	0			854	863	25,045	53,643
0	5,964	8,655	0	6,657					700		4,524	1,518	16,819		14,191	3,882	31,477	189,843
$7,608	**$19,498**	**$58,691**	**$1,191**	**$16,638**	**$2,277**	**$4,080**	**$7,506**	**$700**	**$5,481**	**$45,715**	**$10,296**	**$4,980**	**$34,175**	**$3,666**	**$48,024**	**$10,124**	**$80,884**	**$635,926**
$3		$16	$1	$4		$5	$5			$17	$2	$4	$11		$35	$1	$55	$213
77		8,406	15	318		182	182	50	3,166	2,324	566	1,905	2,145		1,035	77	42,110	103,444
56		522	0	142				20	543		395	0			259	8	7,780	10,925
0		3,000	0	15		10	10	20	10			32			52		7,020	10,764
0		0	0	10				20				0					0	423
2	11	104	0	50				3	0	311	40	136	646		210	40	1,050	3,148
59	481	9,107	0	1,340		547	547	50	3,166	8,505	2,828	5,607	10,758		6,208	514	99,649	164,788
44	0	566	0	650				0	543			0			1,552	51	45,500	52,688
0	25	3,000	0	500				20				91			310		10,980	16,062
0	341	0	0	500				0				0					0	2,208
$235	**$847**	**$24,602**	**$61**	**$3,475**	**$0**	**$739**	**$739**	**$180**	**$7,426**	**$10,829**	**$3,789**	**$7,636**	**$12,903**	**$0**	**$9,416**	**$650**	**$213,039**	**$361,302**
$32	$5	$50	$8	$48		$25	$25	$5	$30	$5	$2	$48			$210	$12	$720	$1,666

San Mateo	Imperial	Orange	Amador	San Luis Obispo	Sierra	El Dorado	El Dorado	Inyo	Santa Cruz	Riverside	Solano	SF Adult	Sacto.	Marin	Santa Clarita	Napa	Los Angeles	TOTAL
942	219	4,378	242	15,264		912	912	250	13,560	130	566	1,905			6,208	162	45,938	205,692
698	44	272	0	6,816				100	7,944		395	0			1,552	16	8,487	40,461
0	25	3,000	0	720		10	10	100	10			32			310		18,000	29,438
0	341	0	0	480				100				0					0	4,755
$1,640	**$628**	**$7,650**	**$242**	**$23,280**	**$0**	**$922**	**$922**	**$550**	**$21,513**	**$130**	**$961**	**$1,937**	**$0**	**$0**	**$8,071**	**$178**	**$72,425**	**$280,346**
0			0	6		25	25	2			1	0	25			0	60	258
0				1,908		912	912	100			24	0	419				5,694	17,710
0				852				40			16	0					1,415	3,771
0				90		10	10	40				0					1,440	1,853
0				60				40				0					0	561
$0	**$0**	**$0**	**$0**	**$2,910**	**$0**	**$922**	**$922**	**$220**	**$0**	**$0**	**$40**	**$0**	**$419**	**$0**	**$0**	**$0**	**$8,549**	**$23,895**
$32	**$5**	**$50**	**$8**	**$54**		**$50**	**$50**	**$7**	**$30**	**$5**	**$3**	**$48**	**$25**	**$0**	**$210**	**$12**	**$780**	**$1,924**
1,640	**628**	**7,650**	**242**	**26,190**	**0**	**1,844**	**1,844**	**770**	**21,513**	**130**	**1,001**	**1,937**	**419**	**0**	**8,071**	**178**	**80,974**	**304,239**
$51	**$126**	**$153**	**$30**	**$485**	**$0**	**$37**	**$37**	**$110**	**$717**	**$26**	**$334**	**$40**	**$17**	**$0**	**$38**	**$15**	**$104**	**$5,554**
$32	$5	$40	$0	$3		$0	$0	$1		$4	$4	$15	$16		$13	$4	$44	$758
942	266	171,640		7,704				100	15,194		81,760	80,399	13,286		41,508	21,362	100,218	654,148
471	5,475	110,000		9,000				50	21,900	2,920		139,125	29,700		41,851	11,680	154,818	622,563
698	106	17,042		1,800				50	6,512			0			10,377	2,136	1,037	56,885
0	100	3,000		300				100				0			2,075		0	14,557
$2,111	**$5,947**	**$301,682**	**$0**	**$18,804**	**$0**	**$0**	**$0**	**$300**	**$43,607**	**$2,920**	**$81,760**	**$219,524**	**$42,986**	**$0**	**$95,811**	**$35,178**	**$256,073**	**$1,348,154**
0	**3**	**21**	**0**	**17**	**0**	**0**	**0**	**1**	**119**	**2**	**56**	**40**	**7**	**0**	**20**	**24**	**16**	**5**

San Mateo	Imperial	Orange	Amador	San Luis Obispo	Sierra	El Dorado	El Dorado	Inyo	Santa Cruz	Riverside	Solano	SF Adult	Sacto.	Marin	Santa Clarita	Napa	Los Angeles	TOTAL
$0		$171,640		$7,704				$100	$135,595	$21,734	$196,794	$85,758			$41,508	$42,725	$399,734	$2,158,902
0		0		0				50				1,220			0		0	20,530
0		17,042		1,800				50	7,944	1,649		0			10,377	4,272	1,037	64,739
0		0		300				50				1,394			2,075		31,215	46,870
$0	**$0**	**$188,682**	**$0**	**$9,804**	**$0**	**$0**	**$0**	**$250**	**$143,539**	**$23,383**	**$196,794**	**$88,372**	**$0**	**$0**	**$53,960**	**$46,997**	**$431,986**	**$2,291,041**
$0				$2,568				$100			$98,397	$0						$223,547
0				0				50				0						8,970
0				600				50				0						7,307
0				100				50				0						3,171
0	**0**	**0**	**0**	**3,268**	**0**	**0**	**0**	**250**	**0**	**0**	**98,397**	**0**	**0**	**0**	**0**	**0**	**0**	**242,995**
0		10,000		1,800				100			2,000		30,706				126,088	193,136
0		0		1,000				100										5,337
0		0		1,500				100			1,178						28,435	44,243
2,111	**$5,947**	**$500,363**	**$0**	**$36,176**	**$0**	**$0**	**$0**	**$1,100**	**$187,146**	**$26,303**	**$380,129**	**$307,895**	**$73,692**	**$0**	**$149,771**	**$82,175**	**$842,582**	**$4,124,906**
$7,608	$19,498	$58,691	$1,191	$16,638	$2,277	$4,080	$7,506	$700	$5,481	$45,715	$10,296	$4,980	$34,175	$3,666	$48,024	$10,124	$80,884	$635,925
235	847	24,602	61	3,475	0	739	739	180	7,426	10,829	3,789	7,636	12,903	0	9,416	650	213,039	361,302
1,640	628	7,650	242	26,190	0	1,844	1,844	770	21,513	130	1,001	1,937	419	0	8,071	178	80,974	304,241
2,111	5,947	500,363	0	36,176	0	0	0	1,100	187,146	26,303	380,129	307,895	73,692	0	149,771	82,175	842,582	4,124,905
$11,595	$26,920	$591,306	$1,494	$82,479	$2,277	$6,663	$10,089	$2,750	$221,566	$82,977	$395,215	$322,448	$121,189	$3,666	$215,282	$93,127	$1,217,479	$5,426,373

County of Los Angeles Test Claim Survey

State Authorized Risk Assessment Tool for Sex Offenders (SARATSO): Sex Offender's Punishment, Control, and Containment Act

1. Name of Survey Respondent (agency): Probation Department

2. Contact Person(s): Richard Stickney
   Phone Number: (562) 940-2468
   E-Mail Address: richard.stickney@probation.lacounty.gov

Below are listed the mandated activities. Staff costs should be calculated at the Productive Hourly rate.

1. TRAINING

a.	Initial costs for training provided by the state. (One day-Train the trainer)	
	(1) Staff costs	$ 19,432
	(2) Travel	$ 897
b.	Subsequent initial training for new/newly assigned training staff.	
	(1) Staff costs	$ n/a
	(2) Travel	$
c.	In-house training for certifying other staff to do assessments. (6-8 hrs)	$ 4,033
d.	Specialized supervision deputies (6-8 hrs every two years).	$ 25,045
e.	Subsequent training of the staff (every two years)	$ 31,477
	SUBTOTAL TRAINING	$ 80,886

2. PERFORMING ASSESSMENTS

a.	New Cases (use average number per month for new cases since the assessment became mandatory – July 1, 2008) -	Monthly average: 55
	(1) Staff costs	$ 42,110
	(2) Clerical handling staff costs	$ 7,780
	(3) Materials	$ 7,020
	(4) Deliver (to Court), attaching to post-sentence reports that go to CDRC, etc.)	$ 0
b.	Existing cases (including any females or juveniles that have registered)	# of new cases 1,050/year
	(1) Staff costs	$ 99,649
	(2) Clerical handling staff costs	$ 45,500
	(3) Materials	$ 10,980
	(4) Deliver (to Court), attaching to post-sentence reports that go to CDRC, etc.)	$ 0
	SUBTOTAL PERFORMING ASSESSMENTS	213,039

County of Los Angeles Test Claim Survey

State Authorized Risk Assessment Tool for Sex Offenders (SARATSO):
Sex Offender's Punishment, Control, and Containment Act

3. INVESTIGATION

a.	Estimated number of new cases per year requiring SARATSO:	720/year
	(1) Estimated Staff costs	$ 45,938
	(2) Estimated Clerical handling staff costs	$ 8,487
	(3) Estimated Materials	$ 18,000
	(4) Estimated Deliver (to Court), attaching to post-sentence reports that go to CDRC, etc.)	$ 0
	SUBTOTAL ESTIMATED COSTS FOR NEW CASES	$ 72,425
b.	Estimated number of additional female and juvenile cases:	60/year
	(1) Estimated Staff costs	$ 5,694
	(2) Estimated Clerical handling staff costs	$ 1,415
	(3) Estimated Materials	$ 1,440
	(4) Estimated Deliver (to Court), attaching to post-sentence reports that go to CDRC, etc.)	$ 0
	SUBTOTAL ESTIMATED COSTS FOR ADDITION FEMALE & JUVENILE CASES	$ 8,549
	TOTAL ESTIMATED NUMBER OF CASES (a. + b.)	
	TOTAL ESTIMATED COSTS	$ 80,974
	ESTIMATED COST PER CASE FOR ALL QUALIFYING CASES (total estimated costs divided by total estimated number of cases)	$ 104

4. SUPERVISION

a.	Estimated number of High Risk Cases	44/year
b.	Estimated cost for Electronic Monitoring of high risk cases.	
	(1) Staff costs	$ 100,218
	(2) Equipment	$ 154,818
	(3) Clerical support	$ 1,037
	(4) Other materials	$ 0
	SUBTOTAL ESTIMATED COSTS FOR ELECTRONIC MONITORING	$ 256,074
	PER PROBATIONER/PER DAY COST (Total estimated costs divided by total estimated cases divided by 365)	$ 16
c.	Estimated cost for "specialized, intensive" supervision of High Risk Cases	44/year
	(1) Staff costs	$ 399,734
	(2) Equipment	$ 0
	(3) Clerical support	$ 1,037
	(4) Other materials	$ 31,215
	SUBTOTAL ESTIMATED COSTS FOR SUPERVISION OF HIGH RISK CASES	$ 431,986

County of Los Angeles Test Claim Survey

State Authorized Risk Assessment Tool for Sex Offenders (SARATSO): Sex Offender's Punishment, Control, and Containment Act

d.	Estimated cost for "specialized, intensive" supervision of additional female and juvenile high risk offenders	n/a
	(1) Staff costs	$ n/a
	(2) Equipment	$ n/a
	(3) Clerical support	$ n/a
	(4) Other materials	$ n/a
	SUBTOTAL ESTIMATED COSTS FOR SUPERVISION OF JUVENILE/FEMALE HIGH RISK OFFENDERS	$ n/a
e.	Estimated cost for any specialized treatment and/or special surveillance (e.g., polygraph, computer checks) for High Risk cases.	$ 126,088
f.	Estimated cost for additional information on child victims (review and processing of psych evaluations).	$ n/a
g.	Estimated cost for preparation and distribution of the Facts of Offense Sheet (mandated for all register-able cases effective June 1, 2010.	$ 28,435
	SUBTOTAL SUPERVISION COSTS	$ 842,583

TOTAL COSTS (ACTUAL & ESTIMATED)

1.	Training	$ 80,886
2.	Performing Assessments	$ 213,039
3.	Investigation	$ 80,974
4.	Supervision	$ 842,583
	TOTAL	$1,217,481

Thank you. Please return your responses to:

Hasmik Yaghobyan at hyaghobyan@auditor.lacounty.gov by 12/23/08.

County of Los Angeles Test Claim Survey

State Authorized Risk Assessment Tool for Sex Offenders (SARATSO):
Sex Offender's Punishment, Control, and Containment Act

1. Name of Survey Respondent (agency) ____Shasta County Probation_____

2. Contact Person(s) _____Gayle Hermann_____
   Phone Number: ____530-245-6213_____
   E-Mail Address __ghermann@co.shasta.ca.us_____

Below are listed the mandated activities. Staff costs should be calculated at the Productive Hourly rate.

1. TRAINING

a.	Initial costs for training provided by the state. (One day-Train the trainer)	
	(1) Staff costs	$255.74
	(2) Travel	$187.20
b.	Subsequent initial training for new/newly assigned training staff.	
	(1) Staff costs	$ 0.00
	(2) Travel	$ 0.00
c.	In-house training for certifying other staff to do assessments. (6-8 hrs)	$ 0.00
d.	Specialized supervision deputies (6-8 hrs every two years).	$ 0.00
e.	Subsequent training of the staff (every two years)	$ 0.00
	SUBTOTAL TRAINING	$442.94

2. PERFORMING ASSESSMENTS

a.	New Cases (use average number per month for new cases since the assessment became mandatory – July 1, 2008) -	Monthly average: 1
	(1) Staff costs	$767.22
	(2) Clerical handling staff costs	$
	(3) Materials	$
	(4) Deliver (to Court), attaching to post-sentence reports that go to CDRC, etc.)	$
b.	Existing cases (including any females or juveniles that have registered)	#of existing cases 53
	(1) Staff costs	$ 0.00
	(2) Clerical handling staff costs	$
	(3) Materials	$
	(4) Deliver (to Court), attaching to post-sentence reports that go to CDRC, etc.)	$
	SUBTOTAL PERFORMING ASSESSMENTS	767.22

County of Los Angeles Test Claim Survey

State Authorized Risk Assessment Tool for Sex Offenders (SARATSO):
Sex Offender's Punishment, Control, and Containment Act

3. INVESTIGATION

a.	Estimated number of new cases per year requiring SARATSO:	12
	(1) Estimated Staff costs	$3,068.52
	(2) Estimated Clerical handling staff costs	$
	(3) Estimated Materials	$
	(4) Estimated Deliver (to Court), attaching to post-sentence reports that go to CDRC, etc.)	$
	SUBTOTAL ESTIMATED COSTS FOR NEW CASES	$3,068.52
b.	Estimated number of additional female and juvenile cases:	24
	(1) Estimated Staff costs	$6,137.04
	(2) Estimated Clerical handling staff costs	$
	(3) Estimated Materials	$
	(4) Estimated Deliver (to Court), attaching to post-sentence reports that go to CDCR, etc.)	$
	SUBTOTAL ESTIMATED COSTS FOR ADDITION FEMALE & JUVENILE CASES	$6,137.04
	TOTAL ESTIMATED NUMBER OF CASES (a. + b.)	36
	TOTAL ESTIMATED COSTS	$9,205.56
	ESTIMATED COST PER CASE FOR ALL QUALIFYING CASES (total estimated costs divided by total estimated number of cases)	$255.71

4. SUPERVISION

a.	Estimated number of High Risk Cases	0
b.	Estimated cost for Electronic Monitoring of high risk cases.	0
	(1) Staff costs	$
	(2) Equipment	$
	(3) Clerical support	$
	(4) Other materials	$
	SUBTOTAL ESTIMATED COSTS FOR ELECTRONIC MONITORING	$
	PER PROBATIONER/PER DAY COST (Total estimated costs divided by total estimated cases divided by 365)	$
c.	Estimated cost for "specialized, intensive" supervision of High Risk Cases	
	(1) Staff costs	$
	(2) Equipment	$
	(3) Clerical support	$
	(4) Other materials	$
	SUBTOTAL ESTIMATED COSTS FOR SUPERVISION OF HIGH RISK CASES	$ 0.00

County of Los Angeles Test Claim Survey

State Authorized Risk Assessment Tool for Sex Offenders (SARATSO):
Sex Offender's Punishment, Control, and Containment Act

d.	Estimated cost for "specialized, intensive" supervision of additional female and juvenile high risk offenders	
	(1) Staff costs	$
	(2) Equipment	$
	(3) Clerical support	$
	(4) Other materials	$
	SUBTOTAL ESTIMATED COSTS FOR SUPERVISION OF JUVENILE/FEMALE HIGH RISK OFFENDERS	$ 0.00
e.	Estimated cost for any specialized treatment and/or special surveillance (e.g., polygraph, computer checks) for High Risk cases.	$
f.	Estimated cost for additional information on child victims (review and processing of psych evaluations).	$
g.	Estimated cost for preparation and distribution of the Facts of Offense Sheet (mandated for all register-able cases effective June 1, 2010.	$
	SUBTOTAL SUPERVISION COSTS	$ 0.00

TOTAL COSTS (ACTUAL & ESTIMATED)

1.	Training	$ 442.94
2.	Performing Assessments	$ 767.22
3.	Investigation	$ 9,205.56
4.	Supervision	$ 0.00
	TOTAL	$10,415.72

Thank you. Please return your responses to:

Hasmik Yaghobyan at hyaghobyan@auditor.lacounty.gov by 12/23/08.

County of Los Angeles Test Claim Survey

State Authorized Risk Assessment Tool for Sex Offenders (SARATSO):
Sex Offender's Punishment, Control, and Containment Act

3. INVESTIGATION

a.	Estimated number of new cases per year requiring SARATSO:	7
	(1) Estimated Staff costs	$5,000
	(2) Estimated Clerical handling staff costs	$0
	(3) Estimated Materials	$0
	(4) Estimated Deliver (to Court), attaching to post-sentence reports that go to CDRC, etc.)	$0
	SUBTOTAL ESTIMATED COSTS FOR NEW CASES	$5,000
b.	Estimated number of additional female and juvenile cases:	25
	(1) Estimated Staff costs	$0
	(2) Estimated Clerical handling staff costs	$0
	(3) Estimated Materials	$0
	(4) Estimated Deliver (to Court), attaching to post-sentence reports that go to CDRC, etc.)	$0
	SUBTOTAL ESTIMATED COSTS FOR ADDITION FEMALE & JUVENILE CASES	$0
	TOTAL ESTIMATED NUMBER OF CASES (a. + b.)	
	TOTAL ESTIMATED COSTS	$0
	ESTIMATED COST PER CASE FOR ALL QUALIFYING CASES (total estimated costs divided by total estimated number of cases)	$0

4. SUPERVISION

a.	Estimated number of High Risk Cases	94
b.	Estimated cost for Electronic Monitoring of high risk cases.	
	(1) Staff costs	$0
	(2) Equipment	$0
	(3) Clerical support	$0
	(4) Other materials	$0
	SUBTOTAL ESTIMATED COSTS FOR ELECTRONIC MONITORING	$
	PER PROBATIONER/PER DAY COST (Total estimated costs divided by total estimated cases divided by 365)	$
c.	Estimated cost for "specialized, intensive" supervision of High Risk Cases	
	(1) Staff costs	$70,000
	(2) Equipment	$500
	(3) Clerical support	$0
	(4) Other materials	$0
	SUBTOTAL ESTIMATED COSTS FOR SUPERVISION OF HIGH RISK CASES	$70,500

County of Los Angeles Test Claim Survey

State Authorized Risk Assessment Tool for Sex Offenders (SARATSO): Sex Offender's Punishment, Control, and Containment Act

d.	Estimated cost for "specialized, intensive" supervision of additional female and juvenile high risk offenders	
	(1) Staff costs	$0
	(2) Equipment	$0
	(3) Clerical support	$0
	(4) Other materials	$0
	SUBTOTAL ESTIMATED COSTS FOR SUPERVISION OF JUVENILE/FEMALE HIGH RISK OFFENDERS	$0
e.	Estimated cost for any specialized treatment and/or special surveillance (e.g., polygraph, computer checks) for High Risk cases.	$0
f.	Estimated cost for additional information on child victims (review and processing of psych evaluations).	$0
g.	Estimated cost for preparation and distribution of the Facts of Offense Sheet (mandated for all register-able cases effective June 1, 2010.	$0
	SUBTOTAL SUPERVISION COSTS	$0

0

TOTAL COSTS (ACTUAL & ESTIMATED)

1.	Training	$525
2.	Performing Assessments	$0
3.	Investigation	$5,000
4.	Supervision	$70,500
	TOTAL	$76,025

Thank you. Please return your responses to:

Hasmik Yaghobyan at hyaghobyan@auditor.lacounty.gov by 12/23/08.

County of Los Angeles Test Claim Survey

State Authorized Risk Assessment Tool for Sex Offenders (SARATSO): Sex Offender's Punishment, Control, and Containment Act

1. Name of Survey Respondent (agency) Del Norte County Probation Department

2. Contact Person(s) Connie Merrill or Cheryl Tomlinson
   Phone Number: (707) 464-7215
   E-Mail Address cmerrill@co.del-norte.ca.us or ctomlinson@co.del-norte.ca.us

Below are listed the mandated activities. Staff costs should be calculated at the Productive Hourly rate.

1. TRAINING

a.	Initial costs for training provided by the state. (One day-Train the trainer)	
	(1) Staff costs	$ 683.28
	(2) Travel	$ 425.07
b.	Subsequent initial training for new/newly assigned training staff.	
	(1) Staff costs	$ 0.00
	(2) Travel	$ 0.00
c.	In-house training for certifying other staff to do assessments. (6-8 hrs)	$ 896.82
d.	Specialized supervision deputies (6-8 hrs every two years).	$ 0.00
e.	Subsequent training of the staff (every two years)	$ 58.50
	SUBTOTAL TRAINING	$ 2,063.67

2. PERFORMING ASSESSMENTS

a.	New Cases (use average number per month for new cases since the assessment became mandatory – July 1, 2008) -	Monthly average:
	(1) Staff costs	$ 438.75
	(2) Clerical handling staff costs	$ 248.85
	(3) Materials	$ 112.50
	(4) Deliver (to Court), attaching to post-sentence reports that go to CDRC, etc.)	$ 36.56
b.	Existing cases (including any females or juveniles that have registered)	# of new cases 5
	(1) Staff costs	$ 965.25
	(2) Clerical handling staff costs	$ 547.47
	(3) Materials	$ 247.50
	(4) Deliver (to Court), attaching to post-sentence reports that go to CDRC, etc.)	$ 80.71
	SUBTOTAL PERFORMING ASSESSMENTS	$ 2,677.59

County of Los Angeles Test Claim Survey

State Authorized Risk Assessment Tool for Sex Offenders (SARATSO):
Sex Offender's Punishment, Control, and Containment Act

3. INVESTIGATION

a.	Estimated number of new cases per year requiring SARATSO:	24
	(1) Estimated Staff costs	$ 5,616.00
	(2) Estimated Clerical handling staff costs	$ 1,194.48
	(3) Estimated Materials	$ 540.00
	(4) Estimated Deliver (to Court), attaching to post-sentence reports that go to CDRC, etc.)	$ 175.50
	SUBTOTAL ESTIMATED COSTS FOR NEW CASES	$ 7,525.98
b.	Estimated number of additional female and juvenile cases:	1
	(1) Estimated Staff costs	$ 234.00
	(2) Estimated Clerical handling staff costs	$ 49.77
	(3) Estimated Materials	$ 22.50
	(4) Estimated Deliver (to Court), attaching to post-sentence reports that go to CDRC, etc.)	$ 14.63
	SUBTOTAL ESTIMATED COSTS FOR ADDITION FEMALE & JUVENILE CASES	$ 320.90
	TOTAL ESTIMATED NUMBER OF CASES (a. + b.)	25
	TOTAL ESTIMATED COSTS	$ 7,846.88
	ESTIMATED COST PER CASE FOR ALL QUALIFYING CASES (total estimated costs divided by total estimated number of cases)	$ 313.88

4. SUPERVISION

a.	Estimated number of High Risk Cases	8
b.	Estimated cost for Electronic Monitoring of high risk cases.	
	(1) Staff costs	$ 3,188.88
	(2) Equipment	$ 7,358.40
	(3) Clerical support	$ 194.72
	(4) Other materials	$ 0.00
	SUBTOTAL ESTIMATED COSTS FOR ELECTRONIC MONITORING	$ 10,742.00
	PER PROBATIONER/PER DAY COST (Total estimated costs divided by total estimated cases divided by 365)	$ 3.68
c.	Estimated cost for "specialized, intensive" supervision of High Risk Cases	3
	(1) Staff costs	$ 1,053.00
	(2) Equipment	$ 0.00
	(3) Clerical support	$ 298.62
	(4) Other materials	$ 25.00
	SUBTOTAL ESTIMATED COSTS FOR SUPERVISION OF HIGH RISK CASES	$ 1,376.62

County of Los Angeles Test Claim Survey

State Authorized Risk Assessment Tool for Sex Offenders (SARATSO): Sex Offender's Punishment, Control, and Containment Act

d.	Estimated cost for "specialized, intensive" supervision of additional female and juvenile high risk offenders	
	(1) Staff costs	$ 711.96
	(2) Equipment	$ 919.80
	(3) Clerical support	$ 305.16
	(4) Other materials	$ 0.00
	SUBTOTAL ESTIMATED COSTS FOR SUPERVISION OF JUVENILE/FEMALE HIGH RISK OFFENDERS	$ 1,936.92
e.	Estimated cost for any specialized treatment and/or special surveillance (e.g., polygraph, computer checks) for High Risk cases.	$ 7,341.75
f.	Estimated cost for additional information on child victims (review and processing of psych evaluations).	$ 0.00
g.	Estimated cost for preparation and distribution of the Facts of Offense Sheet (mandated for all register-able cases effective June 1, 2010.	$ 351.00
	SUBTOTAL SUPERVISION COSTS	$ 21,748.29

TOTAL COSTS (ACTUAL & ESTIMATED)

1.	Training	$ 2,063.67
2.	Performing Assessments	$ 2,677.59
3.	Investigation	$ 7,846.88
4.	Supervision	$ 21,748.29
	TOTAL	$ 34,336.43

This survey has been filled out to the best of our knowledge. We had a few questions that we did not know the answer to.

Thank you. Please return your responses to:

Hasmik Yaghobyan at hyaghobyan@auditor.lacounty.gov by 12/23/08.

County of Los Angeles Test Claim Survey

State Authorized Risk Assessment Tool for Sex Offenders (SARATSO): Sex Offender's Punishment, Control, and Containment Act

1. Name of Survey Respondent (agency)_Stanislaus County Probation Department

2. Contact Person(s) Natascha Roof
   Phone Number: 209-567-4126
   E-Mail Address Roofn@stancounty.com

Below are listed the mandated activities. Staff costs should be calculated at the Productive Hourly rate.

1. TRAINING

a.	Initial costs for training provided by the state. (One day-Train the trainer)	
	(1) Staff costs	$ 408.96
	(2) Travel	$ 288.77
b.	Subsequent initial training for new/newly assigned training staff.	
	(1) Staff costs	$ 0
	(2) Travel	$ 0
c.	In-house training for certifying other staff to do assessments. (6-8 hrs)	$ 2,453.76
d.	Specialized supervision deputies (6-8 hrs every two years).	$ 613.44
e.	Subsequent training of the staff (every two years)	$ 2,453.76
	SUBTOTAL TRAINING	$ 6,218.69

2. PERFORMING ASSESSMENTS

a.	New Cases (use average number per month for new cases since the assessment became mandatory – July 1, 2008) -	Monthly average: 5
	(1) Staff costs	$ 63.90
	(2) Clerical handling staff costs	$ 16.35
	(3) Materials	$ 50.00
	(4) Deliver (to Court), attaching to post-sentence reports that go to CDRC, etc.)	$ 16.35
b.	Existing cases (including any females or juveniles that have registered)	# of new cases 75
	(1) Staff costs	$ 958.50
	(2) Clerical handling staff costs	$ 130.80
	(3) Materials	$ 50.00
	(4) Deliver (to Court), attaching to post-sentence reports that go to CDRC, etc.)	$ 130.80
	SUBTOTAL PERFORMING ASSESSMENTS	$ 1,416.70

County of Los Angeles Test Claim Survey

State Authorized Risk Assessment Tool for Sex Offenders (SARATSO):
Sex Offender's Punishment, Control, and Containment Act

3. INVESTIGATION

a.	Estimated number of new cases per year requiring SARATSO:	8
	(1) Estimated Staff costs	$ 102.24
	(2) Estimated Clerical handling staff costs	$ 65.40
	(3) Estimated Materials	$ 50.00
	(4) Estimated Deliver (to Court), attaching to post-sentence reports that go to CDRC, etc.)	$ 65.40
	SUBTOTAL ESTIMATED COSTS FOR NEW CASES	$ 283.04
b.	Estimated number of additional female and juvenile cases:	24
	(1) Estimated Staff costs	$ 306.72
	(2) Estimated Clerical handling staff costs	$ 32.70
	(3) Estimated Materials	$ 50.00
	(4) Estimated Deliver (to Court), attaching to post-sentence reports that go to CDRC, etc.)	$ 32.70
	SUBTOTAL ESTIMATED COSTS FOR ADDITION FEMALE & JUVENILE CASES	$ 422.12
	TOTAL ESTIMATED NUMBER OF CASES (a. + b.)	32
	TOTAL ESTIMATED COSTS	$ 705.16
	ESTIMATED COST PER CASE FOR ALL QUALIFYING CASES (total estimated costs divided by total estimated number of cases)	$ 22.03

4. SUPERVISION

a.	Estimated number of High Risk Cases	5
b.	Estimated cost for Electronic Monitoring of high risk cases. (per year)	
	(1) Staff costs	$ 26,582.40
	(2) Equipment	$ 16,200.00
	(3) Clerical support	$ 32.70
	(4) Other materials	$ 1,935.60
	SUBTOTAL ESTIMATED COSTS FOR ELECTRONIC MONITORING	$ 44,750.70
	PER PROBATIONER/PER DAY COST (Total estimated costs divided by total estimated cases divided by 365)	$ 24.52
c.	Estimated cost for "specialized, intensive" supervision of High Risk Cases	
	(1) Staff costs	$ 6,643.00
	(2) Equipment	$ 2,000.00
	(3) Clerical support	$ 32.70
	(4) Other materials	$
	SUBTOTAL ESTIMATED COSTS FOR SUPERVISION OF HIGH RISK CASES	$ 8,675.70

County of Los Angeles Test Claim Survey

State Authorized Risk Assessment Tool for Sex Offenders (SARATSO):
Sex Offender's Punishment, Control, and Containment Act

d.	Estimated cost for "specialized, intensive" supervision of additional female and juvenile high risk offenders	24
	(1) Staff costs	$ 31,886.40
	(2) Equipment	$ 2,000.00
	(3) Clerical support	$ 32.70
	(4) Other materials	$
	SUBTOTAL ESTIMATED COSTS FOR SUPERVISION OF JUVENILE/FEMALE HIGH RISK OFFENDERS	$ 33,919.10
e.	Estimated cost for any specialized treatment and/or special surveillance (e.g., polygraph, computer checks) for High Risk cases.	$
f.	Estimated cost for additional information on child victims (review and processing of psych evaluations).	$
g.	Estimated cost for preparation and distribution of the Facts of Offense Sheet (mandated for all register-able cases effective June 1, 2010.	$ 204.48
	SUBTOTAL SUPERVISION COSTS	$ 87,549.98

TOTAL COSTS (ACTUAL & ESTIMATED)

1.	Training	$ 6,218.69
2.	Performing Assessments	$ 1,416.70
3.	Investigation	$ 705.16
4.	Supervision	$ 87,549.98
	TOTAL	$ 95,890.53

Thank you. Please return your responses to:

Hasmik Yaghobyan at hyaghobyan@auditor.lacounty.gov by 12/23/08.

County of Tulare Test Claim Survey

State Authorized Risk Assessment Tool for Sex Offenders (SARATSO): Sex Offender's Punishment, Control, and Containment Act

1. Name of Survey Respondent (agency) *Tulare County Probation Department*

2. Contact Person(s) **Christie Myer, Assistant Chief Probation Officer**
   Phone Number: **(559) 625-0746**
   E-Mail Address **cmyer@co.tulare.ca.us**

Below are listed the mandated activities. Staff costs should be calculated at the Productive Hourly rate.

1. TRAINING

a.	Initial costs for training provided by the state. (One day-Train the trainer)	
	(1) Staff costs	$ 733.60
	(2) Travel	$ 579.56
b.	Subsequent initial training for new/newly assigned training staff.	
	(1) Staff costs	$ 1,467.20
	(2) Travel	$ 1,519.12
c.	In-house training for certifying other staff to do assessments. (6-8 hrs)	$ 9,431.22
d.	Specialized supervision deputies (6-8 hrs every two years).	$ 3,222.20
e.	Subsequent training of the staff (every two years)	$12,653.22
	SUBTOTAL TRAINING	$29,606.12

2. PERFORMING ASSESSMENTS

a.	New Cases (use average number per month for new cases since the assessment became mandatory – July 1, 2008) -	Monthly average: 5
	(1) Staff costs	$ 45.00
	(2) Clerical handling staff costs	$ -0-
	(3) Materials	$ -0-
	(4) Deliver (to Court), attaching to post-sentence reports that go to CDRC, etc.)	$ 45.00
b.	Existing cases (including any females or juveniles that have registered)	# of new cases 109
	(1) Staff costs	$ 953.66
	(2) Clerical handling staff costs	$ -0-
	(3) Materials	$ -0-
	(4) Deliver (to Court), attaching to post-sentence reports that go to CDRC, etc.)	$ 981.00
	SUBTOTAL PERFORMING ASSESSMENTS	$ 2,024.66

County of Tulare Test Claim Survey

State Authorized Risk Assessment Tool for Sex Offenders (SARATSO):
Sex Offender's Punishment, Control, and Containment Act

3. INVESTIGATION

a.	Estimated number of new cases per year requiring SARATSO:	71
	(1) Estimated Staff costs	$ 6,849.00
	(2) Estimated Clerical handling staff costs	$ 372.75
	(3) Estimated Materials	$ -0-
	(4) Estimated Deliver (to Court), attaching to post-sentence reports that go to CDRC, etc.)	$ 639.00
	SUBTOTAL ESTIMATED COSTS FOR NEW CASES	$ 7,860.75
b.	Estimated number of additional female and juvenile cases:	32
	(1) Estimated Staff costs	$ 4,069.50
	(2) Estimated Clerical handling staff costs	$ 882.00
	(3) Estimated Materials	$ -0-
	(4) Estimated Deliver (to Court), attaching to post-sentence reports that go to CDRC, etc.)	$ 183.00
	SUBTOTAL ESTIMATED COSTS FOR ADDITION FEMALE & JUVENILE CASES	$ 5,134.50
	TOTAL ESTIMATED NUMBER OF CASES (a. + b.)	103
	TOTAL ESTIMATED COSTS	$ 12,995.25
	ESTIMATED COST PER CASE FOR ALL QUALIFYING CASES (total estimated costs divided by total estimated number of cases)	$ 126.17

4. SUPERVISION

a.	Estimated number of High Risk Cases	3
b.	Estimated cost for Electronic Monitoring of high risk cases.	
	(1) Staff costs	$ See Below
	(2) Equipment	$ 9,800.25
	(3) Clerical support	$ -0-
	(4) Other materials	$ -0-
	SUBTOTAL ESTIMATED COSTS FOR ELECTRONIC MONITORING	$ 9,800.25
	PER PROBATIONER/PER DAY COST (Total estimated costs divided by total estimated cases divided by 365)	$ 8.95
c.	Estimated cost for "specialized, intensive" supervision of High Risk Cases	
	(1) Staff costs	$ 60,361.88
	(2) Equipment	$ -0-
	(3) Clerical support	$ -0-
	(4) Other materials	$ 1,305.00
	SUBTOTAL ESTIMATED COSTS FOR SUPERVISION OF HIGH RISK CASES	$ 61,666.88

County of Tulare Test Claim Survey

State Authorized Risk Assessment Tool for Sex Offenders (SARATSO):
Sex Offender's Punishment, Control, and Containment Act

d.	Estimated cost for "specialized, intensive" supervision of additional female and juvenile high risk offenders	
	(1) Staff costs	$ 60,361.88
	(2) Equipment	$ -0-
	(3) Clerical support	$ -0-
	(4) Other materials	$ 1,305.00
	SUBTOTAL ESTIMATED COSTS FOR SUPERVISION OF JUVENILE/FEMALE HIGH RISK OFFENDERS	$ 61,666.88
e.	Estimated cost for any specialized treatment and/or special surveillance (e.g., polygraph, computer checks) for High Risk cases.	$ -0-
f.	Estimated cost for additional information on child victims (review and processing of psych evaluations).	$ -0-
g.	Estimated cost for preparation and distribution of the Facts of Offense Sheet (mandated for all register-able cases effective June 1, 2010.	$ 1,789.50
	SUBTOTAL SUPERVISION COSTS	$ 134,923.51

TOTAL COSTS (ACTUAL & ESTIMATED)

1.	Training	$ 29,606.12
2.	Performing Assessments	$ 2,024.66
3.	Investigation	$ 12,995.25
4.	Supervision	$ 134,923.51
	TOTAL	$ 179,549.54

Thank you. Please return your responses to:

Hasmik Yaghobyan at hyaghobyan@auditor.lacounty.gov by 12/23/08.

County of Los Angeles Test Claim Survey

State Authorized Risk Assessment Tool for Sex Offenders (SARATSO): Sex Offender's Punishment, Control, and Containment Act

1. Name of Survey Respondent (agency) Humboldt County Probation Department

2. Contact Person(s) Doris Echeveria
   Phone Number: (707) 268-3304
   E-Mail Address decheveria@co.humboldt.ca.us

Below are listed the mandated activities. Staff costs should be calculated at the Productive Hourly rate.

1. TRAINING

a.	Initial costs for training provided by the state. (One day-Train the trainer)	
	(1) Staff costs	$ 3,774.00
	(2) Travel	$ 623.00
b.	Subsequent initial training for new/newly assigned training staff.	
	(1) Staff costs	$ 4,227.00
	(2) Travel	$ 700.00
c.	In-house training for certifying other staff to do assessments. (6-8 hrs)	$ 8,403.00
d.	Specialized supervision deputies (6-8 hrs every two years).	$ n/a
e.	Subsequent training of the staff (every two years)	$ 9,412.00
	SUBTOTAL TRAINING	$ 27,139.00

2. PERFORMING ASSESSMENTS

a.	New Cases (use average number per month for new cases since the assessment became mandatory – July 1, 2008) -	Monthly average: 1.42
	(1) Staff costs	$ 5,259.00
	(2) Clerical handling staff costs	$ 89.00
	(3) Materials	$ 104.00
	(4) Deliver (to Court), attaching to post-sentence reports that go to CDRC, etc.)	$ 89.00
b.	Existing cases (including any females or juveniles that have registered)	# of new cases 30
	(1) Staff costs	$ 974.00
	(2) Clerical handling staff costs	$ .00
	(3) Materials	$ .00
	(4) Deliver (to Court), attaching to post-sentence reports that go to CDRC, etc.)	$ .00
	SUBTOTAL PERFORMING ASSESSMENTS	$ 6,515.00

County of Los Angeles Test Claim Survey

State Authorized Risk Assessment Tool for Sex Offenders (SARATSO):
Sex Offender's Punishment, Control, and Containment Act

3. INVESTIGATION

a.	Estimated number of new cases per year requiring SARATSO:	21
	(1) Estimated Staff costs	$ 14,190.00
	(2) Estimated Clerical handling staff costs	$ 467.00
	(3) Estimated Materials	$ 59.00
	(4) Estimated Deliver (to Court), attaching to post-sentence reports that go to CDRC, etc.)	$ 467.00
	SUBTOTAL ESTIMATED COSTS FOR NEW CASES	$ 15,183.00
b.	Estimated number of additional female and juvenile cases:	1
	(1) Estimated Staff costs	$ 25.00
	(2) Estimated Clerical handling staff costs	$ .00
	(3) Estimated Materials	$ .00
	(4) Estimated Deliver (to Court), attaching to post-sentence reports that go to CDRC, etc.)	$ .00
	SUBTOTAL ESTIMATED COSTS FOR ADDITION FEMALE & JUVENILE CASES	$ 25.00
	TOTAL ESTIMATED NUMBER OF CASES (a. + b.)	22
	TOTAL ESTIMATED COSTS	$ 15,208.00
	ESTIMATED COST PER CASE FOR ALL QUALIFYING CASES (total estimated costs divided by total estimated number of cases)	$ 691.00

4. SUPERVISION

a.	Estimated number of High Risk Cases	3
b.	Estimated cost for Electronic Monitoring of high risk cases.	
	(1) Staff costs	$ 10,518.00
	(2) Equipment	$ 9,855.00
	(3) Clerical support	$ .00
	(4) Other materials	$ .00
	SUBTOTAL ESTIMATED COSTS FOR ELECTRONIC MONITORING	$ 20,373.00
	PER PROBATIONER/PER DAY COST (Total estimated costs divided by total estimated cases divided by 365)	$ 19.00
c.	Estimated cost for "specialized, intensive" supervision of High Risk Cases	
	(1) Staff costs	$ 9,074.00
	(2) Equipment	$ .00
	(3) Clerical support	$ 1,513.00
	(4) Other materials	$ .00
	SUBTOTAL ESTIMATED COSTS FOR SUPERVISION OF HIGH RISK CASES	$ 10,587.00

County of Los Angeles Test Claim Survey

State Authorized Risk Assessment Tool for Sex Offenders (SARATSO): Sex Offender's Punishment, Control, and Containment Act

d.	Estimated cost for "specialized, intensive" supervision of additional female and juvenile high risk offenders	Unknown
	(1) Staff costs	$
	(2) Equipment	$
	(3) Clerical support	$
	(4) Other materials	$
	SUBTOTAL ESTIMATED COSTS FOR SUPERVISION OF JUVENILE/FEMALE HIGH RISK OFFENDERS	$
e.	Estimated cost for any specialized treatment and/or special surveillance (e.g., polygraph, computer checks) for High Risk cases.	$ 10,000.00
f.	Estimated cost for additional information on child victims (review and processing of psych evaluations).	$ 605.00
g.	Estimated cost for preparation and distribution of the Facts of Offense Sheet (mandated for all register-able cases effective June 1, 2010.	$ 530.00
	SUBTOTAL SUPERVISION COSTS	$ 42,095.00

TOTAL COSTS (ACTUAL & ESTIMATED)

1.	Training	$ 27,139.00
2.	Performing Assessments	$ 6,515.00
3.	Investigation	$ 15,208.00
4.	Supervision	$ 42,095.00
	TOTAL	$ 90,957.00

Thank you. Please return your responses to:

Hasmik Yaghobyan at hyaghobyan@auditor.lacounty.gov by 12/23/08.

County of Los Angeles Test Claim Survey

State Authorized Risk Assessment Tool for Sex Offenders (SARATSO): Sex Offender's Punishment, Control, and Containment Act

1. Name of Survey Respondent (agency) County Santa Barbara Probation

2. Contact Person(s) Lee Bethel, Probation Manager
Phone Number: (805) 882- 3753
E-Mail Address lbethel@co.santa-barbara.ca.us

Lorna Merana, Cost Analyst II
Phone Number: (805) 882-3641
E-Mail Address: lmerana@co.santa-barbara.ca.us

Below are listed the mandated activities. Staff costs should be calculated at the Productive Hourly rate.

1. TRAINING

a.	Initial costs for training provided by the state. (One day-Train the trainer)	
	(1) Staff costs (Static 99 and JSORAT)	$3,176
	(2) Travel	$1,888
b.	Subsequent initial training for new/newly assigned training staff.	
	(1) Staff costs	$0
	(2) Travel	$0
c.	In-house training for certifying other staff to do assessments. (6-8 hrs)	$13,170
d.	Specialized supervision deputies (6-8 hrs every two years). 3 Deputies	$1,148/yr
e.	Subsequent training of the staff (every two years)	$13,170/yr
	SUBTOTAL TRAINING	$32,552

2. PERFORMING ASSESSMENTS

a.	New Cases (use average number per month for new cases since the assessment became mandatory – July 1, 2008)	Monthly average: 7
	(1) Staff costs (30 minutes/client x 7clients/mo x 6 mos)	$916
	(2) Clerical handling staff costs (30 minutes/client x 7clients/mo x 6 mos)	$679
	(3) Materials	$160
	(4) Deliver (to Court), attaching to post-sentence reports that go to CDRC, etc.)	$
b.	Existing cases (including any females or juveniles that have registered)	# cases 163
	(1) Staff costs (30 minutes/client)	$3,556
	(2) Clerical handling staff costs (30 minutes/client)	$2,637
	(3) Materials	$619
	(4) Deliver (to Court), attaching to post-sentence reports that go to CDRC, etc.)	$
	SUBTOTAL PERFORMING ASSESSMENTS	$8,567

County of Los Angeles Test Claim Survey

State Authorized Risk Assessment Tool for Sex Offenders (SARATSO):
Sex Offender's Punishment, Control, and Containment Act

3. INVESTIGATION

a.	Estimated number of new cases per year requiring SARATSO:	84
	(1) Estimated Staff costs (13.5 hrs/client)	$49,476
	(2) Estimated Clerical handling staff costs (4 hrs/client)	$10,870
	(3) Estimated Materials	$6,035
	(4) Estimated Deliver (to Court), attaching to post-sentence reports that go to CDRC, etc.)	$
	SUBTOTAL ESTIMATED COSTS FOR NEW CASES	$66,381
b.	Estimated number of additional female and juvenile cases:	N/A
	(1) Estimated Staff costs	$
	(2) Estimated Clerical handling staff costs	$
	(3) Estimated Materials	$
	(4) Estimated Deliver (to Court), attaching to post-sentence reports that go to CDRC, etc.)	$
	SUBTOTAL ESTIMATED COSTS FOR ADDITION FEMALE & JUVENILE CASES	$ N/A
	TOTAL ESTIMATED NUMBER OF CASES (a. + b.)	84
	TOTAL ESTIMATED COSTS	$66,381
	ESTIMATED COST PER CASE FOR ALL QUALIFYING CASES (total estimated costs divided by total estimated number of cases)	$790

4. SUPERVISION

a.	Estimated number of High Risk Cases	4 / year
b.	Estimated cost for Electronic Monitoring of high risk cases.	
	(1) Staff costs (4 hrs/wk/case)	$36,300
	(2) Equipment ($6/day)	$8,760
	(3) Clerical support (2 hrs/wk/case)	$13,458
	(4) Other materials	$4,976
	SUBTOTAL ESTIMATED COSTS FOR ELECTRONIC MONITORING	$63,494
	PER PROBATIONER/PER DAY COST (Total estimated costs divided by total estimated cases divided by 365)	$43
c.	Estimated cost for "specialized, intensive" supervision of High Risk Cases	
	(1) Staff costs (at least 2 hours when called in per case/week)	$18,150
	(2) Equipment	$8,760
	(3) Clerical support (1 hr per case/week)	$6,729
	(4) Other materials	$2,488
	SUBTOTAL ESTIMATED COSTS FOR SUPERVISION OF HIGH RISK CASES	$99,620

County of Los Angeles Test Claim Survey

State Authorized Risk Assessment Tool for Sex Offenders (SARATSO):
Sex Offender's Punishment, Control, and Containment Act

d.	Estimated cost for "specialized, intensive" supervision of additional female and juvenile high risk offenders	N/A
	(1) Staff costs	$
	(2) Equipment	$
	(3) Clerical support	$
	(4) Other materials	$
	SUBTOTAL ESTIMATED COSTS FOR SUPERVISION OF JUVENILE/FEMALE HIGH RISK OFFENDERS	$N/A
e.	Estimated cost for any specialized treatment and/or special surveillance (e.g., polygraph, computer checks) for High Risk cases.	$ N/A
f.	Estimated cost for additional information on child victims (review and processing of psych evaluations).	$ N/A
g.	Estimated cost for preparation and distribution of the Facts of Offense Sheet (mandated for all register-able cases effective June 1, 2010. (30 min/case)	$153
	SUBTOTAL SUPERVISION COSTS	$99,774

TOTAL COSTS (ACTUAL & ESTIMATED)

1.	Training	$32,552
2.	Performing Assessments	$8,567
3.	Investigation	$66,381
4.	Supervision	$99,774
	TOTAL	$207,274

Thank you. Please return your responses to:

Hasmik Yaghobyan at hyaghobyan@auditor.lacounty.gov by 12/23/08.

County of Los Angeles Test Claim Survey

State Authorized Risk Assessment Tool for Sex Offenders (SARATSO): Sex Offender's Punishment, Control, and Containment Act

1. Name of Survey Respondent (agency) __Nevada County Probation

2. Contact Person(s) __Doug Carver; Michael Ertola
Phone Number: 530-265-1209
E-Mail Address: Michael.Ertola@co.nevada.ca.us

Below are listed the mandated activities. Staff costs should be calculated at the Productive Hourly rate.

1. TRAINING

a.	Initial costs for training provided by the state. (One day-Train the trainer)	
	(1) Staff costs	$726
	(2) Travel	$150
b.	Subsequent initial training for new/newly assigned training staff.	
	(1) Staff costs	$
	(2) Travel	$
c.	In-house training for certifying other staff to do assessments. (6-8 hrs)	$605
d.	Specialized supervision deputies (6-8 hrs every two years).	$
e.	Subsequent training of the staff (every two years)	$
	SUBTOTAL TRAINING	$1481

2. PERFORMING ASSESSMENTS

a.	New Cases (use average number per month for new cases since the assessment became mandatory – July 1, 2008) -	Monthly average: 1 completed
	(1) Staff costs	$44
	(2) Clerical handling staff costs	$
	(3) Materials	$24
	(4) Deliver (to Court), attaching to post-sentence reports that go to CDRC, etc.)	$
b.	Existing cases (including any females or juveniles that have registered)	# of new cases 1 completed
	(1) Staff costs	$22
	(2) Clerical handling staff costs	$
	(3) Materials	$24
	(4) Deliver (to Court), attaching to post-sentence reports that go to CDRC, etc.)	$
	SUBTOTAL PERFORMING ASSESSMENTS	$94

County of Los Angeles Test Claim Survey

State Authorized Risk Assessment Tool for Sex Offenders (SARATSO):
Sex Offender's Punishment, Control, and Containment Act

3. INVESTIGATION

a.	Estimated number of new cases per year requiring SARATSO:	4
	(1) Estimated Staff costs	$176
	(2) Estimated Clerical handling staff costs	$
	(3) Estimated Materials	$96
	(4) Estimated Deliver (to Court), attaching to post-sentence reports that go to CDRC, etc.)	$
	SUBTOTAL ESTIMATED COSTS FOR NEW CASES	$272
b.	Estimated number of additional female and juvenile cases:	
	(1) Estimated Staff costs	$
	(2) Estimated Clerical handling staff costs	$
	(3) Estimated Materials	$
	(4) Estimated Deliver (to Court), attaching to post-sentence reports that go to CDRC, etc.)	$
	SUBTOTAL ESTIMATED COSTS FOR ADDITION FEMALE & JUVENILE CASES	$
	TOTAL ESTIMATED NUMBER OF CASES (a. + b.)	4
	TOTAL ESTIMATED COSTS	$272
	ESTIMATED COST PER CASE FOR ALL QUALIFYING CASES (total estimated costs divided by total estimated number of cases)	$68

4. SUPERVISION

a.	Estimated number of High Risk Cases	5
b.	Estimated cost for Electronic Monitoring of high risk cases.	
	(1) Staff costs	$2,875
	(2) Equipment	$18,250
	(3) Clerical support	$100
	(4) Other materials	$
	SUBTOTAL ESTIMATED COSTS FOR ELECTRONIC MONITORING	$21,225
	PER PROBATIONER/PER DAY COST (Total estimated costs divided by total estimated cases divided by 365)	$11.63
c.	Estimated cost for "specialized, intensive" supervision of High Risk Cases	
	(1) Staff costs	$
	(2) Equipment	$
	(3) Clerical support	$
	(4) Other materials	$
	SUBTOTAL ESTIMATED COSTS FOR SUPERVISION OF HIGH RISK CASES	$

County of Los Angeles Test Claim Survey

State Authorized Risk Assessment Tool for Sex Offenders (SARATSO):
Sex Offender's Punishment, Control, and Containment Act

d.	Estimated cost for "specialized, intensive" supervision of additional female and juvenile high risk offenders	
	(1) Staff costs	$
	(2) Equipment	$
	(3) Clerical support	$
	(4) Other materials	$
	SUBTOTAL ESTIMATED COSTS FOR SUPERVISION OF JUVENILE/FEMALE HIGH RISK OFFENDERS	$
e.	Estimated cost for any specialized treatment and/or special surveillance (e.g., polygraph, computer checks) for High Risk cases.	$
f.	Estimated cost for additional information on child victims (review and processing of psych evaluations).	$
g.	Estimated cost for preparation and distribution of the Facts of Offense Sheet (mandated for all register-able cases effective June 1, 2010.	$
	SUBTOTAL SUPERVISION COSTS	$

TOTAL COSTS (ACTUAL & ESTIMATED)

1.	Training	$1,481
2.	Performing Assessments	$94
3.	Investigation	$272
4.	Supervision	$21,225
	TOTAL	$23,072

Thank you. Please return your responses to:

Hasmik Yaghobyan at hyaghobyan@auditor.lacounty.gov by 12/23/08.

County of Los Angeles Test Claim Survey

State Authorized Risk Assessment Tool for Sex Offenders (SARATSO):
Sex Offender's Punishment, Control, and Containment Act

1. Name of Survey Respondent (agency) Stuart J. Forrest

2. Contact Person(s) Stuart J. Forrest
   Phone Number: 650-363-4642
   E-Mail Address stuforrest@co.sanmateo.ca.us

Below are listed the mandated activities. Staff costs should be calculated at the Productive Hourly rate.

1. TRAINING

a.	Initial costs for training provided by the state. (One day-Train the trainer)	
	(1) Staff costs	$ 1,676 +
	(2) Travel	$ 1,025
b.	Subsequent initial training for new/newly assigned training staff.	
	(1) Staff costs	$ 3,377
	(2) Travel	$
c.	In-house training for certifying other staff to do assessments. (6-8 hrs)	$ 1,530 **
d.	Specialized supervision deputies (6-8 hrs every two years).	$
e.	Subsequent training of the staff (every two years)	$
	SUBTOTAL TRAINING	$ 7,608

+ = 12 hours x hourly rate, incl. S&B for 3 DPOs (Kahn, Lee, Wossne)
** = STC training rate ($28.34) per student trained from May 2008 – Nov 2008 (54 staff)

2. PERFORMING ASSESSMENTS

a.	New Cases (use average number per month for new cases since the assessment became mandatory – July 1, 2008) - 2.6 cases per onth	Monthly average:
	(1) Staff costs	$ 76.57
	(2) Clerical handling staff costs	$ 56.06
	(3) Materials	$
	(4) Deliver (to Court), attaching to post-sentence reports that go to CDRC, etc.)	$
b.	Existing cases (including any females or juveniles that have registered)	# of new cases (2 per month)
	(1) Staff costs	$ 58.90
	(2) Clerical handling staff costs	$ 43.62
	(3) Materials	$
	(4) Deliver (to Court), attaching to post-sentence reports that go to CDRC, etc.)	$
	SUBTOTAL PERFORMING ASSESSMENTS	$ 235.15

County of Los Angeles Test Claim Survey

State Authorized Risk Assessment Tool for Sex Offenders (SARATSO):
Sex Offender's Punishment, Control, and Containment Act

3. INVESTIGATION

a.	Estimated number of new cases per year requiring SARATSO:	32
	(1) Estimated Staff costs	$ 942.40
	(2) Estimated Clerical handling staff costs	$ 697.92
	(3) Estimated Materials	$
	(4) Estimated Deliver (to Court), attaching to post-sentence reports that go to CDRC, etc.)	$
	SUBTOTAL ESTIMATED COSTS FOR NEW CASES	$ 1,640.32
b.	Estimated number of additional female and juvenile cases:	
	(1) Estimated Staff costs	$
	(2) Estimated Clerical handling staff costs	$
	(3) Estimated Materials	$
	(4) Estimated Deliver (to Court), attaching to post-sentence reports that go to CDRC, etc.)	$
	SUBTOTAL ESTIMATED COSTS FOR ADDITION FEMALE & JUVENILE CASES	$
	TOTAL ESTIMATED NUMBER OF CASES (a. + b.)	$ 1,640.32
	TOTAL ESTIMATED COSTS	$ 1,640.32
	ESTIMATED COST PER CASE FOR ALL QUALIFYING CASES (total estimated costs divided by total estimated number of cases)	$ 38.76

4. SUPERVISION

a.	Estimated number of High Risk Cases	32
b.	Estimated cost for Electronic Monitoring of high risk cases.	
	(1) Staff costs	$ 942.40
	(2) Equipment	$ 471.00
	(3) Clerical support	$ 697.92
	(4) Other materials	$
	SUBTOTAL ESTIMATED COSTS FOR ELECTRONIC MONITORING	$
	PER PROBATIONER/PER DAY COST (Total estimated costs divided by total estimated cases divided by 365)	$ 5.78
c.	Estimated cost for "specialized, intensive" supervision of High Risk Cases	
	(1) Staff costs	$
	(2) Equipment	$
	(3) Clerical support	$
	(4) Other materials	$
	SUBTOTAL ESTIMATED COSTS FOR SUPERVISION OF HIGH RISK CASES	$

County of Los Angeles Test Claim Survey

State Authorized Risk Assessment Tool for Sex Offenders (SARATSO):
Sex Offender's Punishment, Control, and Containment Act

d.	Estimated cost for "specialized, intensive" supervision of additional female and juvenile high risk offenders	
	(1) Staff costs	$
	(2) Equipment	$
	(3) Clerical support	$
	(4) Other materials	$
	SUBTOTAL ESTIMATED COSTS FOR SUPERVISION OF JUVENILE/FEMALE HIGH RISK OFFENDERS	$
e.	Estimated cost for any specialized treatment and/or special surveillance (e.g., polygraph, computer checks) for High Risk cases.	$
f.	Estimated cost for additional information on child victims (review and processing of psych evaluations).	$
g.	Estimated cost for preparation and distribution of the Facts of Offense Sheet (mandated for all register-able cases effective June 1, 2010.	$
	SUBTOTAL SUPERVISION COSTS	$ 2,111.32

TOTAL COSTS (ACTUAL & ESTIMATED)

1.	Training	$ 7,608
2.	Performing Assessments	$ 235.15
3.	Investigation	$ 1,640.32
4.	Supervision	$ 2,111.32
	TOTAL	$ 11,594.79

Thank you. Please return your responses to:

Hasmik Yaghobyan at hyaghobyan@auditor.lacounty.gov by 12/23/08.

County of Los Angeles Test Claim Survey

State Authorized Risk Assessment Tool for Sex Offenders (SARATSO):
Sex Offender's Punishment, Control, and Containment Act

1. Name of Survey Respondent (agency) Imperial County Probation

2. Contact Person(s) Debbie Angulo
   Phone Number: 760-339-6503
   E-Mail Address debbieangulo@co.imperial.ca.us

Below are listed the mandated activities. Staff costs should be calculated at the Productive Hourly rate.

1. TRAINING

a.	Initial costs for training provided by the state. (One day-Train the trainer)	
	(1) Staff costs	$5,296.11
	(2) Travel	$2,987.80
b.	Subsequent initial training for new/newly assigned training staff.	
	(1) Staff costs	$
	(2) Travel	$
c.	In-house training for certifying other staff to do assessments. (6-8 hrs)	$5,250.44
d.	Specialized supervision deputies (6-8 hrs every two years).	$
e.	Subsequent training of the staff (every two years)	$5,964.13
	SUBTOTAL TRAINING	$19,498.48

2. PERFORMING ASSESSMENTS

a.	New Cases (use average number per month for new cases since the assessment became mandatory – July 1, 2008) -	Monthly average:
	(1) Staff costs	$
	(2) Clerical handling staff costs	$
	(3) Materials	$
	(4) Deliver (to Court), attaching to post-sentence reports that go to CDRC, etc.)	$
b.	Existing cases (including any females or juveniles that have registered)	# of new cases 11
	(1) Staff costs	$481.29
	(2) Clerical handling staff costs	$
	(3) Materials	$ 25.00
	(4) Deliver (to Court), attaching to post-sentence reports that go to CDRC, etc.)	$340.65
	SUBTOTAL PERFORMING ASSESSMENTS	$846.94

County of Los Angeles Test Claim Survey

State Authorized Risk Assessment Tool for Sex Offenders (SARATSO):
Sex Offender's Punishment, Control, and Containment Act

3. INVESTIGATION

a.	Estimated number of new cases per year requiring SARATSO:	5
	(1) Estimated Staff costs	$218.77
	(2) Estimated Clerical handling staff costs	$ 43.55
	(3) Estimated Materials	$ 25.00
	(4) Estimated Deliver (to Court), attaching to post-sentence reports that go to CDRC, etc.)	$340.65
	SUBTOTAL ESTIMATED COSTS FOR NEW CASES	$627.97
b.	Estimated number of additional female and juvenile cases:	0
	(1) Estimated Staff costs	$
	(2) Estimated Clerical handling staff costs	$
	(3) Estimated Materials	$
	(4) Estimated Deliver (to Court), attaching to post-sentence reports that go to CDRC, etc.)	$
	SUBTOTAL ESTIMATED COSTS FOR ADDITION FEMALE & JUVENILE CASES	$
	TOTAL ESTIMATED NUMBER OF CASES (a. + b.)	
	TOTAL ESTIMATED COSTS	$
	ESTIMATED COST PER CASE FOR ALL QUALIFYING CASES (total estimated costs divided by total estimated number of cases)	$

4. SUPERVISION

a.	Estimated number of High Risk Cases	5
b.	Estimated cost for Electronic Monitoring of high risk cases.	
	(1) Staff costs	$ 266.00
	(2) Equipment	$ 5,475.00
	(3) Clerical support	$ 105.85
	(4) Other materials	$ 100.00
	SUBTOTAL ESTIMATED COSTS FOR ELECTRONIC MONITORING	$ 5,946.85
	PER PROBATIONER/PER DAY COST (Total estimated costs divided by total estimated cases divided by 365)	$ 3.22
c.	Estimated cost for "specialized, intensive" supervision of High Risk Cases	0
	(1) Staff costs	$
	(2) Equipment	$
	(3) Clerical support	$
	(4) Other materials	$
	SUBTOTAL ESTIMATED COSTS FOR SUPERVISION OF HIGH RISK CASES	$

County of Los Angeles Test Claim Survey

State Authorized Risk Assessment Tool for Sex Offenders (SARATSO): Sex Offender's Punishment, Control, and Containment Act

d.	Estimated cost for "specialized, intensive" supervision of additional female and juvenile high risk offenders	
	(1) Staff costs	$
	(2) Equipment	$
	(3) Clerical support	$
	(4) Other materials	$
	SUBTOTAL ESTIMATED COSTS FOR SUPERVISION OF JUVENILE/FEMALE HIGH RISK OFFENDERS	$
e.	Estimated cost for any specialized treatment and/or special surveillance (e.g., polygraph, computer checks) for High Risk cases.	$
f.	Estimated cost for additional information on child victims (review and processing of psych evaluations).	$
g.	Estimated cost for preparation and distribution of the Facts of Offense Sheet (mandated for all register-able cases effective June 1, 2010.	$
	SUBTOTAL SUPERVISION COSTS	$

TOTAL COSTS (ACTUAL & ESTIMATED)

1.	Training	$19,498.48
2.	Performing Assessments	$ 846.94
3.	Investigation	$ 627.97
4.	Supervision	$ 5,946.85
	TOTAL	$26,920.24

Thank you. Please return your responses to:

Hasmik Yaghobyan at hyaghobyan@auditor.lacounty.gov by 12/23/08.

County of Los Angeles Test Claim Survey

State Authorized Risk Assessment Tool for Sex Offenders (SARATSO): Sex Offender's Punishment, Control, and Containment Act

1. Name of Survey Respondent (agency) _____Orange County Probation Department_____

2. Contact Person(s) ____Brian Wayt, Shirley Hunt _____
Phone Number: ____(714) 937-4728, (714) 569-2174_____
E-Mail Address ____Brian.Wayt@prob.ocgov.com Shirley.Hunt@prob.ocgov.com

Below are listed the mandated activities. Staff costs should be calculated at the Productive Hourly rate.

NOTE: Information on Juvenile Sex Offenders/SARATSO: The costs associated with assessments, investigations, and supervision of juvenile sex offenders that will meet the state SARATSO criteria cannot be determined until the state criteria have been finalized. Orange County Probation staff do complete a generic risk/need assessment on all juvenile probationers but there is currently no specialized s.o. assessment conducted for juvenile sex offenders. However, plans are underway to implement the JSORRATT-II this coming year as a component of our Federal Juvenile Sex Offender management grant.

1. **TRAINING**

a.	Initial costs for training provided by the state. (One day-Train the trainer)	
	(1) Staff costs	$ 4,023.12
	(2) Travel	$ 39.33
b.	Subsequent initial training for new/newly assigned training staff.	
	(1) Staff costs	$ 4,035.20
	(2) Travel	$ 292.81
c.	In-house training for certifying other staff to do assessments. (6-8 hrs)	$32,990.89
d.	Specialized supervision deputies (6-8 hrs every two years).	$ 8,654.88
e.	Subsequent training of the staff (every two years)	$ 8,654.88
	SUBTOTAL TRAINING	$58,691.11

2. **PERFORMING ASSESSMENTS**

a.	New Cases (use average number per month for new cases since the assessment became mandatory – July 1, 2008) - Costs below are based on total cases estimated to have been assessed between July 1 and December 31 (16 per month x 6 months = 96 total cases assessed)	Monthly average: 16 per month
	(1) Staff costs	$ 8,406.47
	(2) Clerical handling staff costs	$ 522.35

County of Los Angeles Test Claim Survey

State Authorized Risk Assessment Tool for Sex Offenders (SARATSO):
Sex Offender's Punishment, Control, and Containment Act

	(3) Materials Estimate: $3,000	$ 3,000.00
	(4) Deliver (to Court), attaching to post-sentence reports that go to CDRC, etc.) Unknown costs – no information provided at this time.	$ 0
b.	Existing cases (including any females or juveniles that have registered) Includes adult S.O. assessments of existing cases with PC290 registration (backlog). JUVENILE NUMBERS UNKNOWN AT THIS TIME	# of existing cases 104
	(1) Staff costs	$ 9,107.00
	(2) Clerical handling staff costs	$ 565.78
	(3) Materials Estimate: $3,000	$ 3,000.00
	(4) Deliver (to Court), attaching to post-sentence reports that go to CDRC, etc.) Unknown costs – no information provided at this time.	$ 0
	SUBTOTAL PERFORMING ASSESSMENTS	$ 24,601.60

3. **INVESTIGATION**

a.	Estimated number of new cases per year requiring SARATSO:	50
	(1) Estimated Staff costs	$ 4,378.37
	(2) Estimated Clerical handling staff costs	$ 271.95
	(3) Estimated Materials Estimate: $3,000	$ 3,000.00
	(4) Estimated Deliver (to Court), attaching to post-sentence reports that go to CDRC, etc.) Unknown costs – no information provided at this time.	$ 0
	SUBTOTAL ESTIMATED COSTS FOR NEW CASES	$ 7,650.32
b.	Estimated number of additional female and juvenile cases:	Unknown at this time
	(1) Estimated Staff costs Unknown costs at this time.	$ 0
	(2) Estimated Clerical handling staff costs Unknown costs at this time.	$ 0

County of Los Angeles Test Claim Survey

State Authorized Risk Assessment Tool for Sex Offenders (SARATSO):
Sex Offender's Punishment, Control, and Containment Act

	(3) Estimated Materials Unknown costs at this time	$ 0
	(4) Estimated Deliver (to Court), attaching to post-sentence reports that go to CDRC, etc.) Unknown costs	$ 0
	SUBTOTAL ESTIMATED COSTS FOR ADDITION FEMALE & JUVENILE CASES	$ 0
	TOTAL ESTIMATED NUMBER OF CASES (a. + b.)	50
	TOTAL ESTIMATED COSTS	$ 7,650.32
	ESTIMATED COST PER CASE FOR ALL QUALIFYING CASES (total estimated costs divided by total estimated number of cases) $ 7,650.32 / 50 cases = $ 153.01	$ 153.01

4. SUPERVISION

a.	Estimated number of High Risk Cases (High risk per Static 99: ~ 40 at any given time) The costs given below assume a DPO caseload size of 1 to 20.	40
b.	Estimated cost for Electronic Monitoring of high risk cases.	
	(1) Staff costs	$ 171,639.76
	(2) Equipment	$110,000.00
	(3) Clerical support	$ 17,041.83
	(4) Other materials Estimate: $3,000	$ 3,000.00
	SUBTOTAL ESTIMATED COSTS FOR ELECTRONIC MONITORING	$ 301,681.59
	PER PROBATIONER/PER DAY COST (Total estimated costs divided by total estimated cases divided by 365)	13.13
c.	Estimated cost for "specialized, intensive" supervision of High Risk Cases	
	(1) Staff costs	$ 171,639.76
	(2) Equipment	$ 0
	(3) Clerical support	$ 17,041.83
	(4) Other materials	$ 0
	SUBTOTAL ESTIMATED COSTS FOR SUPERVISION OF HIGH RISK CASES	$ 188,681.59

County of Los Angeles Test Claim Survey

State Authorized Risk Assessment Tool for Sex Offenders (SARATSO):
Sex Offender's Punishment, Control, and Containment Act

d.	Estimated cost for "specialized, intensive" supervision of additional female and juvenile high risk offenders	Unknown at this time
	(1) Staff costs Unknown costs at this time	$ 0
	(2) Equipment Unknown costs at this time	$ 0
	(3) Clerical support Unknown costs at this time	$ 0
	(4) Other materials Unknown costs at this time	$ 0
	SUBTOTAL ESTIMATED COSTS FOR SUPERVISION OF JUVENILE/FEMALE HIGH RISK OFFENDERS	$ 0
e.	Estimated cost for any specialized treatment and/or special surveillance (e.g., polygraph, computer checks) for High Risk cases.	$ 10,000.00
f.	Estimated cost for additional information on child victims (review and processing of psych evaluations). Unknown costs at this time	$ 0
g.	Estimated cost for preparation and distribution of the Facts of Offense Sheet (mandated for all register-able cases effective June 1, 2010. Unknown costs at this time	$ 0
	SUBTOTAL SUPERVISION COSTS	$ 500,363.18

TOTAL COSTS (ACTUAL & ESTIMATED)

1.	Training	$ 58,691.11
2.	Performing Assessments	$ 24,601.60
3.	Investigation	$ 7,650.32
4.	Supervision	$ 500,363.18
	TOTAL	$ 591,306.21

Thank you. Please return your responses to:

Hasmik Yaghobyan at hyaghobyan@auditor.lacounty.gov by 12/23/08.

County of Los Angeles Test Claim Survey

State Authorized Risk Assessment Tool for Sex Offenders (SARATSO): Sex Offender's Punishment, Control, and Containment Act

1. Name of Survey Respondent (agency) Amador County

2. Contact Person(s) Deron Boodehl
   Phone Number: 209 223-6339
   E-Mail Address dbrodehl@co.amador.ca.us

Below are listed the mandated activities. Staff costs should be calculated at the Productive Hourly rate.

1. TRAINING

a.	Initial costs for training provided by the state. (One day-Train the trainer)	
	(1) Staff costs	$ 777.80
	(2) Travel	$
b.	Subsequent initial training for new/newly assigned training staff.	
	(1) Staff costs	$ 257.72
	(2) Travel	$
c.	In-house training for certifying other staff to do assessments. (6-8 hrs)	$ 155.60
d.	Specialized supervision deputies (6-8 hrs every two years).	$
e.	Subsequent training of the staff (every two years)	$
	SUBTOTAL TRAINING	$ 1191.12

2. PERFORMING ASSESSMENTS

a.	New Cases (use average number per month for new cases since the assessment became mandatory – July 1, 2008) -	Monthly average: .5
	(1) Staff costs	$ 15.15
	(2) Clerical handling staff costs	$
	(3) Materials	$
	(4) Deliver (to Court), attaching to post-sentence reports that go to CDRC, etc.)	$
b.	Existing cases (including any females or juveniles that have registered)	# of new cases 0
	(1) Staff costs	$
	(2) Clerical handling staff costs	$
	(3) Materials	$
	(4) Deliver (to Court), attaching to post-sentence reports that go to CDRC, etc.)	$
	SUBTOTAL PERFORMING ASSESSMENTS	$ 60.60

County of Los Angeles Test Claim Survey

State Authorized Risk Assessment Tool for Sex Offenders (SARATSO): Sex Offender's Punishment, Control, and Containment Act

3. INVESTIGATION

a.	Estimated number of new cases per year requiring SARATSO:	8
	(1) Estimated Staff costs	$ 242.00
	(2) Estimated Clerical handling staff costs	$
	(3) Estimated Materials	$
	(4) Estimated Deliver (to Court), attaching to post-sentence reports that go to CDRC, etc.)	$
	SUBTOTAL ESTIMATED COSTS FOR NEW CASES	$ 242.00
b.	Estimated number of additional female and juvenile cases:	0
	(1) Estimated Staff costs	$
	(2) Estimated Clerical handling staff costs	$
	(3) Estimated Materials	$
	(4) Estimated Deliver (to Court), attaching to post-sentence reports that go to CDRC, etc.)	$
	SUBTOTAL ESTIMATED COSTS FOR ADDITION FEMALE & JUVENILE CASES	$ 0
	TOTAL ESTIMATED NUMBER OF CASES (a. + b.)	8
	TOTAL ESTIMATED COSTS	$ $242.00
	ESTIMATED COST PER CASE FOR ALL QUALIFYING CASES (total estimated costs divided by total estimated number of cases)	$ $30.25

4. SUPERVISION

a.	Estimated number of High Risk Cases	0
b.	Estimated cost for Electronic Monitoring of high risk cases.	
	(1) Staff costs	$
	(2) Equipment	$
	(3) Clerical support	$
	(4) Other materials	$
	SUBTOTAL ESTIMATED COSTS FOR ELECTRONIC MONITORING	$
	PER PROBATIONER/PER DAY COST (Total estimated costs divided by total estimated cases divided by 365)	$
c.	Estimated cost for "specialized, intensive" supervision of High Risk Cases	
	(1) Staff costs	$
	(2) Equipment	$
	(3) Clerical support	$
	(4) Other materials	$
	SUBTOTAL ESTIMATED COSTS FOR SUPERVISION OF HIGH RISK CASES	$ 0

County of Los Angeles Test Claim Survey

State Authorized Risk Assessment Tool for Sex Offenders (SARATSO): Sex Offender's Punishment, Control, and Containment Act

d.	Estimated cost for "specialized, intensive" supervision of additional female and juvenile high risk offenders	
	(1) Staff costs	$
	(2) Equipment	$
	(3) Clerical support	$
	(4) Other materials	$
	SUBTOTAL ESTIMATED COSTS FOR SUPERVISION OF JUVENILE/FEMALE HIGH RISK OFFENDERS	$
e.	Estimated cost for any specialized treatment and/or special surveillance (e.g., polygraph, computer checks) for High Risk cases.	$
f.	Estimated cost for additional information on child victims (review and processing of psych evaluations).	$
g.	Estimated cost for preparation and distribution of the Facts of Offense Sheet (mandated for all register-able cases effective June 1, 2010.	$
	SUBTOTAL SUPERVISION COSTS	$ 0

TOTAL COSTS (ACTUAL & ESTIMATED)

1.	Training	$ 1191.12
2.	Performing Assessments	$ 60.60
3.	Investigation	$ 242.00
4.	Supervision	$ 0
	TOTAL	$ 1493.72

Thank you. Please return your responses to:

Hasmik Yaghobyan at hyaghobyan@auditor.lacounty.gov by 12/23/08.

County of Los Angeles Test Claim Survey

State Authorized Risk Assessment Tool for Sex Offenders (SARATSO): Sex Offender's Punishment, Control, and Containment Act

1. Name of Survey Respondent (agency) ___San Luis Obispo County Probation Department_____

2. Contact Person(s) Wendy White_____
   Phone Number: (805) 781-4074_____
   E-Mail Address wwhite@co.slo.ca.us

Below are listed the mandated activities. Staff costs should be calculated at the Productive Hourly rate.

1. TRAINING

a.	Initial costs for training provided by the state. (One day-Train the trainer)	
	(1) Staff costs	$ 2,164.00
	(2) Travel	$ 30.00
b.	Subsequent initial training for new/newly assigned training staff.	
	(1) Staff costs	$ 270.00
	(2) Travel	$ 0.00
c.	In-house training for certifying other staff to do assessments. (6-8 hrs)	$ 6,657.00
d.	Specialized supervision deputies (6-8 hrs every two years). Cost per training session	$ 860.00
e.	Subsequent training of the staff (every two years) Cost per training session	$ 6,657.00
	SUBTOTAL TRAINING	$ 16,638.00

2. PERFORMING ASSESSMENTS

a.	New Cases (use average number per month for new cases since the assessment became mandatory – July 1, 2008) -	Monthly average: 4
	(1) Staff costs (per case)	$ 318.00
	(2) Clerical handling staff costs (per case)	$ 142.00
	(3) Materials (per case)	$ 15.00
	(4) Deliver (to Court), attaching to post-sentence reports that go to CDRC, etc.)	$ 10.00
b.	Existing cases (including any females or juveniles that have registered)	# of new cases 50
	(1) Staff costs (all cases)	$ 1,340.00
	(2) Clerical handling staff costs (all cases)	$ 650.00
	(3) Materials (all cases)	$ 500.00
	(4) Deliver (to Court), attaching to post-sentence reports that go to CDRC, etc.)	$ 500.00
	SUBTOTAL PERFORMING ASSESSMENTS	$ 3,475.00

County of Los Angeles Test Claim Survey

State Authorized Risk Assessment Tool for Sex Offenders (SARATSO): Sex Offender's Punishment, Control, and Containment Act

3. INVESTIGATION

a.	Estimated number of new cases per year requiring SARATSO:	48
	(1) Estimated Staff costs	$ 15,264.00
	(2) Estimated Clerical handling staff costs	$ 6,816.00
	(3) Estimated Materials	$ 720.00
	(4) Estimated Deliver (to Court), attaching to post-sentence reports that go to CDRC, etc.)	$ 480.00
	SUBTOTAL ESTIMATED COSTS FOR NEW CASES	$ 23,280.00
b.	Estimated number of additional female and juvenile cases:	6
	(1) Estimated Staff costs	$ 1,908.00
	(2) Estimated Clerical handling staff costs	$ 852.00
	(3) Estimated Materials	$ 90.00
	(4) Estimated Deliver (to Court), attaching to post-sentence reports that go to CDRC, etc.)	$ 60.00
	SUBTOTAL ESTIMATED COSTS FOR ADDITION FEMALE & JUVENILE CASES	$ 2,910.00
	TOTAL ESTIMATED NUMBER OF CASES (a. + b.)	54
	TOTAL ESTIMATED COSTS	$ 26,190.00
	ESTIMATED COST PER CASE FOR ALL QUALIFYING CASES (total estimated costs divided by total estimated number of cases)	$ 485.00

4. SUPERVISION

a.	Estimated number of High Risk Cases	3
b.	Estimated cost for Electronic Monitoring of high risk cases.	
	(1) Staff costs (per case per month)	$ 7,704.00
	(2) Equipment (per case per month)	$ 9,000.00
	(3) Clerical support	$ 1,800.00
	(4) Other materials	$ 300.00
	SUBTOTAL ESTIMATED COSTS FOR ELECTRONIC MONITORING	$ 18,804.00
	PER PROBATIONER/PER DAY COST (Total estimated costs divided by total estimated cases divided by 365)	$ 17.18
c.	Estimated cost for "specialized, intensive" supervision of High Risk Cases	
	(1) Staff costs	$ 7,704.00
	(2) Equipment	$ 0.00
	(3) Clerical support	$ 1,800.00
	(4) Other materials	$ 300.00
	SUBTOTAL ESTIMATED COSTS FOR SUPERVISION OF HIGH RISK CASES	$ 9,804.00

County of Los Angeles Test Claim Survey

State Authorized Risk Assessment Tool for Sex Offenders (SARATSO): Sex Offender's Punishment, Control, and Containment Act

d.	Estimated cost for "specialized, intensive" supervision of additional female and juvenile high risk offenders	
	(1) Staff costs	$ 2,568.00
	(2) Equipment	$ 0.00
	(3) Clerical support	$ 600.00
	(4) Other materials	$ 100.00
	SUBTOTAL ESTIMATED COSTS FOR SUPERVISION OF JUVENILE/FEMALE HIGH RISK OFFENDERS	$ 3,268.00
e.	Estimated cost for any specialized treatment and/or special surveillance (e.g., polygraph, computer checks) for High Risk cases.	$ 1,800.00
f.	Estimated cost for additional information on child victims (review and processing of psych evaluations).	$ 1,000.00
g.	Estimated cost for preparation and distribution of the Facts of Offense Sheet (mandated for all register-able cases effective June 1, 2010.	$ 1,500.00
	SUBTOTAL SUPERVISION COSTS	$ 36,176.00

TOTAL COSTS (ACTUAL & ESTIMATED)

1.	Training	$ 16,638.00
2.	Performing Assessments	$ 3,475.00
3.	Investigation	$ 26,190.00
4.	Supervision	$ 36,176.00
	TOTAL	$ 82,479.00

Thank you. Please return your responses to:

Hasmik Yaghobyan at hyaghobyan@auditor.lacounty.gov by 12/23/08.

County of Los Angeles Test Claim Survey

State Authorized Risk Assessment Tool for Sex Offenders (SARATSO): Sex Offender's Punishment, Control, and Containment Act

1. Name of Survey Respondent (agency) _____Sierra County_____

2. Contact Person(s) _____Cherry Simi, Admin Sec. II_____
   Phone Number: ___530-289-3277_____
   E-Mail Address ___csimi@sierracounty.ws_____

Sierra County has not had any eligible offenders yet.

Below are listed the mandated activities. Staff costs should be calculated at the Productive Hourly rate.

1. TRAINING

a.	Initial costs for training provided by the state. (One day-Train the trainer)	
	(1) Staff costs	$1,952.00
	(2) Travel	$ 325.00
b.	Subsequent initial training for new/newly assigned training staff.	
	(1) Staff costs	$
	(2) Travel	$
c.	In-house training for certifying other staff to do assessments. (6-8 hrs)	$
d.	Specialized supervision deputies (6-8 hrs every two years).	$
e.	Subsequent training of the staff (every two years)	$
	SUBTOTAL TRAINING	$2,277.00

2. PERFORMING ASSESSMENTS

a.	New Cases (use average number per month for new cases since the assessment became mandatory – July 1, 2008) -	Monthly average:
	(1) Staff costs	$
	(2) Clerical handling staff costs	$
	(3) Materials	$
	(4) Deliver (to Court), attaching to post-sentence reports that go to CDRC, etc.)	$
b.	Existing cases (including any females or juveniles that have registered)	# of new cases
	(1) Staff costs	$
	(2) Clerical handling staff costs	$
	(3) Materials	$
	(4) Deliver (to Court), attaching to post-sentence reports that go to CDRC, etc.)	$
	SUBTOTAL PERFORMING ASSESSMENTS	0

County of Los Angeles Test Claim Survey

State Authorized Risk Assessment Tool for Sex Offenders (SARATSO):
Sex Offender's Punishment, Control, and Containment Act

3. INVESTIGATION

a.	Estimated number of new cases per year requiring SARATSO:	
	(1) Estimated Staff costs	$
	(2) Estimated Clerical handling staff costs	$
	(3) Estimated Materials	$
	(4) Estimated Deliver (to Court), attaching to post-sentence reports that go to CDRC, etc.)	$
	SUBTOTAL ESTIMATED COSTS FOR NEW CASES	$0
b.	Estimated number of additional female and juvenile cases:	
	(1) Estimated Staff costs	$
	(2) Estimated Clerical handling staff costs	$
	(3) Estimated Materials	$
	(4) Estimated Deliver (to Court), attaching to post-sentence reports that go to CDRC, etc.)	$
	SUBTOTAL ESTIMATED COSTS FOR ADDITION FEMALE & JUVENILE CASES	$0
	TOTAL ESTIMATED NUMBER OF CASES (a. + b.)	0
	TOTAL ESTIMATED COSTS	$0
	ESTIMATED COST PER CASE FOR ALL QUALIFYING CASES (total estimated costs divided by total estimated number of cases)	$0

4. SUPERVISION

a.	Estimated number of High Risk Cases	
b.	Estimated cost for Electronic Monitoring of high risk cases.	
	(1) Staff costs	$
	(2) Equipment	$
	(3) Clerical support	$
	(4) Other materials	$
	SUBTOTAL ESTIMATED COSTS FOR ELECTRONIC MONITORING	$0
	PER PROBATIONER/PER DAY COST (Total estimated costs divided by total estimated cases divided by 365)	$
c.	Estimated cost for "specialized, intensive" supervision of High Risk Cases	
	(1) Staff costs	$
	(2) Equipment	$
	(3) Clerical support	$
	(4) Other materials	$
	SUBTOTAL ESTIMATED COSTS FOR SUPERVISION OF HIGH RISK CASES	$0

County of Los Angeles Test Claim Survey

State Authorized Risk Assessment Tool for Sex Offenders (SARATSO): Sex Offender's Punishment, Control, and Containment Act

d.	Estimated cost for "specialized, intensive" supervision of additional female and juvenile high risk offenders	
	(1) Staff costs	$
	(2) Equipment	$
	(3) Clerical support	$
	(4) Other materials	$
	SUBTOTAL ESTIMATED COSTS FOR SUPERVISION OF JUVENILE/FEMALE HIGH RISK OFFENDERS	$0
e.	Estimated cost for any specialized treatment and/or special surveillance (e.g., polygraph, computer checks) for High Risk cases.	$
f.	Estimated cost for additional information on child victims (review and processing of psych evaluations).	$
g.	Estimated cost for preparation and distribution of the Facts of Offense Sheet (mandated for all register-able cases effective June 1, 2010.	$
	SUBTOTAL SUPERVISION COSTS	$0

TOTAL COSTS (ACTUAL & ESTIMATED)

1.	Training	$2,277.00
2.	Performing Assessments	$
3.	Investigation	$
4.	Supervision	$
	TOTAL	$2,277.00

Thank you. Please return your responses to:

Hasmik Yaghobyan at hyaghobyan@auditor.lacounty.gov by 12/23/08.

County of Los Angeles Test Claim Survey

State Authorized Risk Assessment Tool for Sex Offenders (SARATSO):
Sex Offender's Punishment, Control, and Containment Act

1. Name of Survey Respondent (agency) _El Dorado County Probation

2. Contact Person(s) __Steve Heggen, DCPO
   Phone Number: __530-573-3081_____
   E-Mail Address ___steve.heggen@edcgov.us___

Below are listed the mandated activities. Staff costs should be calculated at the Productive Hourly rate.

1. TRAINING

a.	Initial costs for training provided by the state. (One day-Train the trainer)	
	(1) Staff costs	$989.00
	(2) Travel	$179.00
b.	Subsequent initial training for new/newly assigned training staff.	
	(1) Staff costs	$
	(2) Travel	$
c.	In-house training for certifying other staff to do assessments. (6-8 hrs)	$2912.00
d.	Specialized supervision deputies (6-8 hrs every two years).	$
e.	Subsequent training of the staff (every two years)	$
	SUBTOTAL TRAINING	$4080.00

2. PERFORMING ASSESSMENTS

a.	New Cases (use average number per month for new cases since the assessment became mandatory – July 1, 2008) - 5	Monthly average:
	(1) Staff costs	$182.00
	(2) Clerical handling staff costs	$
	(3) Materials	$10.00
	(4) Deliver (to Court), attaching to post-sentence reports that go to CDRC, etc.)	$
b.	Existing cases (including any females or juveniles that have registered)	# of new cases
	(1) Staff costs	$547.00
	(2) Clerical handling staff costs	$
	(3) Materials	$
	(4) Deliver (to Court), attaching to post-sentence reports that go to CDRC, etc.)	$
	SUBTOTAL PERFORMING ASSESSMENTS	$739.00

County of Los Angeles Test Claim Survey

State Authorized Risk Assessment Tool for Sex Offenders (SARATSO): Sex Offender's Punishment, Control, and Containment Act

3. INVESTIGATION

a.	Estimated number of new cases per year requiring SARATSO: 25	
	(1) Estimated Staff costs	$912.00
	(2) Estimated Clerical handling staff costs	$
	(3) Estimated Materials	$10.00
	(4) Estimated Deliver (to Court), attaching to post-sentence reports that go to CDRC, etc.)	$
	SUBTOTAL ESTIMATED COSTS FOR NEW CASES	$922.00
b.	Estimated number of additional female and juvenile cases: 25	
	(1) Estimated Staff costs	$912.00
	(2) Estimated Clerical handling staff costs	$
	(3) Estimated Materials	$10.00
	(4) Estimated Deliver (to Court), attaching to post-sentence reports that go to CDRC, etc.)	$
	SUBTOTAL ESTIMATED COSTS FOR ADDITION FEMALE & JUVENILE CASES	$922.00
	TOTAL ESTIMATED NUMBER OF CASES (a. + b.) 50	
	TOTAL ESTIMATED COSTS	$1844.00
	ESTIMATED COST PER CASE FOR ALL QUALIFYING CASES (total estimated costs divided by total estimated number of cases)	$ 36.88

4. SUPERVISION

a.	Estimated number of High Risk Cases	0
b.	Estimated cost for Electronic Monitoring of high risk cases.	
	(1) Staff costs	$
	(2) Equipment	$
	(3) Clerical support	$
	(4) Other materials	$
	SUBTOTAL ESTIMATED COSTS FOR ELECTRONIC MONITORING	$
	PER PROBATIONER/PER DAY COST (Total estimated costs divided by total estimated cases divided by 365)	$
c.	Estimated cost for "specialized, intensive" supervision of High Risk Cases	0
	(1) Staff costs	$
	(2) Equipment	$
	(3) Clerical support	$
	(4) Other materials	$
	SUBTOTAL ESTIMATED COSTS FOR SUPERVISION OF HIGH RISK CASES	$

County of Los Angeles Test Claim Survey

State Authorized Risk Assessment Tool for Sex Offenders (SARATSO): Sex Offender's Punishment, Control, and Containment Act

d.	Estimated cost for "specialized, intensive" supervision of additional female and juvenile high risk offenders	0
	(1) Staff costs	$
	(2) Equipment	$
	(3) Clerical support	$
	(4) Other materials	$
	SUBTOTAL ESTIMATED COSTS FOR SUPERVISION OF JUVENILE/FEMALE HIGH RISK OFFENDERS	$
e.	Estimated cost for any specialized treatment and/or special surveillance (e.g., polygraph, computer checks) for High Risk cases.	$
f.	Estimated cost for additional information on child victims (review and processing of psych evaluations).	$
g.	Estimated cost for preparation and distribution of the Facts of Offense Sheet (mandated for all register-able cases effective June 1, 2010.	$
	SUBTOTAL SUPERVISION COSTS	$

TOTAL COSTS (ACTUAL & ESTIMATED)

1.	Training	$ 4080.00
2.	Performing Assessments	$ 739.00
3.	Investigation	$ 1844.00
4.	Supervision	$ 0
	TOTAL	$ 6663.00

Thank you. Please return your responses to:

Hasmik Yaghobyan at hyaghobyan@auditor.lacounty.gov by 12/23/08.

County of Los Angeles Test Claim Survey

State Authorized Risk Assessment Tool for Sex Offenders (SARATSO):
Sex Offender's Punishment, Control, and Containment Act

1. Name of Survey Respondent (agency) Inyo County Probation Department

2. Contact Person(s) Jacob E. Morgan
   Phone Number: 760-872-4111
   E-Mail Address jmorgan@inyocounty.us

Below are listed the mandated activities. Staff costs should be calculated at the Productive Hourly rate.

1. TRAINING

a.	Initial costs for training provided by the state. (One day-Train the trainer)	
	(1) Staff costs	$200.00
	(2) Travel	$500.00
b.	Subsequent initial training for new/newly assigned training staff.	
	(1) Staff costs	$0
	(2) Travel	$0
c.	In-house training for certifying other staff to do assessments. (6-8 hrs)	$0
d.	Specialized supervision deputies (6-8 hrs every two years).	$0
e.	Subsequent training of the staff (every two years)	$0
	SUBTOTAL TRAINING	$700.00

2. PERFORMING ASSESSMENTS

a.	New Cases (use average number per month for new cases since the assessment became mandatory – July 1, 2008) -	Monthly average:
	(1) Staff costs	$50.00
	(2) Clerical handling staff costs	$20.00
	(3) Materials	$20.00
	(4) Deliver (to Court), attaching to post-sentence reports that go to CDRC, etc.)	$20.00
b.	Existing cases (including any females or juveniles that have registered)	# of new cases 3
	(1) Staff costs	$50.00
	(2) Clerical handling staff costs	$0
	(3) Materials	$20.00
	(4) Deliver (to Court), attaching to post-sentence reports that go to CDRC, etc.)	$0
	SUBTOTAL PERFORMING ASSESSMENTS	$170.00

County of Los Angeles Test Claim Survey

State Authorized Risk Assessment Tool for Sex Offenders (SARATSO):
Sex Offender's Punishment, Control, and Containment Act

3. INVESTIGATION

a.	Estimated number of new cases per year requiring SARATSO:	5
	(1) Estimated Staff costs	$250.00
	(2) Estimated Clerical handling staff costs	$100.00
	(3) Estimated Materials	$100.00
	(4) Estimated Deliver (to Court), attaching to post-sentence reports that go to CDRC, etc.)	$100.00
	SUBTOTAL ESTIMATED COSTS FOR NEW CASES	$550.00
b.	Estimated number of additional female and juvenile cases:	2
	(1) Estimated Staff costs	$100.00
	(2) Estimated Clerical handling staff costs	$40.00
	(3) Estimated Materials	$40.00
	(4) Estimated Deliver (to Court), attaching to post-sentence reports that go to CDRC, etc.)	$40.00
	SUBTOTAL ESTIMATED COSTS FOR ADDITION FEMALE & JUVENILE CASES	$220.00
	TOTAL ESTIMATED NUMBER OF CASES (a. + b.)	7
	TOTAL ESTIMATED COSTS	$770.00
	ESTIMATED COST PER CASE FOR ALL QUALIFYING CASES (total estimated costs divided by total estimated number of cases)	$110.00

4. SUPERVISION

a.	Estimated number of High Risk Cases	1
b.	Estimated cost for Electronic Monitoring of high risk cases.	
	(1) Staff costs	$100.00
	(2) Equipment	$50.00
	(3) Clerical support	$50.00
	(4) Other materials	$100.00
	SUBTOTAL ESTIMATED COSTS FOR ELECTRONIC MONITORING	$300.00
	PER PROBATIONER/PER DAY COST (Total estimated costs divided by total estimated cases divided by 365)	$1.00
c.	Estimated cost for "specialized, intensive" supervision of High Risk Cases	
	(1) Staff costs	$100.00
	(2) Equipment	$50.00
	(3) Clerical support	$50.00
	(4) Other materials	$50.00
	SUBTOTAL ESTIMATED COSTS FOR SUPERVISION OF HIGH RISK CASES	$250.00

County of Los Angeles Test Claim Survey

State Authorized Risk Assessment Tool for Sex Offenders (SARATSO): Sex Offender's Punishment, Control, and Containment Act

d.	Estimated cost for "specialized, intensive" supervision of additional female and juvenile high risk offenders	
	(1) Staff costs	$100.00
	(2) Equipment	$50.00
	(3) Clerical support	$50.00
	(4) Other materials	$50.00
	SUBTOTAL ESTIMATED COSTS FOR SUPERVISION OF JUVENILE/FEMALE HIGH RISK OFFENDERS	$250.00
e.	Estimated cost for any specialized treatment and/or special surveillance (e.g., polygraph, computer checks) for High Risk cases.	$100.00
f.	Estimated cost for additional information on child victims (review and processing of psych evaluations).	$100.00
g.	Estimated cost for preparation and distribution of the Facts of Offense Sheet (mandated for all register-able cases effective June 1, 2010.	$100.00
	SUBTOTAL SUPERVISION COSTS	$800.00

TOTAL COSTS (ACTUAL & ESTIMATED)

1.	Training	$200.00
2.	Performing Assessments	$170.00
3.	Investigation	$110.00
4.	Supervision	$1050.00
	TOTAL	$1530.00

Thank you. Please return your responses to:

Hasmik Yaghobyan at hyaghobyan@auditor.lacounty.gov by 12/23/08.

County of Los Angeles Test Claim Survey

State Authorized Risk Assessment Tool for Sex Offenders (SARATSO):
Sex Offender's Punishment, Control, and Containment Act

1. Name of Survey Respondent (agency) _SANTA CRUZ COUNTY PROBATION_

2. Contact Person(s) ___BARBARA LEE
   Phone Number: __831-454--3373
   E-Mail Address _barbara.lee@co.santa-cruz.ca.us

Below are listed the mandated activities. Staff costs should be calculated at the Productive Hourly rate.

1. TRAINING

a.	Initial costs for training provided by the state. (One day-Train the trainer)	
	(1) Staff costs	$ 1,322.82
	(2) Travel	$ 718.06
b.	Subsequent initial training for new/newly assigned training staff.	
	(1) Staff costs	$ 1,040.20
	(2) Travel	$ 476.68
c.	In-house training for certifying other staff to do assessments. (6-8 hrs)	$ 594.40
d.	Specialized supervision deputies (6-8 hrs every two years).	$ 628.48
e.	Subsequent training of the staff (every two years)	$ 700.00
	SUBTOTAL TRAINING	$ 5,480.64

2. PERFORMING ASSESSMENTS

a.	New Cases (use average number per month for new cases since the assessment became mandatory – July 1, 2008) -	Monthly average:
	(1) Staff costs **3 cases per month average of DPOIII/DPOII average salary**	$ 3165.5
	(2) Clerical handling staff costs **–NONE CURRENTLY**	$ 542.71
	(3) Materials	$ 10.00
	(4) Deliver (to Court), attaching to post-sentence reports that go to CDRC, etc.)	$
b.	Existing cases (including any females or juveniles that have registered) **NONE**	# of new cases
	(1) Staff costs	$3165.5
	(2) Clerical handling staff costs	$542.71
	(3) Materials	$
	(4) Deliver (to Court), attaching to post-sentence reports that go to CDRC, etc.)	$
	SUBTOTAL PERFORMING ASSESSMENTS	7416.42

County of Los Angeles Test Claim Survey

State Authorized Risk Assessment Tool for Sex Offenders (SARATSO):
Sex Offender's Punishment, Control, and Containment Act

3. INVESTIGATION

a.	Estimated number of new cases per year requiring SARATSO:	30
	(1) Estimated Staff costs- **38 HOURS AT DPO III SALARY (38 CASES)**	$13559.52
	(2) Estimated Clerical handling staff costs-**UNKNOWN**	$7943.52
	(3) Estimated Materials	$ 10.00
	(4) Estimated Deliver (to Court), attaching to post-sentence reports that go to CDRC, etc.)	$ N/A
	SUBTOTAL ESTIMATED COSTS FOR NEW CASES	$21503.04
b.	Estimated number of additional female and juvenile cases: **UNKNOWN**	
	(1) Estimated Staff costs	$
	(2) Estimated Clerical handling staff costs	
	(3) Estimated Materials	$
	(4) Estimated Deliver (to Court), attaching to post-sentence reports that go to CDRC, etc.)	$
	SUBTOTAL ESTIMATED COSTS FOR ADDITION FEMALE & JUVENILE CASES	$
	TOTAL ESTIMATED NUMBER OF CASES (a. + b.)	30
	TOTAL ESTIMATED COSTS	$21503.04
	ESTIMATED COST PER CASE FOR ALL QUALIFYING CASES (total estimated costs divided by total estimated number of cases)	$716.77

4. SUPERVISION

a.	Estimated number of High Risk Cases	CURRENTLY UNKNOWN
b.	Estimated cost for Electronic Monitoring of high risk cases.	
	(1) Staff costs	$15194.40
	(2) Equipment	$21900.00
	(3) Clerical support	$6512.48
	(4) Other materials	$
	SUBTOTAL ESTIMATED COSTS FOR ELECTRONIC MONITORING	$43606.88
	PER PROBATIONER/PER DAY COST (Total estimated costs divided by total estimated cases divided by 365)	$119.47
c.	Estimated cost for "specialized, intensive" supervision of High Risk Cases	
	(1) Staff costs	$135595.2
	(2) Equipment	$
	(3) Clerical support	$7943.52
	(4) Other materials	$
	SUBTOTAL ESTIMATED COSTS FOR SUPERVISION OF HIGH RISK CASES	$143538.72

County of Los Angeles Test Claim Survey

State Authorized Risk Assessment Tool for Sex Offenders (SARATSO):
Sex Offender's Punishment, Control, and Containment Act

d.	Estimated cost for "specialized, intensive" supervision of additional female and juvenile high risk offenders	UNKNOWN
	(1) Staff costs	$
	(2) Equipment	$
	(3) Clerical support	$
	(4) Other materials	$
	SUBTOTAL ESTIMATED COSTS FOR SUPERVISION OF JUVENILE/FEMALE HIGH RISK OFFENDERS	$
e.	Estimated cost for any specialized treatment and/or special surveillance (e.g., polygraph, computer checks) for High Risk cases.	$
f.	Estimated cost for additional information on child victims (review and processing of psych evaluations).	$
g.	Estimated cost for preparation and distribution of the Facts of Offense Sheet (mandated for all register-able cases effective June 1, 2010.	$
	SUBTOTAL SUPERVISION COSTS	$186599.60

TOTAL COSTS (ACTUAL & ESTIMATED)

1.	Training	$5480.64
2.	Performing Assessments	$7416.42
3.	Investigation	$21503.04
4.	Supervision	$186599.60
	TOTAL	$220999.70

Thank you. Please return your responses to:

Hasmik Yaghobyan at hyaghobyan@auditor.lacounty.gov by 12/23/08.

County of Los Angeles Test Claim Survey

State Authorized Risk Assessment Tool for Sex Offenders (SARATSO): Sex Offender's Punishment, Control, and Containment Act

1. Name of Survey Respondent (agency) **Riverside County Probation Department**

2. Contact Person(s) **Sally A. Beavan, Chief Deputy Probation Administrator**
   Phone Number: **(951) 955-3486**
   E-Mail Address **Sbeavan@rcprob.us**

Below are listed the mandated activities. Staff costs should be calculated at the Productive Hourly rate.

1. TRAINING

a.	Initial costs for training provided by the state. (One day-Train the trainer)	
	(1) Staff costs	$1,741.83
	(2) Travel	$1,110.50
b.	Subsequent initial training for new/newly assigned training staff.	
	(1) Staff costs	$4,241.69
	(2) Travel	$1,506.86
c.	In-house training for certifying other staff to do assessments. (6-8 hrs)	$37,113.62
d.	Specialized supervision deputies (6-8 hrs every two years).	$
e.	Subsequent training of the staff (every two years)	$
	SUBTOTAL TRAINING	$45,714.50

2. PERFORMING ASSESSMENTS

a.	New Cases (use average number per month for new cases since the assessment became mandatory – July 1, 2008) -	Monthly average: 17
	(1) Staff costs	$2,324.19
	(2) Clerical handling staff costs	$
	(3) Materials	$
	(4) Deliver (to Court), attaching to post-sentence reports that go to CDRC, etc.)	$
b.	Existing cases (including any females or juveniles that have registered)	# of new cases 311
	(1) Staff costs	$8,504.65
	(2) Clerical handling staff costs	$
	(3) Materials	$
	(4) Deliver (to Court), attaching to post-sentence reports that go to CDRC, etc.)	$
	SUBTOTAL PERFORMING ASSESSMENTS	$10,824.84

County of Los Angeles Test Claim Survey

State Authorized Risk Assessment Tool for Sex Offenders (SARATSO):
Sex Offender's Punishment, Control, and Containment Act

3. INVESTIGATION

a.	Estimated number of new cases per year requiring SARATSO:	5
	(1) Estimated Staff costs	$130.30
	(2) Estimated Clerical handling staff costs	$
	(3) Estimated Materials	$
	(4) Estimated Deliver (to Court), attaching to post-sentence reports that go to CDRC, etc.)	$
	SUBTOTAL ESTIMATED COSTS FOR NEW CASES	$130.30
b.	Estimated number of additional female and juvenile cases:	N/A
	(1) Estimated Staff costs	$
	(2) Estimated Clerical handling staff costs	$
	(3) Estimated Materials	$
	(4) Estimated Deliver (to Court), attaching to post-sentence reports that go to CDRC, etc.)	$
	SUBTOTAL ESTIMATED COSTS FOR ADDITION FEMALE & JUVENILE CASES	N/A
	TOTAL ESTIMATED NUMBER OF CASES (a. + b.)	5
	TOTAL ESTIMATED COSTS	$130.30
	ESTIMATED COST PER CASE FOR ALL QUALIFYING CASES (total estimated costs divided by total estimated number of cases)	$26.10

4. SUPERVISION

a.	Estimated number of High Risk Cases	4
b.	Estimated cost for Electronic Monitoring of high risk cases.	
	(1) Staff costs	$
	(2) Equipment	$8/day
	(3) Clerical support	$
	(4) Other materials	$
	SUBTOTAL ESTIMATED COSTS FOR ELECTRONIC MONITORING	$2,920
	PER PROBATIONER/PER DAY COST (Total estimated costs divided by total estimated cases divided by 365)	$730
c.	Estimated cost for "specialized, intensive" supervision of High Risk Cases	
	(1) Staff costs	$21,734.18
	(2) Equipment	$
	(3) Clerical support	$1,648.78
	(4) Other materials	$
	SUBTOTAL ESTIMATED COSTS FOR SUPERVISION OF HIGH RISK CASES	$26,302.96

County of Los Angeles Test Claim Survey

State Authorized Risk Assessment Tool for Sex Offenders (SARATSO): Sex Offender's Punishment, Control, and Containment Act

d.	Estimated cost for "specialized, intensive" supervision of additional female and juvenile high risk offenders	N/A
	(1) Staff costs	$
	(2) Equipment	$
	(3) Clerical support	$
	(4) Other materials	$
	SUBTOTAL ESTIMATED COSTS FOR SUPERVISION OF JUVENILE/FEMALE HIGH RISK OFFENDERS	N/A
e.	Estimated cost for any specialized treatment and/or special surveillance (e.g., polygraph, computer checks) for High Risk cases.	N/A
f.	Estimated cost for additional information on child victims (review and processing of psych evaluations).	N/A
g.	Estimated cost for preparation and distribution of the Facts of Offense Sheet (mandated for all register-able cases effective June 1, 2010.	N/A
	SUBTOTAL SUPERVISION COSTS	$26,302.96

TOTAL COSTS (ACTUAL & ESTIMATED)

1.	Training	$45,714.50
2.	Performing Assessments	$10,824.84
3.	Investigation	$26.10
4.	Supervision	$26,302.96
	TOTAL	$82,868.40

Thank you. Please return your responses to:

Hasmik Yaghobyan at hyaghobyan@auditor.lacounty.gov by 12/23/08.

County of Los Angeles Test Claim Survey

State Authorized Risk Assessment Tool for Sex Offenders (SARATSO): Sex Offender's Punishment, Control, and Containment Act

1. Name of Survey Respondent (agency) Solano County Probation Department

2. Contact Person(s) Kelley Baulwin-Johnson
   Phone Number: (707) 784-6531
   E-Mail Address kjohnson@solanocounty.com

Below are listed the mandated activities. Staff costs should be calculated at the Productive Hourly rate.

1. TRAINING

a.	Initial costs for training provided by the state. (One day-Train the trainer)	
	(1) Staff costs	$1,508
	(2) Travel	$305
b.	Subsequent initial training for new/newly assigned training staff.	
	(1) Staff costs	$
	(2) Travel	$
c.	In-house training for certifying other staff to do assessments. (6-8 hrs)	$3,393
d.	Specialized supervision deputies (6-8 hrs every two years).	$566
e.	Subsequent training of the staff (every two years)	$4,524
	SUBTOTAL TRAINING	$10,296

2. PERFORMING ASSESSMENTS

a.	New Cases (use average number per month for new cases since the assessment became mandatory – July 1, 2008) -	Monthly average: 2 cases/month
	(1) Staff costs	$566
{	(2) Clerical handling staff costs	$395
{	(3) Materials	$
{	(4) Deliver (to Court), attaching to post-sentence reports that go to CDRC, etc.)	$
b.	Existing cases (including any females or juveniles that have registered)	# of new cases 40 assessments
	(1) Staff costs	$2,828
	(2) Clerical handling staff costs	$
	(3) Materials	$
	(4) Deliver (to Court), attaching to post-sentence reports that go to CDRC, etc.)	$
	SUBTOTAL PERFORMING ASSESSMENTS	$3,789

County of Los Angeles Test Claim Survey

State Authorized Risk Assessment Tool for Sex Offenders (SARATSO):
Sex Offender's Punishment, Control, and Containment Act

3. INVESTIGATION

a.	Estimated number of new cases per year requiring SARATSO:	2 cases per month
	(1) Estimated Staff costs	$566
[	(2) Estimated Clerical handling staff costs	$395
[	(3) Estimated Materials	$
[	(4) Estimated Deliver (to Court), attaching to post-sentence reports that go to CDRC, etc.)	$
	SUBTOTAL ESTIMATED COSTS FOR NEW CASES	$961
b.	Estimated number of additional female and juvenile cases:	1 female per year
	(1) Estimated Staff costs	$24
[	(2) Estimated Clerical handling staff costs	$16
[	(3) Estimated Materials	$
[	(4) Estimated Deliver (to Court), attaching to post-sentence reports that go to CDRC, etc.)	$
	SUBTOTAL ESTIMATED COSTS FOR ADDITION FEMALE & JUVENILE CASES	$40
	TOTAL ESTIMATED NUMBER OF CASES (a. + b.)	3
	TOTAL ESTIMATED COSTS	$1,001
	ESTIMATED COST PER CASE FOR ALL QUALIFYING CASES (total estimated costs divided by total estimated number of cases)	$334

4. SUPERVISION

a.	Estimated number of High Risk Cases	4 cases per year
b.	Estimated cost for Electronic Monitoring of high risk cases.	13,709
	(1) Staff costs	$81,760
	(2) Equipment	$
	(3) Clerical support	$
	(4) Other materials	$
	SUBTOTAL ESTIMATED COSTS FOR ELECTRONIC MONITORING	$95,469
	PER PROBATIONER/PER DAY COST (Total estimated costs divided by total estimated cases divided by 365)	$65.39
c.	Estimated cost for "specialized, intensive" supervision of High Risk Cases	
	(1) Staff costs	$196,794
	(2) Equipment	$
	(3) Clerical support	$
	(4) Other materials	$
	SUBTOTAL ESTIMATED COSTS FOR SUPERVISION OF HIGH RISK CASES	$196,794

County of Los Angeles Test Claim Survey

State Authorized Risk Assessment Tool for Sex Offenders (SARATSO): Sex Offender's Punishment, Control, and Containment Act

d.	Estimated cost for "specialized, intensive" supervision of additional female and juvenile high risk offenders	
	(1) Staff costs	$98,397
	(2) Equipment	$
	(3) Clerical support	$
	(4) Other materials	$98,397
	SUBTOTAL ESTIMATED COSTS FOR SUPERVISION OF JUVENILE/FEMALE HIGH RISK OFFENDERS	$
e.	Estimated cost for any specialized treatment and/or special surveillance (e.g., polygraph, computer checks) for High Risk cases.	$2,000
f.	Estimated cost for additional information on child victims (review and processing of psych evaluations).	$
g.	Estimated cost for preparation and distribution of the Facts of Offense Sheet (mandated for all register-able cases effective June 1, 2010.	$1,178
	SUBTOTAL SUPERVISION COSTS	$298,369

TOTAL COSTS (ACTUAL & ESTIMATED)

1.	Training	$10,296
2.	Performing Assessments	$3,789
3.	Investigation	$1001
4.	Supervision	$298,369
	TOTAL	$313,455

Thank you. Please return your responses to:

Hasmik Yaghobyan at hyaghobyan@auditor.lacounty.gov by 12/23/08.

County of Los Angeles Test Claim Survey

State Authorized Risk Assessment Tool for Sex Offenders (SARATSO): Sex Offender's Punishment, Control, and Containment Act

1. Name of Survey Respondent (agency) _El Dorado County Probation

2. Contact Person(s) __Steve Heggen, DCPO
   Phone Number: __530-573-3081_____
   E-Mail Address ___steve.heggen@edcgov.us___

Below are listed the mandated activities. Staff costs should be calculated at the Productive Hourly rate.

1. TRAINING

a.	Initial costs for training provided by the state. (One day-Train the trainer)	
	(1) Staff costs	$2444.00
	(2) Travel	$348.00
b.	Subsequent initial training for new/newly assigned training staff.	
	(1) Staff costs	$
	(2) Travel	$
c.	In-house training for certifying other staff to do assessments. (6-8 hrs)	$4714.00
d.	Specialized supervision deputies (6-8 hrs every two years).	$
e.	Subsequent training of the staff (every two years)	$
	SUBTOTAL TRAINING	$7506.00

2. PERFORMING ASSESSMENTS

a.	New Cases (use average number per month for new cases since the assessment became mandatory – July 1, 2008) - 5	Monthly average:
	(1) Staff costs	$182.00
	(2) Clerical handling staff costs	$
	(3) Materials	$10.00
	(4) Deliver (to Court), attaching to post-sentence reports that go to CDRC, etc.)	$
b.	Existing cases (including any females or juveniles that have registered)	# of new cases
	(1) Staff costs	$547.00
	(2) Clerical handling staff costs	$
	(3) Materials	$
	(4) Deliver (to Court), attaching to post-sentence reports that go to CDRC, etc.)	$
	SUBTOTAL PERFORMING ASSESSMENTS	$739.00

County of Los Angeles Test Claim Survey

State Authorized Risk Assessment Tool for Sex Offenders (SARATSO):
Sex Offender's Punishment, Control, and Containment Act

3. INVESTIGATION

a.	Estimated number of new cases per year requiring SARATSO: 25	
	(1) Estimated Staff costs	$912.00
	(2) Estimated Clerical handling staff costs	$
	(3) Estimated Materials	$10.00
	(4) Estimated Deliver (to Court), attaching to post-sentence reports that go to CDRC, etc.)	$
	SUBTOTAL ESTIMATED COSTS FOR NEW CASES	$922.00
b.	Estimated number of additional female and juvenile cases: 25	
	(1) Estimated Staff costs	$912.00
	(2) Estimated Clerical handling staff costs	$
	(3) Estimated Materials	$10.00
	(4) Estimated Deliver (to Court), attaching to post-sentence reports that go to CDRC, etc.)	$
	SUBTOTAL ESTIMATED COSTS FOR ADDITION FEMALE & JUVENILE CASES	$922.00
	TOTAL ESTIMATED NUMBER OF CASES (a. + b.) 50	
	TOTAL ESTIMATED COSTS	$1844.00
	ESTIMATED COST PER CASE FOR ALL QUALIFYING CASES (total estimated costs divided by total estimated number of cases)	$ 36.88

4. SUPERVISION

a.	Estimated number of High Risk Cases	0
b.	Estimated cost for Electronic Monitoring of high risk cases.	
	(1) Staff costs	$
	(2) Equipment	$
	(3) Clerical support	$
	(4) Other materials	$
	SUBTOTAL ESTIMATED COSTS FOR ELECTRONIC MONITORING	$
	PER PROBATIONER/PER DAY COST (Total estimated costs divided by total estimated cases divided by 365)	$
c.	Estimated cost for "specialized, intensive" supervision of High Risk Cases	0
	(1) Staff costs	$
	(2) Equipment	$
	(3) Clerical support	$
	(4) Other materials	$
	SUBTOTAL ESTIMATED COSTS FOR SUPERVISION OF HIGH RISK CASES	$

County of Los Angeles Test Claim Survey

State Authorized Risk Assessment Tool for Sex Offenders (SARATSO): Sex Offender's Punishment, Control, and Containment Act

d.	Estimated cost for "specialized, intensive" supervision of additional female and juvenile high risk offenders	0
	(1) Staff costs	$
	(2) Equipment	$
	(3) Clerical support	$
	(4) Other materials	$
	SUBTOTAL ESTIMATED COSTS FOR SUPERVISION OF JUVENILE/FEMALE HIGH RISK OFFENDERS	$
e.	Estimated cost for any specialized treatment and/or special surveillance (e.g., polygraph, computer checks) for High Risk cases.	$
f.	Estimated cost for additional information on child victims (review and processing of psych evaluations).	$
g.	Estimated cost for preparation and distribution of the Facts of Offense Sheet (mandated for all register-able cases effective June 1, 2010.	$
	SUBTOTAL SUPERVISION COSTS	$

TOTAL COSTS (ACTUAL & ESTIMATED)

1.	Training	$ 7506.00
2.	Performing Assessments	$ 739.00
3.	Investigation	$ 1844.00
4.	Supervision	$ 0
	TOTAL	$ 10,089.00

Thank you. Please return your responses to:

Hasmik Yaghobyan at hyaghobyan@auditor.lacounty.gov by 12/23/08.

County of Los Angeles Test Claim Survey

State Authorized Risk Assessment Tool for Sex Offenders (SARATSO):
Sex Offender's Punishment, Control, and Containment Act

1. Name of Survey Respondent (agency) San **Francisco Adult Probation Department**

2. Contact Person(s) Diane Lim
Phone Number: (415) 553-1058
E-Mail Address diane.lim@sfgov.org

Below are listed the mandated activities. Staff costs should be calculated at the Productive Hourly rate. (San Francisco Adult Probation Department Staff hourly rates exclude benefits)

1. TRAINING

a.	Initial costs for training provided by the state. (One day-Train the trainer) **Sacramento - 2/14-15/08**	**$ 0**
	(1) Staff costs **Gabe Calvillo, Christy Henzi, Chauncey Robinson, Cristel Tullock**	$ 1,265.84
	(2) Travel **One night stay in hotel + Per diem**	$ 1,260
b.	Subsequent initial training for new/newly assigned training staff. **Private Training w/ Dr. Mark Koetting – 10/22/08**	**$500**
	(1) Staff costs **Hector Portillo, Chauncey Robinson, Oscar Martinez, Cristel Tullock**	$791.15
	(2) Travel	$ 145.47
c.	In-house training for certifying other staff to do assessments. (6-8 hrs)	**$ 0**
d.	Specialized supervision deputies (6-8 hrs every two years).	**$ 0**
e.	Subsequent training of the staff (every two years) **Hector Portillo, Chauncey Robinson, Oscar Martinez, Cristel Tullock, Christy Henzi, Gabe Calvillo**	**$ 1,517.50**
	SUBTOTAL TRAINING	$ 5,479.96

2. PERFORMING ASSESSMENTS

a.	New Cases (use average number per month for new cases since the assessment became mandatory – July 1, 2008) - **Average 1 hour each STATIC99**	Monthly average: **4 est.**
	(1) Staff costs **Hector Portillo, Chauncey Robinson, Oscar Martinez, Cristel Tullock, Christy Henzi, Gabe Calvillo – Annualized cost for 48 assessments per year**	$ 1,905.00
	(2) Clerical handling staff costs	$ 0
	(3) Materials Cost derived from materials budget per staff time	$ 32.16

	(4) Deliver (to Court), attaching to post-sentence reports that go to CDRC, etc.)	$ 0
b.	Existing cases (including any females or juveniles that have registered) **Actual count of existing cases for which STATIC99 was completed**	# of new cases **136 actual**
	(1) Staff costs **Cristel Tullock, Christy Henzi, Gabe Calvillo,**	$ 5,607.28
	(2) Clerical handling staff costs	$ 0
	(3) Materials Cost derived from materials budget per staff time	$ 91.12
	(4) Deliver (to Court), attaching to post-sentence reports that go to CDRC, etc.)	$ 0
	SUBTOTAL PERFORMING ASSESSMENTS	$ 7,635.56

County of Los Angeles Test Claim Survey

State Authorized Risk Assessment Tool for Sex Offenders (SARATSO):
Sex Offender's Punishment, Control, and Containment Act

1. Name of Survey Respondent (agency) SACRAMENTO COUNTY PROBATION

2. Contact Person(s) EILEEN RADFORD
   Phone Number: 916-875-0367
   E-Mail Address RADFURDE@SACCOUNTY.NET

Below are listed the mandated activities. Staff costs should be calculated at the Productive Hourly rate.

1. TRAINING

a.	Initial costs for training provided by the state. (One day-Train the trainer)	
	(1) Staff costs	$ 1,709
	(2) Travel	$
b.	Subsequent initial training for new/newly assigned training staff.	
	(1) Staff costs	$
	(2) Travel	$
c.	In-house training for certifying other staff to do assessments. (6-8 hrs)	$ 15,647
d.	Specialized supervision deputies (6-8 hrs every two years).	$
e.	Subsequent training of the staff (every two years)	$ 16,819
	SUBTOTAL TRAINING	$ 34,175

2. PERFORMING ASSESSMENTS

a.	New Cases (use average number per month for new cases since the assessment became mandatory – July 1, 2008) -	Monthly average: 11
	(1) Staff costs	$ 2,145
	(2) Clerical handling staff costs	$
	(3) Materials	$
	(4) Deliver (to Court), attaching to post-sentence reports that go to CDRC, etc.)	$
b.	Existing cases (including any females or juveniles that have registered)	# of new cases 640
	(1) Staff costs	$ 10,758
	(2) Clerical handling staff costs	$
	(3) Materials	$
	(4) Deliver (to Court), attaching to post-sentence reports that go to CDRC, etc.)	$
	SUBTOTAL PERFORMING ASSESSMENTS	$ 13,549

County of Los Angeles Test Claim Survey

State Authorized Risk Assessment Tool for Sex Offenders (SARATSO):
Sex Offender's Punishment, Control, and Containment Act

3. INVESTIGATION

a.	Estimated number of new cases per year requiring SARATSO:	
	(1) Estimated Staff costs	$
	(2) Estimated Clerical handling staff costs	$
	(3) Estimated Materials	$
	(4) Estimated Deliver (to Court), attaching to post-sentence reports that go to CDRC, etc.)	$
	SUBTOTAL ESTIMATED COSTS FOR NEW CASES	$
b.	Estimated number of additional female and juvenile cases: 25	
	(1) Estimated Staff costs	$ 419
	(2) Estimated Clerical handling staff costs	$
	(3) Estimated Materials	$
	(4) Estimated Deliver (to Court), attaching to post-sentence reports that go to CDRC, etc.)	$
	SUBTOTAL ESTIMATED COSTS FOR ADDITION FEMALE & JUVENILE CASES	$
	TOTAL ESTIMATED NUMBER OF CASES (a. + b.)	419
	TOTAL ESTIMATED COSTS	$ 419
	ESTIMATED COST PER CASE FOR ALL QUALIFYING CASES (total estimated costs divided by total estimated number of cases)	$ 1

4. SUPERVISION

a.	Estimated number of High Risk Cases	16
b.	Estimated cost for Electronic Monitoring of high risk cases.	
	(1) Staff costs	$ 13,286
	(2) Equipment	$ 29,700
	(3) Clerical support	$
	(4) Other materials	$
	SUBTOTAL ESTIMATED COSTS FOR ELECTRONIC MONITORING	$ 42,986
	PER PROBATIONER/PER DAY COST (Total estimated costs divided by total estimated cases divided by 365)	$ 7
c.	Estimated cost for "specialized, intensive" supervision of High Risk Cases	
	(1) Staff costs	$
	(2) Equipment	$
	(3) Clerical support	$
	(4) Other materials	$
	SUBTOTAL ESTIMATED COSTS FOR SUPERVISION OF HIGH RISK CASES	$

County of Los Angeles Test Claim Survey

State Authorized Risk Assessment Tool for Sex Offenders (SARATSO):
Sex Offender's Punishment, Control, and Containment Act

d.	Estimated cost for "specialized, intensive" supervision of additional female and juvenile high risk offenders	
	(1) Staff costs	$
	(2) Equipment	$
	(3) Clerical support	$
	(4) Other materials	$
	SUBTOTAL ESTIMATED COSTS FOR SUPERVISION OF JUVENILE/FEMALE HIGH RISK OFFENDERS	$
e.	Estimated cost for any specialized treatment and/or special surveillance (e.g., polygraph, computer checks) for High Risk cases.	$ 30,704
f.	Estimated cost for additional information on child victims (review and processing of psych evaluations).	$
g.	Estimated cost for preparation and distribution of the Facts of Offense Sheet (mandated for all register-able cases effective June 1, 2010.	$
	SUBTOTAL SUPERVISION COSTS	$ 73,692

TOTAL COSTS (ACTUAL & ESTIMATED)

1.	Training	$ 34,175
2.	Performing Assessments	$ 13,549
3.	Investigation	$ 419
4.	Supervision	$ 73,692
	TOTAL	$ 121,835

Thank you. Please return your responses to:

Hasmik Yaghobyan at hyaghobyan@auditor.lacounty.gov by 12/23/08.

County of Los Angeles Test Claim Survey

State Authorized Risk Assessment Tool for Sex Offenders (SARATSO): Sex Offender's Punishment, Control, and Containment Act

1. Name of Survey Respondent (agency) Marin County Probation Department

2. Contact Person(s) Teresa Torrence-Tillman
   Phone Number: 415-499-6610
   E-Mail Address ttillman@co.marin.ca.us

Below are listed the mandated activities. Staff costs should be calculated at the Productive Hourly rate.

1. TRAINING

a.	Initial costs for training provided by the state. (One day-Train the trainer)	
	(1) Staff costs	$740
	(2) Travel	$1440
b.	Subsequent initial training for new/newly assigned training staff.	
	(1) Staff costs	$454
	(2) Travel	$
c.	In-house training for certifying other staff to do assessments. (6-8 hrs)	$1032
d.	Specialized supervision deputies (6-8 hrs every two years).	$
e.	Subsequent training of the staff (every two years)	$
	SUBTOTAL TRAINING	$3666

2. PERFORMING ASSESSMENTS

a.	New Cases (use average number per month for new cases since the assessment became mandatory – July 1, 2008) -	Monthly average:
	(1) Staff costs	$
	(2) Clerical handling staff costs	$
	(3) Materials	$
	(4) Deliver (to Court), attaching to post-sentence reports that go to CDRC, etc.)	$
b.	Existing cases (including any females or juveniles that have registered)	# of new cases
	(1) Staff costs	$
	(2) Clerical handling staff costs	$
	(3) Materials	$
	(4) Deliver (to Court), attaching to post-sentence reports that go to CDRC, etc.)	$
	SUBTOTAL PERFORMING ASSESSMENTS	

County of Los Angeles Test Claim Survey

State Authorized Risk Assessment Tool for Sex Offenders (SARATSO):
Sex Offender's Punishment, Control, and Containment Act

3. INVESTIGATION

a.	Estimated number of new cases per year requiring SARATSO:	
	(1) Estimated Staff costs	$
	(2) Estimated Clerical handling staff costs	$
	(3) Estimated Materials	$
	(4) Estimated Deliver (to Court), attaching to post-sentence reports that go to CDRC, etc.)	$
	SUBTOTAL ESTIMATED COSTS FOR NEW CASES	$
b.	Estimated number of additional female and juvenile cases:	
	(1) Estimated Staff costs	$
	(2) Estimated Clerical handling staff costs	$
	(3) Estimated Materials	$
	(4) Estimated Deliver (to Court), attaching to post-sentence reports that go to CDRC, etc.)	$
	SUBTOTAL ESTIMATED COSTS FOR ADDITION FEMALE & JUVENILE CASES	$
	TOTAL ESTIMATED NUMBER OF CASES (a. + b.)	
	TOTAL ESTIMATED COSTS	$
	ESTIMATED COST PER CASE FOR ALL QUALIFYING CASES (total estimated costs divided by total estimated number of cases)	$

4. SUPERVISION

a.	Estimated number of High Risk Cases	
b.	Estimated cost for Electronic Monitoring of high risk cases.	
	(1) Staff costs	$
	(2) Equipment	$
	(3) Clerical support	$
	(4) Other materials	$
	SUBTOTAL ESTIMATED COSTS FOR ELECTRONIC MONITORING	$
	PER PROBATIONER/PER DAY COST (Total estimated costs divided by total estimated cases divided by 365)	$
c.	Estimated cost for "specialized, intensive" supervision of High Risk Cases	
	(1) Staff costs	$
	(2) Equipment	$
	(3) Clerical support	$
	(4) Other materials	$
	SUBTOTAL ESTIMATED COSTS FOR SUPERVISION OF HIGH RISK CASES	$

County of Los Angeles Test Claim Survey

State Authorized Risk Assessment Tool for Sex Offenders (SARATSO):
Sex Offender's Punishment, Control, and Containment Act

d.	Estimated cost for "specialized, intensive" supervision of additional female and juvenile high risk offenders	
	(1) Staff costs	$
	(2) Equipment	$
	(3) Clerical support	$
	(4) Other materials	$
	SUBTOTAL ESTIMATED COSTS FOR SUPERVISION OF JUVENILE/FEMALE HIGH RISK OFFENDERS	$
e.	Estimated cost for any specialized treatment and/or special surveillance (e.g., polygraph, computer checks) for High Risk cases.	$
f.	Estimated cost for additional information on child victims (review and processing of psych evaluations).	$
g.	Estimated cost for preparation and distribution of the Facts of Offense Sheet (mandated for all register-able cases effective June 1, 2010.	$
	SUBTOTAL SUPERVISION COSTS	$

TOTAL COSTS (ACTUAL & ESTIMATED)

1.	Training	$3666
2.	Performing Assessments	$
3.	Investigation	$
4.	Supervision	$
	TOTAL	$3666

Thank you. Please return your responses to:

Hasmik Yaghobyan at hyaghobyan@auditor.lacounty.gov by 12/23/08.

3. INVESTIGATION

a.	Estimated number of new cases per year requiring SARATSO: ***4 estimated X 12*** **mos. (THIS COMPUTATION APPEARS TO DUPLICATE THE COMPUTATION IN 2A ABOVE)**	**48**
	(1) Estimated Staff costs **Cristel Tullock, Christy Henzi, Gabe Calvillo, Hector Portillo, Chauncey Robinson, Oscar Martinez (annualized for 48 assessments per year**	$ 1,905.00
	(2) Estimated Clerical handling staff costs	$ 0
	(3) Estimated Materials Cost derived from materials budget per staff time	$ 32.16
	(4) Estimated Deliver (to Court), attaching to post-sentence reports that go to CDRC, etc.)	$ 0
	SUBTOTAL ESTIMATED COSTS FOR NEW CASES	$ 1.937.16
b.	Estimated number of additional female and juvenile cases: **The San Francisco Adult Probation Department has an averages case count of two female cases offenders. Female cases can not be assessed with the STATIC 99. The Department has no juvenile cases.**	**0**
	(1) Estimated Staff costs **Cristel Tullock, Christy Henzi, Gabe Calvillo**	$ 0
	(2) Estimated Clerical handling staff costs	$ 0
	(3) Estimated Materials Cost derived from materials budget per staff time	$ 0
	(4) Estimated Deliver (to Court), attaching to post-sentence reports that go to CDRC, etc.)	$ 0
	SUBTOTAL ESTIMATED COSTS FOR ADDITION FEMALE & JUVENILE CASES	$ 0
	TOTAL ESTIMATED NUMBER OF CASES (a. + b.)	48
	TOTAL ESTIMATED COSTS	$ 1,937.16
	ESTIMATED COST PER CASE FOR ALL QUALIFYING CASES (total estimated costs divided by total estimated number of cases)	$ 40.36

4. SUPERVISION

a.	Estimated number of High Risk Cases (As of December 23, 2008, 15 cases with STATIC score of 6 or higher)	**15 actual**
b.	Estimated cost for Electronic Monitoring of high risk cases.	**$ 0**
	(1) Staff costs **Cristel Tullock, Christy Henzi, Gabe Calvillo, possible overtime costs for DPO's**	$ 80,398.50
	(2) Equipment **Blackberry devise-account fees for GPS tracking** ***$25 daily for each probationer, one time set up fee $225 for each probationer***	**$136,875 One year** **$2,250 1 X Set up fee** **$139,125 Total**
	(3) Clerical support	$ 0
	(4) Other materials	$ 0
	SUBTOTAL ESTIMATED COSTS FOR ELECTRONIC MONITORING	$ 219,523.50

	PER PROBATIONER/PER DAY COST (Total estimated costs divided by total estimated cases divided by 365)	$ 40.10
c.	Estimated cost for "specialized, intensive" supervision of High Risk Cases	
	(1) Staff costs **Cristel Tullock, Christy Henzi, Gabe Calvillo**	$ 85,758.40
	(2) Equipment **cellular telephone, vehicle use**	$ 1,219.63
	(3) Clerical support	$ 0
	(4) Other materials	$ 1,393.60
	SUBTOTAL ESTIMATED COSTS FOR SUPERVISION OF HIGH RISK CASES	$ 88,371.63
d.	Estimated cost for "specialized, intensive" supervision of additional female and juvenile high risk offenders **Women can not be scored on the STATIC99 and we do not have any juveniles under supervision**	**None**
	(1) Staff costs	$ 0
	(2) Equipment	$ 0
	(3) Clerical support	$ 0
	(4) Other materials	$ 0
	SUBTOTAL ESTIMATED COSTS FOR SUPERVISION OF JUVENILE/FEMALE HIGH RISK OFFENDERS	$ 0
e.	Estimated cost for any specialized treatment and/or special surveillance (e.g., polygraph, computer checks) for High Risk cases. **The Department will collaborate with the SF Department of Public Health- Mental Health to determine assessment costs and will forward to LA County as soon as available.**	$ Undetermined
f.	Estimated cost for additional information on child victims (review and processing of psych evaluations). **APD will work with DA Victim unit and Dept of Public Health to determine costs for child victims, and will forward to LA County as soon as available.**	$ Undetermined
g.	Estimated cost for preparation and distribution of the Facts of Offense Sheet (mandated for all register-able cases effective June 1, 2010. **This state required document is not yet available for review, so we are unable to estimate preparation cost at this time.**	$ Undetermined
	SUBTOTAL SUPERVISION COSTS	$ 307,753.70

TOTAL COSTS (ACTUAL & ESTIMATED)

1.	Training	$ 5,479.96
2.	Performing Assessments	$ 7,635.56
3.	Investigation	$ 1,937.16
4.	Supervision	$ 307,895.13
	TOTAL	$ 322,947.81

Thank you. Please return your responses to:

Hasmik Yaghobyan at hyaghobyan@auditor.lacounty.gov by 12/23/08.

COUNTY OF LOS ANGELES
PROBATION DEPARTMENT
9150 EAST IMPERIAL HIGHWAY, DOWNEY, CALIFORNIA 90242
(562) 940-2593

ROBERT B. TAYLOR
Chief Probation Officer

State Authorized Risk Assessment Tool for Sex Offenders (SARATSO): Sex Offender's Punishment, Control, and Containment Act

Declaration of Edward Jewik

Edward Jewik makes the following declaration and statement under oath:

I, Edward Jewik, Administrative Services Bureau, Budget & Fiscal Services Manager, of the County of Los Angeles, am responsible for recovering the costs of complying with new State mandated programs, including provisions of the State Authorized Risk Assessment Tool for Sex Offenders (SARATSO): Sex Offender's Punishment, Control, and Containment Act as claimed herein.

I declare that, it is my information or belief that the Los Angeles County Probation department is mandated to perform services pursuant to the test claim legislation and is incurring costs well in excess of $1,000 per annum, the minimum cost that must be incurred to file a claim in accordance with Government Code Section 17564(a).

I declare that I have prepared the attached schedules detailing Los Angeles County's costs in implementing the test claim legislation.

I declare that it is my information and belief that the attached schedules fairly represent Los Angeles County's costs in implementing the test claim legislation.

I declare that it is my information and belief that the County's State mandated duties and resulting costs in implementing the test claim legislation are, in my opinion, reimbursable "costs mandated by the State", as defined in Government Code section 17514:

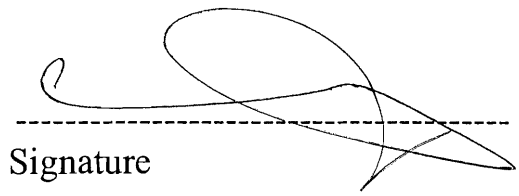
" ' Costs mandated by the State' means any increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution."

I am personally conversant with the foregoing facts and if required, I could and would testify to the statements made herein.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct of my own knowledge, except as to matters which are stated as information and belief, and as to those matters I believe them to be true.

1/6/09

Date and Place



Signature

COUNTY OF LOS ANGELES
DEPARTMENT OF AUDITOR-CONTROLLER

KENNETH HAHN HALL OF ADMINISTRATION
500 WEST TEMPLE STREET, ROOM 525
LOS ANGELES, CALIFORNIA 90012-2706
PHONE: (213) 974-8301 FAX: (213) 626-5427

WENDY L. WATANABE
ACTING AUDITOR-CONTROLLER

ASST. AUDITOR-CONTROLLERS

ROBERT A. DAVIS
JOHN NAIMO
MARIA M. OMS

January 21, 2009

County of Los Angeles Test Claim
State Authorized Risk Assessment Tool for Sex Offenders (SARATSO):
Sex Offender's Punishment, Control, and Containment Act

Declaration of Hasmik Yaghobyan

Hasmik Yaghobyan makes the following declaration and statement under oath:

I, Hasmik Yaghobyan, SB90 Administrator, in and for the County of Los Angeles, am responsible for filing test claims, reviews of State agency comments, Commission staff analysis, and for proposing parameters and guidelines (P's& G's) and amendments thereto, all for the complete and timely recovery of costs mandated by the State. Specifically, I have prepared the subject test claim.

Specifically, I declare that I have examined the County's State mandated duties and resulting costs, in implementing the subject law, and find that such costs as set forth in the subject test claim, are, in my opinion, reimbursable "costs mandated by the State", as defined in Government Code section 17514:

" ' Costs mandated by the State' means any increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution."

I am personally conversant with the foregoing facts and if so required, I could and would testify to the statements made herein.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct of my own knowledge, except as to the matters which are therein stated as information or belief, and as to those matters I believe them to be true.

1/21/09 Los Angeles, CA
Date and Place

Signature

8. CLAIM CERTIFICATION

*Read, sign, and date this section and insert at the end of the test claim submission.**

This test claim alleges the existence of a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514. I hereby declare, under penalty of perjury under the laws of the State of California, that the information in this test claim submission is true and complete to the best of my own knowledge or information or belief.

Wendy L. Watanabe
Print or Type Name of Authorized Local Agency or School District Official

Acting Auditor-Controller
Print or Type Title

Wendy L. Watanabe
Signature of Authorized Local Agency or School District Official

1/22/09
Date

** If the declarant for this Claim Certification is different from the Claimant contact identified in section 2 of the test claim form, please provide the declarant's address, telephone number, fax number, and e-mail address below.*

Wendy L. Watanabe
Claimant Representative Name

Acting Auditor-Controller
Title

Auditor-Controller
Organization

500 West Temple Street, Room 525
Street Address

Los Angeles, CA 90012
City, State, Zip

(213) 974-8301
Telephone Number

(213) 626-5427
Fax Number

wwatanabe@auditor.lacounty.gov
E-Mail Address

County of Los Angeles Test Claim
State Authorized Risk Assessment Tool for Sex Offenders(SARATSO):
Sex Offender's Punishment, Control, and Containment Act

Volume 2

VII. Documentation Exhibits

SB 1128 Senate Bill - CHAPTEREDBILL NUMBER: SB 1128 CHAPTERED
BILL TEXT

CHAPTER 337
FILED WITH SECRETARY OF STATE SEPTEMBER 20, 2006
APPROVED BY GOVERNOR SEPTEMBER 20, 2006
PASSED THE SENATE AUGUST 31, 2006
PASSED THE ASSEMBLY AUGUST 30, 2006
AMENDED IN ASSEMBLY AUGUST 22, 2006
AMENDED IN ASSEMBLY JUNE 22, 2006
AMENDED IN SENATE MAY 30, 2006
AMENDED IN SENATE MAY 26, 2006
AMENDED IN SENATE APRIL 18, 2006
AMENDED IN SENATE MARCH 22, 2006
AMENDED IN SENATE MARCH 7, 2006
AMENDED IN SENATE MARCH 2, 2006
AMENDED IN SENATE FEBRUARY 9, 2006

INTRODUCED BY Senator Alquist
(Principal coauthor: Senator Poochigian)
(Coauthor: Senator Perata)
(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, 1170.125, 1192.7, 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, 626.81, 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, 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, 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 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 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 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, 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 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 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 facility administrator.

Existing law, added by initiative acts that require amendments to its provisions to be approved by2/3 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 by2/3 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. 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 intensive and specialized probation supervision. 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 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 intensive and specialized 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 Office of Emergency Services to establish standards by which grants are awarded on a competitive basis to counties for SAFE teams.

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.

Appropriation: yes.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

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

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

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

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

(c) California's infrastructure for collecting, maintaining, and disseminating information about registered sex offenders must be retooled to ensure that law enforcement and the public have access to accurate, up-to-date, and relevant information about registered sex offenders.

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

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

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

(a) Adoption: retain permanently.

(b) Change of name: retain permanently.

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

(1) Except as otherwise specified: 10 years.

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

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

(4) Eminent domain: retain permanently.

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

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

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

(8) Paternity: retain permanently.

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

(10) Real property other than unlawful detainer: retain

permanently if the action affects title or an interest in real property.

(11) Small claims: 10 years.

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

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

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

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

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

(e) Criminal.

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

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

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

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

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

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

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

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

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

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

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

(12) 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.

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

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

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

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

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

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

(15) Naturalization index: retain permanently.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

288.3. (a) (1) Every person who, motivated by an unnatural or abnormal sexual interest in children, arranges a meeting with a minor or a 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 his or her genitals or pubic or rectal area, or engaging in lewd or lascivious behavior, shall be punished by a fine not

exceeding five thousand dollars ($5,000), by imprisonment in a county jail not exceeding one year, or by both the fine and imprisonment.

(2) Every person who violates this subdivision after a prior conviction for an offense listed in subparagraph (A) of paragraph (2) of subdivision (a) of Section 290 shall be punished by 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) Nothing in this section shall 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 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 15 years to life.

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

CHAPTER 5.5. Sex Offenders

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

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

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

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

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

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

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

(iii) Beginning on his or her first birthday following registration, a transient shall register annually, within five working days of his or her birthday, to update his or her registration with the entities described in clause (i). A transient

shall register in whichever jurisdiction he or she is physically present on that date. At the 30-day updates and the annual update, a transient 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), 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. The registration requirement for persons subject to this subparagraph shall become operative on November 25, 2000. The terms "employed or carries on a vocation" include employment whether or not financially compensated, volunteered, or performed for government or educational benefit.

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

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

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

of one of the offenses described in subparagraph (A).

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

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

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

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

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

(aa) Indecent exposure, pursuant to Section 314.

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

(ac) Incest, pursuant to Section 285.

(ad) Sodomy, pursuant to Section 286, or oral copulation, pursuant to Section 288a, provided that the offender notifies the Department of Justice that the sodomy or oral copulation conviction was for conduct between consenting adults, as described in subparagraph (G) and the department is able, upon the exercise of reasonable diligence, to verify that fact.

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

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

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

(G) (i) Notwithstanding any other subdivision, a person who was convicted before January 1, 1976, under subdivision (a) of Section 286, or Section 288a, shall not be required to register pursuant to this section for that conviction if the conviction was for conduct between consenting adults that was decriminalized by Chapter 71 of the Statutes of 1975 or Chapter 1139 of the Statutes of 1976. The

Department of Justice shall remove that person from the Sex Offender Registry, and the person is discharged from his or her duty to register pursuant to the following procedure:

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

(II) The person submits to the department a declaration stating that the person's conviction pursuant to either of those sections was for consensual conduct between adults that has been decriminalized. The declaration shall be confidential and not a public record, and shall include the person's name, address, telephone number, date of birth, and a summary of the circumstances leading to the conviction, including the date of the 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 of the form to the person, send one copy to the Department of Justice, and forward one copy to the appropriate law enforcement agency or agencies having local jurisdiction where the person expects to reside upon his or her discharge, parole, or release.

(2) 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 granted conditional release without supervised probation, or discharged upon payment of a fine, shall, prior to release or discharge, be informed of the duty to register under this section in open court by the court in which the person has been convicted, and the court 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. If the court finds that it is in the interest of the efficiency of the court, the court may assign the bailiff to require the person to read and sign forms under this section. The court 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 court shall give one copy of the form to the person, send one copy to the Department of Justice, and forward one copy to the appropriate law enforcement agency or agencies having local jurisdiction where the person expects

to reside upon his or her discharge, parole, or release.

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

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

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

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

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

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

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

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

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

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

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

(C) Any person who is preregistered pursuant to this subdivision

is required to be preregistered only once.

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

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

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

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

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

(E) Copies of adequate proof of residence, which shall be limited to a California driver's license, California identification card, recent rent or utility receipt, printed personalized checks or other recent banking documents showing that person's name and address, or any other information that the registering official believes is reliable. If the person has no residence and no reasonable expectation of obtaining a residence in the foreseeable future, the person shall so advise the registering official and shall 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 address for the registrant but shall indicate that he or she is serving a period of incarceration or commitment in a facility under the agency's jurisdiction. This paragraph shall apply to persons received in a department facility or state mental institution on or after January 1, 1999. The Department of Justice shall forward the change of address information to the agency with which the person last registered.

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) Except as otherwise provided by law, the statements, photographs, and fingerprints required by this section shall not be open to inspection by the public or by any person other than a

regularly employed peace officer or other law enforcement officer.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

290.04. (a) (1) The sex offender risk assessment tools authorized by this section for use with selected populations shall be known, with respect to each population, as the State-Authorized Risk Assessment Tool for Sex Offenders (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 Mental Health, in consultation with a representative of the Department of 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 Department of Mental Health, shall be to ensure that the SARATSO reflects the most reliable, objective and well-established protocols for predicting sex offender risk of recidivism, has been scientifically validated with multiple cross-validations, and is widely accepted by the courts. The committee shall consult with experts in the fields of risk assessment and the use of actuarial instruments in predicting sex offender risk, sex offending, sex offender treatment, mental health, and law, as it deems appropriate.

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

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

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

(d) On or before January 1, 2007, the SARATSO Review Committee shall research risk assessment tools for juveniles required to register as sex offenders. If the committee unanimously agrees on an appropriate risk assessment tool to be used to assess this population, it shall advise the Governor and the Legislature of the selected tool, and the State Department of Mental Health shall post the decision on its Internet Web site. Sixty days after the decision is posted, the selected tool shall become the SARATSO for juveniles.

(e) The committee shall periodically evaluate the SARATSO for each specified population. If the committee unanimously agrees on a change to the SARATSO for any population, it shall advise the Governor and the Legislature of the selected tool, and the State Department of Mental Health shall post the decision on its Internet Web site. Sixty days after the decision is posted, the selected tool shall become the SARATSO for that population.

(f) The committee shall perform other functions consistent with the provisions of this act or as may be otherwise required by law,

including, but not limited to, defining tiers of risk based on the SARATSO. The committee shall be immune from liability for good faith conduct under this act.

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

290.05. (a) On or before January 1, 2008, the SARATSO Review Committee established pursuant to Section 290.04, in consultation with the entities specified in subdivision (b), shall develop a training program for persons authorized by this code to administer the SARATSO, as set forth in Section 290.04.

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

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

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

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

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

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

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

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

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

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

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

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

(5) Each probation department shall assess every eligible person under its supervision who was not assessed pursuant to paragraph (4).

The assessment shall take place prior to the termination of probation, but no later than January 1, 2010.

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

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

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

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

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

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

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

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

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

290.3. (a) Every person who is convicted of any offense specified in subdivision (a) of Section 290 shall, in addition to any imprisonment or fine, or both, imposed for violation of the underlying offense, be punished by a fine of three hundred dollars ($300) upon the first conviction or a fine of five hundred dollars ($500) upon the second and each subsequent conviction, unless the

court determines that the defendant does not have the ability to pay the fine.

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

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

(1) Those moneys so designated shall be transferred to the Department of Justice Sexual Habitual Offender Fund created pursuant to paragraph (5) of subdivision (b) of Section 11170 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. All moneys collected by the department under this subdivision shall be transferred, once a month, to the Controller for deposit in the General Fund, as provided in subdivision (a), for transfer by the Controller, as provided in subdivision (b).

(d) An amount equal to one hundred dollars ($100) for every fine imposed pursuant to subdivision (a) in excess of one hundred dollars ($100) shall be transferred to the 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 specified in this section. The department shall update the Internet Web site on an ongoing basis. All information identifying the victim by name, birth date, address, or relationship to the registrant shall be excluded from the Internet Web site. The name or address of the person's employer and the listed person's criminal history other than the specific crimes for which the person is required to register shall not be included on the Internet Web site. The Internet Web site shall be translated into languages other than English, as determined by the department.

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

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

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

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

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

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

(D) Section 264.1.

(E) Section 269.

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

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

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

(I) Section 288.3, provided that the offense is a felony.

(J) Section 288.5.

(K) Section 288.7.

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

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

(c) (1) On or before July 1, 2005, with respect to a person who has been convicted of the commission or the attempted commission of any of the offenses listed in paragraph (2), the Department of Justice shall make available to the public via the Internet Web site his or her name and known aliases, a photograph, a physical description, including gender and race, date of birth, criminal

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

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

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

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

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

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

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

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

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

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

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

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

(D) Section 266j.

(E) Section 267.

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

(G) Section 288.3, provided that the offense is a misdemeanor.

(H) Section 626.81.

(I) Section 647.6.

(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, if 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 that the offender was the victim's parent, stepparent, sibling, or 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 that the offender was the victim's parent, stepparent, sibling, or 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

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

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

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

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

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

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

(h) For purposes of this section, "offense" includes the statutory predecessors of that offense, or any offense committed in another jurisdiction that, if committed or attempted to be committed in this state, would have been punishable in this state as an offense listed in subparagraph (A) of paragraph (2) of 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 1596.871 of the Health and Safety Code, and Section 432.7 of the Labor Code.

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

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

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

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

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

(p) The Attorney General, in collaboration with local law enforcement and others knowledgeable about sex offenders, shall develop strategies to assist members of the public in understanding and using publicly available information about registered sex offenders to further public safety. These strategies may include, but

are not limited to, a hotline for community inquiries, neighborhood and business guidelines for how to respond to information posted on this Web site, and any other resource that promotes public education about these offenders.

SEC. 19.5. 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 specified in this section. The department shall update the Internet Web site on an ongoing basis. All information identifying the victim by name, birth date, address, or relationship to the registrant shall be excluded from the Internet Web site. The name or address of the person's employer and the listed person's criminal history other than the specific crimes for which the person is required to register shall not be included on the Internet Web site. The Internet Web site shall be translated into languages other than English as determined by the department.

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

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

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

(iii) Whether he or she was subsequently incarcerated for any other felony, if that fact is reported to the department. If the department has no information about a subsequent incarceration for any felony, that fact shall be noted on the Internet Web site. However, no year of conviction shall be made available to the public unless the department also is able to make available the corresponding year of release of incarceration for that offense, and the required notation regarding any subsequent felony.

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

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

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

(iv) Any state or local facility that, prior to January 1, 2007, released a person who is required to register pursuant to Section 290 from incarceration whose incarceration was for a felony committed subsequently to the offense for which he or she is required to

register shall advise the Department of Justice of that fact in a manner and format approved by the department.

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

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

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

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

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

(D) Section 264.1.

(E) Section 269.

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

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

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

(I) Section 288.3, provided that the offense is a felony.

(J) Section 288.5.

(K) Section 288.7.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(D) Section 266j.

(E) Section 267.

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

(G) Section 288.3, provided that the offense is a misdemeanor.

(H) Section 626.81.

(I) Section 647.6.

(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 that the offender was the victim's parent, stepparent, sibling, or 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 that the offender was the victim's parent, stepparent, sibling, or 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 that 30 days after notification is attempted, make information about the offender available to the public on the Internet Web site as provided in this section.

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

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

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

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

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

(h) For purposes of this section, "offense" includes the statutory predecessors of that offense, or any offense committed in another jurisdiction that, if committed or attempted to be committed in this state, would have been punishable in this state as an offense listed in subparagraph (A) of paragraph (2) of 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 1596.871 of the Health

and Safety Code, and Section 432.7 of the Labor Code.

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

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

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

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

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

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

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

311.2. (a) 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, or prints, with intent to distribute or to exhibit to others, or who offers to distribute, distributes, or exhibits to others, any obscene matter is for a first offense, guilty of a misdemeanor. If the person has previously been convicted of any violation of this section, the court may, in addition to the punishment authorized in Section 311.9, impose a fine not exceeding fifty thousand dollars ($50,000).

(b) 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 to exhibit to, or to exchange with, others for commercial consideration, or who offers to distribute, distributes, or exhibits to, or exchanges with, others for commercial consideration, any obscene 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 and shall be punished by imprisonment in the state prison for two, three, or six years, or by a fine not exceeding one hundred thousand dollars ($100,000), in the absence of a finding that the defendant would be incapable of paying that fine, or by both that fine and imprisonment.

(c) 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 18 years of age or older, or who offers to distribute, distributes, or exhibits to, or exchanges with, a person 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, 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 chapter or to perform related activities in providing telephone services.

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

311.4. (a) Every person who, with knowledge that a person is a minor, or who, while in possession of any facts on the basis of which he or she should reasonably know that the person is a minor, hires, employs, or uses the minor to do or assist in doing any of the acts described in Section 311.2, 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. If the person has previously been convicted of any violation of this section, the court may, in addition to the punishment authorized in Section 311.9, impose a fine not exceeding fifty thousand dollars ($50,000).

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

(c) Every person who, with knowledge that a person is a minor under the age of 18 years, or who, while in possession of any facts on the basis of which he or she should reasonably know that the person is a minor under the age of 18 years, knowingly promotes, employs, uses, persuades, induces, or coerces a minor under the age of 18 years, or any parent or guardian of a minor under the age of 18 years under his or her control who knowingly permits the minor, to engage in or assist others to engage in either posing or modeling alone or with others for purposes of preparing any 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, filmstrip, or a live performance involving, sexual conduct by a minor under the age of 18 years alone or with other persons or animals, is guilty of a felony. It is not necessary to prove commercial purposes in order to establish a violation of this subdivision.

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

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

(e) This section does not apply to a legally emancipated minor or to lawful conduct between spouses if one or both are under the 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 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, not to exceed a total of 360 days in the county jail, or by both that fine and imprisonment. If 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 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 that fine and imprisonment, or by imprisonment in the state prison. If 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 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 the county jail for not more than one year, or by both that fine and imprisonment. If the person has been twice convicted of a violation of this chapter, a violation of Section 311.7 is punishable as a felony.

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

311.11. (a) Every person who knowingly possesses or controls any matter, 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, the production of which involves the use of a person under the age of 18 years, knowing that the matter depicts a person under the age of 18 years personally engaging in or simulating sexual conduct, as defined in subdivision (d) of Section 311.4, is guilty of a public offense and shall be punished by imprisonment in the county jail for up to one year, or by imprisonment in the state prison, or by a fine not exceeding two thousand five hundred dollars ($2,500), or by both the fine and imprisonment.

(b) Any person who commits a violation of subdivision (a) and who has been previously convicted of a crime for which registration is required pursuant to Section 290, or any person who has ever been adjudicated 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, is guilty of a felony and shall be punished by imprisonment for two, four, or six years.

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

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

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

626.8. (a) Any person who comes into any school building or upon any school ground, or street, sidewalk, or public way adjacent thereto, without lawful business thereon, and whose presence or acts interfere with the peaceful conduct of the activities of the school or disrupt the school or its pupils or school activities, is guilty of a misdemeanor if he or she does any of the following:

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

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

(3) Has otherwise established a continued pattern of unauthorized

entry.

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

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

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

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

(3) If the defendant has been previously convicted two or more times of a violation of 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. 25. Section 626.81 is added to the Penal Code, to read:

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 and written permission from the chief administrative official of that school, is guilty of a misdemeanor.

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

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

(2) If the defendant has been previously convicted once of a violation of this section, by imprisonment in a county jail for a period of not less than 10 days or more than six months, or by both imprisonment and a fine of not exceeding five hundred dollars ($500),

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

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

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

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

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

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

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

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

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

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

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

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

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

653b. (a) Except as provided in subdivision (b), every person who

loiters about any school or public place at or near which children attend or normally congregate and who remains at any school or public place at or near which children attend or normally congregate, or who reenters or comes upon a school or place within 72 hours, after being asked to leave by the chief administrative official of that school or, in the absence of the chief administrative official, the person acting as the chief administrative official, or by a member of the security patrol of the school district who has been given authorization, in writing, by the chief administrative official of that school to act as his or her agent in performing this duty, or a city police officer, or sheriff or deputy sheriff, or Department of the California Highway Patrol peace officer is a vagrant, and is punishable by a fine of not exceeding one thousand dollars ($1,000) or by imprisonment in the county jail for not exceeding six months, or by both the fine and the imprisonment.

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

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

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

(3) If the defendant has been previously convicted two or more times of a violation of this section or former Section 653g, by imprisonment in a county jail for a period of not less than 90 days or more than six months, or by both imprisonment and a fine of not exceeding two thousand dollars ($2,000), and shall not be released on probation, parole, or any other basis until he or she has served at least 90 days.

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

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

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

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

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

(c) The facility administrator may refuse to register, impose restrictions on registration, or revoke the registration of a sex offender if he or she has a reasonable basis for concluding that the

offender's presence or acts would disrupt, or have disrupted, the facility, any resident, employee, volunteer, or visitor; would result, or has resulted, in damage to property; the offender's presence at the facility would interfere, or has interfered, with the peaceful conduct of the activities of the facility; or would otherwise place at risk the facility, or any employee, volunteer or visitor.

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

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

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

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

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

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

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

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

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

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

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

(c) For the purpose of this section, "violent felony" shall mean

any of the following:
(1) Murder or voluntary manslaughter.
(2) Mayhem.
(3) Rape, as defined in paragraph (2) or (6) of subdivision (a) of Section 261 or paragraph (1) or (4) of subdivision (a) of Section 262.
(4) Sodomy, as defined in subdivision (c) or (d) of Section 286.
(5) Oral copulation, as defined in subdivision (c) or (d) of Section 288a.
(6) A lewd or lascivious act, as defined in subdivision (a) or (b) of Section 288.
(7) Any felony punishable by death or imprisonment in the state prison for life.
(8) Any felony in which the defendant inflicts great bodily injury on any person other than an accomplice which has been charged and proved as provided for in Section 12022.7, 12022.8, or 12022.9 on or after July 1, 1977, or as specified prior to July 1, 1977, in Sections 213, 264, and 461, or any felony in which the defendant uses a firearm which use has been charged and proved as provided in subdivision (a) of Section 12022.3, or Section 12022.5 or 12022.55.
(9) Any robbery.
(10) Arson, in violation of subdivision (a) or (b) of Section 451.

(11) Sexual penetration, as defined in subdivision (a) or (j) of Section 289.
(12) Attempted murder.
(13) A violation of Section 12308, 12309, or 12310.
(14) Kidnapping.
(15) Assault with the intent to commit a specified felony, in violation of Section 220.
(16) Continuous sexual abuse of a child, in violation of Section 288.5.
(17) Carjacking, as defined in subdivision (a) of Section 215.
(18) Rape, spousal rape, or sexual penetration, in concert, in violation of Section 264.1.
(19) Extortion, as defined in Section 518, which would constitute a felony violation of Section 186.22 of the Penal Code.
(20) Threats to victims or witnesses, as defined in Section 136.1, which would constitute a felony violation of Section 186.22 of the Penal Code.
(21) Any burglary of the first degree, as defined in subdivision (a) of Section 460, wherein it is charged and proved that another person, other than an accomplice, was present in the residence during the commission of the burglary.
(22) Any violation of Section 12022.53.
(23) A violation of subdivision (b) or (c) of Section 11418.
The Legislature finds and declares that these specified crimes merit special consideration when imposing a sentence to display society's condemnation for these extraordinary crimes of violence against the person.
(d) For the purposes of this section, the defendant shall be deemed to remain in prison custody for an offense until the official discharge from custody or until release on parole, whichever first occurs, including any time during which the defendant remains subject to reimprisonment for escape from custody or is reimprisoned on revocation of parole. The additional penalties provided for prior prison terms shall not be imposed unless they are charged and

admitted or found true in the action for the new offense.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) In lieu of the term provided in Section 1170.1, a full, separate, and consecutive term may be imposed for each violation of an offense specified in subdivision (e) if the crimes involve the same victim on the same occasion. A term may be imposed consecutively pursuant to this subdivision if a person is convicted of at least one offense specified in subdivision (e). If the term is imposed consecutively pursuant to this subdivision, it 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.

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

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

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

(e) This section 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 another jurisdiction that includes all of the elements of an offense specified in subdivision (c).

(2) The defendant kidnapped the victim of the present offense and the movement of the victim substantially increased the risk of harm

to the victim over and above that level of risk necessarily inherent in the underlying offense in subdivision (c).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(h) 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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(e) This section shall apply only if the defendant's status as a habitual sexual offender is alleged in the accusatory pleading, and

either admitted by the defendant in open court, or found to be true by the trier of fact.

SEC. 35. Section 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. 36. Section 1170.125 of the Penal Code is amended to read:

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

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

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

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

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

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

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

(1) Murder or voluntary manslaughter; (2) mayhem; (3) rape; (4) sodomy by force, violence, duress, menace, threat of great bodily injury, or fear of immediate and unlawful bodily injury on the victim or another person; (5) oral copulation by force, violence, duress, menace, threat of great bodily injury, or fear of immediate and unlawful bodily injury on the victim or another person; (6) lewd or lascivious act on a child under 14 years of age; (7) any felony

punishable by death or imprisonment in the state prison for life; (8) any felony in which the defendant personally inflicts great bodily injury on any person, other than an accomplice, or any felony in which the defendant personally uses a firearm; (9) attempted murder; (10) assault with intent to commit rape or robbery; (11) assault with a deadly weapon or instrument on a peace officer; (12) assault by a life prisoner on a noninmate; (13) assault with a deadly weapon by an inmate; (14) arson; (15) exploding a destructive device or any explosive with intent to injure; (16) exploding a destructive device or any explosive causing bodily injury, great bodily injury, or mayhem; (17) exploding a destructive device or any explosive with intent to murder; (18) any burglary of the first degree; (19) robbery or bank robbery; (20) kidnapping; (21) holding of a hostage by a person confined in a state prison; (22) attempt to commit a felony punishable by death or imprisonment in the state prison for life; (23) any felony in which the defendant personally used a dangerous or deadly weapon; (24) selling, furnishing, administering, giving, or offering to sell, furnish, administer, or give to a minor any heroin, cocaine, phencyclidine (PCP), or any methamphetamine-related drug, as described in paragraph (2) of subdivision (d) of Section 11055 of the Health and Safety Code, or any of the precursors of methamphetamines, as described in subparagraph (A) of paragraph (1) of subdivision (f) of Section 11055 or subdivision (a) of Section 11100 of the Health and Safety Code; (25) any violation of subdivision (a) of Section 289 where the act is accomplished against the victim's will by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person; (26) grand theft involving a firearm; (27) carjacking; (28) any felony offense, which would also constitute a felony violation of Section 186.22; (29) assault with the intent to commit mayhem, rape, sodomy, or oral copulation, in violation of Section 220; (30) throwing acid or flammable substances, in violation of Section 244; (31) assault with a deadly weapon, firearm, machinegun, assault weapon, or semiautomatic firearm or assault on a peace officer or firefighter, in violation of Section 245; (32) assault with a deadly weapon against a public transit employee, custodial officer, or school employee, in violation of Sections 245.2, 245.3, or 245.5; (33) discharge of a firearm at an inhabited dwelling, vehicle, or aircraft, in violation of Section 246; (34) commission of rape or sexual penetration in concert with another person, in violation of Section 264.1; (35) continuous sexual abuse of a child, in violation of Section 288.5; (36) shooting from a vehicle, in violation of subdivision (c) or (d) of Section 12034; (37) intimidation of victims or witnesses, in violation of Section 136.1; (38) criminal threats, in violation of Section 422; (39) any attempt to commit a crime listed in this subdivision other than an assault; (40) any violation of Section 12022.53; (41) a violation of subdivision (b) or (c) of Section 11418; and (42) any conspiracy to commit an offense described in this subdivision.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(e) Except in unusual cases where the interests of justice would

best be served if the person is granted probation, probation shall not be granted to any of the following persons:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(h) If a defendant is convicted of a felony and a probation report is prepared pursuant to subdivision (b) or (g), the probation officer may obtain and include in the report a statement of the comments of the victim concerning the offense. The court may direct the probation officer not to obtain a statement if the victim has in fact testified at any of the court proceedings 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. 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 Corrections and Rehabilitation a report of the circumstances surrounding the offense and the prior record and history of the defendant, as may be required by the Secretary of the Department of Corrections and Rehabilitation.

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

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

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

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

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

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

(c) The probation officer shall send a copy of the Facts of Offense Sheet to the Department of Justice Sex Offender Tracking Program within 30 days of the person's sex offense conviction, and it

shall be made part of the registered sex offender's file maintained by the Sex Offender Tracking Program. The Facts of Offense Sheet shall thereafter be made available to law enforcement by the Department of Justice, which shall post it with the offender's record on the Department of Justice Internet Web site maintained pursuant to Section 290.46, and shall be accessible only to law enforcement.

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

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

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

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

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

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

(A) Murder.

(B) Robbery, in violation of Section 211.

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

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

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

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

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

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

(I) Carjacking, in violation of Section 215.

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

(K) Torture, in violation of Section 206.

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

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

(N) Sodomy, in violation of Section 286.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) Murder.

(2) Robbery, in violation of Section 211.

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

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

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

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

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

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

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

(10) Sodomy, in violation of Section 286.

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

(12) Carjacking, in violation of Section 215.

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

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

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

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

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

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

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

(4) For any person being evaluated as a sexually violent predator pursuant to Article 4 (commencing with Section 6600) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code, parole shall toll from evaluation through the period of commitment, 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, actual commitment, and any time spent on conditional release under court monitoring. Parole shall be tolled through any subsequent evaluation and commitment proceedings, actual commitment, and any time spent on conditional release under court monitoring. 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), (5), (6), (11), (15), (16), or (18) of subdivision (c) of Section 667.5 shall be released on parole for a period not exceeding 10 years.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

amendments.

SEC. 47. Section 3005 of the Penal Code is amended to read:

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

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

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

SEC. 48. Section 3072 is added to the Penal Code, to read:

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

(b) (1) The program shall be based upon the relapse prevention model and shall include referral to specialized services, such as substance abuse treatment, for offenders needing those specialized services.

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

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

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

(B) The offender has been clinically assessed.

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

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

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

(3) Notwithstanding any other provision of law, inmates who are

condemned to death or sentenced to life without the possibility of parole are ineligible to participate in treatment.

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

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

(2) To the maximum extent that is practical and feasible, offenders participating in the treatment program shall be held in a separate area of the prison facility, segregated from any non-sex offenders held at the same prison, and treatment in the pilot program shall be provided in program space segregated, to the maximum extent that is practical and feasible, from program space for any non-sex offenders held at the same prison.

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

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

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

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

SEC. 49. Section 12022.75 of the Penal Code is amended to read:

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

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

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

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

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

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

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

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

SEC. 50. Section 13887 of the Penal Code is amended to read:

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

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

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

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

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

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

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

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

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

13887.5. The Office of Emergency Services shall establish standards by which grants are awarded on a competitive basis to counties for SAFE teams. The grants shall be awarded to innovative teams designed to promote the purposes of this chapter.

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

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

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

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

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

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

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

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

(E) A prior conviction for which the inmate received a grant of

probation for an offense described in subdivision (b).

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

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

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

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

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

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

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

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

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

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

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

criminal behavior.

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

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

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

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

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

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

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

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

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

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

to the State Department of Mental Health for a full evaluation of whether the person meets the criteria in Section 6600.

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

(d) Pursuant to subdivision (c), the person shall be evaluated by two practicing psychiatrists or psychologists, or one practicing psychiatrist and one practicing psychologist, designated by the Director of Mental Health. If both evaluators concur that the person has a diagnosed mental disorder so that he or she is likely to engage in acts of sexual violence without appropriate treatment and custody, the Director of Mental Health shall forward a request for a petition for commitment under Section 6602 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.

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

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

(g) Any independent professional who is designated by the Secretary of the Department of Corrections and Rehabilitation or the Director of Mental Health for purposes of this section shall not be a state government employee, shall have at least five years of experience in the diagnosis and treatment of mental disorders, and shall include psychiatrists and licensed psychologists who have a doctoral degree in psychology. The requirements set forth in this section also shall apply to any professionals appointed by the court to evaluate the person for purposes of any other 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 unconditionally released at the end of parole, whichever is applicable. If the court or jury determines that the person is a sexually violent predator, the person shall be committed for an indeterminate term to the custody of the State Department of Mental Health for appropriate treatment and confinement in a secure facility designated by the Director of Mental Health. Time spent on conditional release shall not count toward the term of commitment, unless the person is placed in a locked facility by the conditional release program, in which case the time in a locked facility shall count toward the term of commitment. The facility shall be located on the grounds of an institution under the jurisdiction of the Department of Corrections and Rehabilitation.

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

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

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

all commitment proceedings.

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

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

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

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

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

(e) If the court or jury rules against the committed person at the hearing conducted pursuant to subdivision (d), the term of commitment of the person shall run for an indeterminate period from the date of this ruling. If the court or jury rules for the committed person, he or she shall be unconditionally released and unconditionally discharged.

(f) In the event that the State Department of Mental Health has reason to believe that a person committed to it as a sexually violent

predator is no longer a sexually violent predator, it shall seek judicial review of the person's commitment pursuant to the procedures set forth in Section 7250 in the superior court from which the commitment was made. If the superior court determines that the person is no longer a sexually violent predator, he or she shall be unconditionally released and unconditionally discharged.

SEC. 58. 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.

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.

SEC. 61. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain costs that may be incurred by a local agency or school district because, in that regard, this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

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

SEC. 62. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are::

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

SB 1178 Senate Bill - Bill Analysis
BILL ANALYSIS

SENATE RULES COMMITTEE Office of Senate Floor Analyses 1020 N Street, Suite 524 (916) 651-1520 Fax: (916) 327-4478	SB 1128

UNFINISHED BUSINESS

Bill No: SB 1128
Author: Alquist (D), et al
Amended: 8/22/06
Vote: 27 - Urgency

SENATE PUBLIC SAFETY COMMITTEE : 6-0, 3/15/06
AYES: Migden, Poochigian, Cedillo, Margett, Perata, Romero

SENATE APPROPRIATIONS COMMITTEE : 7-0, 5/25/06
AYES: Murray, Alarcon, Alquist, Escutia, Florez, Romero, Torlakson
NO VOTE RECORDED: Aanestad, Ashburn, Battin, Dutton, Ortiz, Poochigian

SENATE FLOOR : 38-0, 6/1/06
AYES: Aanestad, Ackerman, Alarcon, Alquist, Ashburn, Battin, Bowen, Cedillo, Chesbro, Cox, Denham, Ducheny, Dunn, Dutton, Escutia, Figueroa, Florez, Hollingsworth, Kehoe, Kuehl, Lowenthal, Machado, Maldonado, Margett, McClintock, Morrow, Murray, Ortiz, Perata, Poochigian, Romero, Runner, Scott, Simitian, Soto, Speier, Torlakson, Vincent
NO VOTE RECORDED: Migden

ASSEMBLY FLOOR : 75-0, 8/30/06 - See last page for vote

SUBJECT : Sex Offenders

SOURCE : Author

CONTINUED

DIGEST : This bill enacts the Sex Offender Punishment, Control, and Containment Act of 2006 and makes specified legislative findings and declarations concerning sex offenders.

Assembly Amendments : (1) authorize the Department of Corrections and Rehabilitation to establish a specialized sex offender treatment program for inmates, (2) add provisions providing for specified punishment for committing sex acts with a child 10 years of age or younger, (3) recast provision relative to punishment for possession of child pornography materials, (4) recast provision relative to a sex offender who enters upon or loiters around any school yard, (5) requires the Office of Emergency Services instead of the Corrections Standards Authority to award grants to SAFE teams, (6) deletes $6,000,000 appropriation to implement #5, (7) add double-jointing language, and (8) add coauthors.

ANALYSIS :

Existing law:

1. Includes the One-Strike Sex Crime Sentencing Law that provides sentences of 15-years-to-life or 25-years-to-life in certain sex crimes if specified circumstances in aggravation are found to be true.

2. States that the qualifying sex crimes under the One-Strike Sex Law are forcible rape, forcible spousal rape, rape by a foreign object, forcible sodomy, forcible oral copulation, lewd and lascivious acts with a child under the age of 14 accomplished by force or duress, and lewd and lascivious acts with a child under the age of 14 accomplished by other than force or duress where the defendant is not eligible for probation.

3. Provides that a defendant convicted of a One-Strike sex offense is only eligible for probation if he or she is also eligible for probation under Penal Code Section 1203.066, which allows probation for a person convicted of lewd conduct in intra-family cases where the defendant is particularly likely to be rehabilitated and the grant of probation is in the best interests of the

child.

4. Denies probation for any person convicted of lewd conduct committed by force, violence, duress or menace.

5. Provides that every person who possesses or controls any matter depicting a person under the age of 18 years engaging in sexual conduct or simulating sexual conduct is guilty of a misdemeanor with imprisonment in the county jail up to one year or a fine not exceeding $2,500. If a person has a prior conviction, he or she is guilty of a felony and subject to imprisonment in the state prison for two, four, or six years. It is not necessary to prove that the matter in question is obscene.

6. Provides that every person who sends, brings, possesses, prepares, publishes, produces, duplicates or prints any obscene matter depicting a person under the age of 18 years engaging in or simulating sexual conduct with the intent to distribute, exhibit, or exchange such material is guilty of either a misdemeanor or a felony, punishable by imprisonment in the county jail up to one year or in the state prison for 16 months, 2 or 3 years and a fine not to exceed $10,000.

7. Provides that every person who sends, brings, possesses, prepares, publishes, produces, duplicates or prints any obscene matter depicting a person under the age of 18 years engaging in or simulating sexual conduct for commercial purposes is guilty of a felony, punishable by imprisonment in the state prison for two, three, or six years and a fine up to $100,000.

8. Provides that every person who sends, brings, possesses, prepares, publishes, produces, duplicates or prints any matter depicting a person under the age of 18 years engaging in or simulating sexual conduct to distribute, exhibit, or exchange with a minor is guilty of a felony, punishable by imprisonment in the state prison for 16 months, 2 or 3 years. It is not necessary to prove commercial consideration or that the matter is obscene.

9. Provides that any person who hires or uses a minor to

assist in the possession, preparation or distribution of obscene matter or for commercial purposes is guilty of a felony, punishable by imprisonment in the state prison for three, six, or eight years.

10. Provides that an inmate serving a determinate term of imprisonment shall be released on parole for a period of three years unless the parole authority for good cause waives the period of parole and discharges the inmate from custody. A person convicted of "violent" sex offenses, as defined, and sentenced to determinate terms shall be released on parole for a period of five years unless the parole authority for good cause waives the period of parole.

11. Defines a "SVP" as an inmate "who has been convicted of a sexually violent offense against two or more victims and who has a diagnosed mental disorder that makes the person a danger to the health and safety of others in that it is likely that he or she will engage in sexually violent criminal behavior."

12. States that for any subsequent extended commitment, the term of commitment shall be for two years. The term shall commence on the date of the termination of the previous commitment.

13. Provides that for the purposes of extended commitments, the person shall be evaluated by two practicing psychologists or psychiatrists, or by one practicing psychiatrist and one practicing psychologist designated by DMH, both of whom must concur that the person has a diagnosed mental disorder so that he or she is likely to engage in acts of sexual violence without appropriate treatment and custody.

14. Provides that a prisoner found to be a SVP could be civilly confined based on a judicial commitment. A "SVP" is defined as a person who has been convicted of a "sexually violent offense," as specified, against two or more victims for whom he or she received a determinate sentence. A SVP must have a diagnosable mental disorder that makes the person a danger to the health and safety of others in that it is likely that he or she will

engage in sexually violent criminal behavior.

15. Defines "sexually violent offenses" as specified sexual acts (rape or spousal rape, sex crimes in concert, lewd conduct with a child under 14 years, foreign or unknown object rape, sodomy and oral copulation) committed by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person.

16. Provides for a hearing procedure to determine whether there is probable cause to believe that a person who is the subject of a petition for civil commitment as a SVP is likely to engage in sexually violent predatory criminal behavior upon his or her release from prison. 17)Requires a jury trial at the request of either party with a determination beyond a reasonable doubt that the person is a SVP.

FISCAL EFFECT : Appropriation: Yes Fiscal Com.: Yes Local: Yes

According to the Assembly Appropriations Committee, major annual General Fund (GF) costs, potentially in the range of $200,000 million. Major costs include:

1. If the numerous penalty-related provisions of this bill result in a 10% increase in the population of sex offenders in state prison, the annual GF cost would eventually exceed $25 million.

2. One-time state capital outlay costs, within a few years, potentially in the low hundreds of millions of dollars for construction of additional state mental hospital and prison beds.

3. Annual General Fund costs of about $3 million per year for three years to update DOJ's Violent Crime Information Network and add information to the Megan's Law Web site. Ongoing maintenance costs of about $500,000.

4. Costs in the tens of millions of dollars for more staff and more revocations.

5. Creating a state and local scheme for assessing the risk presented by convicted sex offenders, training state and local authorities in the use of the assessment tool, assessing sex offenders, increasing state and local parole and probation staff to supervise more offenders for longer periods of time and increasing the scope of probation reports, will result in state costs in the tens of millions of dollars.

6. Major changes to the SVP program will eventually result in increased annual costs in the tens of millions of dollars from increasing the number of SVP referrals, hearings, and commitments, and increasing the length of commitments.

7. Increasing fines on persons convicted of registerable sex crimes (from $200 to $300 on the first conviction, and from $300 to $500 on a subsequent conviction), will likely result in a relatively minor increase in revenue, probably less than $1 million.

8. In-custody sex offender relapse treatment program would likely cost tens of millions of dollars. To the extent these programs are effective, and reduce recidivism, there could be corresponding out-year savings.

9. This bill appropriates $495,000 to OES for child abuse and abduction prevention programs.

SUPPORT : (Verified as of 6/27 - Assembly Public Safety Committee analysis)

California Association of Health Facilities
California Association of Homes and Services for the Aging
California Coalition Against Sexual Assault
California District Attorneys Association
California Police Chiefs Association
California State Parent Teacher Association
City of San Jose
Community Solutions
Crime Victims United
Office of the Attorney General
Peace Officers Research Association

Santa Clara County District Attorney's Office

ARGUMENTS IN SUPPORT : According to the author's office, "The purpose of the bill is to provide a comprehensive, proactive approach to preventing the victimization of Californians by sex offenders. Under current law, California's tactical methods and infrastructure are insufficient for law enforcement to appropriately assess, convict and monitor sex offenders.

"SB 1128 is the product of months of discussion with, and input from, experts in the area. It incorporates a broad spectrum of approaches recognized by law enforcement and avoids key flaws that have marred other bills on this subject, such as residency requirements that dump offenders into rural communities or provisions that inadvertently tie the hands of police in performing Internet sting operations.

"SB 1128, the Sex Offender Punishment, Control and Containment Act of 2006: Increases the prison term for child rape to 25 years to life; Expands the Megan's Law database; Toughens penalties for child pornography; Toughens penalties for Internet predators; Ensures police can use on-line decoys to catch Internet predators; Discourages prosecutors from offering plea bargains in sex offense cases; Gives state and local officials a new system to monitor dangerous parolees; Increases parole time for violent sexual offenses; Keeps sex offenders away from schools, parks, and other places where vulnerable populations, including the elderly and disabled, congregate.

"By taking this comprehensive approach SB 1128 will make all of California's communities safer from all sexual predators, not just some."

ASSEMBLY FLOOR :
AYES: Aghazarian, Arambula, Baca, Bass, Benoit, Berg, Bermudez, Blakeslee, Bogh, Calderon, Canciamilla, Chan, Chavez, Chu, Cogdill, Cohn, Coto, Daucher, De La Torre, DeVore, Dymally, Emmerson, Evans, Frommer, Garcia, Haynes, Jerome Horton, Shirley Horton, Houston, Huff,

Jones, Karnette, Keene, Klehs, Koretz, La Malfa, La Suer, Laird, Leno, Leslie, Levine, Lieber, Lieu, Liu, Matthews, Maze, McCarthy, Montanez, Mountjoy, Mullin, Nakanishi, Nation, Nava, Niello, Oropeza, Parra, Pavley, Plescia, Richman, Ridley-Thomas, Sharon Runner, Ruskin, Salinas, Spitzer, Strickland, Torrico, Tran, Umberg, Vargas, Villines, Walters, Wolk, Wyland, Yee, Nunez
NO VOTE RECORDED: Goldberg, Hancock, Negrete McLeod, Saldana, Vacancy

RJG:nl 8/31/06 Senate Floor Analyses

SUPPORT/OPPOSITION: SEE ABOVE

**** END ****

SENATE THIRD READING
SB 1128 (Alquist)
As Amended August 22, 2006
2/3 vote Urgency

SENATE VOTE :38-0

PUBLIC SAFETY 6-0 APPROPRIATIONS 13-0

Ayes:	Leno, La Suer, Cohn, Dymally, Spitzer, Lieber	Ayes:	Chu, Bass, Berg, Calderon, De La Torre, Karnette, Klehs, Leno, Nation, Laird, Ridley-Thomas, Saldana, Yee

SUMMARY : Creates the "Sex Offender Punishment, Control and Containment Act of 2006" which makes several changes to the law relating to sex offenders. Specifically, this bill :

1) Requires every district attorney and Department of Justice (DOJ) to keep all records relating to persons required to register as a sex offender for a period of 75 years after the disposition of the case. This provision only applies to convictions occurring after the enactment of this bill.

2) States that any person who kidnaps or carries away any person with the intent commit a specified sex offense shall be punished by imprisonment in the state prison for life with the possibility of parole.

3) Adds rape, sodomy and oral copulation with the threat of retaliation, and sodomy and oral copulation in concert to the list of offenses eligible for a term of 15-years-to-life as an aggravated sexual assault on a child.

4) Requires that when sentencing an offender on charges of aggravated sexual assault of a child, as specified, the court must impose consecutive sentences if the crime(s) involves separate victims or separate acts, as specified.

5) Punishes any person who, motivated by an unnatural or abnormal

sexual interest in children, arranges a meeting with a minor or a 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 his or her genitals or pubic or rectal area, or engaging in lewd or lascivious behavior, by a fine not exceeding 5,000; by imprisonment in a county jail not exceeding one year; or, by both the fine and imprisonment.

6) Punishes any person who annoys or molests a child, as specified, after having entered a dwelling without consent, as specified, with not only a term of imprisonment up to one year in the county jail or in the state prison for a term of 16 months, 2 or 3 years and by a fine of $5,000.

7) Provides that any person previously convicted of a registerable sex offense and who arranges a meeting with a minor, as specified, shall be sentenced to a term of 16 months, 2 or 3 years in state prison.

8) States that a person who arranges a meeting with a minor, as specified, and who goes to the arranged meeting place on or about the arranged time shall be punished by a term of two, three or four years.

9) Specifies that prosecution for arranging a meeting with a minor, as specified, shall not prohibit prosecution under any other provision of law.

10) Clarifies that no other act of substantial sexual conduct, as specified, with a child under the age of 14 years be charged with more than one offense of continuous sexual abuse of a child involving the same victim unless the other charge must have occurred outside the specified time period.

11) Punishes any adult who engages in sexual intercourse or sodomy with a child under the age of 10 years of age or younger by sentencing the offender to a term of 25-years-to-life.

12) States that when an offender registers as a sex offender pursuant to existing law, the registering agency shall give the registrant a copy of the completed DOJ form each time the person registers or re-registers, including the annual update.

13) Adds trespass on school grounds as a felony registered sex offender to the list of crimes that require an offender to register as a sex offender.

14) Provides DOJ renovate the Violent Crime Information Network on or before June 1, 2010, as follows:

   a) Correct all software deficiencies affecting data integrity and include designated data fields for all mandated sex offender data;

   b) Consolidate and simplify program logic, thereby increasing system performance and reducing system maintenance costs;

   c) Provide all necessary data storage, processing and search capabilities;

   d) Provide law enforcement agencies with full Internet access to all sex offender data and photos; and,

   e) Incorporate a flexible designed structure to readily meet future demands for enhanced system functionality, including public internet access to sex offender information, as specified.

15) Makes findings and declarations related to the need for comprehensive management of sex offenders and the Megan's law database.

16) Specifies that the Attorney General, in collaboration with local law enforcement and others shall develop strategies to assist members of the public in understanding and using publicly available information about registered sex offenders to further public safety.

17) States that the sex offender risk assessment tools authorized by this bill for use with selected populations shall be known, with respect to each selected population, as the "State-Authorized Risk Assessment Tool for Sex Offenders" (SARATSO).

18) Specifies that if a SARATSO has not been selected for a given

population, as specified, no duty to administer the SARATSO shall apply for that population.

19) Demands every person who is required to register as a sex offender be subjected to assessment with the SARATSO, as specified.

20) States that the SARATSO Review Committee shall consist of representatives from the California Department of Corrections and Rehabilitation (CDCR), mental health and the DOJ.

21) Provides the purpose of the Review Committee, which shall be staffed by the Department of Mental Health (DMH), is to ensure that the SARATSO reflects the most reliable, objective and well-established protocols for predicting sex offender risk of recidivism, has been scientifically validated with multiple cross-validations, and is widely accepted by the courts.

22) Specifies the Review Committee shall consult with experts in the fields of risk assessment and the use of actuarial instruments in predicting sex offender risk, sex offending, sex offender treatment, mental health, and law, as the Review Committee deems appropriate.

23) States that as of January 1, 2007, the SARATSO for adult males required to register as sex offenders shall be the STATIC-99 risk assessment scale.

24) States that on or before January 1, 2008, the SARATSO Review Committee shall determine whether the STATIC-99 should be supplemented with an actuarial instrument that measures dynamic risk factors or whether the STATIC-99 should be replaced as the SARATSO with a different risk assessment tool.

25) Provides that if the Review Committee unanimously agrees on changes to be made to the SARATSO, it shall post its decision on the DMH Internet Web site. Sixty days after the decision is posted, the selected tool shall become the SARATSO for adult males.

26) Requires that on or before July 1, 2007, the SARATSO Review Committee shall research risk assessment tools for female and juvenile sex offenders. If the Review Committee unanimously agrees on changes to be made to the SARATSO, the Review

Committee shall post its decision on the DMH Internet Web site. Sixty days after the decision is posted, the selected tool shall become the SARATSO for females and juveniles.

27) States that the Review Committee shall periodically evaluate the SARATSO for each specified population. If the Review Committee unanimously agrees on changes to be made to the SARATSO, the Review Committee shall post its decision on the DMH Internet Web site. Sixty days after the decision is posted, the selected tool shall become the SARATSO for that population.

28) Provides that the Review Committee shall perform other functions consistent with the provisions of this bill or as otherwise may be required by law. The Review Committee shall be immune from liability for good faith conduct under this act.

29) States that on or before January 1, 2008, the SARATSO Review Committee in consultation with probation and parole officers shall develop a training program for probation officers, parole officers, local law enforcement personnel, and any other persons, as specified, to administer the SARATSO.

30) Requires CDCR to be responsible for overseeing the training of persons who are to perform the SARATSO on state inmates, as specified, and shall be conducted by experts in the field of risk assessment and the use of actuarial instruments in predicting sex offender risk.

31) Requires DMH to oversee the training of persons who will administer the SARATSO to state mental health inmates.

32) Requires the Corrections Standards Authority (CSA) oversee the training of person who will administer the SARATSO to person on probation.

33) Requires the Commission on Peace Officer Standards and Training (CPOST) oversee the training of persons who will administer the SARATSO to persons not tested by CDCR.

34) Requires that subject to rules established by the Review Committee, probation departments, and authorized local law enforcement agencies designate key persons within their

organizations to attend training and, as authorized by CDCR, to train others within their organizations designated to perform risk assessments as required or authorized by law.

35) States that any person who administers the SARATSO shall receive training no less frequently than every two years and the SARATSO may be performed for purposes authorized by statute only by persons trained pursuant to this bill.

36) Establishes the administration of the SARATSO, whenever possible and effective on or before July 1, 2008, as follows:

a) CDCR shall assess every eligible person who is incarcerated in state prison. The assessment shall take place at least four months, but no sooner than 10 months prior to release from incarceration;

b) CDCR shall assess every eligible person who is on parole. The assessment shall take place at least four months, but no sooner than 10 months, prior to termination of parole;

c) DMH shall assess every eligible person who is committed to DMH. The assessment shall take place at least four months, but no sooner than 10 months, prior to release from commitment;

d) Each probation department shall assess every eligible person for whom it prepares a report pursuant to existing law; and,

e) Each probation department shall assess every eligible person under its supervision who was not assessed by DMH. The assessment shall take place prior to the termination of probation, but no later than January 1, 2010.

37) States that if a person required to be assessed pursuant to the terms of this bill was assessed within the previous five years, a reassessment is permissible but not required.

38) Requires the SARATSO Review Committee, in consultation with local law enforcement agencies, establish a plan and a schedule for assessing eligible persons not assessed pursuant to other provisions of this bill.

39) Provides that the plan assess adult males on or before January 1, 2012 and assess females and juveniles on or before January 1, 2013. Priority shall be given to assessing those persons most recently convicted of an offense requiring registration as sex offenders. On or before January 15, 2008, the Review Committee shall introduce legislation to implement the plan.

40) States that on or before January 1, 2008, the SARATSO Review Committee shall research the appropriateness and feasibility of providing a means by which an eligible person subject to assessment may, at his or her own expense, be assessed with the SARATSO by a governmental entity prior to his or her scheduled assessment. If the Review Committee unanimously agrees that such a process is appropriate and feasible, the Review Committee shall advise the Governor and the Legislature of the selected tool, and the Review Committee shall post its decision on the CDCR Internet Web site. Sixty days after the decision is posted, the established process shall become effective.

41) Defines an "eligible person" as any person convicted of an offense that requires him or her to register as a sex offender, as specified, and who has not been assessed with the SARATSO within the previous five years.

42) States that regardless of any other provision of law, any person authorized to administer the SARATSO and trained pursuant to the terms in this bill shall be granted access to all relevant records pertaining to a registered sex offender, including, but not limited to:

a) Criminal histories;

b) Sex offender registration records;

c) Police reports;

d) Probation and pre-sentencing reports;

e) Judicial records and case files;

f) Juvenile records;

g) Records maintained by Child Protective Services;

h) Psychological evaluations and psychiatric hospital reports;

i) Sexually violent predator (SVP) treatment program reports; and,

j) Records that have been sealed by the courts or DOJ.

43) States that records and information obtained pursuant to this bill shall not be subject to the California Public Records Act, as specified.

44) Provides that if a person receives a conviction that requires him or her to register as sex offender, the probation officer's report shall include the results of the SARATSO if applicable.

45) States that the designated probation officers shall compile a "facts of offense" sheet for every registrant referred to probation. The "facts of offense" sheet shall state:

a) CII number;

b) Physical description; and,

c) Criminal history including registerable sex offenses, other offense, and arrests that did not result in conviction for sexual or violent offenses, unique characteristics of the offense for which registration is required, including but not limited to, weapons used or victim patterns, risk assessment tier level and type of victim targeted in the past, and the results of the SARATSO.

The "Facts of Offense" Sheet (FOS) shall be included in probation.

46) States the defendant may move the court to correct the FOS. Any corrections to the FOS shall be made consistent with existing law.

47) States that in any determination of probation for those required to register as a sex offender, the court shall consider the results of the SARATSO if available.

48) Increases the additional fine imposed on persons convicted of crimes for which they are required to register as sex offenders from $200 to $300 upon the first conviction and from $300 to $500 upon a second or subsequent conviction.

49) States that 25% of those funds shall be directed to the DOJ DNA testing fund, as specified, and 25% shall be allocated to local DNA testing laboratories, as specified.

50) Provides an amount equal to $100 for every fine imposed for those who are required to register as sex offenders in excess of $100 shall be transferred to the Governor's Office of Emergency Services and fund Sexual Assault Felony Enforcement Teams, as specified.

51) Adds felony contacting or communicating with a child, as specified, to list of offenses that require posting of an offender's address on Megan's Law and misdemeanor contacting or communicating with a child shall be listed with the zip code of the offender.

52) Requires the Megan's Law Sex Offender Internet Web site (Megan's Law Database) be translated into languages other than English, as determined by DOJ.

53) Mandates the probation officer to send a copy of the FOS to the DOJ Sex Offender Tracking Program (SOTP) within 30 days of the person's sex offense conviction, and the FOS shall be made part of the registered sex offender's file maintained by the SOTP. The FOS shall thereafter be made available to law enforcement by DOJ, which shall post the FOS with the offender's record on DOJ's Internet Web site and shall be accessible only to law enforcement.

54) States that if the registered sex offender is sentenced to a period of incarceration at either the state prison or the county jail, the FOS shall be sent by CDCR or the county sheriff to the registering law enforcement agency in the jurisdiction where the registrant will be paroled or will live upon release.

55) Provides that if the registered sex offender is committed to DMH, the FOS shall be sent by the DMH to the registering law enforcement agency in the jurisdiction where the person will live on release, within three days of release.

56) States that any state or local facility that releases from incarceration a person who was incarcerated for a registerable sex offense shall, within 30 days of release, provide the year of conviction and year of release from incarceration for that crime to DOJ in manner and format approved by DOJ.

57) Specifies that every probation department shall ensure that all probationers under active supervision who are deemed to pose a high risk to the public of committing sex crimes as determined by the SARATSO are placed on an intensive and specialized probation supervision caseload and are required to report frequently to designated probation officers. The probation department may place any other probationer convicted of a sex registerable offense who is on active supervision on an intensive and specialized caseload and require him or her to report frequently to designated probation officers.

58) States that any state or local facility that, prior to January 1, 2007, released from incarceration a person incarcerated for a registerable sex offense shall provide to DOJ the year of the conviction and year of release for that person's most recent offense that required registration.

59) Increases the punishment to an alternate misdemeanor/felony for every person who knowingly sends or causes to be sent, or brings or causes to be brought, into California for sale or distribution, or in California possesses, prepares, publishes, produces, develops, duplicates, or prints any representation of information, with intent to distribute or exhibit to, or to exchange with, a person 18 years of age or older, or who offers to distribute, distributes, or exhibits to, or exchanges with, a person 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.

60) Provides that every person who, with knowledge that a person is a minor, or who, while in possession of any facts on the

basis of which he or she should reasonably know that the person is a minor, hires, employs, or uses the minor to do or assist in doing any of the acts, as specified, shall be punished by imprisonment either in county jail or in the state prison for a term of sixteen months, two or three years.

61) Punishes any person who possesses or controls matter depicting a person under the age of 18, as specified, shall be punished by up to one year in the county jail or a term of 16 months, 2 or 3 years in state prison; and if the person has been previously been convicted of a pornography-related crime, as specified, a felony registerable sex offense, or is found to be a SVP, he or she shall be punished with an enhanced sentence of two, four or six years in state prison

62) Creates an in-custody relapse prevention treatment program for those sex offenders incarcerated in state prison that are determined by CDCR, using the SARATSO, and are at least five years away from parole. No offender who has been sentenced to life without parole or death shall be eligible to participate in treatment.

63) States that a person required to register as a sex offender who loiters on school property where minors are present without lawful business purpose and without permission from the chief operating officer is punishable as follows:

a) Upon a first conviction, by a fine not exceeding $2,000; by six months in the county jail; or by both imprisonment and fine;

b) If the defendant has been previously convicted once of loitering, as specified, he or she shall be punished by not less than 10 days or more than six months in the county jail, or by both imprisonment and fine of not more than $2,000 and shall not be released on probation or parole without serving 10 days; and,

c) If the defendant has been previously convicted two or more times of loitering, as specified, he or she shall be punished by imprisonment for not less than 90 days and not more than six months; by a fine of not more than $2,000; or by both imprisonment and fine. The defendant shall not be released on probation or parole without serving at least 90

days.

64) States any person who is required to register as a sex offender where the victim was an elderly or dependant person, as defined, and who is present on any property where elderly or dependant persons reside or are regularly present without having registered with the facility administrator, except as to proceed expeditiously to the administrator's office, is guilty of a crime and shall be punished as follows:

a) Upon a first conviction, by a fine of not exceeding $2,000; by imprisonment for up to six months in the county jail; or by both imprisonment and fine;

b) If the defendant has been previously convicted once of being present at an elder or dependent facility, as specified, he or she shall be sentenced to not less than 10 days and not more than six months; by a fine of $2,000; or by both imprisonment and fine. The defendant shall not be placed on probation or parole without serving at least 10 days; and,

c) If the defendant has been previously convicted two or more times of being present at an elder or dependent facility, as specified, he or she shall be punished by imprisonment for not less than 90 days and not more than six months; by a fine of not more than $2,000; or by both imprisonment and fine. The defendant shall not be released on probation or parole without serving at least 90 days.

65) Specifies that registration with the facility administrator requires the offender to advise the administrator that he or she is a registered sex offender and provide his or her name and address and the reason for visit and proof of identity.

66) States the facility administrator may refuse to register, impose restrictions on registration, or revoke registration of a sex offender if he or she has a reasonable basis for concluding the offender's presence disrupts the facility, as specified.

67) Extends the statute of limitations for the offense of using or employing a minor to participate in the production of sexually explicit material to 10 years from the date of the

production of the material.

68) Expands the list of "violent felonies" for the purposes of sentencing pursuant to "Three Strikes" to include sodomy, as defined and specified sex offenses in concert.

69) Limits the court's discretion to dismiss in the interest of justice convictions sustained pursuant to the "One-Strike" sex statute, as specified.

70) Specifies that for certain crimes listed in the One-Strike sex statute, an offender must be sentenced consecutively if the crime involves separate victims or the same victim on separate occasions.

71) Requires each county to designate certain probation officers to monitor registered sex offenders. Those probationers shall be subject to active and intense supervision by those designated officers.

72) Adds continuous sexual abuse of a child to a provision authorizing a five-year enhancement for specified sex acts.

73) Adds specified sex offenses to the list of crimes eligible for a five-year enhancement for each prior specified crimes.

74) Adds continuous sexual abuse of a child, aggravated sexual assault of a child, sodomy, oral copulation, and forcible sexual penetration to the list of offenses which make a person upon conviction ineligible for probation.

75) Increases the period of parole from five to ten years for any inmate sentenced under the One-Strike Sex Law or sentenced as a "habitual sex offender" rather than just those offenders convicted of child molestation and the continuous sexual abuse of a child.

76) Expands the list of "violent felonies" for the purposes of sentencing pursuant to Three Strikes to include certain sex offenses related to sodomy and acting in concert.

77) Creates a five-year enhancement to be imposed consecutively for any person administering a controlled substance for the purposes of committing a specified sex offense.

78) States persons who are committed as SVPs shall be committed for an indeterminate term rather than the current law of two years.

79) Tolls the period of parole while a person is committed as a SVP and states time spent on conditional release under the supervision of the court shall be subtracted from the person's period of parole.

80) Expands the definition of "sexually violent offense" to include specified acts of rape, sodomy and oral copulation in concert.

81) Specifies that a committed person's failure to engage in treatment shall be considered evidence that his or her condition has not changed for purposes of any court proceeding held pursuant to existing law and a jury shall be so instructed. Completion of treatment programs shall be a condition of release.

82) Provides that the Office of Emergency Services (OES) shall establish standards by which grants are awarded on a competitive basis to counties for Sexual Assault Felony Enforcement (SAFE) teams. The grant shall be awarded to innovative teams designed to promote the purposes of sexual assault felony enforcement.

83) Adds murder committed in the course of a sex crime to the list of offenses requiring registration as a sex offender.

84) Adds the crimes of pimping and pandering with a minor to the list of persons convicted in another state of an offense requiring registration in the state of conviction who are not required to register as sex offenders in California unless the out-of-state offense contains all of the elements of a registerable California offense, as specified.

85) Provides an exception from the requirement that a sex offender registrant who has been incarcerated to re-register upon release if that person has been incarcerated for less than 30 days and returns to the previously registered address, as specified.

86) Adds the crime of contacting a minor for the purpose of arranging a meeting with the intent to commit a specified sex act to the list of offenses requiring registration as a sex offender.

87) Adds the crime of loitering or trespassing on school property or on an elder or dependent care facility, as a sex offender, as specified, to the list of offenses posted on Megan's Law with the offender's zip code.

88) Specifies that effective January 1, 2012, no person shall be excluded from the Megan's Law website unless he or she has submitted documentation sufficient to determine he or she is a SARATSO risk level of low or moderate low.

89) Appropriates $495,000 from the General Fund to the Office of Emergency Services, Division of Criminal Justice Programs for child abuse and abduction programs, as specified.

90) States that provisions of this act are severable and 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(s).

91) Double-joins provisions of this bill related to information posted on the Megan's Law database with AB 1849 (Leslie), currently pending on the Assembly floor.

92) Makes technical, non-substantive amendments.

EXISTING LAW :

1) Includes the One-Strike Sex Crime Sentencing Law that provides sentences of 15-years-to-life or 25-years-to-life in certain sex crimes if specified circumstances in aggravation are found to be true.

2) States that the qualifying sex crimes under the One-Strike Sex Law are forcible rape, forcible spousal rape, rape by a foreign object, forcible sodomy, forcible oral copulation, lewd and lascivious acts with a child under the age of 14 accomplished by force or duress, and lewd and lascivious acts with a child under the age of 14 accomplished by other than force or duress where the defendant is not eligible for

probation.

3) Provides that a defendant convicted of a One-Strike sex offense is only eligible for probation if he or she is also eligible for probation under Penal Code Section 1203.066, which allows probation for a person convicted of lewd conduct in intra-family cases where the defendant is particularly likely to be rehabilitated and the grant of probation is in the best interests of the child.

4) Denies probation for any person convicted of lewd conduct committed by force, violence, duress or menace.

5) Provides that every person who possesses or controls any matter depicting a person under the age of 18 years engaging in sexual conduct or simulating sexual conduct is guilty of a misdemeanor with imprisonment in the county jail up to one year or a fine not exceeding $2,500. If a person has a prior conviction, he or she is guilty of a felony and subject to imprisonment in the state prison for two, four, or six years. It is not necessary to prove that the matter in question is obscene.

6) Provides that every person who sends, brings, possesses, prepares, publishes, produces, duplicates or prints any obscene matter depicting a person under the age of 18 years engaging in or simulating sexual conduct with the intent to distribute, exhibit, or exchange such material is guilty of either a misdemeanor or a felony, punishable by imprisonment in the county jail up to one year or in the state prison for 16 months, 2 or 3 years and a fine not to exceed $10,000.

7) Provides that every person who sends, brings, possesses, prepares, publishes, produces, duplicates or prints any obscene matter depicting a person under the age of 18 years engaging in or simulating sexual conduct for commercial purposes is guilty of a felony, punishable by imprisonment in the state prison for two, three, or six years and a fine up to $100,000.

8) Provides that every person who sends, brings, possesses, prepares, publishes, produces, duplicates or prints any matter depicting a person under the age of 18 years engaging in or simulating sexual conduct to distribute, exhibit, or exchange

with a minor is guilty of a felony, punishable by imprisonment in the state prison for 16 months, 2 or 3 years. It is not necessary to prove commercial consideration or that the matter is obscene.

9) Provides that any person who hires or uses a minor to assist in the possession, preparation or distribution of obscene matter or for commercial purposes is guilty of a felony, punishable by imprisonment in the state prison for three, six, or eight years.

10) Provides that an inmate serving a determinate term of imprisonment shall be released on parole for a period of three years unless the parole authority for good cause waives the period of parole and discharges the inmate from custody. A person convicted of "violent" sex offenses, as defined, and sentenced to determinate terms shall be released on parole for a period of five years unless the parole authority for good cause waives the period of parole.

11) Defines a "SVP" as an inmate "who has been convicted of a sexually violent offense against two or more victims and who has a diagnosed mental disorder that makes the person a danger to the health and safety of others in that it is likely that he or she will engage in sexually violent criminal behavior."

12) States that for any subsequent extended commitment, the term of commitment shall be for two years. The term shall commence on the date of the termination of the previous commitment.

13) Provides that for the purposes of extended commitments, the person shall be evaluated by two practicing psychologists or psychiatrists, or by one practicing psychiatrist and one practicing psychologist designated by DMH, both of whom must concur that the person has a diagnosed mental disorder so that he or she is likely to engage in acts of sexual violence without appropriate treatment and custody.

14) Provides that a prisoner found to be a SVP could be civilly confined based on a judicial commitment. A "SVP" is defined as a person who has been convicted of a "sexually violent offense," as specified, against two or more victims for whom he or she received a determinate sentence. A SVP must have a

diagnosable mental disorder that makes the person a danger to the health and safety of others in that it is likely that he or she will engage in sexually violent criminal behavior.

15) Defines "sexually violent offenses" as specified sexual acts (rape or spousal rape, sex crimes in concert, lewd conduct with a child under 14 years, foreign or unknown object rape, sodomy and oral copulation) committed by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person.

16) Provides for a hearing procedure to determine whether there is probable cause to believe that a person who is the subject of a petition for civil commitment as a SVP is likely to engage in sexually violent predatory criminal behavior upon his or her release from prison.

17) Requires a jury trial at the request of either party with a determination beyond a reasonable doubt that the person is a SVP.

FISCAL EFFECT : According to the Assembly Appropriations Committee, major annual General Fund (GF) costs, potentially in the range of $200,000 million. Major costs include:

1) If the numerous penalty-related provisions of this bill result in a 10% increase in the population of sex offenders in state prison, the annual GF cost would eventually exceed $25 million.

2) One-time state capital outlay costs, within a few years, potentially in the low hundreds of millions of dollars for construction of additional state mental hospital and prison beds.

3) Annual General Fund costs of about $3 million per year for three years to update DOJ's Violent Crime Information Network and add information to the Megan's Law Web site. Ongoing maintenance costs of about $500,000.

4) Costs in the tens of millions of dollars for more staff and more revocations.

5) Creating a state and local scheme for assessing the risk

presented by convicted sex offenders, training state and local authorities in the use of the assessment tool, assessing sex offenders, increasing state and local parole and probation staff to supervise more offenders for longer periods of time and increasing the scope of probation reports, will result in state costs in the tens of millions of dollars.

6) Major changes to the SVP program will eventually result in increased annual costs in the tens of millions of dollars from increasing the number of SVP referrals, hearings, and commitments, and increasing the length of commitments.

7) Increasing fines on persons convicted of registerable sex crimes (from $200 to $300 on the first conviction, and from $300 to $500 on a subsequent conviction), will likely result in a relatively minor increase in revenue, probably less than $1 million.

8) In-custody sex offender relapse treatment program would likely cost tens of millions of dollars. To the extent these programs are effective, and reduce recidivism, there could be corresponding out-year savings.

9) This bill appropriates $495,000 to OES for child abuse and abduction prevention programs.

COMMENTS : According to the author, "The purpose of the bill is to provide a comprehensive, proactive approach to preventing the victimization of Californians by sex offenders. Under current law, California's tactical methods and infrastructure are insufficient for law enforcement to appropriately assess, convict and monitor sex offenders. This bill is the product of months of discussion with, and input from, experts in the area and incorporates a broad spectrum of approaches recognized by law enforcement and avoids key flaws that have marred other bills on this subject, such as residency requirements that dump offenders into rural communities or provisions that inadvertently tie the hands of police in performing Internet sting operations.

"This bill, the Sex Offender Punishment, Control and Containment Act of 2006: increases the prison term for child rape to 25-years-to-life; expands the Megan's Law database; toughens penalties for child pornography; toughens penalties for Internet

predators; ensures police can use on-line decoys to catch Internet predators; discourages prosecutors from offering plea bargains in sex offense cases; gives state and local officials a new system to monitor dangerous parolees; increases parole time for violent sexual offenses; and keeps sex offenders away from schools, parks, and other places where vulnerable populations, including the elderly and disabled, congregate. By taking this comprehensive approach, this bill will make all of California's communities safer from all sexual predators, not just some."

Please see the policy committee analysis for full discussion of this bill.

Analysis Prepared by : Kimberly Horiuchi / PUB. S. / (916) 319-3744

FN: 0016843

SB 1128 Senate Bill - Bill Analysis
BILL ANALYSIS

Date of Hearing: August 16, 2006

ASSEMBLY COMMITTEE ON APPROPRIATIONS
Judy Chu, Chair

SB 1128 (Alquist) - As Amended: June 22, 2006

Policy Committee: Public
SafetyVote: 6-0

Urgency: No State Mandated Local Program:
Yes Reimbursable: Yes

SUMMARY

This bill creates the "Sex Offender Punishment, Control and Containment Act of 2006," which makes dozens of changes to the body of law relating to sex offenders. Specifically, this bill:

1) Increases penalties for numerous sex offenses, including child pornography, continuous sexual abuse of a child, administering a controlled substance to commit a sex offense.

2) Renovates the Department of Justice's (DOJ) Violent Crime Information Network (hardware and software) and expands the Megan's Law database on registered sex offenders by adding the year of conviction and the year the offender was released from incarceration.

3) Increases penalties for luring and enables police to use on-line decoys to catch Internet predators.

4) Increases the period of parole for violent sexual offenses from five to 10 years.

5) Prohibits sex offenders from loitering near schools, parks, and places where children gather.

6) Creates a state and local scheme for assessing the risk presented by convicted sex offenders: the State Authorized

Risk Assessment Tool for Sex Offenders (SARATSO). Requires all registered sex offenders to undergo assessment, and requires training regarding SARATSO for law enforcement personnel and others who may administer the SARATSO.

7) Makes major changes to the Sexually Violent Predator (SVP) program, increasing commitments from two years to indeterminate, tolling parole while a persons is an SVP, and making completion of sex offender treatment programs a condition of release.

8) Requires the state prison system to operate an in-custody sex offender relapse treatment program, using SARATSO.

9) Makes a series of miscellaneous changes increasing fines and changing distribution of fines levied on registered sex offenders; funding Sexual Assault Felony Enforcement (SAFE) teams; and funding child abuse and abduction prevention programs.

FISCAL EFFECT

This bill will result in major annual GF costs, potentially in the range of $200 million. Major costs include:

1) Increasing penalties for various sex offenses . If the numerous penalty-related provisions of this bill result in a 10% increase in the population of sex offenders in state prison, the annual GF cost would eventually exceed $25 million.

2) One-time state capital outlay costs , within a few years, potentially in the low hundreds of millions of dollars for construction of additional state mental hospital and prison beds.

3) Expanding and enhancing the Megan's Law database and enhancing DOJ's VCIN . Annual GF costs of about $3 million per year for three years to update DOJ's VCIN and add information to the Megan's Law website. Ongoing maintenance costs of about $500,000.

4) Increasing the period of parole for violent sexual offenses . Costs in the tens of millions of dollars for more staff and more revocations.

5) SARATSO . Creating a state and local scheme for assessing the risk presented by convicted sex offenders, training state and local authorities in the use of the assessment tool, assessing sex offenders, increasing state and local parole and probation staff to supervise more offenders for longer periods of time, and increasing the scope of probation reports, will result in state costs in the tens of million of dollars.

6) Major changes to the Sexually Violent Predator (SVP) program will eventually result in increased annual costs in the tens of millions of dollars from increasing the number of SVP referrals, hearings, and commitments, and increasing the length of commitments.

7) Increasing fines on persons convicted of registerable sex crimes (from $200 to $300 on the first conviction, and from $300 to $500 on a subsequent conviction), will likely result in a relatively minor increase in revenue, probably less than $1 million.

8) In-custody sex offender relapse treatment program would likely cost tens of millions of dollars. To the extent these programs are effective, and reduce recidivism, there could be corresponding out-year savings.

9) SAFE teams . This bill appropriates $6 million to the Department of Corrections and Rehabilitation's (CDCR's) Correctional Standards Authority for grants to counties.

10) Office of Emergency Services (OES) child abuse and abduction prevention programs . This bill appropriates $495,000 to OES.

COMMENTS

1) Rationale. According to the author, this bill is "a comprehensive, proactive approach to preventing the victimization of Californians by sex offenders. Under current law, California's tactical methods and infrastructure are insufficient for law enforcement to appropriately assess, convict and monitor sex offenders. This bill is the product of months of discussion with, and input from, experts in the area and incorporates a broad spectrum of approaches recognized by law enforcement and avoids key flaws that have marred other bills on this subject, such as residency requirements that dump offenders into rural communities or provisions that inadvertently tie the hands of police in performing Internet sting operations."

2) Jessica's Law , which will be on the November ballot as Proposition 83, provides for a series of penalty increases for violent and habitual sex offenders and child molesters. It prohibits registered sex offenders from living within 2,000 feet of any school or park, and requires lifetime Global Positioning System (GPS) monitoring of felony registered sex offenders. Prop 83 expands the definition of an SVP, and changes the current two-year involuntary civil commitment for an SVP to an indeterminate commitment.

The Legislative Analyst and Department of Finance estimate the fiscal impact on state and local governments as unknown net costs to the state, within a few years, potentially in the low hundreds of millions of dollars annually due primarily to increased state prison, parole supervision, and mental health program costs. These costs will grow significantly in the long term. Potential one-time state capital outlay costs, within a few years, in the low hundreds of millions of dollars for construction of additional state mental hospital and prison beds. Unknown but potentially significant net operating costs or savings to counties for jail, probation supervision, district attorneys, and public defenders.

3) SB 1128 and Prop 83 . Though the initiative and SB 1128 are similar in many areas (SVPs, many of the penalty changes), in other areas, there are major differences: no GPS, no residential restrictions in SB 1128, and no SAFE team funding

or sex offender assessment (SARATSO) in Prop 83; and in many cases, there are minor to moderate differences that will cause confusion and/or chaptering problems (child pornography, extended parole terms, luring, distribution of fine revenue.)

4)Related Legislation .

a) AB 231 (S. Runner) and SB 558 (G. Runner), virtually identical to Prop 83, failed passage in the Assembly Public Safety Committee and Senate Public Safety respectively.

b) AB 50 (Leno), which creates the Sex Offender Containment and Management Act of 20006, was introduced as a parallel measure to SB 1128. AB 50 has been amended to a different topic.

c) AB 1015 (Chu), which creates a Sex Offender Management Board to assess current management practices for adult sex offenders and report is pending in the Senate Appropriations Committee.

d) AB 1849 (Leslie) requires DOJ to include on the Megan's Law website, the offender's year of conviction and year of release from incarceration, similar to SB 1128. AB 1849 is pending before Senate Appropriations.

e) SB 864 (Poochigian), which lengthens the period of civil commitment for those found to be SVPs from two years to an indeterminate term failed in the Assembly Public Safety Committee.

f) SB 1178 (Speier) requires men convicted of registerable sex offenses to be assessed for risk of re-offending; similar to the requirements in SB 1128. SB 1178 is also before this committee today.

Analysis Prepared by : Geoff Long / APPR. / (916) 319-2081

SB 1128 Senate Bill - Bill Analysis
BILL ANALYSIS

Senate Appropriations Committee Fiscal Summary
Senator Kevin Murray, Chairman

1128 (Alquist)

Hearing Date: 5/25/06 Amended: 4/18/06
Consultant: Nora Lynn Policy Vote: Public Safety 6-0
Page 2
SB 1128 (Alquist)

BILL SUMMARY: SB 1128, an urgency measure, enacts the Sex Offender Punishment, Control and Containment Act of 2006.

Fiscal Impact (in thousands)

Major Provisions	2006-07	2007-08	2008-09	Fund
Incarceration, probation, parole	Annual costs in the multimillion dollar range3			General
Megan's Law, registration		$2,9845	$2,984	$2,984General
SARATSO training, testing & offender oversight	Unknown costs3			General
Facts of Offense Sheets	Significant costs beginning in 2010-11			General
DOJ: SVP commitments	$150	$300	$300	General
SAFE Teams	$6,2501,4	$8,0004	$8,000	General
Courts (record retention)	Minor, absorbable costs			General2
Child safety program	$4956	$495	$495	General

1 Funding consistent with Governor's proposed 2006-07 budget
2 Trial Court Trust Fund
3 Requirements placed on probation programs (assessing and monitoring sex offenders, training probation officers & Facts of Offense sheets) constitute a state-mandated local program
4 Offset by penalty revenues directed to these purposes by the bill
5 Partially funded in Governor's proposed 2006-07 budget
6 Appropriated in bill

STAFF COMMENTS: SUSPENSE FILE. AS PROPOSED TO BE AMENDED.

SB 1128 makes a number of changes to existing law pertaining to sex crimes and sex offenders:

- creates new "child luring" crimes;
- creates a new crime for sex offenses against very young children with a punishment of 25 years to life;

creates a new loitering statute to prevent sex offenders from loitering around school grounds and other places where

vulnerable persons congregate;

increases penalties and statutes of limitations for child pornography; and

extends parole periods for all violent sex offenses.

requires the Department of Justice (DOJ) to update the Megan's Law database and provide enhanced information on the Megan's Law website; and

makes changes to sex offender registration practices.

requires specified recidivism risk assessments (STATIC-99) for all adult male registered sex offenders;

enhances parole and probation provisions for sex offenders, including requiring those whose STATIC-99 assessment indicates a high risk of re-offense to be on reduced caseloads.

requires all sex offenders on probation or parole who are assessed at a high risk of recidivism to be placed on reduced probation or parole caseloads.

imposes indeterminate terms for sexually violent predators.

creates a $6 million competitive grant program to fund county SAFE teams.

requires all state and local agencies that maintain records containing information on registered sex offenders to maintain those records for 75 years;

requires probation departments to compile Facts of Offense Sheets for every adult male convicted of an offense requiring him to register as a sex offender;

requires the Facts of Offense Sheet to contain specified information;

requires probation departments and CDCR to send Facts of Offense Sheets to DOJ to be made part of the sex offenders' files maintained in the Sex Offender Tracking Program and to law enforcement in the jurisdiction where the sex offender will be on probation or parole; and

appropriates $495,000 to the Office of Emergency Services (OES) to fund a child safety program.

AS PROPOSED TO BE AMENDED Proposed author's amendments make the following changes to the measure:

Strike SVP provisions except to make commitments indeterminate terms;

Clarify child pornography, obscenity and harmful matter

provisions;
Strike STATIC-99 requirements and replace with language

to implement the State Authorized Risk Assessment Tool for Sex Offenders (SARATSO) which will be used to assess the risk level of all sex offenders; state STATIC-99 will be the instrument for adult male offenders as of Jan. 1, 2007; review STATIC-99 as the assessment tool for adult males (by Jan. 1, 2008); select an assessment tool for females and juveniles (by Jan. 1, 2007); unanimous recommendations of the committee will be posted on the CDCR website;
Sets a risk assessment training schedule for CDCR, DMH and probation;
Requires probation reports to include SARATSO to be considered by the court and sent to CDCR;
CDCR to establish a plan to assess those included above (adult males tested by Jan. 1, 2012; females and juveniles by Jan. 1, 2013);
SARATSO administrators have access to records and records of sex offenders are retained for 75 years;
Probation prepares Facts of Offense Sheet (June 1, 2010);
High risk parolees per SARATSO will be intensive supervision; CDCR has discretion to require intensive supervision for other offenders;
High risk inmates per SARATSO will participate in sex offender programmingl CDCR has discretion to require intensive supervision for other offenders;
Legislation is rendered inoperative if Jessica's Law is enacted; and
Miscellaneous technical amendments.

SB 1178 Senate Bill - CHAPTEREDBILL NUMBER: SB 1178 CHAPTERED
BILL TEXT

CHAPTER 336
FILED WITH SECRETARY OF STATE SEPTEMBER 20, 2006
APPROVED BY GOVERNOR SEPTEMBER 20, 2006
PASSED THE SENATE AUGUST 31, 2006
PASSED THE ASSEMBLY AUGUST 30, 2006
AMENDED IN ASSEMBLY AUGUST 23, 2006
AMENDED IN ASSEMBLY AUGUST 21, 2006
AMENDED IN ASSEMBLY AUGUST 7, 2006
AMENDED IN SENATE MAY 30, 2006
AMENDED IN SENATE MAY 26, 2006
AMENDED IN SENATE APRIL 6, 2006

INTRODUCED BY Senator Speier
(Coauthor: Assembly Member Spitzer)

JANUARY 13, 2006

An act to amend Sections 1202.8 and 3004 of, and to add Sections 290.04, 290.05, and 290.06 to, the Penal Code, relating to sex offenders, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 1178, Speier Sex offenders: continuous electronic monitoring.

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

This 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, as specified. Commencing January 1, 2008, the SARATSO for adult males would be the STATIC-99 risk assessment scale. The committee could 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 develop and administer a training program for persons designated to administer the SARATSO to offenders.

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

Existing law requires persons placed on probation by a court to be under the supervision of the county probation officer who shall determine both the level and type of supervision consistent with the court-ordered conditions of probation.

This bill would require every adult male who is convicted of an offense that requires him to register as a sex offender who is assessed to have a high risk of reoffending to be continuously electronically monitored while on probation, unless the court

determines that such monitoring is unnecessary for a particular person. The bill would require each probation department to report to the Legislature and to the Governor on the effectiveness of mandatory electronic monitoring of offenders, as specified.

Existing law authorizes the parole authority to require, as a condition of release on parole or reinstatement on parole, or as an intermediate sanction in lieu of return to prison, that an inmate or parolee agree in writing to the use of electronic monitoring or supervising devices.

This bill would require every adult male who is convicted of an offense that requires him to register as a sex offender who is assessed to have a high risk of reoffending to be continuously electronically monitored while on parole, unless the Department of Corrections and Rehabilitation determines that such monitoring is unnecessary for a particular person. The bill would require the Department of Corrections and Rehabilitation to report to the Legislature and to the Governor on the effectiveness of mandatory electronic monitoring of offenders, as specified.

The bill would specify that the monitoring device used for these purposes shall be identified as one that employs the latest available proven effective monitoring technology.

Because the bill would impose new duties on local agencies, the bill would impose a state-mandated local program.

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, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

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

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. 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 Department of Corrections and Rehabilitation, in consultation with a representative of the Department of Mental Health and a representative of the Attorney General's office, shall comprise the SARATSO Review Committee. The purpose of the committee shall be to ensure that the SARATSO reflects the most reliable, objective and well-established protocols for predicting sex offender risk of recidivism, has been scientifically validated with multiple cross-validations, and is widely accepted by the courts. The committee shall consult with experts in the fields of

risk assessment and the use of actuarial instruments in predicting sex offender risk, sex offending, sex offender treatment, mental health, and law, as it deems appropriate.

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

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

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

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

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

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

SEC. 2. Section 290.05 is added to the Penal Code, to read:

290.05. (a) On or before January 1, 2008, the SARATSO Review Committee established pursuant to Section 290.04, in consultation with probation officers and parole officers, shall develop a training program for probation officers, parole officers, local law enforcement personnel, and any other persons authorized by this code to administer the SARATSO, as set forth in Section 290.04. The Department of Corrections and Rehabilitation shall be responsible for overseeing the training, which shall be conducted by experts in the field of risk assessment and the use of actuarial instruments in predicting sex offender risk. Subject to requirements promulgated by the committee, probation departments, regional parole officers, and local law enforcement agencies shall designate key persons within

their organizations to attend training and, as authorized by the department, to train others within their organizations designated to perform risk assessments as required or authorized by law. Any person who administers the SARATSO shall receive training no less frequently than every two years.

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

SEC. 3. Section 290.06 is added to the Penal Code, to read:

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

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

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

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

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

(5) Each probation department shall assess every eligible person under its supervision who was not assessed pursuant to paragraph (4). The assessment shall take place prior to the termination of probation, but no later than January 1, 2010.

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

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

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

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

SEC. 4. Section 1202.8 of the Penal Code is amended to read:

1202.8. (a) Persons placed on probation by a court shall be under the supervision of the county probation officer who shall determine

both the level and type of supervision consistent with the court-ordered conditions of probation.

(b) Commencing July 1, 2008, every adult male who is convicted of an offense that requires him to register as a sex offender pursuant to Section 290 shall be assessed for the risk of reoffending consistent with Section 290.06. The assessment shall be performed by a probation officer who has been trained pursuant to Section 290.05. Every adult male who has a risk assessment of high shall be continuously electronically monitored while on probation, unless the court determines that such monitoring is unnecessary for a particular person. The monitoring device used for these purposes shall be identified as one that employs the latest available proven effective monitoring technology. Nothing in this section prohibits probation authorities from using electronic monitoring technology pursuant to any other provision of law.

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

(d) Beginning January 1, 2009, each probation department shall report every two years to the Legislature and to the Governor on the effectiveness of continuous electronic monitoring of offenders pursuant to subdivision (b). The report shall include the costs of monitoring and the recidivism rates of those persons who have been monitored.

SEC. 5. Section 3004 of the Penal Code is amended to read:

3004. (a) Notwithstanding any other law, the parole authority may require, as a condition of release on parole or reinstatement on parole, or as an intermediate sanction in lieu of return to prison, that an inmate or parolee agree in writing to the use of electronic monitoring or supervising devices for the purpose of helping to verify his or her compliance with all other conditions of parole. The devices shall not be used to eavesdrop or record any conversation, except a conversation between the parolee and the agent supervising the parolee which is to be used solely for the purposes of voice identification.

(b) Notwithstanding subdivision (a), commencing July 1, 2008, every adult male who is convicted of an offense that requires him to register as a sex offender pursuant to Section 290 shall be assessed for the risk of reoffending consistent with Section 290.06. The assessment shall be performed by a parole officer who has been trained pursuant to Section 290.05. Every adult male who has a risk assessment of high shall be continuously electronically monitored while on parole, unless the department determines that such monitoring is unnecessary for a particular person. The monitoring device used for these purposes shall be identified as one that employs the latest available proven effective monitoring technology. Nothing in this section prohibits parole authorities from using electronic monitoring technology pursuant to any other provision of law.

(c) Beginning January 1, 2009, and every two years thereafter, the Department of Corrections and Rehabilitation shall report to the Legislature and to the Governor on the effectiveness of continuous electronic monitoring of offenders pursuant to subdivision (b). The report shall include the costs of monitoring and the recidivism rates of those persons who have been monitored.

SEC. 6. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

SEC. 7. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are: In order to protect public safety by ensuring that sex offenders are electronically monitored, it is necessary that this act take effect immediately.

Date of Hearing: August 16, 2006

ASSEMBLY COMMITTEE ON APPROPRIATIONS
Judy Chu, Chair

SB 1178 (Speier) - As Amended: August 7, 2006

Policy Committee: Public
SafetyVote: 6-0

Urgency: No State Mandated Local Program:
Yes Reimbursable: Yes

SUMMARY

This bill requires all registered sex offenders to undergo a risk-assessment, and, if assessed as a high risk for re-offending, to be electronically monitored while on probation or parole. Specifically, this bill:

1) Creates a state and local scheme for assessing the risk presented by convicted sex offenders: the State Authorized Risk Assessment Tool for Sex Offenders (SARATSO), and creates the SARATSO Review Committee to determine the appropriate assessment tools.

2) Requires the Department of Corrections and Rehabilitation (CDCR) to consult with the Department of Mental Health (DMH) and experts in sex offender risk assessment, on or before January 1, 2008, and to establish a training program for probation officers, parole officers and any other persons authorized to administer SARATSO.

3) Requires, beginning January 1, 2008, every adult male sex offender who is assessed as a high risk for re-offending to be electronically monitored while on probation or parole, unless the court determines monitoring is inappropriate for a particular person.

4) Specifies that the electronic monitoring device employ the "latest available proven effective monitoring technology."

5) Requires, beginning January 1, 2009, CDCR and county probation departments to report to the Legislature and to the governor on the effectiveness of mandatory electronic monitoring,

including the costs of the monitoring and the recidivism rates of those persons who have been monitored.

FISCAL EFFECT

1) SARATSO . Creating a state and local scheme for assessing the risk presented by convicted sex offenders, training state and local authorities in the use of the assessment tool, assessing sex offenders, increasing state and local parole and probation staff to supervise more offenders for longer periods of time, based on risk assessment ratings, and reporting will result in state and reimbursable local costs in the tens of millions.

2) Electronic Monitoring. State and reimbursable local costs in the tens of millions of dollars to provide electronic monitoring for high risk parolees and probationers. For example, to cover the portion of CDCR's current High Risk Sex Offender parole population (about 2,000 parolees) not currently under electronic monitoring, CDCR would require about $10 million in 2007-08. To the extent the SARATSO results in additional high risk parolees, these costs would increase significantly. (Currently CDCR is budgeted to provide Global Positioning System surveillance on 1,000 high risk sex offenders on parole.)

Reimbursable annual local costs would likely be somewhat less, assuming a smaller number of offenders.

COMMENTS

1) Rationale . The author states that global positioning system (GPS) surveillance should be used to track sex offenders assessed as high risks for re-offending. With about 100,000 registered sex offenders in California, including about 20,000 on parole or probation, the author contends the state must use every possible tool, including advanced technology to protect Californians.

2) Jessica's Law and SB 1128 . The SARATSO provisions in this bill are identical to those contained in SB 1128 (Alquist), which

is also before this committee today. The electronic monitoring provisions in this bill are similar to those contained in Proposition 83 (Jessica's Law), which will be on the November statewide ballot. Prop 83 requires GPS monitoring of all registered sex offenders, for life, though Prop 83 applies only to registered sex offenders who served state prison sentences, thus omitting registered sex offenders on probation.

If approved by the voters, the GPS provisions in Prop 83 will chapter out the provisions in this bill related to parolees, leaving the electronic monitoring requirement for high risk sex offenders on probation.

3) GPS and Electronic Monitoring . Electronic monitoring is often used for house arrest via ankle bracelets. Offenders wear devices that permit periodic checks of their whereabouts by telephone signal. If the offender moves too far from the phone, or disables the device, authorities are alerted electronically. GPS uses satellite tracking. Offenders wear ankle bracelets and carry packs containing mobile receivers. When the offenders are sleeping or sitting, the packs are placed near them. A monitoring station receives data from offenders using the system and tracks them constantly. GPS can follow and locate an offender instantly, rather than merely signaling whether a person is home. GPS can be programmed to notify authorities or potential victims if an offender enters a so-called exclusion zone where the person is not allowed to go, such as the home of a victim or a school.

As drafted, this bill requires electronic monitoring, though the bill requires the use of the "latest available proven effective monitoring technology," which could be interpreted as GPS.

4) Technical Amendments . The author should clarify whether the reports required to begin in January 2009 are intended to be provided annually.

Analysis Prepared by : Geoff Long / APPR. / (916) 319-2081

Senate Appropriations Committee Fiscal Summary
Senator Kevin Murray, Chairman

1178 (Speier)

Hearing Date: 5/25/06 Amended: 4/6/06
Consultant: Nora Lynn Policy Vote: Public Safety 6-0

BILL SUMMARY: SB 1178 requires adult male registered sex offenders to be assessed for risk of re-offense utilizing a specified assessment methodology. All those who are assessed as posing a moderate-high or high risk of re-offense would be required to be electronically monitored while on probation or parole, except as specified. SB 1178 requires the Department of Corrections and Rehabilitation (CDCR) by January 1, 2008, to develop a training program for probation and parole officers as well as any others permitted by law to conduct sex offender risk assessments. SB 1178 further states that its training component is only to become operative if similar provisions contained in SB 1128 (Alquist), an urgency measure on calendar for today's hearing, are not enacted on or before January 1, 2007.

Fiscal Impact (in thousands)

Major Provisions	2006-07	2007-08	2008-09	Fund
STATIC-99 training	$3,000	$300	$300	General*
STATIC-99 assessments	$500 range beginning in 2008-09			General*
GPS equipment, monitoring	$50 million range beginning in 2008-09			General*
Reporting	Likely minor costs beginning in 2008-09			General*

* Reflects combined probation and parole cost estimates and only those in custody being assessed; requirements placed on probation programs (assessing sex offenders, monitoring sex offenders electronically and training probation officers) constitute a state-mandated local program

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STAFF COMMENTS: SUSPENSE FILE. AS PROPOSED TO BE AMENDED.

Current law authorizes probation and parole authorities to use electronic monitoring to supervise probationers and parolees.

SB 1178 would require all registered adult male sex offenders to be assessed for risk of re-offense using a specific assessment tool (STATIC-99, required in the measure). For those on probation or parole whose STATIC-99 scores indicate pose a medium-high or high risk of re-offending, SB 1178 would require they be electronically monitored during their supervision, unless a court specifies such monitoring is unnecessary for a particular person. Training for probation department staff in conducting STATIC-99 assessments would be provided by CDCR beginning in 2008.

AS PROPOSED TO BE AMENDED: Author's amendments would:

Delay STATIC-99 assessments until July 1, 2008;

Clarify that STATIC-99 assessments are to be conducted on all adult male sex offenders on probation or parole;

Require CDCR and DMH to research and make recommendations for a risk assessment tool doe female and juvenile sex offenders;

Require CDCR and local authorities to report to the Legislature beginning Jan.1, 2009, on the impact of electronic monitoring as relates to programmatic costs and recidivism rates of those monitored;

Renders the measure inoperative if Jessica's Law is approved by the voters.

SENATE THIRD READING
SB 1178 (Speier)
As Amended August 23, 2006
2/3 vote. Urgency

SENATE VOTE :38-0

PUBLIC SAFETY 6-0 APPROPRIATIONS 18-0

Ayes:	Leno, La Suer, Dymally, Goldberg, Spitzer, Lieber	Ayes:	Chu, Sharon Runner, Bass, Berg, Calderon, De La Torre, Emmerson, Haynes, Karnette, Klehs, Leno, Nakanishi, Nation, Laird, Ridley-Thomas, Saldana, Walters, Yee

SUMMARY : Requires 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). Specifically, this bill :

1) Establishes the SARATSO Review Committee to ensure that the SARATSO reflects the most reliable, objective and well-established protocols for predicting sex offender risk of recidivism, as specified. States that the SARATSO Review Committee shall be comprised of a representative of the California Department of Corrections and Rehabilitation (CDCR), in consultation with a representative of the Department of Mental Health (DMH) and a representative of the Attorney General's Office; the Committee shall consult with specified experts as it deems appropriate.

2) States that on or before January 1, 2008, the SARATSO Review Committee shall determine whether the Static-99 should be supplemented with an actuarial instrument that measures dynamic risk factors or whether the Static-99 should be replaced as the SARATSO with a different risk assessment tool. If the Committee unanimously agrees on changes to be made to the SARATSO, the Committee shall advise the Governor and the Legislature and shall post its decision on the CDCR Web site. Provides that 60 days after the decision is posted, the

selected tool shall become the SARATSO for adult males.

3) States that commencing on January 1, 2007, the SARATSO for adult male sex offender registrants shall be the STATIC-99 assessment scale.

4) Provides that on or before January 1, 2007, the SARATSO Review Committee shall research risk assessment tools for females and juveniles required to register as sex offenders. States that if the Committee unanimously agrees on an appropriate assessment tool for these populations, the Committee shall advise the Governor and the Legislature and shall post its decision on the CDCR Web site. Provides that 60 days after the decision is posted, the selected tool shall become the SARATSO for females and/or juveniles, as specified.

5) States that on or before January 1, 2008, the SARATSO Review Committee, in consultation with probation and parole officers, shall establish a training program for probation officers, local law enforcement personnel and other specified persons. Requires any person who administers the SARATSO to receive training no less frequently than every two years.

6) Provides that on or before July 1, 2008, the SARATSO shall be administered as follows, and the assessments shall take place at least four months but no sooner than 10 months prior to release from incarceration or commitment, or termination of parole:

   a) CDCR shall assess every eligible person who is incarcerated in state prison, as specified.

   b) CDCR shall assess every eligible person who is on parole, as specified.

   c) The DMH shall assess every eligible person committed to DMH, as specified.

7) Requires each probation department to assess every eligible person under its supervision prior to the termination of probation but no later than January 1, 2010.

8) Requires the SARATSO Review Committee, prior to January 15, 2008, to introduce legislation to implement a plan to assess eligible persons not assessed by CDCR or DMH.

9) Requires the SARATSO Review Committee to research the appropriateness and feasibility of providing a means by which an eligible person subject to assessment may, at his or her own expense, be assessed with the SARATSO by a governmental entity prior to his or her scheduled assessment. If the Committee unanimously agrees that such a process is appropriate and feasible, the Committee shall advise the Governor and the Legislature and shall post its decision on the CDCR Web site. Provides that 60 days after the decision is posted, the established process shall become effective.

10) Defines "eligible person" as a person convicted of a sex offense that requires him or her to register as a sex offender pursuant to Penal Code Section 290 and has not been assessed with the SARATSO within the previous five years.

11) Provides that commencing July 1, 2008, every adult male convicted of an offense that requires him to register as a sex offender shall be assessed for the risk of re-offending, as specified. States that this assessment shall be conducted by a probation officer trained, as specified.

12) Provides that every adult male who has a risk assessment of "high" shall be continuously electronically monitored while on probation unless a court determines that such monitoring is unnecessary for a particular person.

13) States that beginning January 1, 2009, each probation department shall report to the Legislature and the Governor on the effectiveness of continuous electronic monitoring, including the costs of monitoring and the recidivism rates of those persons who have been monitored.

14) Allows the parole authority to require, as a condition of release on parole, reinstatement of parole or as an intermediate sanction in lieu of return to prison that an inmate or parolee agree in writing to the use of electronic monitoring or supervising devices for the purpose of helping to verify his or her compliance with all other conditions of parole.

15) States that commencing July 1, 2008, every adult male convicted of an offense that requires him to register as a sex offender to be assessed for the risk of re-offending. The

assessment shall be conducted by a parole officer who has been trained as specified.

16) Requires every adult male who has a risk assessment of "high" shall be continuously electronically monitored while on parole unless the CDCR determines that such monitoring is unnecessary for a particular person.

17) States that beginning January 1, 2009 and every two years thereafter, CDCR shall report to the Legislature and to the Governor on the effectiveness of continuous electronic monitoring, including the costs and the recidivism rates of the persons who have been monitored.

18) Specifies that the monitoring device shall be identified as one that employs the latest available proven effective monitoring technology.

19) Contains an urgency clause.

FISCAL EFFECT : According to the Assembly Appropriations Committee:

1) Creating a state and local scheme for assessing the risk presented by convicted sex offenders, training state and local authorities in the use of the assessment tool, assessing sex offenders, increasing state and local parole and probation staff to supervise more offenders for longer periods of time, based on risk assessment ratings, and reporting will result in state and reimbursable local costs in the tens of millions.

2) State and reimbursable local costs in the tens of millions of dollars to provide electronic monitoring for high risk parolees and probationers. For example, to cover the portion of CDCR's current high risk sex offender parole population (about 2,000 parolees) not currently under electronic monitoring, CDCR would require about $10 million in 2007-08. To the extent that this bill results in additional high risk parolees, these costs would increase significantly. [Currently CDCR is budgeted to provide Global Positioning System (GPS) surveillance on 1,000 high risk sex offenders on parole.]

Reimbursable annual local costs would likely be somewhat less, assuming a smaller number of offenders.

COMMENTS : According to the author, "This bill requires parole and probation authorities to place GPS devices on all sex offenders found to pose a high risk to society.

"Unfortunately, California is home to more than 85,000 registered sex offenders most of whom pose a clear and present danger to children and other innocent citizens unable to protect themselves against vicious attacks.

"At least 27,000 of these sex offenders are presently serving prison sentences and will eventually be paroled back into the very community they committed their crime. 8,100 are child molesters and pedophiles, all of whom have committed unspeakable crimes against innocent children and most of whom will be released from prison before their victims graduate from high school.

"In addition, more than 9,000 sex offenders are supervised on parole caseloads, all living and working in the same areas where children congregate. According to CDCR, at least 2,000 of these sex offenders are classified 'dangerous and high risk'. Recently, it was discovered that a number of these offenders were allowed to live in motels adjacent to Disneyland.

"Another 11,000 sex offenders are currently on county probation and thousands more are incarcerated in county jails and will be released back into communities within one-year. Current CDCR recidivism rates indicate that up to 66% of all sex offenders released from prison will return to prison within three years for committing subsequent sex crimes.

"While we have some of the toughest laws in the nation as it relates to punishing sex offenders, we do not do enough to ensure that when sex offenders are released from prison or jail they are monitored to the fullest extent possible.

"GPS technology is a proven method of tracking the whereabouts of offenders who pose a threat to society. In fact, parole officials have tracked high-risk sex offenders on GPS since July 2005. These devices provide an extra set of eyes by keeping parole agents aware of every move the offender makes 24 hours per day and seven days per week.

"CDCR is very pleased with the results of this program. In just

10 months, more than 100 of the 450 high-risk sex offender parolees placed on GPS have been sent back to prison for violating their conditions of parole. At least 30 of these violators were tracked on GPS casing their next victims or in the act of committing subsequent sex crimes.

"This bill will help protect and preserve the well being of our children - because they are the key to our future!"

Please see the policy committee analysis for full discussion of this bill.

Analysis Prepared by : Kathleen Ragan / PUB. S. / (916) 319-3744

FN: 0016946

SENATE RULES COMMITTEE Office of Senate Floor Analyses 1020 N Street, Suite 524 (916) 651-1520 Fax: (916) 327-4478	SB 1178

UNFINISHED BUSINESS

Bill No: SB 1178
Author: Speier (D), et al
Amended: 8/23/06
Vote: 27 - Urgency

SENATE PUBLIC SAFETY COMMITTEE : 6-0, 3/15/06
AYES: Migden, Poochigian, Cedillo, Margett, Perata, Romero

SENATE APPROPRIATIONS COMMITTEE : 13-0, 5/25/06
AYES: Murray, Aanestad, Alarcon, Alquist, Ashburn, Battin, Dutton, Escutia, Florez, Ortiz, Poochigian, Romero, Torlakson

SENATE FLOOR : 38-0, 6/1/06
AYES: Aanestad, Ackerman, Alarcon, Alquist, Ashburn, Battin, Bowen, Cedillo, Chesbro, Cox, Denham, Ducheny, Dunn, Dutton, Escutia, Figueroa, Florez, Hollingsworth, Kehoe, Kuehl, Lowenthal, Machado, Maldonado, Margett, McClintock, Morrow, Murray, Ortiz, Perata, Poochigian, Romero, Runner, Scott, Simitian, Soto, Speier, Torlakson, Vincent
NO VOTE RECORDED: Migden, Vacancy

ASSEMBLY FLOOR : 76-0, 8/30/06 - See last page for vote

SUBJECT : Sex offenders: electronic monitoring

SOURCE : Author

DIGEST : This bill, commencing July 1, 2008, requires

CONTINUED

every adult male who is convicted of specified sex offenses to be assessed for the risk of reoffending, as specified, and provides that those that are deemed to be of moderate-high or high risk shall be monitored continuously electronically while on parole with specified exceptions.

Assembly Amendments (1) require sex offenders to be subject to assessment using the State-Authorized Risk Assessment Tool for Sex Offenders (SARATSO), (2) establish the SARATSO Review Committee with specified functions, (3) delete provisions requiring the California Department of Corrections and Rehabilitation to establish a related training program, (4) add an urgency clause, and (5) add a co-author.

Senate Floor Amendments of 5/30/06 delete language stating that this bill is "inoperative if the initiative measure commonly known as 'Jessica's Law' is enacted by the voters at the November 7, 2006, general election."

ANALYSIS : Existing law requires that persons placed on probation by a court be under the supervision of the county probation officer, who is required to determine both the level and type of supervision consistent with the court-ordered conditions of probation.

Existing law states the legislative finding that "continuous electronic monitoring has proven to be an effective risk management tool for supervising high-risk persons on probation who are likely to reoffend where prevention and knowledge of their whereabouts is a high priority for
maintaining public safety."

Existing law authorizes county probation departments to utilize continuous electronic monitoring to electronically monitor the whereabouts of persons on probation, as specified.

Existing law provides for local governments to authorize the use of home detention for minimum security jail inmates, including global positioning system devices, as specified.

Existing law authorizes the parole authority [the California Department of Corrections and Rehabilitation (CDCR) for determinately sentenced inmates and the Board of Parole Hearings for indeterminately sentenced inmates] to require, as a condition of release on parole, electronic monitoring as long as the device is not used to eavesdrop or record the parolee's conversations.

Existing law provides that the "Department of Corrections, to the maximum extent practicable and feasible, and subject to legislative appropriation of necessary funds, shall ensure, by July 1, 2001, that all parolees under active supervision and deemed to pose a high risk to the public of committing violent sex crimes shall be placed on an intensive and specialized parole supervision caseload."

Existing law further provides that the "Department of Corrections shall develop and, at the discretion of the director, and subject to an appropriation of the necessary funds, may implement a plan for the implementation of relapse prevention treatment programs, and the provision of other services deemed necessary by the department, in conjunction with intensive and specialized parole supervision, to reduce the recidivism of high-risk sex offenders."

Existing law states the legislative finding that "continuous electronic monitoring has proven to be an effective risk management tool for supervising high-risk persons on parole who are likely to reoffend where prevention and knowledge of their whereabouts is a high priority for maintaining public safety."

Existing law authorizes CDCR to "utilize continuous electronic monitoring to electronically monitor the whereabouts of persons on parole," as specified.

This bill, commencing July 1, 2008, requires every adult male convicted of an offense that requires him/her to register as a sex offender to be assessed for risk of re-offending using the STATIC-99 assessment. Specifically, this bill:

1. Requires the CDCR to consult with the Department of

Mental Health (DMH) and experts in sex offender risk assessment, on or before January 1, 2008, and to establish a training program for probation officers, parole officers and any other persons.

2. States that on or before January 1, 2008, CDCR, DMH, and experts in the field of risk assessment and the use of actuarial risk instruments in predicting sex offender risk shall establish a training program for probation officers, parole officers, and any other persons authorized by law to perform risk assessments.

3. States that commencing on January 1, 2008, every adult male sex offender registrant shall be assessed for the risk of re-offending using the STATIC-99 assessment, and that the assessment shall be performed by a probation officer who has been trained as specified.

4. Requires that every adult male who has a risk assessment of moderate-high or high shall be electronically monitored while on probation unless the court determines that monitoring is inappropriate for a particular person.

5. Provides that the electronic monitoring device shall be identified as the one that employs the latest available proven effective monitoring technology. States, however, that nothing in this section shall prohibit probation authorities from using electronic monitoring technology pursuant to any other provision of law.

6. States that, beginning January 1, 2009, and every two years thereafter, CDCR shall report to the Legislature and to the Governor on the effectiveness of mandatory electronic monitoring, including the costs of the monitoring and the recidivism rates of those persons who have been monitored.

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9. Contains an urgency clause allowing this bill to take effect immediately upon enactment.

FISCAL EFFECT : Appropriation: No Fiscal Com.: Yes Local: Yes

According to the Assembly Appropriations Committee:

1. Creating a state and local scheme for assessing the risk presented by convicted sex offenders, training state and local authorities in the use of the assessment tool, assessing sex offenders, increasing state and local parole and probation staff to supervise more offenders for longer periods of time, based on risk assessment ratings, and reporting will result in state and reimbursable local costs in the tens of millions.

2. State and reimbursable local costs in the tens of millions of dollars to provide electronic monitoring for high risk parolees and probationers. For example, to cover the portion of CDCR's current high risk sex offender parole population (about 2,000 parolees) not currently under electronic monitoring, CDCR would require about $10 million in 2007-08. To the extent that this bill results in additional high risk parolees, these costs would increase significantly. [Currently CDCR is budgeted to provide Global Positioning System (GPS) surveillance on 1,000 high risk sex offenders on parole.]

   Reimbursable annual local costs would likely be somewhat less, assuming a smaller number of offenders.

SUPPORT : (Verified 6/27/06) (Per the Assembly Public Safety Committee)

California Apartment Association

California Correctional Supervisors Organization
California District Attorneys Association
California Peace Officer's Association
California Police Chief's Association
California State PTA
Crime Victims United
Los Angeles County District Attorney's Office
Mayor Antonio Villaraigosa, City of Los Angeles
Office of the Attorney General
Orange County Board of Supervisors
Police Officers Research Association of California
Santa Clara County District Attorney

ARGUMENTS IN SUPPORT : According to the author:

"This bill requires parole and probation authorities to place GPS devices on all sex offenders found to pose a high risk to society.

"Unfortunately, California is home to more than 85,000 registered
sex offenders most of whom pose a clear and present danger to children and other innocent citizens unable to protect themselves against vicious attacks.

"At least 27,000 of these sex offenders are presently serving prison sentences and will eventually be paroled back into the very community they committed their crime. 8,100 are child molesters and pedophiles, all of whom have committed unspeakable crimes against innocent children and most of whom will be released from prison before their victims graduate from high school.

"In addition, more than 9,000 sex offenders are supervised on parole caseloads, all living and working in the same areas where children congregate. According to CDCR, at least 2,000 of these sex offenders are classified 'dangerous and high risk'. Recently, it was discovered that a number of these offenders were allowed to live in motels adjacent to Disneyland.

"Another 11,000 sex offenders are currently on county probation and thousands more are incarcerated in county

jails and will be released back into communities within one-year. Current CDCR recidivism rates indicate that up to 66% of all sex offenders released from prison will return to prison within three years for committing subsequent sex crimes.

"While we have some of the toughest laws in the nation as it relates to punishing sex offenders, we do not do enough to ensure that when sex offenders are released from prison or jail they are monitored to the fullest extent possible.

"GPS technology is a proven method of tracking the whereabouts of offenders who pose a threat to society. In fact, parole officials have tracked high-risk sex offenders on GPS since July 2005. These devices provide an extra set of eyes by keeping parole agents aware of every move the offender makes 24 hours per day and seven days per week.

"CDCR is very pleased with the results of this program. In just 10 months, more than 100 of the 450 high-risk sex offender parolees placed on GPS have been sent back to prison for violating their conditions of parole. At least 30 of these violators were tracked on GPS casing their next victims or in the act of committing subsequent sex crimes.

"This bill will help protect and preserve the well being of our children - because they are the key to our future!"

ASSEMBLY FLOOR :
AYES: Aghazarian, Arambula, Baca, Bass, Benoit, Berg, Bermudez, Blakeslee, Bogh, Calderon, Canciamilla, Chan, Chavez, Chu, Cogdill, Cohn, Coto, Daucher, De La Torre, DeVore, Dymally, Emmerson, Evans, Frommer, Garcia, Goldberg, Haynes, Jerome Horton, Shirley Horton, Houston, Huff, Jones, Karnette, Keene, Klehs, Koretz, La Malfa, La Suer, Laird, Leno, Leslie, Levine, Lieber, Lieu, Liu, Matthews, Maze, McCarthy, Montanez, Mountjoy, Mullin, Nakanishi, Nation, Nava, Niello, Oropeza, Parra, Pavley, Plescia, Richman, Ridley-Thomas, Sharon Runner, Ruskin,

Salinas, Spitzer, Strickland, Torrico, Tran, Umberg, Vargas, Villines, Walters, Wolk, Wyland, Yee, Nunez
NO VOTE RECORDED: Hancock, Negrete McLeod, Saldana, Vacancy

RJG:mel 8/31/06 Senate Floor Analyses

SUPPORT/OPPOSITION: SEE ABOVE

**** END ****

SENATE RULES COMMITTEE Office of Senate Floor Analyses 1020 N Street, Suite 524 (916) 651-1520 Fax: (916) 327-4478	SB 1178

UNFINISHED BUSINESS

Bill No: SB 1178
Author: Speier (D), et al
Amended: 8/23/06
Vote: 27 - Urgency

SENATE PUBLIC SAFETY COMMITTEE : 6-0, 3/15/06
AYES: Migden, Poochigian, Cedillo, Margett, Perata, Romero

SENATE APPROPRIATIONS COMMITTEE : 13-0, 5/25/06
AYES: Murray, Aanestad, Alarcon, Alquist, Ashburn, Battin, Dutton, Escutia, Florez, Ortiz, Poochigian, Romero, Torlakson

SENATE FLOOR : 38-0, 6/1/06
AYES: Aanestad, Ackerman, Alarcon, Alquist, Ashburn, Battin, Bowen, Cedillo, Chesbro, Cox, Denham, Ducheny, Dunn, Dutton, Escutia, Figueroa, Florez, Hollingsworth, Kehoe, Kuehl, Lowenthal, Machado, Maldonado, Margett, McClintock, Morrow, Murray, Ortiz, Perata, Poochigian, Romero, Runner, Scott, Simitian, Soto, Speier, Torlakson, Vincent
NO VOTE RECORDED: Migden, Vacancy

ASSEMBLY FLOOR : 76-0, 8/30/06 - See last page for vote

SUBJECT : Sex offenders: electronic monitoring

SOURCE : Author

DIGEST : This bill, commencing July 1, 2008, requires

CONTINUED

every adult male who is convicted of specified sex offenses to be assessed for the risk of reoffending, as specified, and provides that those that are deemed to be of moderate-high or high risk shall be monitored continuously electronically while on parole with specified exceptions.

Assembly Amendments (1) require sex offenders to be subject to assessment using the State-Authorized Risk Assessment Tool for Sex Offenders (SARATSO), (2) establish the SARATSO Review Committee with specified functions, (3) delete provisions requiring the California Department of Corrections and Rehabilitation to establish a related training program, (4) add an urgency clause, and (5) add a co-author.

Senate Floor Amendments of 5/30/06 delete language stating that this bill is "inoperative if the initiative measure commonly known as 'Jessica's Law' is enacted by the voters at the November 7, 2006, general election."

ANALYSIS : Existing law requires that persons placed on probation by a court be under the supervision of the county probation officer, who is required to determine both the level and type of supervision consistent with the court-ordered conditions of probation.

Existing law states the legislative finding that "continuous electronic monitoring has proven to be an effective risk management tool for supervising high-risk persons on probation who are likely to reoffend where prevention and knowledge of their whereabouts is a high priority for
maintaining public safety."

Existing law authorizes county probation departments to utilize continuous electronic monitoring to electronically monitor the whereabouts of persons on probation, as specified.

Existing law provides for local governments to authorize the use of home detention for minimum security jail inmates, including global positioning system devices, as specified.

Existing law authorizes the parole authority [the California Department of Corrections and Rehabilitation (CDCR) for determinately sentenced inmates and the Board of Parole Hearings for indeterminately sentenced inmates] to require, as a condition of release on parole, electronic monitoring as long as the device is not used to eavesdrop or record the parolee's conversations.

Existing law provides that the "Department of Corrections, to the maximum extent practicable and feasible, and subject to legislative appropriation of necessary funds, shall ensure, by July 1, 2001, that all parolees under active supervision and deemed to pose a high risk to the public of committing violent sex crimes shall be placed on an intensive and specialized parole supervision caseload."

Existing law further provides that the "Department of Corrections shall develop and, at the discretion of the director, and subject to an appropriation of the necessary funds, may implement a plan for the implementation of relapse prevention treatment programs, and the provision of other services deemed necessary by the department, in conjunction with intensive and specialized parole supervision, to reduce the recidivism of high-risk sex offenders."

Existing law states the legislative finding that "continuous electronic monitoring has proven to be an effective risk management tool for supervising high-risk persons on parole who are likely to reoffend where prevention and knowledge of their whereabouts is a high priority for maintaining public safety."

Existing law authorizes CDCR to "utilize continuous electronic monitoring to electronically monitor the whereabouts of persons on parole," as specified.

This bill, commencing July 1, 2008, requires every adult male convicted of an offense that requires him/her to register as a sex offender to be assessed for risk of re-offending using the STATIC-99 assessment. Specifically, this bill:

1. Requires the CDCR to consult with the Department of

Mental Health (DMH) and experts in sex offender risk assessment, on or before January 1, 2008, and to establish a training program for probation officers, parole officers and any other persons.

2. States that on or before January 1, 2008, CDCR, DMH, and experts in the field of risk assessment and the use of actuarial risk instruments in predicting sex offender risk shall establish a training program for probation officers, parole officers, and any other persons authorized by law to perform risk assessments.

3. States that commencing on January 1, 2008, every adult male sex offender registrant shall be assessed for the risk of re-offending using the STATIC-99 assessment, and that the assessment shall be performed by a probation officer who has been trained as specified.

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Salinas, Spitzer, Strickland, Torrico, Tran, Umberg, Vargas, Villines, Walters, Wolk, Wyland, Yee, Nunez
NO VOTE RECORDED: Hancock, Negrete McLeod, Saldana, Vacancy

RJG:mel 8/31/06 Senate Floor Analyses

SUPPORT/OPPOSITION: SEE ABOVE

**** END ****

Effective: October 13, 2007

West's Annotated California Codes Currentness
Penal Code (Refs & Annos)
Part 1. Of Crimes and Punishments
Title 9. Of Crimes Against the Person Involving Sexual Assault, and Crimes Against Public Decency and Good Morals (Refs & Annos)
Chapter 5.5. Sex Offenders (Refs & Annos)

➡ § 290. Sex Offender Registration Act; lifetime duty to register within specified number of days following entrance into or moving within a jurisdiction; offenses requiring mandatory registration

(a) Sections 290 to 290.023, inclusive, shall be known and may be cited as the Sex Offender Registration Act. All references to "the Act" in those sections are to the Sex Offender Registration Act.

(b) Every person described in subdivision (c), for the rest of his or her life while residing in California, or while attending school or working in California, as described in Sections 290.002 and 290.01, shall be required to register with the chief of police of the city in which he or she is residing, or the sheriff of the county if he or she is residing in an unincorporated area or city that has no police department, and, additionally, with the chief of police of a campus of the University of California, the California State University, or community college if he or she is residing upon the campus or in any of its facilities, within five working days of coming into, or changing his or her residence within, any city, county, or city and county, or campus in which he or she temporarily resides, and shall be required to register thereafter in accordance with the Act.

(c) The following persons shall be required to register:

Any person who, since July 1, 1944, has been or is hereafter convicted in any court in this state or in any federal or military court of a violation of Section 187 committed in the perpetration, or an attempt to perpetrate, rape or any act punishable under Section 286, 288, 288a, or 289, Section 207 or 209 committed with intent to violate Section 261, 286, 288, 288a, or 289, Section 220, except assault to commit mayhem, Section 243.4, paragraph (1), (2), (3), (4), or (6) of subdivision (a) of Section 261, paragraph (1) of subdivision (a) of Section 262 involving the use of force or violence for which the person is sentenced to the state prison, Section 264.1, 266, or 266c, subdivision (b) of Section 266h, subdivision (b) of Section 266i, Section 266j, 267, 269, 285, 286, 288, 288a, 288.3, 288.4, 288.5, 288.7, 289, or 311.1, subdivision (b), (c), or (d) of Section 311.2, Section 311.3, 311.4, 311.10, 311.11, or 647.6, former Section 647a, subdivision (c) of Section 653f, subdivision 1 or 2 of Section 314, any offense involving lewd or lascivious conduct under Section 272, or any felony violation of Section 288.2; any statutory predecessor that includes all elements of one of the above-mentioned offenses; or any person who since that date has been or is hereafter convicted of the attempt or conspiracy to commit any of the above-mentioned offenses.

CREDIT(S)

(Added by Stats.2007, c. 579 (S.B.172), § 8, eff. Oct. 13, 2007.)

OFFICIAL FORMS

2008 Main Volume

<Mandatory and optional Forms adopted and approved by the Judicial Council are set out in West's California Judicial Council Forms Pamphlet.>

HISTORICAL AND STATUTORY NOTES

2008 Main Volume

For executive order S-15-06, issued by Governor Schwarzenegger, see Historical and Statutory Notes under Penal Code § 3003.

For executive order S-08-06, issued by Governor Schwarzenegger on May 15, 2006, relating to creation of a High Risk Sex Offender Task Force, see Historical and Statutory Notes under Penal Code § 3003.

Sections 52 and 53 of Stats.2007, c. 579 (S.B.172), provide:

"SEC. 52. It is the intent of the Legislature that any reference to Section 290 of the Penal Code that appears in any other provision of a bill enacted during the 2007-08 Regular Session be construed to refer to a corresponding provision of Section 290 of the Penal Code as renumbered by this act.

"SEC. 53. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

"In order to ensure that conforming changes are made to laws relating to sex offenders, it is necessary that this act take effect immediately."

Former § 290, added by Stats.1985, c. 1474, § 2, operative Jan. 1, 1988, amended by Stats.1986, c. 1299, § 7; Stats.1987, c. 753, § 3; Stats.1987, c. 1418, § 3.1; Stats.1989, c. 1316, § 2; Stats.1989, c. 1402, § 5; Stats.1989, c. 1407, § 4; Stats.1992, c. 197 (A.B.2297), § 1; Stats.1992, c. 695 (S.B.97), § 9, eff. Sept. 15, 1992; Stats.1993, c. 555 (A.B.191), § 1, eff. Sept. 28, 1993; Stats.1993, c. 589 (A.B. 2211), § 109; Stats.1993, c. 595 (A.B.595), § 8; Stats.1994, c. 863 (A.B.3456), § 1; Stats.1994, c. 864 (A.B.1211), § 1; Stats.1994, c. 865 (A.B.3513), § 1; Stats.1994, c. 867 (A.B.2500), § 2.7; Stats.1995, c. 91 (S.B.975), § 120; Stats.1995, c. 85 (A.B.173), § 1; Stats.1995, c. 840 (S.B.295), § 2; Stats.1996, c. 908 (A.B.1562), § 2, eff. Sept. 25, 1996; Stats.1996, c. 909 (S.B.1378), § 2; Stats.1997, c. 17 (S.B.947), § 96; Stats.1997, c. 80 (A.B.213), § 1; Stats.1997, c. 817 (A.B.59), § 3; Stats.1997, c. 818 (A.B.1303), § 4; Stats.1997, c. 819 (S.B.314), § 1; Stats.1997, c. 820 (S.B.882), § 1; Stats.1997, c. 821 (A.B.290), § 3, eff. Oct. 9, 1997; Stats.1997, c. 821 (A.B.290), § 3.5, eff. Oct. 9, 1997, operative Jan. 1, 1998; Stats.1998, c. 485 (A.B.2803), § 128-129; Stats.1998, c. 927 (A.B.796), § 1; Stats.1998, c. 928 (A.B.1927), § 1; Stats.1998, c. 929 (A.B.1745), § 1; Stats.1998, c. 930 (A.B.1078), § 1; Stats.1999, c. 83 (S.B.966), § 138; Stats.1999, c. 576 (A.B.1193), § 1; Stats.1999, c. 730 (S.B.1275), § 1; Stats.1999, c. 901 (S.B.341), § 1.5; Stats.2000, c. 240 (A.B.2502), § 1; Stats.2000, c. 287 (S.B.1955), § 7; Stats.2000, c. 648 (A.B.1340), § 1; Stats.2000, c. 649 (S.B.446), § 2.5; Stats.2001, c. 485 (A.B.1004), § 1; Stats.2001, c. 544 (A.B.4), § 1; Stats.2001, c. 843 (A.B.349), § 1.3; Stats.2002, c. 664 (A.B.3034), § 171; Stats.2002, c. 17 (S.B.836), § 1, eff. March 28, 2002; Stats.2003, c. 538 (S.B.356), § 1; Stats.2003, c. 540 (S.B.879), § 1; Stats.2003, c. 634 (A.B.1313), § 1.3, eff. Sept. 30, 2003; Stats.2004, c. 429 (A.B.2527), § 1; Stats.2004, c. 731 (S.B.1289), § 1; Stats.2004, c. 761 (A.B.2395), § 1.3; Stats. 2005, c. 704 (A.B.439), § 1; Stats.2005, c. 722 (A.B.1323), § 3, eff. Oct. 7, 2005; Stats.2005, c. 722 (A.B.1323), § 3.5, eff. Oct. 7, 2005, operative Jan. 1, 2006; Stats.2006, c. 538 (S.B.1852), § 500; Stats.2006, c. 337 (S.B.1128), § 11, eff. Sept. 20, 2006, relating to registration of sex offenders, was repealed by Stats.2007, c. 579

(S.B.172), § 7, effective Oct. 13, 2007. See this section and Penal Code §§ 290.001 to 290.023.

Former § 290, added by Stats.1947, c. 1124, § 1, amended by Stats.1949, 1st Ex.Sess., c. 13, § 1; Stats.1950, 1st Ex.Sess., c. 70, § 1; Stats.1953, c. 400, § 1; Stats.1955, c. 169, § 1; Stats.1961, c. 560, § 3; Stats.1961, c. 2147, § 8; Stats.1967, c. 716, § 1; Stats.1970, c. 1301, § 4; Stats.1972, c. 944, § 8; Stats.1984, c. 1419, § 1; Stats.1985, c. 929, § 4; Stats.1985, c. 1474, § 1.

Section 2 of Stats.1992, c. 197 provides:

"It is the intent of the Legislature in enacting Section 1 of this bill to abrogate the holding in People v. Saunders, 232 Cal.App.3d 1592."

Section 3 of Stats.1993, c. 555 (A.B.191), provides:

"It is the intent of the Legislature in enacting Section 1 of this bill to abrogate the holding in People v. Saunders, 232 Cal.App.3d 1592."

Sections 1 and 7 of Stats.1994, c. 867 (A.B.2500), provide:

"Section 1. This bill shall be known and may be cited as the Child Protective Act of 1994."

"Sec. 7. This act shall become operative only if Assembly Bill 3026 [Stats.1994, c. 875] of the 1993-94 Regular Session is enacted and becomes effective on or before January 1, 1995."

Section 5 of Stats.1995, c. 840 (S.B.295), provides:

"If both this bill and AB 95 [not enrolled] or AB 401 [not enrolled] are enacted, or all three bills are enacted, amend Section 290 of the Penal Code, and become effective on January 1, 1996, and this bill is chaptered last, Section 2 of this bill shall not become operative."

Section 1 of Stats.1996, c. 908 (A.B.1562), provides:

"The Legislature finds and declares the following:

"(a) Sex offenders pose a high risk of engaging in further offenses after release from incarceration or commitment, and protection of the public from these offenders is a paramount public interest.

"(b) It is a compelling and necessary public interest that the public have information concerning persons convicted of offenses involving unlawful sexual behavior collected pursuant to Sections 290 and 290.4 of the Penal Code to allow members of the public to adequately protect themselves and their children from these persons.

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

"(d) In balancing the offenders' due process and other rights against the interests of public security, the Legislature finds that releasing information about sex offenders under the circumstances specified in this act will further the primary government interest of protecting vulnerable populations from potential harm.

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

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

"(g) 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 such person convicted of a sexual 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."

Stats.1997, c. 818 (A.B.1303), § 1, provides:

"In order to ensure the continued receipt of federal anti-drug abuse funds by the state and to protect the public from repeat violent sex offenders, it is the intent of the Legislature that California sex offender registration statutes comply with the provisions of the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Program contained in the federal Violent Crime Control and Law Enforcement Act of 1994 (Section 14071 of Title 42 of the United States Code)."

Sections 2 and 3 of Stats.1997, c. 80, provide:

"Sec. 2. The Attorney General shall do all of the following:

"(a) Work with local law enforcement agencies to determine whether the existing registry of sex offenders established by Section 290 of the Penal Code is meeting the needs of law enforcement. The Attorney General shall report to the Legislature by December 31, 1998, on his or her findings.

"(b) Work with the chief law enforcement officers of other states to develop a national registry of sex offenders, as required by federal law. The registry should include persons who are required to register in any state and should specifically mark those offenders who are registered in multiple states.

"(c) Work with Attorney Generals of other states to amend registration statutes to inform persons required to register as sex offenders of their responsibility to register in any other state where they may relocate.

"Sec. 3. The Legislature finds and declares that the amendments made to subparagraphs (D) and (E) of paragraph (2) of subdivision (a) of Section 290 of the Penal Code, as set forth in Section 1 of this act, do not constitute a change in, but are declaratory of, existing law."

Section 1 of Stats.2000, c. 649 (S.B.446), provides:

"It is the intent of the Legislature that photographs available to the public of persons required to register as convicted sex offenders pursuant to Section 290 of the Penal Code be current."

Section 2 of Stats.2002, c. 17 (S.B.836), provides, in part:

"In order to clarify legislative intent with respect to treatment of sex offenders on probation or parole, it is necessary for this act to become effective immediately."

Section 2 of Stats.2003, c. 540 (S.B.879), provides:

"SEC. 2. (a) Section 1.1 of this bill incorporate amendments to Sections 290 of the Penal Code proposed by both this bill and SB 356 [Stats.2003, c. 538]. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2004, (2) each bill amends Section 290 of the Penal Code, and (3) SB 879 [Stats.2003, c. 540] is not enacted or as enacted does not amend that section, and (4) this bill is enacted after SB 356 [Stats.2003, c. 538], in which case Sections 1, 1.2, 1.3, of this bill shall not become operative.

"(b) Section 1.2 of this bill incorporates amendments to Section 290 of the Penal Code proposed by both this bill and AB 1313 [Stats.2003, c. 634]. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2004, (2) each bill amends Section 290 of the Penal Code, (3) SB 356 [Stats.2003, c. 538] is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 1313 [Stats.2003, c. 634] in which case Sections 1, 1.1, and 1.3 of this bill shall not become operative, and Section 290.45 of the Penal Code, as proposed to be added by Section 4 of AB 1313 [Stats.2003, c. 634], shall become operative, and Section 4.1 of AB 1313 [Stats.2003, c. 634] shall not become operative.

"(c) Section 1.3 of this bill incorporates amendments to Section 290 of the Penal Code proposed by this bill, SB 356 [Stats.2003, c. 538], and AB 1313 [Stats.2003, c. 634]. It shall only become operative if (1) all three bills are enacted and become effective on or before January 1, 2004, (2) all three bills amend Section 290 of the Penal Code, and (3) this bill is enacted after SB 356 [Stats.2003, c. 538] and AB 1313 [Stats.2003, c. 634], in which case Sections 1, 1.1, and 1.2 of this bill shall not become operative, and Section 290.45 of the Penal Code, as proposed to be added by Section 4.1 of AB 1313 [Stats.2003, c. 634], shall become operative, and Section 4 of AB 1313 [Stats.2003, c. 634] shall not become operative."

Section 7 of Stats.2003, c. 634 (A.B.1313), provides:

"SEC. 7. (a) Section 1.1 of this bill incorporate amendments to Sections 290 of the Penal Code proposed by both this bill and SB 356 [Stats.2003, c. 538]. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2004, (2) each bill amends Section 290 of the Penal Code, and (3) SB 879 [Stats.2003, c. 540] is not enacted or as enacted does not amend that section, and (4) this bill is enacted after SB 356 [Stats.2003, c. 538], in which case Sections 1, 1.2, 1.3, of this bill shall not become operative.

"(b) Section 1.2 of this bill incorporates amendments to Section 290 of the Penal Code proposed by both this bill and SB 879 [Stats.2003, c. 540]. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2004, (2) each bill amends Section 290 of the Penal Code, (3) SB 356 [Stats.2003, c. 538] is not enacted or as enacted does not amend that section, and (4) this bill is enacted after SB 879 in which case Sections 1, 1.1, and 1.3 of this bill shall not become operative.

"(c) Section 1.3 of this bill incorporates amendments to Section 290 of the Penal Code proposed by this bill, SB 356 [Stats.2003, c. 538], and SB 879 [Stats.2003, c. 540]. It shall only become operative if (1) all three bills are enacted and become effective on or before January 1, 2004, (2) all three bills amend Section 290 of the Penal Code, and (3) this bill is enacted after SB 356 [Stats.2003, c. 538] and SB 879 [Stats.2003, c. 540], in which case Sections 1, 1.1,

and 1.2 of this bill shall not become operative."

Section 11 of Stats.2003, c. 634 (A.B.1313), provides:

"SEC. 11. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

"In order to ensure that California is in full compliance with the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act and the Higher Education Act of 1965, as amended by the Campus Sex Crimes Prevention Act, it is necessary that this act take effect immediately."

Sections 5 and 6 of Stats.2003, c. 634 (A.B.1313), provide:

"SEC. 5. The Department of Justice may develop a training program for police, sheriffs, and campus police departments explaining how information specified in paragraph (1) of subdivision (d) of Section 290.01 of the Penal Code may be disclosed.

"SEC. 6. It is the intent of the Legislature in enacting this act to ensure that California universities, colleges, community colleges, and other institutions of higher learning maintain full eligibility for federal funds by complying with the provisions of Section 1092(f)(1)(I) of Title 20 of the United States Code."

Sections 2 and 3 of Stats.2004, c. 429 (A.B.2527), provide:

"SEC. 2. It is the intent of the Legislature that this measure address the holding of the California Court of Appeal in People v. North (2003) 112 Cal.App.4th 612.

"SEC. 3. (a) Section 1.3 of this bill incorporates amendments to Section 290 of the Penal Code proposed by both this bill and AB 2395 [Stats.2004, c. 761]. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2005, (2) each bill amends Section 290 of the Penal Code, (3) SB 1289 [Stats.2004, c. 731] is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 2395 [Stats.2004, c. 761], in which case Sections 1, 1.5, and 1.7 of this bill shall not become operative.

"(b) Section 1.5 of this bill incorporates amendments to Section 290 of the Penal Code proposed by both this bill and SB 1289 [Stats.2004, c. 731]. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2005, (2) each bill amends Section 290 of the Penal Code, (3) AB 2395 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after SB 1289 [Stats.2004, c. 731], in which case Sections 1, 1.3, and 1.7 of this bill shall not become operative.

"(c) Section 1.7 of this bill incorporates amendments to Section 290 of the Penal Code proposed by this bill, AB 2395 [Stats.2004, c. 761], and SB 1289 [Stats.2004, c. 731]. It shall only become operative if (1) all three are enacted and become effective on or before January 1, 2005, (2) all three bills amend Section 290 of the Penal Code, and (3) this bill is enacted after AB 2395 [Stats.2004, c. 761] and SB 1289 [Stats.2004, c. 731], in which case Sections 1, 1.3, and 1.5 of this bill shall not become operative."

Section 3 of Stats.2004, c. 731 (S.B.1289), provides:

"SEC. 3. (a) Section 1.1 of this bill incorporates amendments to Section 290 of the Penal Code proposed by this bill and required by the enactment of AB 488 [Stats.2004, c. 745, eff. Sept. 24, 2004]. It shall only become operative if

(1) both bills are enacted and become effective on or before January 1, 2005, (2) this bill amends Section 290 of the Penal Code and AB 488 [Stats.2004, c. 745, eff. Sept. 24, 2004] adds Section 290.46 to the Penal Code, (3) and neither AB 2395 [Stats.2004, c. 761], nor AB 2527 [Stats.2004, c. 429] are enacted or as enacted do not amend that section [290], in which case Sections 1, 1.2, 1.3, 1.4, 1.5, 1.6, and 1.7 of this bill shall not become operative.

"(b) Section 1.2 of this bill incorporates amendments to Section 290 of the Penal Code proposed by both this bill and AB 2395 [Stats.2004, c. 761]. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2005, (2) each bill amends Section 290 of the Penal Code, (3) neither AB 488 [Stats.2004, c. 745, eff. Sept. 24, 2004], nor AB 2527 [Stats.2004, c. 429] are enacted or as enacted, AB 2527 [Stats.2004, c. 429] does not amend that section and AB 488 [Stats.2004, c. 745, eff. Sept. 24, 2004] does not add Section 290.46 to the Penal Code, and (4) this bill is enacted after AB 2395 [Stats.2004, c. 761], in which case Sections 1, 1.1, 1. 3, 1.4, 1.5, 1.6, and 1.7 of this bill shall not become operative.

"(c) Section 1.3 of this bill incorporated amendments to Section 290 of the Penal Code proposed by both this bill and AB 2527 [Stats.2004, c. 429]. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2005, (2) each bill amends Section 290 of the Penal Code, (3) neither AB 488 [Stats.2004, c. 745, eff. Sept. 24, 2004], nor AB 2395 [Stats.2004, c. 761] are enacted or as enacted AB 2395 [Stats.2004, c. 761] does not amend that section and AB 488 [Stats.2004, c. 745, eff. Sept. 24, 2004] does not add Section 290.46 to the Penal Code, and (4) this bill is enacted after AB 2527 [Stats.2004, c. 429], in which case Sections 1, 1.1, 1.2, 1.4, 1.5, 1.6, and 1.7 of this bill shall not become operative.

"(d) Section 1.4 of this bill incorporates amendments to Section 290 of the Penal Code proposed by this bill and AB 2395 [Stats.2004, c. 761], and required by the enactment of AB 488 [Stats.2004, c. 745, eff. Sept. 24, 2004]. It shall only become operative if (1) all three bills are enacted and become effective on or before January 1, 2005, (2) this bill and AB 2395 [Stats.2004, c. 761] amend Section 290 of the Penal Code and AB 488 [Stats.2004, c. 745, eff. Sept. 24, 2004] adds Section 290.46 to the Penal Code, (3) AB 2527 [Stats.2004, c. 429] is not enacted or as enacted does not amend Section 290 of the Penal Code, and (4) this bill is enacted after AB 2395 [Stats.2004, c. 761], in which case Sections 1, 1.1, 1.2, 1.3, 1.5, 1.6, and 1.7 of this bill shall not become operative.

"(e) Section 1.5 of this bill incorporated amendments to Section 290 of the Penal Code proposed by this bill, AB 2395 [Stats.2004, c. 761], and AB 2527 [Stats.2004, c. 429]. It shall only become operative if (1) all three bills are enacted and become effective on or before January 1, 2005, (2) all three bills amend Section 290 of the Penal Code, (3) this bill is enacted after AB 2395 [Stats.2004, c. 761], and AB 2527 [Stats.2004, c. 429], and (4) AB 488 [Stats.2004, c. 745, eff. Sept. 24, 2004] is not enacted, or as enacted does not add Section 290.46 to the Penal Code, in which case Sections 1, 1.1, 1.2, 1.3, 1.4, 1.6, and 1.7 of this bill shall not become operative.

"(f) Section 1.6 of this bill incorporates amendments to Section 290 of the Penal Code proposed by this bill and AB 2527, and required by the enactment of AB 488 [Stats.2004, c. 745, eff. Sept. 24, 2004]. It shall only become operative if (1) all three bills are enacted and become effective on or before January 1, 2005, (2) this bill and AB 2527 [Stats.2004, c. 429] amend Section 290 of the Penal Code, (3) AB 488 [Stats.2004, c. 745, eff. Sept. 24, 2004] adds Section 290. 46 to the Penal Code, (4) AB 2395 [Stats.2004, c. 761] is not enacted or as enacted does not amend Section 290 of the Penal Code, and (5) this bill is enacted after AB 2527 [Stats.2004, c. 429], in which case Sections 1, 1.1, 1.2, 1.3, 1.4, 1.5, and 1.7 of this bill shall not become operative.

"(g) Section 1.7 of this bill incorporated amendments to Section 290 of the Penal Code proposed by this bill, AB 2395 [Stats.2004, c. 761], and AB 2527 [Stats.2004, c. 429], and required by the enactment of AB 488 [Stats.2004, c. 745, eff. Sept. 24, 2004]. It shall only become operative if (1) all four bills are enacted and become effective on or before January 1, 2005, (2) this bill, AB 2395 [Stats.2004, c. 761], and AB 2527 [Stats.2004, c. 429] amend Section 290 of the Penal Code, (3) AB 488 [Stats.2004, c. 745, eff. Sept. 24, 2004] adds Section 290.46 to the Penal Code, and (4) this bill is enacted after AB 2395 [Stats.2004, c. 761] and AB 2527 [Stats.2004, c. 429], in which case Sections 1, 1.1, 1.2, 1.3, 1.4, 1.5, and 1.6 of this bill shall not become operative."

Section 2 of Stats.2004, c. 761 (A.B.2395), provides:

"SEC. 2. (a) Section 1.1 of this bill incorporates amendments to Section 290 of the Penal Code proposed by both this bill and AB 2527 [Stats.2004, c. 429]. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2005, (2) each bill amends Section 290 of the Penal Code, (3) SB 1289 [Stats.2004, c. 731] is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 2527 [Stats.2004, c. 429], in which case Sections 1, 1.2, and 1.3 of this bill shall not become operative.

"(b) Section 1.2 of this bill incorporates amendments to Section 290 of the Penal Code proposed by both this bill and SB 1289 [Stats.2004, c. 731]. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2005, (2) each bill amends Section 290 of the Penal Code, (3) AB 2527 [Stats.2004, c. 429] is not enacted or as enacted does not amend that section, and (4) this bill is enacted after SB 1289 [Stats.2004, c. 731], in which case Sections 1, 1.1, and 1.3 of this bill shall not become operative.

"(c) Section 1.3 of this bill incorporates amendments to Section 290 of the Penal Code proposed by this bill, AB 2527 [Stats.2004, c. 429] , and SB 1289 [Stats.2004, c. 731]. It shall only become operative if (1) all three bills are enacted and become effective on or before January 1, 2005, (2) all three bills amend Section 290 of the Penal Code, and (3) this bill is enacted after AB 2527 [Stats.2004, c. 429], and SB 1289 [Stats.2004, c. 731], in which case Sections 1, 1.1, and 1.2 of this bill shall not become operative."

Sections 4 and 5 of Stats.2005, c. 704 (A.B.439), provide:

"SEC. 4. Section 1.5 of this bill incorporates amendments to Section 290 of the Penal Code proposed by this bill and AB 1323 [Stats.2005, c. 722]. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2006, (2) each bill amends Section 290 of the Penal Code, and (3) this bill is enacted after AB 1323 [Stats.2005, c. 722], in which case Section 290 of the Penal Code, as amended by AB 1323, shall remain operative only until the operative date of this bill, at which time Section 1.5 of this bill shall become operative, and Section 1 of this bill shall not become operative.

"SEC. 5. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code."

Sections 12 to 15 of Stats.2005, c. 722 (A.B.1323), provide:

"SEC. 12. The Legislature finds and declares the following:

"(a) The findings and declarations made by the Legislature in Section 1 of Chapter 908 of the Statutes of 1996, which enacted California's law relating to public notification regarding registered sex offenders, also apply to public notification made via the Internet Web site mandated by this section.

"(b) Releasing the home addresses and other information pertaining to specified registered sex offenders is not intended to further punish them for their offenses, but to allow the public to be aware of their presence in the community and take appropriate and lawful safety precautions on behalf of themselves and their children.

"(c) The notice concerning sex offender information required by Section 2079.10a of the Civil Code is not expected to change immediately upon the effective date of this act or immediately upon the notification to the Secretary of State pursuant to Section 290.47 of the Penal Code, as added by this act. It is expected that forms accompanying real

estate transactions may reflect the notice in the prior law for a reasonable period following those dates.

"SEC. 13. Section 3.5 of this bill incorporates amendments to Section 290 of the Penal Code proposed by both this bill and AB 439 [Stats.2005, c. 704]. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2006, but this bill becomes operative first, (2) each bill amends Section 290 of the Penal Code, and (3) this bill is enacted after AB 439 [Stats.2005, c. 704], in which case Section 290 of the Penal Code, as amended by Section 3 of this bill, shall remain operative only until the operative date of AB 439 [Stats.2005, c. 704], at which time Section 3.5 of this bill shall become operative.

"SEC. 14. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

"SEC. 15. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

"In order to assure that members of the public have adequate information about the identities and locations of sex offenders who may put them and their families at risk, it is necessary that this act take effect immediately."

Former § 290, added by Stats.1947, c. 1124, § 1, amended by Stats.1949, 1st Ex.Sess., c. 13, § 1; Stats.1950, 1st Ex.Sess., c. 70, § 1; Stats.1953, c. 400, § 1; Stats.1955, c. 169, § 1; Stats.1961, c. 560, § 3; Stats.1961, c. 2147, § 8; Stats.1967, c. 716, § 1; Stats.1970, c. 1301, § 4; Stats.1972, c. 1377, § 70; Stats.1975, c. 71, § 12; Stats.1979, c. 944, § 8; Stats.1984, c. 1419, § 1; Stats.1985, c. 929, § 4; Stats.1985, c. 1474, § 1, relating to the same subject matter, was repealed by its own terms on Jan. 1, 1988. See this section.

Former § 290, enacted in 1872, relating to unlawful mutilation or removal of dead bodies, was repealed by Stats.1939, c. 60, p. 1000, § 40000. See Health and Safety Code § 7052.

Derivation: Former § 290, added by Stats.1985, c. 1474, § 2, operative Jan. 1, 1988, amended by Stats.1986, c. 1299, § 7; Stats.1987, c. 753, § 3; Stats.1987, c. 1418, § 3.1; Stats.1989, c. 1316, § 2; Stats.1989, c. 1402, § 5; Stats.1989, c. 1407, § 4; Stats.1992, c. 197 (A.B.2297), § 1; Stats.1992, c. 695 (S.B.97), § 9, eff. Sept. 15, 1992; Stats.1993, c. 555 (A.B.191), § 1, eff. Sept. 28, 1993; Stats.1993, c. 589 (A.B. 2211), § 109; Stats.1993, c. 595 (A.B.595), § 8; Stats.1994, c. 863 (A.B.3456), § 1; Stats.1994, c. 864 (A.B.1211), § 1; Stats.1994, c. 865 (A.B.3513), § 1; Stats.1994, c. 867 (A.B.2500), § 2.7; Stats.1995, c. 91 (S.B.975), § 120; Stats.1995, c. 85 (A.B.173), § 1; Stats.1995, c. 840 (S.B.295), § 2; Stats.1996, c. 908 (A.B.1562), § 2, eff. Sept. 25, 1996; Stats.1996, c. 909 (S.B.1378), § 2; Stats.1997, c. 17 (S.B.947), § 96; Stats.1997, c. 80 (A.B.213), § 1; Stats.1997, c. 817 (A.B.59), § 3; Stats.1997, c. 818 (A.B.1303), § 4; Stats.1997, c. 819 (S.B.314), § 1; Stats.1997, c. 820 (S.B.882), § 1; Stats.1997, c. 821 (A.B.290), § 3, eff. Oct. 9, 1997; Stats.1997, c. 821 (A.B.290), § 3.5, eff. Oct. 9, 1997, operative Jan. 1, 1998; Stats.1998, c. 485 (A.B.2803), § 128-129; Stats.1998, c. 927 (A.B.796), § 1; Stats.1998, c. 928 (A.B.1927), § 1; Stats.1998, c. 929 (A.B.1745), § 1; Stats.1998, c. 930 (A.B.1078), § 1; Stats.1999, c. 83 (S.B.966), § 138; Stats.1999, c. 576 (A.B.1193), § 1; Stats.1999, c. 730 (S.B.1275), § 1; Stats.1999, c. 901 (S.B.341), § 1.5; Stats.2000, c. 240 (A.B.2502), § 1; Stats.2000, c. 287 (S.B.1955), § 7; Stats.2000, c. 648 (A.B.1340), § 1; Stats.2000, c. 649 (S.B.446), § 2.5; Stats.2001, c. 485 (A.B.1004), § 1; Stats.2001, c. 544 (A.B.4), § 1; Stats.2001, c. 843 (A.B.349), § 1.3; Stats.2002, c. 664 (A.B.3034), § 171; Stats.2002, c. 17 (S.B.836), § 1, eff. March 28, 2002; Stats.2003, c. 538 (S.B.356), § 1; Stats.2003, c. 540 (S.B.879), § 1; Stats.2003, c. 634 (A.B.1313), § 1.3, eff. Sept. 30, 2003; Stats.2004, c. 429 (A.B.2527), § 1; Stats.2004, c. 731 (S.B.1289), § 1; Stats.2004, c. 761 (A.B.2395), § 1.3; Stats. 2005, c. 704 (A.B.439), § 1; Stats.2005, c. 722 (A.B.1323), § 3, eff. Oct. 7, 2005;

Stats.2005, c. 722 (A.B.1323), § 3.5, eff. Oct. 7, 2005, operative Jan. 1, 2006; Stats.2006, c. 538 (S.B.1852), § 500; Stats.2006, c. 337 (S.B.1128), § 11, eff. Sept. 20, 2006.

Former § 290, added by Stats.1947, c. 1124, § 1, amended by Stats.1949, 1st Ex.Sess., c. 13, § 1; Stats.1950, 1st Ex.Sess., c. 70, § 1; Stats.1953, c. 400, § 1; Stats.1955, c. 169, § 1; Stats.1961, c. 560, § 3; Stats.1961, c. 2147, § 8; Stats.1967, c. 716, § 1; Stats.1970, c. 1301, § 4; Stats.1972, c. 1377, § 70; Stats.1975, c. 71, § 12; Stats.1979, c. 944, § 8; Stats.1984, c. 1419, § 1; Stats.1985, c. 929, § 4; Stats.1985, c. 1474, § 1.

CROSS REFERENCES

Administration of franchise and income tax laws, providing addresses of persons with outstanding arrest warrants, see Revenue and Taxation Code § 19550.
Ambulance driver certificate, sex offense as grounds for refusal, suspension or revocation, see Vehicle Code § 13372.
Board of behavioral sciences, petitions for reinstatement or modification of penalty filed by registered sex offenders not considered, see Business and Professions Code § 4990.30.
Child day care, fingerprints and criminal record information of individuals in contact with child day care facility clients, see Health and Safety Code § 1596.871.
Commitment to youth authority, acceptance, transfer, see Welfare and Institutions Code § 1731.5.
Community care facilities, criminal record clearances, see Health and Safety Code § 1522.
Community care facilities clients, sex offender, disclosure, criminal and civil penalties, see Health and Safety Code § 1522.01.
Completion of inprison drug treatment, discharge from parole supervision, ineligibility of person required to register under this section, see Penal Code § 2933.4.
County sexual assault felony enforcement team programs, see Penal Code § 13887 et seq.
Creation of board of parole hearings, see Penal Code § 5075 et seq.
Criminal record information, employer request and submission of fingerprints, unlicensed persons providing nonmedical domestic or personal care to aged or disabled adult, see Welfare and Institutions Code § 15660.
Delinquents and wards of the juvenile court, detention or sentence to adult institutions, contact with adults committed for sex offenses, see Welfare and Institutions Code § 208.
Denial, suspension, revocation and reinstatement of physical therapy license, see Business and Professions Code § 2660.5.
Dentistry, denial, revocation or suspension of registered sex offenders' license exceptions, see Business and Professions Code § 1687.
Destruction of records, retention period for misdemeanor sex offenses, see Government Code § 68152.
DNA and Forensic Identification Database and Data Bank Act,
Offenders subject to collection of specimens, samples and print impressions, see Penal Code § 296.
Reversal, dismissal or acquittal, request for expungement of information, specimens from persons no longer considered suspects, see Penal Code § 299.
Denial or revocation of physician's and surgeon's license, sex offenders, see Business and Professions Code §§ 2221 and 2232.
Effect of conviction on custody and visitation, child support, and disclosure of information, see Family Code § 3030.
Emergency medical services, suspension or revocation of licenses or certificates, see Health and Safety Code § 1798.200.
Employees of elementary and secondary education institutions, sex offenses, see Education Code § 44010.
Employment generally, disclosure of arrest or detention not resulting in conviction or referral or participation in diversion programs, see Labor Code § 432.7.
Exemptions from disclosure, information related to sexual offenders and victims, see Government Code § 6276.40.
Felonies, definition and penalties, see Penal Code §§ 17 and 18.

Injuries or detrimental condition resulting from those who have care or custody of child as prima facie evidence, see Welfare and Institutions Code § 355.1.
Judicial commitments of mentally disordered sex offenders, certification for hearing and examination after conviction, see Welfare and Institutions Code § 6302.
Judicial commitments of mentally retarded persons, order of commitment, least restrictive placement, and change of placement, see Welfare and Institutions Code § 6509.
Juvenile case file inspection, confidentiality, probation reports, see Welfare and Institutions Code § 827.
Juvenile offenders, work providing access to personal information pertaining to private individuals, see Welfare and Institutions Code § 219.5.
Legislative intent concerning treatment for sex offenders following incarceration, see Penal Code § 3000.
Legislative intent concerning treatment for sex offenders on probation, see Penal Code § 1202.7.
Licensed educational psychologists, persons convicted of sexual abuse of children and registered sex offenders ineligible for license, see Business and Professions Code § 4989.24.
Making specific information about certain sex offenders available to the public via the Internet Web site, see Penal Code § 290.46.
Marriage and family therapists, qualifications, see Business and Professions Code § 4980.40.
Massage personnel or owners or operators of massage business, license denial with respect to registered sex offenders, see Government Code § 51032.
Modification or termination of custody or visitation order, sex offenders required to be registered, see Family Code § 3030.5.
Name change, restrictions, see Code of Civil Procedure § 1279.5.
Notice required before release of sex offender to long-term health care facility, see Health and Safety Code § 1312.
Parole, sex offenders, orders prohibiting contact or communication with victim or victim's family, see Penal Code § 3053.6.
Petition for reinstatement of marriage and family therapists license or modification of penalty, see Business and Professions Code § 4982.2.
Petition for reinstatement of occupational therapy license or modification of penalty, see Business and Professions Code § 2570.32.
Petition for reinstatement of psychiatric technicians license or modification of penalty, see Business and Professions Code § 4524.
Petition for reinstatement of vocational nursing license or modification of penalty, see Business and Professions Code § 2878.7.
Petition for sealing records, grounds for and effect of order, inspection and destruction of records, see Welfare and Institutions Code § 781.
Petition to seal court records by person arrested for misdemeanor while a minor, see Penal Code § 851.7.
Photographs of minors that are harmful matter, preservation of and access to evidence, application to actions under this section, see Penal Code § 1417.8.
Powers and duties of Board of Parole Hearings when a person has been committed to Department of Corrections and Rehabilitation, Division of Juvenile Facilities, provisions applicable to wards eligible for release on parole, see Welfare and Institutions Code § 1766.
Powers and duties of youth authority, condition of probation or parole, see Welfare and Institutions Code § 1767.2.
Probation officer's right of access to state summary criminal history information, see Welfare and Institutions Code § 272.
Prohibited commitments to juvenile facilities division of department of corrections and rehabilitation, see Welfare and Institutions Code § 733.
Prohibition against county or city employing person or volunteer having authority over any minor following certain convictions, see Public Resources Code § 5164.
Prohibition on use of public funds to provide erectile dysfunction treatments to sex offenders, see Welfare and Institutions Code § 14133.225.
Psychologists, sex offender, eligibility for license, see Business and Professions Code § 2964.3.

Recall of the commitment of a ward, see Welfare and Institutions Code § 731.1.
Reinstatement of nursing license, modification of penalty, hearing, see Business and Professions Code § 2760.1.
Release of persons required to register under this section, information to authorities, see Penal Code § 290.6.
Residential care facilities for persons with chronic life-threatening illness, criminal records of applicants or persons in frequent contact with residents, disqualification of licensee, see Health and Safety Code § 1568.09.
Residential care facilities for the elderly, fingerprints and criminal records of individuals in contact with clients, see Health and Safety Code § 1569.17.
Return to custody of parolee under the jurisdiction of the Division of Juvenile Parole Operations, see Welfare and Institutions Code § 1767.35.
Revocation of parole, refusal to sign duty to register form, see Penal Code § 3060.5.
School buildings or grounds, entry of sex offender, punishment, see Penal Code § 626.81.
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Sex offender registration and notification, generally, see 42 U.S.C.A. §§ 16911 to 16929.

Sex offender registration and notification, crime information databases, access, see 42 U.S.C.A. §§ 16961.

Sex offender registration and notification, Project Safe Childhood program, see 42 U.S.C.A. §§ 16942.

Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Program, see 42 U.S.C.A. § 14071 et seq.

Sex offender registration,
Failure to register, see 18 U.S.C.A. § 2250.

Supervised release, see 18 U.S.C.A. § 3583.

NOTES OF DECISIONS

1. Validity--In general

Notification requirements of statute governing registration of sex offenders did not violate either ex post facto or double jeopardy clauses, as legislature did not intend for them to be punitive, and statute had built-in limitations and restrictions that showed it was intended not to punish past offenses but to serve important nonpunitive goals of public safety, awareness, protection, and deterrence. Byron M. v. City of Whittier, C.D.Cal.1998, 46 F.Supp.2d 1032. Constitutional Law 2821; Double Jeopardy 22; Mental Health 433(2)

A statute will not be held void for vagueness if any reasonable and practical construction can be given its language or if its terms may be made reasonably certain by reference to other definable sources. People v. Musovich (App. 3 Dist. 2006) 42 Cal.Rptr.3d 62, 138 Cal.App.4th 983. Criminal Law 13.1(1)

Statute requiring sex offenders to reregisterwith appropriate law enforcement authorities after changing their residence or location was not void for vagueness as applied to defendant who left his residence where he was registered for a different residence, in contrast to a transient offender who moved from location to location. People v. Musovich (App. 3 Dist. 2006) 42 Cal.Rptr.3d 62, 138 Cal.App.4th 983. Constitutional Law 4343; Mental Health 433(2)

Mandatory requirement of lifetime sex offender registration violated equal protection right of 22-year-old defendant convicted of felony oral copulation with 16-year-old minor, inasmuch as person convicted of unlawful sexual intercourse with a victim of same age was not subject to mandatory requirement; no rational basis existed for statutory distinction between these offenders that would further state interest in protecting against recidivism; disapproving *People v. Jones*, 101 Cal.App.4th 220, 124 Cal.Rptr.2d 10. People v. Hofsheier (2006) 39 Cal.Rptr.3d 821, 37 Cal.4th 1185, 129 P.3d 29, on remand 2006 WL 1196585, unpublished. Constitutional Law 3176; Mental Health 433(2)

Although sex offender registration is not considered a form of punishment under the state or federal Constitution, it imposes a substantial and onerous burden. People v. Hofsheier (2006) 39 Cal.Rptr.3d 821, 37 Cal.4th 1185, 129 P.3d 29, on remand 2006 WL 1196585, unpublished. Mental Health 469(1)

Statute requiring sex offender to register when he or she "changes his or her name" does not impermissibly allow

jury to resolve meaning of "name change" on an ad hoc and subjective basis, outside any standard of reasonable certainty. People v. Vincelli (App. 3 Dist. 2005) 33 Cal.Rptr.3d 839, 132 Cal.App.4th 646, review denied. Mental Health 433(2)

Statute requiring sex offender to register when he or she "changes his or her name," was not unconstitutionally vague as it adequately gave fair notice to defendant, who retained his name but added alias to obtain driver's license and conduct other business, that he was required to register; although word "changes" was not defined in statute, defendant's use of two distinct names fell within ordinary meaning of word. People v. Vincelli (App. 3 Dist. 2005) 33 Cal.Rptr.3d 839, 132 Cal.App.4th 646, review denied. Constitutional Law 4343; Mental Health 433(2)

Rational basis test applied to appellate review of issue whether requiring sex offender registration for one convicted of oral copulation with a person under 14, but not one convicted of sexual intercourse with a person under 14; no fundamental right or suspect class was involved. People v. Jones (App. 6 Dist. 2002) 124 Cal.Rptr.2d 10, 101 Cal.App.4th 220, rehearing denied ; review denied. Constitutional Law 3176

Statute requiring convicted sex offender to notify law enforcement authorities of change in address was not vague as applied in case where defendant was alleged to be living at two addresses other than his current registered address after being released on bail on pending charges, though one of the addresses at which he was allegedly living was the residence address he initially registered upon release from imprisonment on sex offense conviction. People v. Vigil (App. 6 Dist. 2001) 114 Cal.Rptr.2d 331, 94 Cal.App.4th 485, review denied, denial of habeas corpus affirmed 130 Fed.Appx. 872, 2005 WL 1111846, certiorari denied 126 S.Ct. 243, 546 U.S. 901, 163 L.Ed.2d 223. Mental Health 469(7)

Registration requirement for annoying or molesting a child under age of 18 years is valid, and thus trial court erred in ordering that defendant need not register pursuant to this section. People v. Tate (App. 5 Dist. 1985) 210 Cal.Rptr. 117, 164 Cal.App.3d 133. Mental Health 433(2); Mental Health 469(2)

Mandatory registration of sex offenders convicted under misdemeanor disorderly conduct statute (§ 647) violated cruel and unusual punishment under Cal. Const. Art. 1, § 17. In re Reed (1983) 191 Cal.Rptr. 658, 33 Cal.3d 914, 663 P.2d 216. Sentencing And Punishment 1601; Criminal Law 1226(1)

2. ---- Equal protection, validity

After Supreme Court's conclusion that imposition of mandatory lifetime requirement of registration as sex offender violated equal protection of adult defendant convicted of oral sex with 16-year-old, remand was required for trial court to determine whether defendant was subject to discretionary registration order. People v. Hofsheier (2006) 39 Cal.Rptr.3d 821, 37 Cal.4th 1185, 129 P.3d 29, on remand 2006 WL 1196585, unpublished. Mental Health 469(6)

Appropriate remedy for equal protection violation, in statute's mandatory lifetime requirement of registration as sex offender for adult defendant convicted of oral sex with 16- or 17-year-old, was to eliminate requirement, rather than invalidating requirement completely, or imposing mandatory requirement on persons convicted of unlawful sexual intercourse with same-age victim. People v. Hofsheier (2006) 39 Cal.Rptr.3d 821, 37 Cal.4th 1185, 129 P.3d 29, on remand 2006 WL 1196585, unpublished. Statutes 64(6)

Defendant's right to equal protection was not violated when he was required to register as a sex offender, based on conviction for oral copulation with a person under 18, although those convicted of sexual intercourse with a person under 18 were not required to register; registration statute had legitimate purpose of assuring that persons convicted of enumerated crimes be available for police surveillance, because the legislature considered them likely to reoffend.

People v. Jones (App. 6 Dist. 2002) 124 Cal.Rptr.2d 10, 101 Cal.App.4th 220, rehearing denied , review denied. Constitutional Law 3176; Mental Health 433(2)

Petitioner's right to equal protection was not violated when he was required to register as a sex offender, based on conviction for oral copulation with a person under 18, although those convicted of sexual intercourse with a person under 18 were not required to register; rational basis existed for distinguishing between crimes, even if California also considered statutory rape to be serious crime. Jones v. Solis, C.A.9 (Cal.)2005, 121 Fed.Appx. 228, 2005 WL 236504, Unreported. Constitutional Law 3176; Mental Health 433(2)

3. ---- Due process, validity

Jury instruction that erroneously led jury to believe it did not have to find actual knowledge of duty to register in order to find petitioner guilty of failure to register as sex offender, under California law, did not so infect trial that resulting conviction violated due process, and thus petitioner was not entitled to federal habeas relief, where overwhelming evidence was adduced at trial that petitioner possessed actual knowledge of registration requirement. Bartlett v. Duncan, C.D.Cal.2003, 262 F.Supp.2d 1053, reversed 366 F.3d 1020. Constitutional Law 4637; Habeas Corpus 498; Mental Health 469(7)

Convicted sex offender did not establish that due process entitled him to a hearing before registration information was disseminated pursuant to notification provisions of statute governing registration of sex offenders, and thus offender was not entitled to temporary restraining order preventing such dissemination on due process grounds, as statute disseminated information that was available to the public under California's Public Records Act. Byron M. v. City of Whittier, C.D.Cal.1998, 46 F.Supp.2d 1032. Constitutional Law 4343; Injunction 150; Mental Health 469(4)

Deprivation of liberty suffered by plaintiff in connection with his arrest for failing to register as a sex offender and subsequent trial was not effected without due process and therefore did not give rise to a 42 U.S.C.A. § 1983 violation, in that he did not complain that he was not given a fair trial on his charges of failing to register or that he had no opportunity to file complaint in state court alleging false imprisonment or malicious prosecution, and any deprivation of liberty he might have suffered was minimal because he was afforded procedural due process and subsequently cleared of charges of failing to register. Kirk v. People of State of Cal., N.D.Cal.1984, 592 F.Supp. 46. Civil Rights 1088(4); Civil Rights 1088(5)

Defendant convicted as a sex offender of failing to notify police when he moved from an apartment to new address or addresses in Oregon lacked standing to assert a due process challenge based on the alleged vagueness of the statutory terms "location" and "is located" as applied to homeless, transient sex offenders. People v. Annin (App. 1 Dist. 2004) 15 Cal.Rptr.3d 278, 117 Cal.App.4th 591, modified on denial of rehearing , review denied. Constitutional Law 889

Provisions of sex offender registration statute requiring registration of transient in jurisdiction where offender without a residence was "located," and provision requiring registration in all jurisdictions where such an offender was regularly "located," were not vague under due process clause. People v. North (App. 1 Dist. 2003) 5 Cal.Rptr.3d 337, 112 Cal.App.4th 621, as modified. Constitutional Law 4343; Mental Health 433(2)

Provision of sex offender registration statute requiring annual verification of transient offender's "temporary location" was void for vagueness under due process clause. People v. North (App. 1 Dist. 2003) 5 Cal.Rptr.3d 337, 112 Cal.App.4th 621, as modified. Constitutional Law 4343; Mental Health 433(2)

Provision of sex offender registration statute requiring that transient offender specify all the places where he was

regularly "located" within a jurisdiction was void for vagueness, under due process clause. People v. North (App. 1 Dist. 2003) 5 Cal.Rptr.3d 337, 112 Cal.App.4th 621, as modified. Constitutional Law 4343; Mental Health 433(2)

Provisions of sex offender registration statute requiring sex offender who lacked residence to register in jurisdiction in which he was "located" and inform authorities of his new "location" after change of "location" were void for vagueness under due process clause; use of "location" to require registration or notification of particular places where an offender could regularly be found failed to provide specificity for transient offender or authorities to understand what statute demanded. People v. North (App. 1 Dist. 2003) 5 Cal.Rptr.3d 337, 112 Cal.App.4th 621, as modified. Constitutional Law 4343; Mental Health 433(2)

Provisions of sex offender registration statute requiring sex offender who lacked residence to register in jurisdiction in which he was "located" and inform authorities of his new "location" after change of "location" were void for vagueness under due process clause; use of "location" to require registration or notification of particular places where an offender could regularly be found failed to provide specificity for transient offender or authorities to understand what statute demanded. People v. North (App. 1 Dist. 2003) 5 Cal.Rptr.3d 337, 112 Cal.App.4th 621, as modified. Constitutional Law 4343; Mental Health 433(2)

Provision of sex offender registration statute requiring that transient offender specify all the places where he was regularly "located" within a jurisdiction was void for vagueness, under due process clause. People v. North (App. 1 Dist. 2003) 5 Cal.Rptr.3d 337, 112 Cal.App.4th 621, as modified. Constitutional Law 4343; Mental Health 433(2)

Provision of sex offender registration statute requiring annual verification of transient offender's "temporary location" was void for vagueness under due process clause. People v. North (App. 1 Dist. 2003) 5 Cal.Rptr.3d 337, 112 Cal.App.4th 621, as modified. Constitutional Law 4343; Mental Health 433(2)

Instruction in prosecution for willfully violating notice provisions of sex offender registration law, that one who had one place of residence and then added a second place of residence had changed his residence within the meaning of statute and had a duty to report that change even though he might also maintain a residence at old place, violated due process by imposing criminal liability without any need for jury to find that defendant actually knew the law required him to register multiple residences. People v. Edgar (App. 1 Dist. 2002) 127 Cal.Rptr.2d 662, 104 Cal.App.4th 210. Constitutional Law 4637; Mental Health 469(7)

Application of sex offender registration requirement to defendant who was convicted of offenses which were made subject to registration requirement did not constitute an increase in punishment for the commissions of such acts, and thus, as trial court was not required to find beyond a reasonable doubt that defendant committed such offenses as a result of sexual compulsion or for sexual gratification, no violation of defendant's due process rights occurred. People v. Marchand (App. 3 Dist. 2002) 120 Cal.Rptr.2d 687, 98 Cal.App.4th 1056, review denied , habeas corpus dismissed 2007 WL 987858. Constitutional Law 4343; Mental Health 469(2)

Requirement that a defendant have actual knowledge of registration requirement in order to be convicted of willfully failing to register as sex offender satisfies constitutional due process requirements. People v. Garcia (2001) 107 Cal.Rptr.2d 355, 25 Cal.4th 744, 23 P.3d 590, rehearing denied , as modified.

State court's determination that petitioner's conviction for failing to register as convicted sex offender did not violate due process was not contrary to, and did not represent unreasonable application of clearly established federal law in *Lambert v. California*, and thus did not warrant federal habeas relief, even if petitioner had not established permanent residence, where petitioner had actual notice of his duty to register within 15 days after moving, and petitioner had been in California about four months without letting any law enforcement know of his presence.

Apodaca v. Runnells, N.D.Cal.2003, 2003 WL 1936126, Unreported. Habeas Corpus 462

4. ---- Cruel and unusual punishment, validity

As mandatory, lifetime sex offender registration requirement for certain offenses is not "punishment" for purposes of state and federal constitutional prohibition against cruel and unusual punishment, such requirement is not cruel and unusual when applied to misdemeanor indecent exposure conviction; abrogating *In re King*, 157 Cal.App.3d 554, 204 Cal.Rptr. 39. People v. Noriega (App. 4 Dist. 2004) 22 Cal.Rptr.3d 382, 124 Cal.App.4th 1334. Mental Health 433(2); Sentencing And Punishment 1601

Given the frightening and high danger of long-term recidivism by sex offenders, the permanent nature of the registration obligation for sex offenders, including offenders whose crimes involve or promote the pornographic exploitation of children, is designed to serve legitimate regulatory aims, and does not constitute punishment subject to proscription against cruel and/or unusual punishment. In re Alva (2004) 14 Cal.Rptr.3d 811, 33 Cal.4th 254, 92 P.3d 311. Mental Health 433(2); Sentencing And Punishment 1601

Portion of defendant's sentence for misdemeanor indecent exposure which required defendant to register as sex offender was neither facially nor inherently violative of federal constitutional prohibition against cruel and unusual punishment; applicable statute criminalizes broad range of conduct, and mandatory sex offender registration is constitutionally precluded only when facts and circumstances of particular offense indicate that registration requirement would be cruel or unusual. People v. King (App. 1 Dist. 1993) 20 Cal.Rptr.2d 220, 16 Cal.App.4th 567. Sentencing And Punishment 1601

Requiring defendant convicted of misdemeanor indecent exposure to register as sex offender, pursuant to mandatory statutory requirement, did not violate federal constitutional prohibition against cruel and unusual punishment where defendant aggressively alerted victims and others to his presence with repeated comments, defendant stroked his private parts in obviously lewd manner, and defendant's act of indecent exposure persisted for several minutes and was then exacerbated by his subsequent act of approaching victims, engaging in physical struggle, and making unwelcome, vulgar comments to them. People v. King (App. 1 Dist. 1993) 20 Cal.Rptr.2d 220, 16 Cal.App.4th 567. Sentencing And Punishment 1601

Penalty of sex offender registration for indecent exposure is unconstitutional as cruel and unusual punishment. In re King (App. 4 Dist. 1984) 204 Cal.Rptr. 39, 157 Cal.App.3d 554. Sentencing And Punishment 1601

Provision of this section requiring persons guilty of enumerated sex offenses to register with police in city where he resides and to notify police of each change of address for rest of his life unless relieved of requirement by court order was not unconstitutional as to defendant, found guilty of lewd and lascivious conduct toward a child under the age of 14 years on ground that it constituted cruel and/or unusual punishment, that it violated equal protection or that it impinged his constitutional right to travel and right to privacy. People v. Mills (App. 4 Dist. 1978) 146 Cal.Rptr. 411, 81 Cal.App.3d 171. Constitutional Law 1245; Constitutional Law 1288; Constitutional Law 3176; Sentencing And Punishment 1601; Mental Health 433(2)

Registration requirement of this section governing registration of sex offenders was not "out of all proportion of offense", as respects individuals convicted of engaging in lewd and dissolute conduct in a place exposed to public view, so as to constitute cruel and unusual punishment. People v. Rodrigues (Super. 1976) 133 Cal.Rptr. 765, 63 Cal.App.3d Supp. 1. Sentencing And Punishment 1601

5. ---- Ex post facto law, validity

California's sex offender registration statute was not historically regarded as a form of punishment, weighing in favor of determination that statute was nonpunitive, so that retroactive application of statute would not violate ex post facto clause; there was no evidence that an objective of the statute was to shame, ridicule, or stigmatize offenders. Hatton v. Bonner, C.A.9 (Cal.)2004, 356 F.3d 955. Constitutional Law 2821; Mental Health 433(2)

Statutory requirement that a person register as a convicted sex offender does not constitute punishment, for purposes of ex post facto analysis; requirement neither alters the definition of any crime nor increases the punishment for criminal acts, was not intended to constitute punishment, and is not so punitive in nature and effect that it must be deemed punishment. People v. Allen (App. 3 Dist. 1999) 90 Cal.Rptr.2d 662, 76 Cal.App.4th 999, review denied , certiorari denied 121 S.Ct. 105, 531 U.S. 841, 148 L.Ed.2d 63. Constitutional Law 2820; Mental Health 433(2)

Application of amendment to sex offender registration statute, which replaced rule that persons adjudicated guilty of sexual offenses as juveniles need only register until they reach age 25 with lifetime registration requirement for such offenders, to offender who had been adjudicated guilty of a sex offense by a juvenile, and who turned 25 prior to amendment's effective date, did not constitute punishment, for purposes of ex post facto clause. People v. Allen (App. 3 Dist. 1999) 90 Cal.Rptr.2d 662, 76 Cal.App.4th 999, review denied , certiorari denied 121 S.Ct. 105, 531 U.S. 841, 148 L.Ed.2d 63. Constitutional Law 2821; Mental Health 433(2)

Application of sex offender registration requirement to defendant who was convicted of offenses which were made subject to registration requirement after he committed acts in question, but before date of conviction, did not constitute an increase in punishment for defendant's criminal acts, and thus did not violate ex post facto clauses of Federal and State Constitutions. (Per George, C.J., with two Justices concurring and three Justices concurring in the result.) People v. Castellanos (1999) 88 Cal.Rptr.2d 346, 21 Cal.4th 785, 982 P.2d 211. Constitutional Law 2821; Mental Health 469(2)

Prosecution of defendant, a convicted sex offender, for failure to inform authorities of change in residence did not violate ex post facto clause, even though statute which provided that registration requirements continue notwithstanding a record clearance was enacted after he committed original offense, as when defendant initiated proceeding to have record cleared statute which continued reporting requirements had been the law for over a year. People v. Fioretti (App. 6 Dist. 1997) 63 Cal.Rptr.2d 367, 54 Cal.App.4th 1209, review denied. Constitutional Law 2821; Mental Health 469(7)

Statute which provided that person convicted of felony sex offense is not relieved from duty to register as sex offender despite statute which provided that probationer who fulfills conditions of probation or receives early discharge is released from all penalties, was not so punitive in purpose or effect as to override its regulatory purpose. People v. Fioretti (App. 6 Dist. 1997) 63 Cal.Rptr.2d 367, 54 Cal.App.4th 1209, review denied. Mental Health 433(2)

Sex offender's failure to register his address with law enforcement authorities was continuing offense, and thus felony prosecution, based on nonregistration after effective date of law, making failure to register a felony rather than a misdemeanor, did not violate prohibition against ex post facto laws. Wright v. Superior Court (1997) 63 Cal.Rptr.2d 322, 15 Cal.4th 521, 936 P.2d 101. Constitutional Law 2803; Mental Health 469(7)

6. Construction and application

Defendant could not be convicted under sex offender registration statute for failing to inform last registering agency of a move outside the jurisdiction, where he was not charged with that offense with respect to the last jurisdiction in which he registered, but only with respect to the jurisdiction in which he failed to register. People v. Davis (App. 2

Dist. 2002) 125 Cal.Rptr.2d 519, 102 Cal.App.4th 377, rehearing denied , review denied. Mental Health 469(7)

Statute requiring convicted sex offender to notify law enforcement authorities of a change of registered address within specified period is violated when one of offender's residence addresses remains unchanged while another residence address is added, eliminated, or otherwise altered without notification. People v. Vigil (App. 6 Dist. 2001) 114 Cal.Rptr.2d 331, 94 Cal.App.4th 485, review denied, denial of habeas corpus affirmed 130 Fed.Appx. 872, 2005 WL 1111846, certiorari denied 126 S.Ct. 243, 546 U.S. 901, 163 L.Ed.2d 223. Mental Health 469(7)

Pen.C. § 290, which requires persons convicted of certain offenses to register as sex offenders, by using mandatory language "shall," leaves no discretion in trial judge to not require registration if one of more of listed violations occur. People v. Monroe (App. 5 Dist. 1985) 215 Cal.Rptr. 51, 168 Cal.App.3d 1205. Mental Health 469(2)

Upon release from imprisonment, one convicted of a felony or second misdemeanor sex offense involving a child under 14 years of age must register with sheriff or chief of police in city of his residence and give notice of change or residence, regardless of judicial finding as to whether he is a sexual psychopath, and a first offender convicted of a sex offense involving a child under 14 years of age may not be placed on probation until report of reputable psychiatrist as to mental condition of such offender is obtained. People v. Jones (1954) 42 Cal.2d 219, 266 P.2d 38. Mental Health 469(2)

Officers' arrest of sex offender based on his failure to notify authorities before moving out of state was reasonable, and thus, suppression of items found in search incident to arrest was not warranted, even though state court subsequently determined that out-of-state moves fell outside statute's registration requirements; prevailing interpretation of statute at time of arrest was that registration requirements applied to out-of-state moves. Graling v. Pliler, N.D.Cal.2003, 2003 WL 21244116, Unreported. Criminal Law 394.4(9)

Fulfillment of procedure outlined in § 1203.4 providing that every defendant who has fulfilled conditions of his probation or shall have been discharged from probation shall be permitted to withdraw plea of guilty and enter plea of not guilty, or, if he has been convicted after plea of not guilty, court shall set aside verdict of guilty, and shall dismiss accusations or information against defendant, who shall thereafter be released from all penalties and disabilities resulting from offense or crime of which he has been convicted, does not relieve an ex-convict of duty of registering under local ordinances or relieve a sex offender from registering pursuant to the sex offenders' registration law. 28 Op.Atty.Gen. 178.

Whenever an attempt to commit rape would fall within purview of this section, an assault with intent to commit rape would also be included therein, and person convicted of such assault would be required to register as a sexual offender. 24 Op.Atty.Gen. 6.

The Department of Corrections and Rehabilitation may place two or more sex offender parolees in a "residential facility which serves six or fewer persons" as that term is defined in the California Community Care Facilities Act. Op.Atty.Gen. 05-1106 (September 1, 2006), 2006 WL 2571269.

7. Construction with other laws

Defendant, who was required by a Texas State juvenile court to register as a sex offender as a condition of probation after committing sex offense, was not required to register as a sex offender in California after moving there to reside with his mother; while defendant may have agreed to abide by the Texas State juvenile court's conditions of probation in California, he nonetheless was not required to register as a sex offender under California law. In re Crockett (App. 1 Dist. 2008) 71 Cal.Rptr.3d 632, 159 Cal.App.4th 751. Infants 225

Attorney General did not waive claim on appeal that trial court lacked jurisdiction to grant habeas corpus relief on petition brought by convicted sex offender who was not imprisoned or retrained of his liberty; issue presented pure question of law that could be reviewed for first time on appeal, and Attorney General could not waive sex offender registration requirements, or resulting disciplinary procedures by Medical Board, which were established primarily for the benefit and protection of public. In re Stier (App. 1 Dist. 2007) 61 Cal.Rptr.3d 181, 152 Cal.App.4th 63, as modified. Habeas Corpus 816

Since unlawful sexual intercourse with a minor is not an offense enumerated in provision on mandatory registration for sex offenders, a person convicted of that offense is not subject to a mandatory lifetime registration obligation. People v. King (App. 2 Dist. 2007) 60 Cal.Rptr.3d 673, 151 Cal.App.4th 1304. Mental Health 469(2)

The prohibition against the unauthorized use of registered sex offender identifying information obtained from the California "Megan's Law" Web site does not in itself qualify registered sex offenders as a "protected class" for purposes of housing discrimination under the Fair Employment and Housing Act. Op.Atty.Gen. 05-301 (April 27, 2006), 2006 WL 1144373.

The federal requirement in 42 U.S.C. § 13663 that state and local agencies responsible for the collection or maintenance of information on persons required to register as sex offenders comply with requests of public housing agencies for information overrides California's prohibitions on the release of such information to public housing agencies. Op.Atty.Gen. No. 00-201 (July 12, 2000), 2000 WL 966845.

Welfare & Institutions Code § 5328 prohibits the department of mental hygiene from supplying movement and identification information, such as fingerprints, concerning patients in state hospitals to the bureau of criminal identification and investigation, except that information concerning firearms in the hands of mental patients, registration of sexual psychopaths, information concerning arsonists, escapees, and statistical data is not confidential and may be released to the bureau. 53 Op.Atty.Gen. 20, 1-21-70.

8. Amendment

Defendant's possession of child pornography "transported by computer," in violation of federal law would not have been punishable under the 1995 version of the California Penal Code, in effect when defendant committed the offense, and thus defendant could not be required to register as a sex offender under California law as a condition of probation, because the 1995 version of the California child pornography statute did not include computer-generated images in its definition of prohibited matter. U.S. v. Davidson, C.A.9 (Cal.)2001, 246 F.3d 1240. Sentencing And Punishment 1969(1)

Amendment to sex offender registration statute, which replaced rule that persons adjudicated guilty of sexual offenses as juveniles need only register until they reach age 25 with lifetime registration requirement for such offenders, did not make statute retroactive in effect, but rather, merely obligated such persons to register from effective date of amendment forward. People v. Allen (App. 3 Dist. 1999) 90 Cal.Rptr.2d 662, 76 Cal.App.4th 999, review denied , certiorari denied 121 S.Ct. 105, 531 U.S. 841, 148 L.Ed.2d 63. Mental Health 433(2)

Under version of sex offender registration statute applicable prior to 1998 amendment specifically requiring offenders subject to registration to give change-of-address notification upon leaving California, offenders subject to registration were not required to notify authorities of change of address when leaving California to live elsewhere. People v. Franklin (1999) 84 Cal.Rptr.2d 241, 20 Cal.4th 249, 975 P.2d 30. Mental Health 469(5)

9. Purpose

In considering whether a state's sex offender law constitutes retroactive punishment forbidden by the Ex Post Facto Clause, a court must first ascertain whether the legislature meant the statute to impose punishment; if yes, that ends the inquiry, but if the intention was to enact a civil and nonpunitive regulatory scheme, the court must further decide whether the statute is so punitive either in purpose or effect as to negate the state's intention to deem it civil. Hatton v. Bonner, C.A.9 (Cal.)2004, 356 F.3d 955. Constitutional Law 2820; Mental Health 433(2)

District Attorney's withdrawal of opposition to petition for habeas corpus relief by convicted sex offender did not estop Attorney General, who did not appear at hearing, from asserting claim on appeal that trial court exceeded its authority by relieving sex offender of obligation to comply with sex offender registration requirements so that sex offender's license to practice medicine would not be subject to revocation; Attorney General did not join in District Attorney's withdrawal or concession, and Attorney General never advocated or ratified actions taken by District Attorney. In re Stier (App. 1 Dist. 2007) 61 Cal.Rptr.3d 181, 152 Cal.App.4th 63, as modified. Habeas Corpus 848

Sex offender registration requirements are intended to promote the state interest in controlling crime and preventing recidivism in sex offenders. In re Stier (App. 1 Dist. 2007) 61 Cal.Rptr.3d 181, 152 Cal.App.4th 63, as modified. Mental Health 469(1)

The legislative intent in adding, to sex offender registration statute, provision establishing misdemeanor of providing false information on registration form was to create a substantive crime, not to fundamentally alter subdivision establishing as felony any violation of registration requirements when underlying offense is felony. People v. Gonzalez (App. 2 Dist. 2007) 56 Cal.Rptr.3d 909, 149 Cal.App.4th 304. Mental Health 469(7)

The purpose of statute requiring registration of sex offenders is to assure that persons convicted of the crimes enumerated therein shall be readily available for police surveillance at all times, because the Legislature deemed them likely to commit similar offenses in the future. People v. Hofsheier (2006) 39 Cal.Rptr.3d 821, 37 Cal.4th 1185, 129 P.3d 29, on remand 2006 WL 1196585, unpublished. Mental Health 469(1)

The purpose of the sex offender registration statute is to assure that persons convicted of the crimes enumerated therein shall be readily available for police surveillance at all times because the Legislature deems them likely to commit similar offenses in the future; the statute is thus regulatory in nature, intended to accomplish the government's objective by mandating certain affirmative acts. People v. Sorden (2005) 29 Cal.Rptr.3d 777, 36 Cal.4th 65, 113 P.3d 565, rehearing denied, on remand 2005 WL 2462254, unpublished. Mental Health 469(1)

The purpose of the sex offender registration requirement is to ensure that specified sex offenders are readily available for police surveillance at all times because the Legislature deemed them likely to commit similar offenses in the future. People v. Carmony (App. 3 Dist. 2005) 26 Cal.Rptr.3d 365, 127 Cal.App.4th 1066, review denied. Mental Health 469(1)

By requiring sex offenders to reregister annually and upon a change of location, it was the Legislature's intent to treat each violation as a separate, continuing offense in order to encourage compliance with the law and to ensure to the extent possible that a sex offender's whereabouts remain known. People v. Meeks (App. 3 Dist. 2004) 20 Cal.Rptr.3d 445, 123 Cal.App.4th 695, rehearing denied , review denied. Criminal Law 150

The purpose of statute requiring sex offenders to register is to assure that persons convicted of the crimes enumerated therein shall be readily available for police surveillance at all times because the Legislature deemed them likely to commit similar offenses in the future; plainly, the Legislature perceives that sex offenders pose a continuing threat to society and require constant vigilance. People v. Meeks (App. 3 Dist. 2004) 20 Cal.Rptr.3d 445, 123 Cal.App.4th 695, rehearing denied , review denied. Mental Health 469(7)

The purpose of statute requiring registration of sex offenders is to assure that persons convicted of the crimes enumerated therein shall be readily available for police surveillance at all times, because the Legislature deemed them likely to commit similar offenses in the future. People v. Barker (2004) 18 Cal.Rptr.3d 260, 34 Cal.4th 345, 96 P.3d 507, rehearing denied. Mental Health 465(1)

Statute requiring sex offenders to register is regulatoryin nature, intended to accomplish the government's objective by mandating certain affirmative acts. People v. Barker (2004) 18 Cal.Rptr.3d 260, 34 Cal.4th 345, 96 P.3d 507, rehearing denied. Mental Health 465(1)

Purpose of statute requiring sex offender registration is to assure that persons convicted of the crimes enumerated therein shall be readily available for police surveillance at all times because the Legislature deemed them likely to commit similar offenses in the future. People v. Britt (2004) 12 Cal.Rptr.3d 66, 32 Cal.4th 944, 87 P.3d 812. Mental Health 469(1)

Purpose of sex offender registration statute is to assure that sex offenders are readily available for police surveillance, because they are deemed likely to commit similar offenses in the future. People v. North (App. 1 Dist. 2003) 5 Cal.Rptr.3d 337, 112 Cal.App.4th 621, as modified. Mental Health 469(1)

Given the purpose of the sex offender registration statute to allow local law enforcement agencies to keep known sex offenders under surveillance, the duty to register as a sex offender arises when the sex offender enters a jurisdiction and ends when he leaves the jurisdiction; if the offender returns to the original jurisdiction then a new duty arises because the local law enforcement agency has a renewed interest in keeping him under surveillance. People v. Davis (App. 2 Dist. 2002) 125 Cal.Rptr.2d 519, 102 Cal.App.4th 377, rehearing denied , review denied. Mental Health 469(5)

The purpose of sex-offender registration statute is to assure that persons convicted of the crimes enumerated therein shall be readily available for police surveillance at all times, because the legislature deemed them likely to commit similar offenses in the future. People v. Jones (App. 6 Dist. 2002) 124 Cal.Rptr.2d 10, 101 Cal.App.4th 220, rehearing denied , review denied. Mental Health 469(1)

Statutes defining postsentence disabilities experienced by convicted felons serve vital public interests, avoid criminal punishment, and otherwise raise no ex post facto concerns. People v. Ansell (2001) 108 Cal.Rptr.2d 145, 25 Cal.4th 868, 24 P.3d 1174. Constitutional Law 2815; Convicts 1

Purpose of statute requiring registration of sex offenders is to assure that persons convicted of the crimes enumerated therein shall be readily available for police surveillance at all times, because the Legislature deemed them likely to commit similar offenses in the future. (Per George, C.J., with two Justices concurring and three Justices concurring in the result.) People v. Castellanos (1999) 88 Cal.Rptr.2d 346, 21 Cal.4th 785, 982 P.2d 211. Mental Health 433(2)

Sex offender registration act is intended to promote State's interest in controlling crime and preventing recidivism in sex offenders by making them readily available for police surveillance. People v. Franklin (1999) 84 Cal.Rptr.2d 241, 20 Cal.4th 249, 975 P.2d 30. Mental Health 433(2)

Purpose of requiring sex offender to register his or her address with law enforcement authorities is to assure that persons convicted of certain enumerated crimes shall be readily available for police surveillance at all times. Wright v. Superior Court (1997) 63 Cal.Rptr.2d 322, 15 Cal.4th 521, 936 P.2d 101. Mental Health 469(1)

Purpose of this section is to assure that persons convicted of crimes enumerated therein shall be readily available for police surveillance at all times because the legislature deemed them likely to commit similar offenses in the future. Barrows v. Municipal Court of Los Angeles Judicial Dist. of Los Angeles County (1970) 83 Cal.Rptr. 819, 1 Cal.3d 821, 464 P.2d 483.

10. Pre-emption by state

Insofar as it specifically included sex offenders within its operation, Los Angeles criminal registration ordinance was in direct conflict with state law; and such conflict could not be cured by deleting therefrom all application to sex offenders, where over-all requirement of criminal registration had placed ordinance within field pre-empted by state. Abbott v. City of Los Angeles (1960) 3 Cal.Rptr. 158, 53 Cal.2d 674, 349 P.2d 974. Municipal Corporations 592(1)

By expressly requiring registration in some instances and by inferentially rejecting it in others, state pre-empted, to exclusion of local legislation, field of registration as means of apprehension of criminals. Abbott v. City of Los Angeles (1960) 3 Cal.Rptr. 158, 53 Cal.2d 674, 349 P.2d 974. Municipal Corporations 592(1)

Penal system adopted by state constitutes a complete legislative scheme intended to occupy field, and Los Angeles was precluded from enacting criminal registration ordinance in conflict with legislative determination that only registration of sex offender was required, even though legislature had not specifically declared such "scheme" or policy in so many words. Abbott v. City of Los Angeles (1960) 3 Cal.Rptr. 158, 53 Cal.2d 674, 349 P.2d 974. Municipal Corporations 592(1)

11. Violation of registration requirements, generally

Reference in sex offender registration provision making violation of requirement a felony when underlying offense was felony, to same statute's provision establishing misdemeanor of providing false information on registration form, did not transform registration offense to "wobbler" that gave court discretion to impose either felony or misdemeanor punishment on defendant who failed to notify of address change and whose underlying offense was felony. People v. Gonzalez (App. 2 Dist. 2007) 56 Cal.Rptr.3d 909, 149 Cal.App.4th 304. Criminal Law 27

Sex offenders may be convicted of violating both requirement that they registerwith appropriate law enforcement authorities of changing their residence or location, and requirement that they, when they move, inform law enforcement agency where they last registered of their new address or location. People v. Musovich (App. 3 Dist. 2006) 42 Cal.Rptr.3d 62, 138 Cal.App.4th 983. Mental Health 469(7)

Willful failure to update one's sex offender registration is a felony. People v. Sorden (2005) 29 Cal.Rptr.3d 777, 36 Cal.4th 65, 113 P.3d 565, rehearing denied, on remand 2005 WL 2462254, unpublished. Mental Health 469(7)

Defendant charged with failure to complete his annual registration as sex offender could not prevent jury, by way of stipulation, from being informed of his status as sex offender; sex offender status was critical element of offense, and failure to inform jury of defendant's status would hamper the People's coherent presentation of remaining issues. People v. Cajina (App. 1 Dist. 2005) 26 Cal.Rptr.3d 171, 127 Cal.App.4th 929, review denied. Criminal Law 661

In a prosecution for failure to register as a sex offender, the jury needs to be informed of the defendant's status as a sex offender, but the jury need not be informed of the defendant's specific sex offense conviction. People v. Cajina (App. 1 Dist. 2005) 26 Cal.Rptr.3d 171, 127 Cal.App.4th 929, review denied. Mental Health 469(7)

Sex offenders registered in one county who move to another county within California without notifying any law enforcement agency violate two statutory requirements: by not registering in the new county, and by not informing authorities in the old county of the new address. People v. Britt (2004) 12 Cal.Rptr.3d 66, 32 Cal.4th 944, 87 P.3d 812. Criminal Law 29(5.5)

A sex offender is guilty of a felony only if he 'willfully violates' the registration or notification provisions of registration statute, which requires actual knowledge of the duty to register. People v. Jackson (App. 6 Dist. 2003) 1 Cal.Rptr.3d 253, 109 Cal.App.4th 1625. Mental Health 469(7)

Failure to comply with sex offender registration law constitutes a penal offense. People v. Franklin (1999) 84 Cal.Rptr.2d 241, 20 Cal.4th 249, 975 P.2d 30. Mental Health 469(7)

Offense of failure to register as a sex offender based on commission of certain enumerated crimes is a felony. People v. Prothero (App. 3 Dist. 1997) 66 Cal.Rptr.2d 779, 57 Cal.App.4th 126, review denied. Criminal Law 27

12. Location

The duty of a sex offender to notify police of a change of address arises when offender moves, and is not postponed unless and until a new address is acquired; if the offender "changes" the last registered address by moving out, and does not have a new address, he or she may comply with statute by notifying of a new "location," meaning, in this context, simply a place where the registrant who has no address can be found. People v. Annin (App. 1 Dist. 2004) 15 Cal.Rptr.3d 278, 117 Cal.App.4th 591, modified on denial of rehearing , review denied. Mental Health 469(7)

A sex offender is "located" in jurisdiction for purposes of registration when he is present in the jurisdiction on five consecutive working days, and has five working days from time he first comes into jurisdiction to register as transient, if he is in jurisdiction on each of those days. People v. North (App. 1 Dist. 2003) 5 Cal.Rptr.3d 337, 112 Cal.App.4th 621, as modified. Mental Health 469(5)

In sex offender registration statute, "located" for purposes of place of registration means present in the jurisdiction on a regular basis, which must be considered in light of the legislative intent to include offenders who are transient, and thus likely to be less "regular" in their routines than offenders with residences. People v. North (App. 1 Dist. 2003) 5 Cal.Rptr.3d 337, 112 Cal.App.4th 621, as modified. Mental Health 469(5)

13. Intent, generally

Under statute requiring a defendant to register as a sex offender, although notice alone does not satisfy the requirement of willful failure to register, a jury may infer from proof of notice to defendant of that duty that defendant did have actual knowledge, which would satisfy the requirement. People v. Poslof (App. 4 Dist. 2005) 24 Cal.Rptr.3d 262, 126 Cal.App.4th 92, review denied. Mental Health 469(7)

Defendant's claim that his depression made it more difficult for him to remember to register as a sex offender did not negate the willfulness element of the offense, and was not a defense to the charge of failure to register as a sex offender. People v. Sorden (2005) 29 Cal.Rptr.3d 777, 36 Cal.4th 65, 113 P.3d 565, rehearing denied, on remand 2005 WL 2462254, unpublished. Mental Health 469(7)

Under sex offender registration statute, so long as the accused, with knowledge of the registration requirement acts willfully, and such is proven beyond a reasonable doubt, forgetting one's correct address while registering is not a defense any more than not remembering to register. People v. Chan (App. 2 Dist. 2005) 26 Cal.Rptr.3d 878, 128

Cal.App.4th 408, as modified, review denied, appeal after new sentencing hearing 2006 WL 1351577, unpublished. Mental Health 469(7)

The willful failure to register as a sex offender is a regulatory offense that may be committed merely by forgetting to register as required. People v. Carmony (App. 3 Dist. 2005) 26 Cal.Rptr.3d 365, 127 Cal.App.4th 1066, review denied. Mental Health 469(7)

Defendant's forgetting to register as a sex offender within five working days of his birthday did not negate "willfulness" element of crime of willful failure to register and thus was not defense to that crime. People v. Barker (2004) 18 Cal.Rptr.3d 260, 34 Cal.4th 345, 96 P.3d 507, rehearing denied. Mental Health 465(1)

Statute prohibiting the "willful" failure to register as a sex offender contains no other intent language and, therefore, sets forth a general intent offense requiring no specific intent or other mental state; failure need not be reckless or grossly negligent. People v. Johnson (App. 2 Dist. 1998) 78 Cal.Rptr.2d 795, 67 Cal.App.4th 67. Mental Health 469(7)

Statute which includes "willfully" language may nevertheless define a specific intent offense if the statute includes other language requiring a specific intent, but "willfully" language without any additional specific intent language denotes a general intent offense. People v. Johnson (App. 2 Dist. 1998) 78 Cal.Rptr.2d 795, 67 Cal.App.4th 67. Criminal Law 20

The term "willful" requires that the prohibited act or omission occur intentionally. People v. Johnson (App. 2 Dist. 1998) 78 Cal.Rptr.2d 795, 67 Cal.App.4th 67. Criminal Law 20

Jury instructions in prosecution for willful failure to register as a sex offender, defining "willful" as requiring a purpose or willingness to make the omission, and requiring an "intentional" failure to register, did not convert the general intent offense into a strict liability offense, but permitted the jury to find that defendant's failure to register was the result of misinformation and lack of transportation, and thus, not willful. People v. Johnson (App. 2 Dist. 1998) 78 Cal.Rptr.2d 795, 67 Cal.App.4th 67. Mental Health 469(7)

14. Actual knowledge, generally

A defendant charged with violation of the duty to register as a sex offender may present substantial evidence that, because of an involuntary condition, temporary or permanent, physical or mental, he lacked actual knowledge of his duty to register, which would negate the willfulness element of the offense; only the most disabling of conditions would qualify under this standard. People v. Sorden (2005) 29 Cal.Rptr.3d 777, 36 Cal.4th 65, 113 P.3d 565, rehearing denied, on remand 2005 WL 2462254, unpublished. Mental Health 469(7)

Defendant could be liable for failure to register address under sex offender registration law only if he had actual knowledge of duty to register; defendant claimed that he did not know that he had to register second address. People v. Jackson (App. 6 Dist. 2003) 1 Cal.Rptr.3d 253, 109 Cal.App.4th 1625. Mental Health 469(2)

A jury may infer knowledge of the duty a sex offender to register an address change from notice, but notice alone does not necessarily satisfy the willfulness requirement. People v. Jackson (App. 6 Dist. 2003) 1 Cal.Rptr.3d 253, 109 Cal.App.4th 1625. Mental Health 469(7)

Conviction for willfully violating notice provisions of sex offender registration statute requires actual knowledge of the duty to register. People v. Edgar (App. 1 Dist. 2002) 127 Cal.Rptr.2d 662, 104 Cal.App.4th 210. Mental Health 469(7)

Defendant, as a convicted rapist, did not have actual knowledge of sex offender registration requirement that he advise last registering agency of a move outside the jurisdiction, where he was only advised of duty to report when he moved into a jurisdiction, but was not advised of the duty to report when he moved out, except to the extent of providing an annual update of his registration. People v. Davis (App. 2 Dist. 2002) 125 Cal.Rptr.2d 519, 102 Cal.App.4th 377, rehearing denied , review denied. Mental Health 469(7)

By claiming that he had forgotten to register, defendant in prosecution for failing to register as sex offender conceded that he had actual knowledge of registration requirement. People v. Cox (App. 4 Dist. 2002) 115 Cal.Rptr.2d 123, 94 Cal.App.4th 1371, review denied. Mental Health 469(7)

Under penal statute, a defendant willfully fails to register as a sex offender when, possessed of actual knowledge of the requirement, he or she forgets to do so. People v. Cox (App. 4 Dist. 2002) 115 Cal.Rptr.2d 123, 94 Cal.App.4th 1371, review denied. Mental Health 469(7)

Willfulness element of failing to register as sex offender requires actual knowledge of the registration requirement. People v. Cox (App. 4 Dist. 2002) 115 Cal.Rptr.2d 123, 94 Cal.App.4th 1371, review denied. Mental Health 469(7)

Willful violation of statute requiring that convicted sex offenders notify law enforcement authorities of change of address within a specified period occurs only where offender actually knows of the duty to act and what act is required to be performed. People v. Vigil (App. 6 Dist. 2001) 114 Cal.Rptr.2d 331, 94 Cal.App.4th 485, review denied, denial of habeas corpus affirmed 130 Fed.Appx. 872, 2005 WL 1111846, certiorari denied 126 S.Ct. 243, 546 U.S. 901, 163 L.Ed.2d 223. Mental Health 469(7)

Conviction for willfully failing to register as sex offender requires that defendant actually know of the duty to register. People v. Garcia (2001) 107 Cal.Rptr.2d 355, 25 Cal.4th 744, 23 P.3d 590, rehearing denied , as modified.

15. Juveniles--In general

When a minor is committed to Department of Juvenile Justice (DJJ) for engaging in sexual intercourse with a child under the age of 14, the minor must register as a sex offender. In re G.C. (App. 4 Dist. 2007) 68 Cal.Rptr.3d 523, 157 Cal.App.4th 405, time for grant or denial of review extended. Infants 227(2)

Minor was properly committed to Department of Juvenile Justice (DJJ) based on admitted offense of engaging in sexual intercourse with child under age of 14, which was subject of current juvenile petition, thus requiring minor to register as sex offender, rather than aggregating the maximum confinement periods for his previous non-sexual offenses and committing him to DJJ based only upon those crimes in order to avoid registration requirement; juvenile court did not have authority to disregard current offense. In re G.C. (App. 4 Dist. 2007) 68 Cal.Rptr.3d 523, 157 Cal.App.4th 405, time for grant or denial of review extended. Infants 223.1; Infants 227(2)

Statutory requirements placed upon juvenile court when committing a minor to Department of Juvenile Justice (DJJ) explicitly mandate the consideration of a minor's most recent offense in additionto prior offenses; juvenile court does not have the authority to disregard the events that bring or continue a minor under the jurisdiction of the juvenile court when determining appropriate disposition on adjudication based on those events. In re G.C. (App. 4 Dist. 2007) 68 Cal.Rptr.3d 523, 157 Cal.App.4th 405, time for grant or denial of review extended. Infants 223.1

A minor is required to register as a sex offender only if he has been discharged or paroled from the California Youth

Authority (CYA) and the CYA commitment was both afterandbecause ofa sex offense adjudication; if minor is committed to the CYA only for non-sex offenses, he will not be required to register as a sex offender even though he has previously been adjudicated a ward for sex offenses. In re Alex N. (App. 6 Dist. 2005) 33 Cal.Rptr.3d 172, 132 Cal.App.4th 18. Infants 227(2)

Juvenile ward of court, found to have committed lewd and lascivious act upon child under age of 14, could not be required to register as sex offender where he had not been committed to Youth Authority. In re Bernardino S. (App. 1 Dist. 1992) 5 Cal.Rptr.2d 746, 4 Cal.App.4th 613. Infants 227(2)

The director of the youth authority may not keep a person who is subject to the provisions of this section incarcerated beyond the time which the youthful offender parole board has scheduled for his release on parole in order to meet the 45 day notice requirements of this section. 63 Op.Atty.Gen. 393, 5-9-80.

16. ---- Sexual battery, juveniles

Registration requirement for juvenile sex offenders is limited to statutory list of specific offenses giving rise to registration requirement upon discharge or parole from Youth Authority. In re Derrick B. (2006) 47 Cal.Rptr.3d 13, 39 Cal.4th 535, 139 P.3d 485. Infants 227(2)

Because sexual battery was not included in statutory list of specific offenses giving rise to sexual offender registration requirement upon discharge or parole from Youth Authority, registration requirement imposed against minor who admitted allegations contained in juvenile delinquency petition, including an allegation of sexual battery, was not authorized, notwithstanding the inclusion of sexual battery in statutory list of registrable offenses for adults. In re Derrick B. (2006) 47 Cal.Rptr.3d 13, 39 Cal.4th 535, 139 P.3d 485. Infants 227(2)

17. Change of address, generally

Violation of statute requiring sex offenders to give notification of any change of address to law enforcement authorities is a continuing offense. People v. Annin (App. 1 Dist. 2004) 15 Cal.Rptr.3d 278, 117 Cal.App.4th 591, modified on denial of rehearing , review denied. Mental Health 469(7)

There was substantial evidence that defendant had a new "address" in Oregon, and thus violated sex offender statute by failing to notify police in his last registered jurisdiction of it; although defendant was vague and evasive about where precisely he stayed, and for how long, jury could reasonably infer that he regularly returned to one or more address, either with friends or in motels, during his 14-month stay in Oregon, and "residence address" includes multiple addresses. People v. Annin (App. 1 Dist. 2004) 15 Cal.Rptr.3d 278, 117 Cal.App.4th 591, modified on denial of rehearing , review denied. Mental Health 469(7)

Sex offender subject to registration requirement, who moved from one county to another, could not be punished both for failing to notify authorities in old county of move and for failing to register in new county; offender's objective in each crime of omission was the same, i.e., to prevent any law enforcement authority from learning of his current residence. People v. Britt (2004) 12 Cal.Rptr.3d 66, 32 Cal.4th 944, 87 P.3d 812. Criminal Law 29(5.5)

A sex offender accused of failing to inform police of change of address within five days is innocent if he mailed the notice within the statutory five-day period, regardless of whether he mistakenly thought he had a duty to make sure the police received his notice, and willfully failed to do so. People v. Smith (2004) 11 Cal.Rptr.3d 290, 32 Cal.4th 792, 86 P.3d 348. Mental Health 469(7)

Under statute requiring sex offender to inform police of a change of address within five working days, a registered

sex offender who mails a change-of-address notice to the police within five working days has fulfilled his statutory obligation; statute does not give clear notice that registrant has a duty to see that the notification is actually received by the police, and therefore cannot be construed to impose such an obligation. People v. Smith (2004) 11 Cal.Rptr.3d 290, 32 Cal.4th 792, 86 P.3d 348. Mental Health 469(7)

California had jurisdiction to try sex offender who moved from California to Colorado for failure to notify police of change of address within five days. People v. Smith (2004) 11 Cal.Rptr.3d 290, 32 Cal.4th 792, 86 P.3d 348. Criminal Law 97(.5)

Defendant did not "willfully" fail to register as a sex offender in the new jurisdiction, as element of failing to register as a sex offender, if he did not believe that he had acquired a second residence in that jurisdiction and was therefore required to register in that jurisdiction. People v. LeCorno (App. 1 Dist. 2003) 135 Cal.Rptr.2d 775, 109 Cal.App.4th 1058. Mental Health 469(7)

Defendant who is required to register as sex offender may have more than one registerable residence. People v. Horn (App. 5 Dist. 1998) 80 Cal.Rptr.2d 310, 68 Cal.App.4th 408. Mental Health 469(5)

In prosecution for failure to reregister as sex offender within 10 days of any change in residence address, trial court had no sua sponte duty to define term "residence" for jury, since term "residence," as used in registration statute, was commonly understood term without technical meaning; term "residence" referred to term so easily understood by person of common intelligence as connoting more than passing through or presence for limited visit that further definition was not required. People v. McCleod (App. 4 Dist. 1997) 64 Cal.Rptr.2d 545, 55 Cal.App.4th 1205, 56 Cal.App.4th 772B, modified on denial of rehearing , review denied. Criminal Law 824(2)

"Residence "is not truly a synonym for domicile but is term of varying import, and its statutory meaning depends upon context and purpose of statute in which it is used. People v. McCleod (App. 4 Dist. 1997) 64 Cal.Rptr.2d 545, 55 Cal.App.4th 1205, 56 Cal.App.4th 772B, modified on denial of rehearing , review denied. Domicile 2

Under statute requiring sex offender to reregister within 10 days of any change in his residence address, term "residence" should be construed as connoting more than passing through or presence for limited visit; term contemplates notification by offender when he is in place where he is living or temporarily staying for more than limited time defined by statute. People v. McCleod (App. 4 Dist. 1997) 64 Cal.Rptr.2d 545, 55 Cal.App.4th 1205, 56 Cal.App.4th 772B, modified on denial of rehearing , review denied. Mental Health 469(5)

Jury was entitled to disbelieve defendant's self-serving testimony that he had slept nightly at apartment from which he had been evicted until he found new place to live, and to find that he willfully failed to reregister change of residence address within 10 days of his eviction, thus supporting conviction for failure to timely reregister as sex offender upon change of residence; defendant had provided police false address after eviction, he gave conflicting testimony, he was not found at apartment, and other evidence indicated that he was residing with either his mother or his girlfriend. People v. McCleod (App. 4 Dist. 1997) 64 Cal.Rptr.2d 545, 55 Cal.App.4th 1205, 56 Cal.App.4th 772B, modified on denial of rehearing , review denied. Mental Health 469(7)

To convict of failure to reregister as sex offender within 10 days of any change in residence address, jury did not need to find defendant specifically "intended" to evade police, but rather it was sufficient for showing "willfullness" required under sex offender registration statute that his actions were done with purpose or willingness. People v. McCleod (App. 4 Dist. 1997) 64 Cal.Rptr.2d 545, 55 Cal.App.4th 1205, 56 Cal.App.4th 772B, modified on denial of rehearing , review denied. Mental Health 469(7)

Sex offenders have continuing duty to give required notification of any change of address to law enforcement

authorities and violation of that duty is continuing offense. Wright v. Superior Court (1997) 63 Cal.Rptr.2d 322, 15 Cal.4th 521, 936 P.2d 101. Mental Health 469(5); Mental Health 469(7)

18. Failure to register--In general

Court of Appeals did not impose new constitutional rule of criminal procedure on collateral review of conviction of habeas petitioner on charge of not re-registering as sex offender pursuant to California's sex offender registration statute, by determining that state court decision did not reasonably apply *Lambert* which required proof that defendant knew of duty to register, since *Lambert* clearly established requisite legal principles long ago. Bartlett v. Alameida, C.A.9 (Cal.)2004, 366 F.3d 1020. Habeas Corpus 498

The mandatory duty to register as a sex offender cannot be avoided through a plea bargain or through the exercise of judicial discretion. People v. Hofsheier (2006) 39 Cal.Rptr.3d 821, 37 Cal.4th 1185, 129 P.3d 29, on remand 2006 WL 1196585, unpublished. Criminal Law 273.1(2); Mental Health 469(2)

Defendant's failure to register as a sex offender with city police department in the first place precluded his conviction under sex offender registration statute for failing to inform city when he left for another jurisdiction; because he never registered when he entered city, he was not required to register when he left. People v. Davis (App. 2 Dist. 2002) 125 Cal.Rptr.2d 519, 102 Cal.App.4th 377, rehearing denied , review denied. Mental Health 469(5); Mental Health 469(7)

19. ---- Continuing offense, failure to register

Failure to register as a sex offender is a "continuing offense," that is, one marked by a continuing duty in the defendant to do an act which he fails to do, which continues as long as the duty persists and there is a failure to perform that duty. People v. Meeks (App. 3 Dist. 2004) 20 Cal.Rptr.3d 445, 123 Cal.App.4th 695, rehearing denied , review denied. Criminal Law 150

Failure to register as sex offender is continuing offense to which statute of limitations does not apply. People v. Fioretti (App. 6 Dist. 1997) 63 Cal.Rptr.2d 367, 54 Cal.App.4th 1209, review denied. Criminal Law 150

This section defined a continuing offense, so that one-year limitations period did not commence to run when defendant failed to register. In re Parks (App. 4 Dist. 1986) 229 Cal.Rptr. 202, 184 Cal.App.3d 476. Criminal Law 150

20. Discretionary orders

To implement requirements of discretionary registration provision of sex offender statute, trial court must engage in a two-step process: (1) it must find whether offense was committed as result of sexual compulsion or for purposes of sexual gratification, and state reasons for these findings, and (2) it must state reasons for requiring lifetime registration as sex offender. People v. King (App. 2 Dist. 2007) 60 Cal.Rptr.3d 673, 151 Cal.App.4th 1304. Mental Health 469(2)

If a court imposes a discretionary registration requirement upon a person convicted of unlawful sexual intercourse with a minor, it must comply with the requirements set forth in discretionary registration provision of sex offender statute. People v. King (App. 2 Dist. 2007) 60 Cal.Rptr.3d 673, 151 Cal.App.4th 1304. Mental Health 469(2)

To implement statute providing for discretionary order for sex offender registration for offenses not enumerated for mandatory registration, trial court must engage in two-step process: (1) it must find whether offense was committed

as result of sexual compulsion or for purposes of sexual gratification, and state reasons for these findings, and (2) it must state reasons for requiring lifetime registration as sex offender. People v. Hofsheier (2006) 39 Cal.Rptr.3d 821, 37 Cal.4th 1185, 129 P.3d 29, on remand 2006 WL 1196585, unpublished. Mental Health 469(2)

21. Assaults

Statute requiring registration by persons convicted of assault with intent to commit rape, assault with intent to commit sodomy, and attempted oral copulation, among other crimes, would not be read to require registration by defendant who was convicted of assault with intent to commit oral copulation, where statute did not explicitly require registration by defendants convicted of that crime; therefore, trial court lacked jurisdiction to require defendant to register. People v. Saunders (App. 5 Dist. 1991) 284 Cal.Rptr. 212, 232 Cal.App.3d 1592. Mental Health 469(2)

22. Annoying or molesting children

Requirement that defendant convicted of misdemeanor child annoyance and molestation pursuant to Pen.C. § 647a [renumbered § 647.6] register as sex offender pursuant to Pen.C. § 290 did not shock conscience or offend fundamental notions of human dignity, where defendant, a friend of victim's family, "squeezed and rubbed" vaginal area of ten-year-old victim with hand for about one minute, and thus, registration requirement did not constitute cruel and unusual punishment, despite fact that comparison of registration requirement with punishments prescribed in same jurisdiction for different offenses and with punishments prescribed for same offense in other jurisdictions facially favored defendant. People v. Monroe (App. 5 Dist. 1985) 215 Cal.Rptr. 51, 168 Cal.App.3d 1205. Sentencing And Punishment 1601

Legislature's failure to harmonize § 290 requiring registration of sex offenders and § 647a [renumbered § 647.6] proscribing annoying or molesting a child under age of 18 years was an oversight, and legislature intended that registration be required for annoying and molesting children. People v. Tate (App. 5 Dist. 1985) 210 Cal.Rptr. 117, 164 Cal.App.3d 133. Mental Health 469(2)

23. Condition of probation

Former parolee's prior offense of assault with intent to commit rape, which he committed when he was 16 in Arkansas, "would have been punishable" in California at time of his conviction as one of qualifying offenses under California sex offender registration statute, and thus parolee was properly required to register as sex offender, under adult provisions of law, as condition of parole; Arkansas offense for which parolee was convicted involved conduct that satisfied all elements of offense under California law, and thus offense satisfied statutory requirements for punishment, even if parolee would not have been tried as adult, and liable to punishment for offense, had he been in California at time he committed offense. Beene v. Terhune, C.A.9 (Cal.)2004, 380 F.3d 1149, certiorari denied 125 S.Ct. 1975, 544 U.S. 1020, 161 L.Ed.2d 860. Mental Health 469(2)

Probation condition imposed on defendant convicted of registerable sex offense of committing lewd act on minor, prohibiting him from leaving county for any purpose, was unconstitutional restriction on defendant's right to intrastate travel; no consideration was given to defendant's employment which sometimes required him to drive to locations in other counties, and prohibition bore no reasonable relation to defendant's crime. People v. Smith (App. 2 Dist. 2007) 62 Cal.Rptr.3d 316, 152 Cal.App.4th 1245. Constitutional Law 1288; Sentencing And Punishment 1971(2)

Defendant convicted of a registerable sex offense and placed on probation had a constitutional right to intrastate travel, which, although not absolute, could be restricted only as reasonably necessary to further a legitimate governmental interest. People v. Smith (App. 2 Dist. 2007) 62 Cal.Rptr.3d 316, 152 Cal.App.4th 1245.

Constitutional Law 1288

Failure of defendant, who had pleaded guilty to unlawful sexual intercourse with minor, to comply with registration requirements for sex offenders was violation of probation condition rather than substantive offense, since trial court in underlying case had failed to comply with statutory procedures for imposition of discretionary registration requirement, but instead granted five-year probation with registration requirement. People v. King (App. 2 Dist. 2007) 60 Cal.Rptr.3d 673, 151 Cal.App.4th 1304. Mental Health 469(2)

Criminal defendant convicted of offense not included in sex offender registration statute may not be compelled to register as condition of probation. In re Bernardino S. (App. 1 Dist. 1992) 5 Cal.Rptr.2d 746, 4 Cal.App.4th 613. Sentencing And Punishment 1969(2)

Defendant convicted of contributing to the delinquency of a minor and battery, misdemeanors, could not be required to register as a sex offender as a condition of probation, since battery was not a registerable offense and lewd and lascivious conduct was not indicated in either jury instruction or verdict. People v. Tye (App. 2 Dist. 1984) 206 Cal.Rptr. 813, 160 Cal.App.3d 796. Sentencing And Punishment 1969(2)

24. Probation revocation

Upon revoking defendant's probation and remanding him to state prison on his original sentence, trial court's removal of the requirement that defendant register as a sex offender was unauthorized, notwithstanding that the initial trial judge failed to state reasons for the registration order as required; trial court could not modify or reduce a sentence previously imposed, nor could one superior court judge overrule another. People v. Garcia (App. 6 Dist. 2006) 55 Cal.Rptr.3d 12, 147 Cal.App.4th 913, modified on denial of rehearing , review denied. Sentencing And Punishment 2035; Sentencing And Punishment 2040

Revocation of probation on ground that probationer had failed to register as a sex offender constituted an abuse of discretion where there was no evidence from which to infer that either the court granting probation, the officials in charge of the county jail, or the probation officer had complied with statutory requirements by informing petitioner of his obligation under this section to register. People v. Buford (App. 1 Dist. 1974) 117 Cal.Rptr. 333, 42 Cal.App.3d 975. Sentencing And Punishment 2003

25. Discharged probationer

This section providing for registration of sex offenders is designed to take effect automatically when a person is convicted of one of the offenses enumerated therein and imposes a life-long requirement of registration and re-registration as one of the penalties or disabilities incurred by convicted offender and this section has no independent operation but depends for its effectiveness upon a prior conviction, and cannot stand alone when conviction is expunged from record, for it is one of those "penalties and disabilities" which are expunged under § 1203.4 providing that upon fulfillment of period of probation defendant may be granted release from all penalties and disabilities. People v. Taylor (App. 2 Dist. 1960) 3 Cal.Rptr. 186, 178 Cal.App.2d 472. Mental Health 454; Criminal Law 1222.1

The requirement of this section of registration and reregistration upon changing place of address, imposed upon convicts, is one of the "penalties and disabilities resulting from the offense or crime" of which he had been convicted, from which convict would thereafter be released upon being granted probation and fulfilling conditions of probation. Kelly v. Municipal Court of City and County of San Francisco (App. 1958) 160 Cal.App.2d 38, 324 P.2d 990. Sentencing And Punishment 1953

This section imposing on convict the continuing duty to reregister upon affecting change of address, without expressly recognizing any release of successful probationer from such duty, does not prevail over § 1203.4 governing such release of probationer, either as being the later enactment or as being a special as compared with a general statute. Kelly v. Municipal Court of City and County of San Francisco (App. 1958) 160 Cal.App.2d 38, 324 P.2d 990. Criminal Law 1222.1

26. Parole revocation

Evidence before panel at parole revocation hearing was sufficient to sustain charges that petitioner violated conditions of his parole by entering into a residence without obtaining permission of occupants, by choking and hitting one of the occupants with a chain, and by failing to register as required by this section. In re Carroll (App. 1 Dist. 1978) 145 Cal.Rptr. 334, 80 Cal.App.3d 22. Pardon And Parole 90

27. Disclosure of information by school districts

School districts may disclose information received from law enforcement officials concerning the presence of a sex offender in the community, in the manner and to the extent authorized by the law enforcement agency, however, school districts do not have a mandatory duty to disclose the information. 82 Op.Atty.Gen. 20, 3-1-99.

School districts may within the discretion of school officials disclose information received from parents or employees concerning the presence of a sex offender in the community, however, school districts will only have civil immunity for their actions if the information that is disclosed was obtained from a law enforcement agency. 82 Op.Atty.Gen. 20, 3-1-99.

School districts may disclose information received from law enforcement officials relating to the presence of a registered sex offender in the community to protect at-risk students in the manner and to the extent authorized by the law enforcement agency. 82 Op.Atty.Gen. 20, 3-1-99.

School officials are immune from civil liability when information relating to a sex offender is disclosed in the manner and to the extent authorized by law enforcement agencies, however, school officials may be subject to sanctions when they improperly use or improperly disclose the information. 82 Op.Atty.Gen. 20, 3-1-99.

28. Notice

California Court of Appeal's decision that notification provision of California's sex offender registration statute, obligating sex offender to notify law enforcement of his change of address within 10 days of moving, was not satisfied when petitioner provided his current address in the course of being booked at jail, did not make previously lawful conduct illegal or result in unforeseeable and retroactive judicial expansion of narrow and precise statutory language; thus, California Court of Appeal's decision was not objectively unreasonable application of federal due process law, and petitioner was not entitled to writ of habeas corpus on that ground. Mendez v. Small, C.A.9 (Cal.)2002, 298 F.3d 1154. Habeas Corpus 537.1

A violation of the duty to register as a sex offender requires actual knowledge of the duty to register, and a jury may infer knowledge from notice, but notice alone does not necessarily satisfy the willfulness requirement. People v. Sorden (2005) 29 Cal.Rptr.3d 777, 36 Cal.4th 65, 113 P.3d 565, rehearing denied, on remand 2005 WL 2462254, unpublished. Mental Health 469(7)

Any failure by jail officials to notify convicted sex offender, upon his release on bail on subsequent charges that would also trigger sex offender registration requirement, of his preexisting registration requirement based on past

conviction did not violate statute governing required notice to sex offenders of their duty to register their residence addresses. People v. Vigil (App. 6 Dist. 2001) 114 Cal.Rptr.2d 331, 94 Cal.App.4th 485, review denied, denial of habeas corpus affirmed 130 Fed.Appx. 872, 2005 WL 1111846, certiorari denied 126 S.Ct. 243, 546 U.S. 901, 163 L.Ed.2d 223. Mental Health 469(7)

The youthful offender parole board is required to provide opportunity to give the 45 day notice required by subd. (b) of this section, in fixing a parole date of an inmate subject to that section. 63 Op.Atty.Gen. 754, 10-1-80.

29. Publication to media

Trial court would issue temporary restraining order preventing publication to media of high-risk sex offender's photograph, physical description, address, and license plate number until parties could brief issue for hearing on preliminary injunction, as it was not clear whether statute governing registration of sex offenders authorized publication to media, although offender had not shown probability of success on his constitutional challenge to notification provisions of statute. Byron M. v. City of Whittier, C.D.Cal.1998, 46 F.Supp.2d 1032. Injunction 150

30. Burden of proof

In a prosecution for failure to register as a sex offender, the People must prove the defendant knew he or she was obligated to comply with an extremely stringent set of requirements, including annual, life-long registration. People v. Cajina (App. 1 Dist. 2005) 26 Cal.Rptr.3d 171, 127 Cal.App.4th 929, review denied. Mental Health 469(7)

31. Pardon

A pardon does not relieve an ex-felon of the duty to register under the sex offenders' registration law. 28 Op.Atty.Gen. 178.

Where a pardon is granted to one who has been convicted of a felony, on basis of a determination of innocence, he is not obligated to register as a sex offender or ex-convict. 28 Op.Atty.Gen. 178.

32. Plea agreements

The duty to register as a sex offender cannot be avoided through a plea bargain citation or through the exercise of judicial discretion. In re Stier (App. 1 Dist. 2007) 61 Cal.Rptr.3d 181, 152 Cal.App.4th 63, as modified. Criminal Law 273(4.1); Mental Health 469(1)

Registration as sex offender is mandatory, and is not a permissible subject of plea agreement negotiation. In re Stier (App. 1 Dist. 2007) 61 Cal.Rptr.3d 181, 152 Cal.App.4th 63, as modified. Criminal Law 273(4.1); Mental Health 469(1)

A discretionary sex offender registration requirement may not be grafted onto a plea bargain when it was not included in the agreement. People v. King (App. 2 Dist. 2007) 60 Cal.Rptr.3d 673, 151 Cal.App.4th 1304. Criminal Law 273.1(2)

Defendant established prejudice in trial court's failure to advise defendant of lifetime requirement of sex offender registration when accepting his plea of no contest to misdemeanor lewd conduct in public place; defendant made prompt efforts to withdraw his plea accompanied by his specific declaration that he would not have entered plea had he known of lifetime registration requirement, format of oral sentencing and written probation forms misleadingly

suggested that registration requirement was for duration of probation only, and there was no evidence that defendant was made aware that registration would be for life. People v. Zaidi (App. 1 Dist. 2007) 55 Cal.Rptr.3d 566, 147 Cal.App.4th 1470. Criminal Law 1167(5)

The trial court's failure to advise a defendant pleading guilty or no contest of a sex registration requirement is error. People v. Zaidi (App. 1 Dist. 2007) 55 Cal.Rptr.3d 566, 147 Cal.App.4th 1470. Criminal Law 273.1(4); Criminal Law 275.4(1)

The trial court's obligation to advise a defendant of the direct consequences of a plea of guilty or no contest includes the duty to advise of the requirement to register as a sex offender upon conviction of a statutorily enumerated offense. People v. Zaidi (App. 1 Dist. 2007) 55 Cal.Rptr.3d 566, 147 Cal.App.4th 1470. Criminal Law 273.1(4); Criminal Law 275.4(1)

Before accepting defendant's plea of no contest to misdemeanor lewd conduct in public place, trial court was required to inform defendant that registration was lifetime requirement, not merely to advise him that he was subject to registration requirement, even though court had discretion whether to impose this requirement for defendant's offense; ignominy and duration of registration requirement made it particularly harsh sanction that defendant was required to fully appreciate to render plea voluntary and intelligent. People v. Zaidi (App. 1 Dist. 2007) 55 Cal.Rptr.3d 566, 147 Cal.App.4th 1470. Criminal Law 275.4(1)

When defendant agrees to plead guilty to an offense not specifically included in sex offender registration statute and the registration requirement is not included in the bargain, sentencing court violates plea agreement by subsequently requiring defendant to register based on facts underlying the offense. People v. Olea (App. 1 Dist. 1997) 69 Cal.Rptr.2d 722, 59 Cal.App.4th 1289. Criminal Law 273.1(2)

Imposition of sex offender registration on defendant who pleaded guilty to multiple counts of residential burglary, on grounds that crimes were for purpose of sexual gratification, was not an insignificant deviation from terms of plea agreement so as to be permissible even though not included in agreement. People v. Olea (App. 1 Dist. 1997) 69 Cal.Rptr.2d 722, 59 Cal.App.4th 1289. Criminal Law 273.1(2)

For purposes of determining whether trial court violated plea agreement, defendant could reasonably believe that by agreeing to plead guilty to multiple counts of residential burglary in exchange for dismissal of sexual assault and attempted rape charges arising from same incidents, he avoided possibility of being required to register as sex offender; registration requirement was not inherent part of conviction on burglary charges, though it could be imposed upon a finding that burglaries were sexually motivated. People v. Olea (App. 1 Dist. 1997) 69 Cal.Rptr.2d 722, 59 Cal.App.4th 1289. Criminal Law 273.1(2); Mental Health 469(2)

Appropriate remedy for trial court's breach of plea bargain, by imposing as part of sentence the unbargained-for requirement that defendant register as sex offender based on sexual motivation behind charged residential burglaries, was not to strike registration requirement but to remand for resentencing. People v. Olea (App. 1 Dist. 1997) 69 Cal.Rptr.2d 722, 59 Cal.App.4th 1289. Criminal Law 1181.5(8)

Registration of sex offenders with law enforcement authorities is mandatory and not permissible subject of plea agreement negotiation. Wright v. Superior Court (1997) 63 Cal.Rptr.2d 322, 15 Cal.4th 521, 936 P.2d 101. Criminal Law 273.1(2); Mental Health 469(1)

Superior court had jurisdiction over subject matter and parties in proceeding in which defendant, who was charged with failing to register as sex offender, entered no contest plea to that charge, despite defendant's claim on appeal that dates charged in information were inaccurate, as information was facially sufficient, defendant admitted

charging dates by his plea, and sentence was not unauthorized by law. People v. Borland (App. 2 Dist. 1996) 57 Cal.Rptr.2d 562, 50 Cal.App.4th 124, review denied. Criminal Law 275.2

Sex offender registration was not permissible subject of plea agreement negotiation. People v. McClellan (1993) 24 Cal.Rptr.2d 739, 6 Cal.4th 367, 862 P.2d 739, rehearing denied. Criminal Law 273.1(2)

33. Separate offense

Under the sex offender registration statute, a failure to register within five working days of coming into a city or county is one offense separate from the offense of failure to register within five working days of release from a place of incarceration while a transient. People v. Balkin (App. 2 Dist. 2006) 51 Cal.Rptr.3d 687, 145 Cal.App.4th 487. Mental Health 469(7)

Defendant's failure to register as a sex offender on his birthday and his subsequent failure to register on a change of address, although involving partly coterminous time period, were offenses triggered by separate occurrences such that punishing each offense did not violate statutory prohibition against multiple punishment for single act or omission. People v. Meeks (App. 3 Dist. 2004) 20 Cal.Rptr.3d 445, 123 Cal.App.4th 695, rehearing denied , review denied. Sentencing And Punishment 516

Defendant's failure to register as a sex offender on his birthday and his failure to register on a change of address were each a separate, continuing offense for which defendant was subject to conviction. People v. Meeks (App. 3 Dist. 2004) 20 Cal.Rptr.3d 445, 123 Cal.App.4th 695, rehearing denied , review denied. Criminal Law 150; Mental Health 469(7)

Prosecuting sex offender, who was subject to registration requirement and who moved from one county to another without notifying authorities in either county, in second county after he had been convicted in first county violated statutory prohibition against multiple prosecution; although offender committed offense as to each county, offenses could be joined in single proceeding, either county was proper venue, offenses were connected together and of the same class of crimes, and prosecution was aware of proceeding in first county. People v. Britt (2004) 12 Cal.Rptr.3d 66, 32 Cal.4th 944, 87 P.3d 812. Criminal Law 29(5.5)

A defendant subject to sex offender registration requirement may be convicted of violating both parts of statute (failing to register and failing to inform of change of address), since statute limits multiple punishment and prosecution, not conviction. People v. Britt (2004) 12 Cal.Rptr.3d 66, 32 Cal.4th 944, 87 P.3d 812. Criminal Law 29(5.5)

Under sex offender registration statute, a duty on part of defendant, as a convicted rapist, to register with city police department arose when he entered city and remained for five consecutive working days, ceased when he moved from city, and arose again when he returned to city for five consecutive working days, and thus, defendant committed a separate offense each time he failed to register when the duty arose. People v. Davis (App. 2 Dist. 2002) 125 Cal.Rptr.2d 519, 102 Cal.App.4th 377, rehearing denied , review denied. Criminal Law 29(5.5)

34. Estoppel

State was not equitably estopped from prosecuting defendant, who had been adjudicated guilty of a sex offense as a juvenile, for failing to register as a convicted sex offender pursuant to amendment to registration statute which imposed lifetime registration requirement to such juvenile offenders, by its representation in open court that defendant "was not and is not registrable," where defendant subsequently signed notice of registration form which expressly acknowledged that he had been notified of lifetime registration obligation, and complied with registration

requirement on one occasion after that time. People v. Allen (App. 3 Dist. 1999) 90 Cal.Rptr.2d 662, 76 Cal.App.4th 999, review denied , certiorari denied 121 S.Ct. 105, 531 U.S. 841, 148 L.Ed.2d 63. Estoppel 62.2(2)

Government was not equitably estopped from prosecuting defendant, a convicted sex offender, for failure to inform authorities of change in residence, as there was no evidence of government conduct indicating any official representation to defendant that he was not required to comply with registration requirements. People v. Fioretti (App. 6 Dist. 1997) 63 Cal.Rptr.2d 367, 54 Cal.App.4th 1209, review denied. Estoppel 62.2(1)

35. Injunction

High-risk sex offender did not establish a probability of success on merits of claim that police department applied statute governing registration of sex offenders in arbitrary and capricious manner, and thus was not entitled to temporary restraining order preventing dissemination of personal information, where department had just implemented policy regarding statute, two other offenders also resided in city at time of implementation, and city showed that it contacted all three offenders at same time and that other offenders were subsequently arrested for failing to register as required. Byron M. v. City of Whittier, C.D.Cal.1998, 46 F.Supp.2d 1032. Injunction 150

36. Sufficiency of evidence

In a prosecution for failing to register as a sex offender at a home he had purchased, there was sufficient evidence to support jury's finding that defendant had actual knowledge he was required to register this second residence, based on notices of registration duty he had received and acknowledged, and jury could also conclude defendant in fact had been staying at the home for more than five consecutive working days, which obligated him to register. People v. Poslof (App. 4 Dist. 2005) 24 Cal.Rptr.3d 262, 126 Cal.App.4th 92, review denied. Mental Health 469(7)

In a prosecution for failing to register as a sex offender, there was sufficient evidence that defendant resided at the home he had purchased for five consecutive working days; deputy's testimony based on observations he made at the home established that defendant and his daughter lived there, and defendant told the deputy he purchased the home and stayed there three days a week. People v. Poslof (App. 4 Dist. 2005) 24 Cal.Rptr.3d 262, 126 Cal.App.4th 92, review denied. Mental Health 469(7)

Evidence did not support defendant's conviction for willfully failing to register as a sex offender within five working days of entering city; although defendant had mailing address in city, there was no evidence when he secured that address or how long he had been present in city when he was arrested. People v. Balkin (App. 2 Dist. 2006) 51 Cal.Rptr.3d 687, 145 Cal.App.4th 487. Mental Health 469(7)

There was substantial evidence that defendant violated sex offender registration statute by willfully failing to accurately register his address with the police; defendant wrote on the registration form that he resided at a nonexistent address, and was found by police at another address and admitted that was where he lived. People v. Chan (App. 2 Dist. 2005) 26 Cal.Rptr.3d 878, 128 Cal.App.4th 408, as modified, review denied, appeal after new sentencing hearing 2006 WL 1351577, unpublished. Mental Health 469(7)

Finding that defendant lived for a period longer than five days at a new address was supported, in prosecution for violating notice provisions of sex offender registration law, by evidence that defendant told officer at time of arrest for unspecified offense that he had been living at some hotels downtown and was presently staying at a hotel to which he had a key, that desk clerk at that hotel stated to another officer that defendant had been "living out of that room...for the past four months," and by a third officer's testimony that at time of a subsequent arrest defendant stated he was living at both a previously registered address and at a homeless shelter. People v. Edgar (App. 1 Dist. 2002) 127 Cal.Rptr.2d 662, 104 Cal.App.4th 210. Mental Health 469(7)

Any lack of proof that authorities failed to give defendant a copy of form stating that his duty to register as sex offender was explained to him or that they failed to require that he read that form did not require reversal of conviction for willfully failing to register as sex offender. People v. Garcia (2001) 107 Cal.Rptr.2d 355, 25 Cal.4th 744, 23 P.3d 590, rehearing denied , as modified. Mental Health 469(7)

Evidence supported conviction for failing to register as sex offender; after defendant registered, he signed rental application for apartment at different address with his girlfriend, they both signed lease for that apartment, defendant's income was used as basis for calculating rent, he was regularly at apartment with girlfriend and her two children during nine-month period, and these contacts supported finding that defendant's connection to apartment was outside realm of brief sojourn or transitory relationship of less than 14 days. People v. Horn (App. 5 Dist. 1998) 80 Cal.Rptr.2d 310, 68 Cal.App.4th 408. Mental Health 469(7)

State court's determination that there was sufficient evidence to support jury's finding that petitioner willfully failed to register as sex offender was not contrary to, and did not represent unreasonable application of clearly established federal law in *In re Winship*, and thus did not warrant federal habeas relief, in light of evidence that petitioner knew he was required to register with police authorities within no more than 14 days after moving, he lived at address for several months before his arrest, and he failed to register with appropriate authorities. Apodaca v. Runnells, N.D.Cal.2003, 2003 WL 1936126, Unreported. Habeas Corpus 493(3)

37. Instructions--In general

In a prosecution for failing to register as a sex offender, instruction was inappropriate that allowed a jury to conclude from the instruction that a defendant may be guilty of violating statute even if unaware of his or her obligation to register. People v. Poslof (App. 4 Dist. 2005) 24 Cal.Rptr.3d 262, 126 Cal.App.4th 92, review denied. Mental Health 469(7)

Pleading error and related instructional error in prosecution for failure to register as sex offender, charging defendant under catchall provision and proceeding on specific provision for willfully failing to register when he left his residence, were harmless; prosecution's closing argument demonstrated its election to proceed solely under specific provision, court's instruction covered only that violation, and defendant did not claim that information failed to adequately notify him of charge against him. People v. Musovich (App. 3 Dist. 2006) 42 Cal.Rptr.3d 62, 138 Cal.App.4th 983. Criminal Law 1167(1); Criminal Law 1172.1(2)

In prosecution of sex offender for failing to inform police of change of address within five days, the trial court's instructional error was prejudicial; defendant's only defense was that he had mailed the notice, but the court's erroneous instruction, responding to questions from a deadlocked jury, told the jurors that timely mailing was not a defense to the charge, after which the jury quickly returned a guilty verdict. People v. Smith (2004) 11 Cal.Rptr.3d 290, 32 Cal.4th 792, 86 P.3d 348. Criminal Law 863(2); Criminal Law 1174(1)

Error in instructing jury that it was necessary to prove that defendant willfully and knowingly failed to inform "in writing" the law enforcement agency, in the new jurisdiction, of his new or additional residence in that jurisdiction was harmless beyond a reasonable doubt, in prosecution for failing to register as a sex offender; the evidence was undisputed that defendant neither registered nor informed the city police department in writing of his additional residence in that jurisdiction, and had defendant registered in that jurisdiction, he necessarily would have informed the proper authorities in writing of his new address. People v. LeCorno (App. 1 Dist. 2003) 135 Cal.Rptr.2d 775, 109 Cal.App.4th 1058. Mental Health 469(7)

Error in instructing jury that defendant willfully failed to register as a sex offender in the new jurisdiction, as element of failing to register as a sex offender, even if he did not believe that he had acquired a second residence in

that jurisdiction, was not harmless beyond a reasonable doubt; while there was evidence that defendant received notice of the obligation to register additional residences, there was also substantial evidence that defendant was misinformed as to the circumstances under which the obligation arises and that he did not understand the meaning of a "residence" as used in the sex offender registration statute. People v. LeCorno (App. 1 Dist. 2003) 135 Cal.Rptr.2d 775, 109 Cal.App.4th 1058. Mental Health 469(7)

Defendant's mental state was not the only issue as to which circumstantial evidence was presented, in prosecution for failing to register as a sex offender, and thus, it was appropriate to give a general instruction concerning circumstantial evidence rather than an instruction on the use of circumstantial evidence to prove a mental state; circumstantial evidence was also presented regarding defendant's acquisition of a second residence. People v. LeCorno (App. 1 Dist. 2003) 135 Cal.Rptr.2d 775, 109 Cal.App.4th 1058. Mental Health 469(7)

On its face, instruction that willful violation of notice provisions of sex offender registration statute was a general intent crime, thus not requiring an intent to violate the law, improperly allowed a conviction for failing to register even if defendant were unaware of his obligation to do so. People v. Edgar (App. 1 Dist. 2002) 127 Cal.Rptr.2d 662, 104 Cal.App.4th 210. Mental Health 469(7)

Mistake-of-fact instruction was not warranted in prosecution arising from failure of defendant, a convicted sex offender, to notify authorities of a change of address when he began living partly at new address and partly at previously registered address; language on a registration card did not support a reasonable belief that defendant could add a second address without notification, and his statements at time of arrest rebutted any inference he was operating under mistake of fact. People v. Vigil (App. 6 Dist. 2001) 114 Cal.Rptr.2d 331, 94 Cal.App.4th 485, review denied, denial of habeas corpus affirmed 130 Fed.Appx. 872, 2005 WL 1111846, certiorari denied 126 S.Ct. 243, 546 U.S. 901, 163 L.Ed.2d 223. Criminal Law 772(6)

References to charged offense as "failure to register" or "failure to update registration," as made by trial court in its instructions to jury and by prosecutor in closing argument, were not prejudicial to defendant in prosecution for failing, as a convicted sex offender, to notify law enforcement authorities of a change in residence; in light of other instructions and the theories presented by prosecutor, erroneous references did not invite jury to return conviction for a crime with which defendant was not charged. People v. Vigil (App. 6 Dist. 2001) 114 Cal.Rptr.2d 331, 94 Cal.App.4th 485, review denied, denial of habeas corpus affirmed 130 Fed.Appx. 872, 2005 WL 1111846, certiorari denied 126 S.Ct. 243, 546 U.S. 901, 163 L.Ed.2d 223. Criminal Law 1171.1(3); Criminal Law 1172.1(3)

Jury in prosecution for willfully failing to register as sex offender may infer knowledge of duty to register from notice, but notice alone does not necessarily satisfy the willfulness requirement. People v. Garcia (2001) 107 Cal.Rptr.2d 355, 25 Cal.4th 744, 23 P.3d 590, rehearing denied , as modified. Mental Health 469(7)

"Ignorance of the law is no excuse" instruction was improper in prosecution for willfully failure to register as sex offender; instruction, on its face, would allow the jury to convict defendant even if he were unaware of his obligation to register. People v. Garcia (2001) 107 Cal.Rptr.2d 355, 25 Cal.4th 744, 23 P.3d 590, rehearing denied , as modified. Mental Health 469(7)

In fulfilling its duty to instruct on principles of law relevant to issues raised by evidence, while court must be sure jurors are adequately informed on that law to extent necessary to enable them to perform their function, it need only give explanatory instructions when terms used in instruction have technical meaning peculiar to the law. People v. McCleod (App. 4 Dist. 1997) 64 Cal.Rptr.2d 545, 55 Cal.App.4th 1205, 56 Cal.App.4th 772B, modified on denial of rehearing , review denied. Criminal Law 800(3)

To determine whether term in jury instruction has a technical legal meaning, so that trial court must give explanatory instructions, one must look to statutory language defining alleged crime. People v. McCleod (App. 4 Dist. 1997) 64

Cal.Rptr.2d 545, 55 Cal.App.4th 1205, 56 Cal.App.4th 772B, modified on denial of rehearing , review denied. Criminal Law 800(3)

Though statute defining alleged crime is to be construed as favorably to defendant as its language and circumstances of its application may reasonably permit, this rule does not require that penal statute be strained and distorted in order to exclude conduct clearly intended to be within its scope, nor does any rule require that statute be given "narrowest meaning"; it is sufficient if words are given their fair meaning in accord with evident intent of legislative body. People v. McCleod (App. 4 Dist. 1997) 64 Cal.Rptr.2d 545, 55 Cal.App.4th 1205, 56 Cal.App.4th 772B, modified on denial of rehearing , review denied. Statutes 241(1)

By failing to object to continuation of deliberations, when trial court specifically asked whether there was any objection to jury doing so while parties attempted to craft definition of statutory term requested by jury, defendant waived any possible error with respect to trial court's statutory obligation to provide information requested by jury; jury had asked for definition of statutory term, but jurors reached verdict before court and parties could agree upon specific definition to give to jury. People v. McCleod (App. 4 Dist. 1997) 64 Cal.Rptr.2d 545, 55 Cal.App.4th 1205, 56 Cal.App.4th 772B, modified on denial of rehearing , review denied. Criminal Law 868

Although by statute trial court must provide information requested by jury concerning any point of law arising in case, where instructions given are full and complete in themselves, court has discretion to determine what additional explanations or definitions are needed to satisfy jury's request for information. People v. McCleod (App. 4 Dist. 1997) 64 Cal.Rptr.2d 545, 55 Cal.App.4th 1205, 56 Cal.App.4th 772B, modified on denial of rehearing , review denied. Criminal Law 863(1)

38. ---- Actual knowledge, instructions

State trial court's instruction to jury, that actual knowledge was not element of crime of not re-registering as sex offender pursuant to California's sex offender registration statute, was not "harmless error," and, consequently, petitioner was entitled to federal habeas relief; court's repeated misstatement of element of crime had substantial and injurious effect or influence in determining jury's verdict because it was apparently the one factor that turned deadlocked jury, concerned in particular about actual knowledge or actual notice distinction, into convicting jury. Bartlett v. Alameida, C.A.9 (Cal.)2004, 366 F.3d 1020. Habeas Corpus 498

State court of appeal "unreasonably determined" that *Lambert* error did not occur when trial court erroneously instructed jury that actual knowledge was not element of crime of not re-registering as sex offender pursuant to California's sex offender registration statute, and, consequently, petitioner was entitled to federal habeas relief; although there was evidence that petitioner was given actual notice of life-long duty to register, petitioner was entitled to present evidence that he did not read the forms, or did not comprehend them, or misinterpreted the requirements, and jury was required, consistent with *Lambert,* to acquit him if they believed his testimony. Bartlett v. Alameida, C.A.9 (Cal.)2004, 366 F.3d 1020. Habeas Corpus 498

In a prosecution for failing to register as a sex offender, in which trial court erred in giving instruction from which jury might conclude that a defendant may be guilty of violating statute even if unaware of his or her obligation to register, error was harmless; based on the instructions as a whole it was unlikely the jury disregarded other instructions that the jury must find defendant had actual knowledge of the duty to register a new residence. People v. Poslof (App. 4 Dist. 2005) 24 Cal.Rptr.3d 262, 126 Cal.App.4th 92, review denied. Criminal Law 822(7)

In a prosecution for failing to register as a sex offender, instruction was proper that stated the jury must find defendant had actual knowledge of the duty to register the home he had bought and was living in, but failed to do so. People v. Poslof (App. 4 Dist. 2005) 24 Cal.Rptr.3d 262, 126 Cal.App.4th 92, review denied. Mental Health 469(7)

In prosecution for willful failure to register as a sex offender within five working days of defendant's birthday, instruction on general intent, which might have erroneously led jury to believe it could convict defendant even if he was unaware of registration requirement, was harmless error; record reflected that defendant actually knew of his duty. People v. Barker (2004) 18 Cal.Rptr.3d 260, 34 Cal.4th 345, 96 P.3d 507, rehearing denied. Criminal Law 1172.1(3)

In prosecution for willful failure to register as a sex offender within five working days of defendant's birthday, trial court's error in failing to instruct jury that offense requires actual knowledge of duty to register was harmless beyond a reasonable doubt; record reflected that defendant actually knew of his duty, and defendant argued instead that he had simply forgotten to update his registration. People v. Barker (2004) 18 Cal.Rptr.3d 260, 34 Cal.4th 345, 96 P.3d 507, rehearing denied. Criminal Law 1173.2(2)

Error in failure to instruct jury that defendant needed actual knowledge of statutory requirement that he register as sex offender at all of his addresses was not harmless beyond a reasonable doubt, although there was evidence that defendant knew of requirement that he had to notify law enforcement when he changed his address; defendant contested that he had a second residence address which he knew he had to register, and only evidence that the second address was his residence came from documentary evidence, including paychecks, tax information, and driver's license. People v. Jackson (App. 6 Dist. 2003) 1 Cal.Rptr.3d 253, 109 Cal.App.4th 1625. Criminal Law 1173.2(2)

Instructions that failed to clearly state that a conviction required actual knowledge of duty to register were not harmless beyond a reasonable doubt in prosecution under sex offender registration law; applicable version of statute did not address issue of multiple addresses that was present in instant case and thus did not provide clear notice of what defendant had to do upon obtaining additional addresses, and prosecution presented no evidence defendant knew that staying at a transient hotel or homeless shelter while still maintaining previously registered address triggered registration requirements. People v. Edgar (App. 1 Dist. 2002) 127 Cal.Rptr.2d 662, 104 Cal.App.4th 210. Criminal Law 1172.1(3)

Error in failing to instruct jury that conviction under sex offender registration statute for failing to notify law enforcement of change in residence address required defendant's actual knowledge of the duty to act and of what act was to be performed was harmless; evidence indisputably established that defendant had been repeatedly and properly notified of his lifetime registration and notification obligations and that he had previously complied with those obligations, and defendant did not testify at trial regarding his actual state of mind. People v. Vigil (App. 6 Dist. 2001) 114 Cal.Rptr.2d 331, 94 Cal.App.4th 485, review denied, denial of habeas corpus affirmed 130 Fed.Appx. 872, 2005 WL 1111846, certiorari denied 126 S.Ct. 243, 546 U.S. 901, 163 L.Ed.2d 223. Criminal Law 1173.2(2)

Pattern jury instruction on definition of "willfully," as given in prosecution for willfully failing to register as sex offender, did not adequately convey requirement that defendant have actual knowledge of duty to register. People v. Garcia (2001) 107 Cal.Rptr.2d 355, 25 Cal.4th 744, 23 P.3d 590, rehearing denied , as modified. Mental Health 469(7)

Error arising from jury instructions and closing arguments that led jury to believe it did not have to find actual knowledge of duty to register in order to find defendant guilty of willful failure to register as sex offender was harmless beyond a reasonable doubt, where jury found under properly given instructions that defendant actually read form that stated he had been notified of duty of register and that went on to specify what the duty was. People v. Garcia (2001) 107 Cal.Rptr.2d 355, 25 Cal.4th 744, 23 P.3d 590, rehearing denied , as modified. Mental Health 469(7)

Although trial court erred by failing to instruct jury that willful failure to register pursuant to sex offender registration statute required finding that defendant had actual knowledge of his duty to register, such error was harmless beyond a reasonable doubt, where defendant was properly notified of his duty to register a change of address, and defendant did register his change of address, showing that he knew of and understood his duty. Vigil v. Lamarque, C.A.9 (Cal.)2005, 130 Fed.Appx. 872, 2005 WL 1111846, Unreported, certiorari denied 126 S.Ct. 243, 546 U.S. 901, 163 L.Ed.2d 223. Criminal Law 1173.2(2)

39. ---- Definitions, instructions

Commonly understood terms need not be defined for jury. People v. McCleod (App. 4 Dist. 1997) 64 Cal.Rptr.2d 545, 55 Cal.App.4th 1205, 56 Cal.App.4th 772B, modified on denial of rehearing , review denied. Criminal Law 800(2)

Fact that jury requested definition of term "residence," in prosecution for failure to reregister as sex offender within 10 days of any change in residence address, did not by itself create duty for further instruction by trial court. People v. McCleod (App. 4 Dist. 1997) 64 Cal.Rptr.2d 545, 55 Cal.App.4th 1205, 56 Cal.App.4th 772B, modified on denial of rehearing , review denied. Criminal Law 863(1)

40. Punishment, generally

Sex offender registration requirement is not "punishment" under some "broader" test that applies to the cruel and/or unusual punishment clauses in particular; to qualify as punishment, the burden or disability must be imposed as a consequence of a law violation, and must either be intended as punishment, or have no other legitimate aim. In re Alva (2004) 14 Cal.Rptr.3d 811, 33 Cal.4th 254, 92 P.3d 311. Mental Health 433(2); Sentencing And Punishment 1601

Statutory requirement of mere registration by one convicted of a sex-related crime, despite the inconvenience it imposes, cannot be considered a form of "punishment" regulated by either federal or state constitutional proscriptions against cruel and/or unusual punishment; rather, it is a legitimate, nonpunitive regulatory measure. In re Alva (2004) 14 Cal.Rptr.3d 811, 33 Cal.4th 254, 92 P.3d 311. Mental Health 433(2); Sentencing And Punishment 1601

41. Time for registration

Under statutory provision that a sex offender is required to register "within five working days of coming into, or changing his or her residence or location," it does not mean that registration is not required unless an individual has stayed at a location for at least five consecutive working days; the reference in the statute to "five working days" pertains to the time in which a sex offender must notify law enforcement of his location upon entering or leaving a jurisdiction or establishing a second or additional location. People v. Poslof (App. 4 Dist. 2005) 24 Cal.Rptr.3d 262, 126 Cal.App.4th 92, review denied. Mental Health 469(5)

42. Sentence--In general

Defendant's felony offense of failing to register as sex offender was strict liability offense for omission of required conduct by sex offender, and thus, defendant's prior felony conviction for child molestation could be used as basis for both the offense of failing to register as sex offender and for three strikes sentencing enhancement; prior felony conviction did not constitute element of criminal conduct that would otherwise be noncriminal. People v. Yarborough (App. 5 Dist. 1998) 77 Cal.Rptr.2d 402, 65 Cal.App.4th 1417, modified on denial of rehearing. Sentencing And Punishment 1350

Sentence of one year in county jail was authorized sentence for offense of failure to register change of address by sex offender convicted of forcible sex offense. People v. Carranza (App. 6 Dist. 1996) 59 Cal.Rptr.2d 134, 51 Cal.App.4th 528, review denied. Mental Health 469(7)

Trial court was not deprived of authority to entertain motion to reduce to misdemeanor felony charge for failure to register change of address by sex offender convicted of forcible sex offense on ground that offense came within sentencing scheme of three strikes law. People v. Carranza (App. 6 Dist. 1996) 59 Cal.Rptr.2d 134, 51 Cal.App.4th 528, review denied. Sentencing And Punishment 1236

43. ---- Habitual and second offenders, sentence

Defendant's sentence under California's "Three Strikes" law to term of 25 years to life was not cruel and unusual punishment on ground that it was grossly disproportionate to crime of failure to register as a sex offender, in light of his prior criminal history and his failure to be deterred from criminal acts despite his significant time in custody. Bartlett v. Duncan, C.D.Cal.2003, 262 F.Supp.2d 1053, reversed 366 F.3d 1020. Sentencing And Punishment 1513

Defendant's prior rape conviction could properly be used both to satisfy element of offense of failing to register as a sex offender, and as "strike" which augmented defendant's sentence following his conviction for failing to register under Three Strikes law. People v. Tillman (App. 1 Dist. 1999) 86 Cal.Rptr.2d 715, 73 Cal.App.4th 771, rehearing denied , review denied. Sentencing And Punishment 1350

Imposition of 25-years-to-life sentence under Three Strikes law following defendant's conviction for failing to register as sex offender did not raise inference of gross disproportionality, in violation of Eighth Amendment, where defendant had six prior serious felony convictions. Apodaca v. Runnells, N.D.Cal.2003, 2003 WL 1936126, Unreported. Sentencing And Punishment 1513

44. ---- Three strikes law, sentence

Three strikes sentence of 27 years to life following defendant's conviction of failing to register as a sex offender did not constitute cruel and unusual punishment; sentence was a permissible means of punishing defendant and deterring others from committing future crimes, taking into account defendant's lengthy criminal record, that included corporal punishment or injury of a child, two sexual felonies for committing lewd or lascivious acts upon a child, and a felony drug possession offense. People v. Poslof (App. 4 Dist. 2005) 24 Cal.Rptr.3d 262, 126 Cal.App.4th 92, review denied. Sentencing And Punishment 1513

The trial court's exercise of discretion in ruling on a motion to strike a prior conviction under the Three Strikes law, is reviewed under the deferential, abuse-of-discretion standard. People v. Poslof (App. 4 Dist. 2005) 24 Cal.Rptr.3d 262, 126 Cal.App.4th 92, review denied. Sentencing And Punishment 1369

In ruling on a motion to strike a prior conviction under the Three Strikes law, the trial court must consider whether, in light of the nature and circumstances of the present offense, the prior felony convictions, and the particulars of the defendant's background, character, and prospects, the defendant may be deemed outside the scheme's spirit, in whole or in part, and hence should be treated as though he or she had not previously been convicted of one or more serious or violent felonies. People v. Poslof (App. 4 Dist. 2005) 24 Cal.Rptr.3d 262, 126 Cal.App.4th 92, review denied. Sentencing And Punishment 1369

The trial court did not abuse its discretion in denying motion by defendant, convicted of failing to register as a sex

offender, to dismiss one of his prior strike convictions, even though it resulted in a sentence of 27 years to life, and the current offense did not involve violence. People v. Poslof (App. 4 Dist. 2005) 24 Cal.Rptr.3d 262, 126 Cal.App.4th 92, review denied. Sentencing And Punishment 1369

Recidivist penalty of 25 years to life in prison under the three strikes law was so grossly disproportionate to defendant's technical violation of sex offender registration law as to violate state constitutional proscription against cruel or unusual punishment, where current offense was minor, given that state had been informed of defendant's current address one month prior to his birthday and offense consisted of his mere failure to "update" address within five days following his birthday, and prior convictions were remote and irrelevant; there was a great disparity between the severity of the sentence and the passive, nonviolent nature of the instant regulatory offense, defendant was acting in a responsible manner prior to commission of the offense, and intrajurisdictional and interjurisdictional comparisons both underscored the disproportionality of the sentence. People v. Carmony (App. 3 Dist. 2005) 26 Cal.Rptr.3d 365, 127 Cal.App.4th 1066, review denied. Sentencing And Punishment 1425; Sentencing And Punishment 1513

Recidivist penalty of 25 years to life in prison under the three strikes law was so grossly disproportionate to defendant's technical violation of sex offender registration law as to violate federal constitutional proscription against cruel and unusual punishment, where current offense was minor, given that state had been informed of defendant's current address one month prior to his birthday and offense consisted of his mere failure to "update" address within five days following his birthday, and prior convictions were remote and irrelevant; given harmless nature of instant offense, extreme penalty was imposed almost wholly for past crimes, and intrajurisdictional and interjurisdictional comparisons both underscored disproportionality of sentence. People v. Carmony (App. 3 Dist. 2005) 26 Cal.Rptr.3d 365, 127 Cal.App.4th 1066, review denied. Sentencing And Punishment 1425; Sentencing And Punishment 1513

Felony violation of laws requiring registration of sex offenders is not exempt from provision of "Three Strikes" law requiring that a person with a prior qualifying felony, or strike, receive a prison term that is twice the term otherwise provided as punishment for his new offense. People v. Garcia (2001) 107 Cal.Rptr.2d 355, 25 Cal.4th 744, 23 P.3d 590, rehearing denied , as modified. Sentencing And Punishment 1236

45. Failure to object

Defendant who pleaded no contest to misdemeanor lewd conduct in public place did not waive, by failing to raise issue in trial court, his argument that trial court was required to inform him that registration as sex offender was lifetime requirement; although defendant had been advised of possibility of imposition of requirement, nothing suggested he was aware of lifetime element of requirement and therefore should have brought it to court's attention. People v. Zaidi (App. 1 Dist. 2007) 55 Cal.Rptr.3d 566, 147 Cal.App.4th 1470. Criminal Law 1031(4)

Defendant did not preserve for appeal the argument that trial court failed to state adequate reasons for imposing sex offender registration as condition for probation on false imprisonment conviction; court apprised defendant before imposing sentence that reason for such a requirement, if court decided to impose it, would be that offense was committed with intent to commit rape, and defendant raised no objection to court's failure to articulate reasons for registration requirement more clearly. People v. Bautista (App. 5 Dist. 1998) 74 Cal.Rptr.2d 370, 63 Cal.App.4th 865. Criminal Law 1042

46. Statement of reasons

Defendant was not prejudiced by failure of trial court at sentencing to give more complete statement of reasons for imposing sex offender registration as condition of probation for false imprisonment charge to which defendant pleaded no contest; there was no reasonable probability that court would have omitted registration requirement had

it been informed of need to explain its reasons more adequately. People v. Bautista (App. 5 Dist. 1998) 74 Cal.Rptr.2d 370, 63 Cal.App.4th 865. Criminal Law 1177

47. Findings

Imposition of sex offender registration and public notification requirements against defendant who was convicted of false imprisonment and assault did not constitute punishment beyond permissible range that would require jury findings under Sixth Amendment, and thus judge properly imposed such conditions. People v. Presley (App. 3 Dist. 2007) 67 Cal.Rptr.3d 826, 156 Cal.App.4th 1027, review denied. Jury 34(7)

Under sex offender registration statute, a willful failure to advise the last registering agency of a move outside the jurisdiction requires a finding the defendant had actual knowledge of this reporting requirement. People v. Davis (App. 2 Dist. 2002) 125 Cal.Rptr.2d 519, 102 Cal.App.4th 377, rehearing denied , review denied. Mental Health 469(7)

48. Judicial notice

On appeal from conviction for violating registration requirements for sex offenders, the Court of Appeal would take judicial notice of the transcript of the plea and sentencing in the underlying case. People v. King (App. 2 Dist. 2007) 60 Cal.Rptr.3d 673, 151 Cal.App.4th 1304. Criminal Law 304(16)

49. Review--In general

The federal Court of Appeals is bound by the California Court of Appeal's interpretation of what California's sex offender registration statute requires of a registrant with regard to giving his notice of a change of address. Mendez v. Small, C.A.9 (Cal.)2002, 298 F.3d 1154. Federal Courts 386

The question whether a defendant charged with failure to register as a sex offender has proffered evidence sufficiently substantial to go to the jury that he lacked actual knowledge of his duty to register because of an involuntary condition, temporary or permanent, physical or mental, is a question confided to the sound discretion of the trial court. People v. Sorden (2005) 29 Cal.Rptr.3d 777, 36 Cal.4th 65, 113 P.3d 565, rehearing denied, on remand 2005 WL 2462254, unpublished. Mental Health 469(7)

Defendant, who was convicted for stalking, waived for appellate review his claim that requiring him to register as a sex offender violated his right to due process, where defendant failed to raise such claim at trial. People v. Marchand (App. 3 Dist. 2002) 120 Cal.Rptr.2d 687, 98 Cal.App.4th 1056, review denied , habeas corpus dismissed 2007 WL 987858. Criminal Law 1042

The People could appeal order reducing felony charge for failure to register change of address by sex offender convicted of forcible sex offense to misdemeanor as order imposing unlawful sentence. People v. Carranza (App. 6 Dist. 1996) 59 Cal.Rptr.2d 134, 51 Cal.App.4th 528, review denied. Criminal Law 1024(9)

By failing to object below, the People waived any claim of error on appeal in order reducing to misdemeanor felony charge for failure to register change of address by sex offender convicted of forcible sex offense. People v. Carranza (App. 6 Dist. 1996) 59 Cal.Rptr.2d 134, 51 Cal.App.4th 528, review denied. Criminal Law 1042

Where defendant pleaded no contest to charge of failing to register as sex offender and admitted to having violated subject registration statute for particular period of time, defendant was estopped, on appeal, from contesting charging date in accusatory pleading; plea was judicial admission that defendant committed offense on date alleged.

People v. Borland (App. 2 Dist. 1996) 57 Cal.Rptr.2d 562, 50 Cal.App.4th 124, review denied. Criminal Law 1026.10(4)

Defendant who pleaded no contest to charge of failing to register as sex offender could not appeal based on alleged inaccuracy of dates charged in information, absent certificate of probable cause, as defendant's claim of error was direct attack on validity of no contest plea. People v. Borland (App. 2 Dist. 1996) 57 Cal.Rptr.2d 562, 50 Cal.App.4th 124, review denied. Criminal Law 1073

50. ---- Advisement, review

Trial court's omission at change of plea hearing of advice regarding defendant's statutory obligation to register as sex offender did not transform court's error into term of parties' plea agreement, and, thus, defendant was not entitled to relief from agreement. People v. McClellan (1993) 24 Cal.Rptr.2d 739, 6 Cal.4th 367, 862 P.2d 739, rehearing denied. Criminal Law 273.1(2); Criminal Law 273.1(4)

Failure to advise defendant that plea of guilty to assault with intent to commit rape requires defendant to register as sex offender is error. People v. McClellan (1993) 24 Cal.Rptr.2d 739, 6 Cal.4th 367, 862 P.2d 739, rehearing denied. Criminal Law 273.1(4)

Absent timely objection, defendant waives claim of error as to trial court's misadvisement concerning consequences of guilty plea. People v. McClellan (1993) 24 Cal.Rptr.2d 739, 6 Cal.4th 367, 862 P.2d 739, rehearing denied. Criminal Law 1031(4)

Defendant waived claim of error in trial court's failure to inform defendant that, as consequence of guilty plea, he was required to register as sex offender, where defendant did not object to registration requirement at sentencing hearing. People v. McClellan (1993) 24 Cal.Rptr.2d 739, 6 Cal.4th 367, 862 P.2d 739, rehearing denied. Criminal Law 1031(4)

Although trial court should have informed defendant that direct consequence of his guilty plea to assault with intent to commit rape would be registration as sex offender, failure to do so did not entitle defendant to relief where defendant did not interpose timely objection to imposition of registration requirement and did not show that he would not have pleaded guilty if he had been advised properly with regard to consequence; imposition of registration requirement was not violation of terms of plea agreement. People v. McClellan (1993) 24 Cal.Rptr.2d 739, 6 Cal.4th 367, 862 P.2d 739, rehearing denied. Criminal Law 1031(4)

Trial court's failure to advise defendant that entry of guilty plea would require registration as sex offender did not result in prejudice to defendant and was not reversible error; nothing in record on appeal supported contention that defendant would not have pled guilty had he been properly advised. People v. McClellan (1993) 24 Cal.Rptr.2d 739, 6 Cal.4th 367, 862 P.2d 739, rehearing denied. Criminal Law 1167(5)

51. Habeas corpus

Federal court had jurisdiction to hear petition for habeas relief brought by petitioner convicted of California offense of annoying or molesting a minor, even though petitioner was no longer in prison or on probation; petitioner was on probation at time he filed his petition, and he remained subject to adverse consequences of the conviction inasmuch as he continued to be subject to California's sex offender registration requirement. Fowler v. Sacramento County Sheriff's Dept., C.A.9 (Cal.)2005, 421 F.3d 1027. Habeas Corpus 253; Habeas Corpus 256

Defendant adequately explained his delay in the filing of his habeas corpus petition in the Court of Appeal, in which

he alleged that Texas State juvenile court's probation requirement that he register as a sex offender did not follow him to California; defendant's jurisdiction argument did not become known to his counsel until the trial court mentioned it at habeas proceeding, and the legal analysis involved in the case was far from clear. In re Crockett (App. 1 Dist. 2008) 71 Cal.Rptr.3d 632, 159 Cal.App.4th 751. Habeas Corpus 603

The Court of Appeal would not exercise its discretion to treat as petition for writ of mandate convicted sex offender's petition for writ of habeas corpus in which he sought relief from sex offender registration requirements so that license to practice medicine would not be revoked, where sex offender failed to show that Attorney General had duty to absolve him of registration requirements. In re Stier (App. 1 Dist. 2007) 61 Cal.Rptr.3d 181, 152 Cal.App.4th 63, as modified. Mandamus 154(2)

Convicted sex offender was not "in custody" by being subjected to sex offender registration requirements which would resulting in revocation of license to practice medicine, and therefore, by being at risk of future incarceration if he failed to comply, and thus, trial court lacked jurisdiction to grant habeas corpus relief from compliance with registration requirements; registration requirements were mere collateral consequence of qualifying conviction. In re Stier (App. 1 Dist. 2007) 61 Cal.Rptr.3d 181, 152 Cal.App.4th 63, as modified. Habeas Corpus 253

The legislative mandate of sex offender registration is not a permissible subject of waiver or concession in a habeas corpus proceeding, where the public interest in litigating respondent's duty to register as a sex offender must be given foremost consideration. In re Stier (App. 1 Dist. 2007) 61 Cal.Rptr.3d 181, 152 Cal.App.4th 63, as modified. Habeas Corpus 537.1

The legislative mandate of sex offender registration is not a permissible subject of waiver or concession in habeas corpus proceeding, where the public interest in litigating respondent's duty to register as a sex offender must be given foremost consideration. In re Stier (App. 1 Dist. 2007) 61 Cal.Rptr.3d 181, 152 Cal.App.4th 63, as modified. Habeas Corpus 537.1

Habeas petitioner who was convicted of failing to register as sex offender was not precluded from seeking habeas relief by fact that his underlying conviction for oral copulation with minor was final; petitioner was challenging requirement of California law that he register as sex offender, not validity of underlying conviction. Jones v. Solis, C.A.9 (Cal.)2005, 121 Fed.Appx. 228, 2005 WL 236504, Unreported. Habeas Corpus 331

52. Certificate of rehabilitation

The granting or denial of a petition for a rehabilitation certificate for a defendant subject to a lifetime requirement to register as a sex offender lies within the trial court's sound discretion. People v. Zaidi (App. 1 Dist. 2007) 55 Cal.Rptr.3d 566, 147 Cal.App.4th 1470. Mental Health 469(5)

Starting date for new five-year waiting period for seeking certificate of rehabilitation, which was set by trial court following its denial of registered sex offender's initial application for a certificate, was date initial application was denied, rather than earlier date when offender violated the law. People v. Failla (App. 4 Dist. 2006) 45 Cal.Rptr.3d 585, 140 Cal.App.4th 1514, review denied. Pardon And Parole 25

Although a defendant convicted of oral copulation with a minor may be eligible for a certificate of rehabilitation after completing his sentence, that certificate will not relieve the defendant of the lifetime registration requirement. People v. Hofsheier (2006) 39 Cal.Rptr.3d 821, 37 Cal.4th 1185, 129 P.3d 29, on remand 2006 WL 1196585, unpublished. Mental Health 469(2); Pardon And Parole 23.1

West's Ann. Cal. Penal Code § 290, CA PENAL § 290

Current with urgency legislation through Ch. 266 of 2008 Reg.Sess. and Ch. 7 of 2007-2008 Third Ex.Sess., and Prop. 99

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Penal Code (Refs & Annos)
Part 1. Of Crimes and Punishments
Title 9. Of Crimes Against the Person Involving Sexual Assault, and Crimes Against Public Decency and Good Morals (Refs & Annos)
Chapter 5.5. Sex Offenders (Refs & Annos)
➡ **§ 290.03. Identification, assessment, monitoring, and containment of sex offenders**

(a) The Legislature finds and declares that a comprehensive system of risk assessment, supervision, monitoring and containment for registered sex offenders residing in California communities is necessary to enhance public safety and reduce the risk of recidivism posed by these offenders. The Legislature further affirms and incorporates the following findings and declarations, previously reflected in its enactment of "Megan's Law":

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

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

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

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

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

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

(7) The Legislature also declares, however, that in making information available about certain sex offenders to the

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

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

CREDIT(S)

(Added by Stats.2006, c. 337 (S.B.1128), § 12, eff. Sept. 20, 2006.)

HISTORICAL AND STATUTORY NOTES

2008 Main Volume

For short title of act, legislative findings and declarations, and appropriations, severability, cost reimbursement, and urgency effective provisions relating to Stats.2006, c. 337 (S.B.1128), see Historical and Statutory Notes under Government Code § 68152.

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Megan's Law or Sarah's Law? A comparative analysis of public notification statutes in the United States and England. Meghann J. Dugan, 23 Loy.L.A.Int'l & Comp.L.Rev. 617 (2001).

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3 Witkin Cal. Crim. L. 3d Punishment § 184, Nature and Purpose.

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Current with urgency legislation through Ch. 266 of 2008 Reg.Sess. and Ch. 7 of 2007-2008 Third Ex.Sess., and Prop. 99

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Chapter 5.5. Sex Offenders (Refs & Annos)
➡ **§ 290.04. State-Authorized Risk Assessment Tool for Sex Offenders (SARATSO); SARATSO review committee**

(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 Mental Health, in consultation with a representative of the Department of 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 Department of Mental Health, shall be to ensure that the SARATSO reflects the most reliable, objective and well-established protocols for predicting sex offender risk of recidivism, has been scientifically validated and cross validated, and is, or is reasonably likely to be, widely accepted by the courts. The committee shall consult with experts in the fields of risk assessment and the use of actuarial instruments in predicting sex offender risk, sex offending, sex offender treatment, mental health, and law, as it deems appropriate.

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

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

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

(d) On or before July 1, 2007, the SARATSO Review Committee shall research risk assessment tools for male juveniles required to register as sex offenders. If the committee unanimously agrees on an appropriate risk assessment tool to be used to assess this population, it shall advise the Governor and the Legislature of the selected tool, and the State Department of Mental Health shall post the decision on its Internet Web site. Sixty days after the decision is posted, the selected tool shall become the SARATSO for male juveniles.

(e) On or before July 1, 2007, the SARATSO Review Committee shall research risk assessment tools for female juveniles required to register as sex offenders. If the committee unanimously agrees on an appropriate risk assessment tool to be used to assess this population, it shall advise the Governor and the Legislature of the selected tool, and the State Department of Mental Health shall post the decision on its Internet Web site. Sixty days after the decision is posted, the selected tool shall become the SARATSO for female juveniles.

(f) The committee shall periodically evaluate the SARATSO for each specified population. If the committee unanimously agrees on a change to the SARATSO for any population, it shall advise the Governor and the Legislature of the selected tool, and the State Department of Mental Health shall post the decision on its Internet Web site. Sixty days after the decision is posted, the selected tool shall become the SARATSO for that population.

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

CREDIT(S)

(Added by Stats.2006, c. 337 (S.B.1128), § 13, eff. Sept. 20, 2006. Amended by Stats.2007, c. 579 (S.B.172), § 33, eff. Oct. 13, 2007.)

HISTORICAL AND STATUTORY NOTES

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Sections 1, 2, 58, 59, 61, and 62 of Stats.2006, c. 337 (S.B.1128), provide:

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

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

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

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

"(c) California's infrastructure for collecting, maintaining, and disseminating information about registered sex offenders must be retooled to ensure that law enforcement and the public have access to accurate, up-to-date, and relevant information about registered sex offenders.

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

"SEC. 58. 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.

"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. 61. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain costs that may be incurred by a local agency or school district because, in that regard, this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

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

"SEC. 62. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

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

Another § 290.04, added by Stats.2006, c. 336 (S.B.1178), § 1, eff. Sept. 20, 2006, relating to the State-Authorized Risk Assessment Tool for Sex Offenders (SARATSO) and the SARATSO Review Committee, was repealed by Stats.2006, c. 886 (A.B.1849), § 1, eff. Sept. 30, 2006.

For operative and urgency effective provisions relating to Stats.2006, c. 886 (A.B.1849), see Historical and Statutory Notes following Penal Code § 290.46.

Stats.2007, c. 579 (S.B.172), rewrote this section, which had read:

"(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 Mental Health, in consultation with a representative of the Department of 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 Department of Mental Health, shall be to ensure that the SARATSO reflects the most reliable, objective and well-established protocols for predicting sex offender risk of recidivism, has been scientifically validated with multiple cross-

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

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

"(2) On or before January 1, 2008, the SARATSO Review Committee shall determine whether the STATIC-99 should be supplemented with an actuarial instrument that measures dynamic risk factors or whether the STATIC-99 should be replaced as the SARATSO with a different risk assessment tool. If the committee unanimously agrees on changes to be made to the SARATSO, it shall advise the Governor and the Legislature of the changes, and the State Department of Mental Health shall post the decision on its Internet Web site. Sixty days after the decision is posted, the selected tool shall become the SARATSO for adult males.

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

"(d) On or before January 1, 2007, the SARATSO Review Committee shall research risk assessment tools for juveniles required to register as sex offenders. If the committee unanimously agrees on an appropriate risk assessment tool to be used to assess this population, it shall advise the Governor and the Legislature of the selected tool, and the State Department of Mental Health shall post the decision on its Internet Web site. Sixty days after the decision is posted, the selected tool shall become the SARATSO for juveniles.

"(e) The committee shall periodically evaluate the SARATSO for each specified population. If the committee unanimously agrees on a change to the SARATSO for any population, it shall advise the Governor and the Legislature of the selected tool, and the State Department of Mental Health shall post the decision on its Internet Web site. Sixty days after the decision is posted, the selected tool shall become the SARATSO for that population.

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

For legislative intent and urgency effective provisions relating to Stats.2007, c. 579 (S.B.172), see Historical and Statutory Notes under Penal Code § 290.

CROSS REFERENCES

Attorney General, generally, see Government Code § 12500 et seq.
Department of Corrections, generally, see Penal Code § 5000 et seq.
Department of Mental Health, generally, see Welfare and Institutions Code § 4000 et seq.
Parolees at high risk of committing sex crimes, intensive and specialized parole supervision, relapse prevention treatment programs and control and containment programming, see Penal Code § 3008.
Probation, SARATSO test results to be included in probation officer's report, see Penal Code §§ 1203, 1203c.
Probationers at high risk for committing sexual offenses, intensive and specialized probation supervision, see Penal Code § 1203e.

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Megan's Law or Sarah's Law? A comparative analysis of public notification statutes in the United States and England. Meghann J. Dugan, 23 Loy.L.A.Int'l & Comp.L.Rev. 617 (2001).

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3 Witkin Cal. Crim. L. 3d Punishment § 504, Supervision of Probationer.

3 Witkin Cal. Crim. L. 3d Punishment § 526, Required Contents.

3 Witkin Cal. Crim. L. 3d Punishment § 531, Conditional Sentence.

West's Ann. Cal. Penal Code § 290.04, CA PENAL § 290.04

Current with urgency legislation through Ch. 266 of 2008 Reg.Sess. and Ch. 7 of 2007-2008 Third Ex.Sess., and Prop. 99

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Title 9. Of Crimes Against the Person Involving Sexual Assault, and Crimes Against Public Decency and Good Morals (Refs & Annos)
Chapter 5.5. Sex Offenders (Refs & Annos)
→ **§ 290.05. SARATSO Training Committee; membership; training program**

(a) The SARATSO Training Committee shall be comprised of a representative of the State Department of Mental Health, a representative of the Department of Corrections and Rehabilitation, a representative of the Attorney General's Office, and a representative of the Chief Probation Officers of California.

(b) On or before January 1, 2008, the SARATSO Training Committee, in consultation with the Corrections Standards Authority and the Commission on Peace Officer Standards and Training, shall develop a training program for persons authorized by this code to administer the SARATSO, as set forth in Section 290.04.

(c)(1) The Department of Corrections and Rehabilitation shall be responsible for overseeing the training of persons who will administer the SARATSO pursuant to paragraph (1) or (2) of subdivision (a) of Section 290.06.

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

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

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

(d) The training shall be conducted by experts in the field of risk assessment and the use of actuarial instruments in predicting sex offender risk. Subject to requirements established by the committee, the Department of Corrections and Rehabilitation, the State Department of Mental Health, probation departments, and authorized local law enforcement agencies shall designate key persons within their organizations to attend training and, as authorized by the department, to train others within their organizations designated to perform risk assessments as required or authorized by law. Any person who administers the SARATSO shall receive training no less frequently than every two years.

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

CREDIT(S)

(Added by Stats.2006, c. 337 (S.B.1128), § 14, eff. Sept. 20, 2006. Amended by Stats.2007, c. 579 (S.B.172), § 34, eff. Oct. 13, 2007.)

HISTORICAL AND STATUTORY NOTES

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Sections 1, 2, 58, 59, 61, and 62 of Stats.2006, c. 337 (S.B.1128), provide:

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

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

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

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

"(c) California's infrastructure for collecting, maintaining, and disseminating information about registered sex offenders must be retooled to ensure that law enforcement and the public have access to accurate, up-to-date, and relevant information about registered sex offenders.

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

"SEC. 58. 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.

"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. 61. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain costs that may be incurred by a local agency or school district because, in that regard, this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

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

"SEC. 62. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

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

Another § 290.05, added by Stats.2006, c. 336 (S.B.1178), § 2, eff. Sept. 20, 2006, relating to the SARATSO training program, was repealed by Stats.2006, c. 886 (A.B.1849), § 2, eff. Sept. 30, 2006.

For operative and urgency effective provisions relating to Stats.2006, c. 886 (A.B.1849), see Historical and Statutory Notes following Penal Code § 290.46.

Stats.2007, c. 579 (S.B.172), rewrote this section, which had read:

"(a) On or before January 1, 2008, the SARATSO Review Committee established pursuant to Section 290.04, in consultation with the entities specified in subdivision (b), shall develop a training program for persons authorized by this code to administer the SARATSO, as set forth in Section 290.04.

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

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

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

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

"(c) The training shall be conducted by experts in the field of risk assessment and the use of actuarial instruments in predicting sex offender risk. Subject to requirements established by the committee, the Department of Corrections and Rehabilitation, the State Department of Mental Health, probation departments, and authorized local law enforcement agencies shall designate key persons within their organizations to attend training and, as authorized by the department, to train others within their organizations designated to perform risk assessments as required or authorized by law. Any person who administers the SARATSO shall receive training no less frequently than every two years.

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

For legislative intent and urgency effective provisions relating to Stats.2007, c. 579 (S.B.172), see Historical and Statutory Notes under Penal Code § 290.

CROSS REFERENCES

Attorney General, generally, see Government Code § 12500 et seq.
Department of Corrections, generally, see Penal Code § 5000 et seq.

Department of Mental Health, generally, see Welfare and Institutions Code § 4000 et seq.
Sex offenders on parole, assessment and monitoring, see Penal Code § 3004.
Sex offenders on probation, assessment and monitoring, see Penal Code § 1202.8

LAW REVIEW AND JOURNAL COMMENTARIES

Megan's Law or Sarah's Law? A comparative analysis of public notification statutes in the United States and England. Meghann J. Dugan, 23 Loy.L.A.Int'l & Comp.L.Rev. 617 (2001).

Review of Selected 2007 California Legislation (Good for more than just driving directions: GPS helps protect Californians from recidivist sex offenders). R. Brooks Whitehead, 38 McGeorge L. Rev. 265 (2007).

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Mental Health 469(4).
Westlaw Topic No. 257A.

West's Ann. Cal. Penal Code § 290.05, CA PENAL § 290.05

Current with urgency legislation through Ch. 266 of 2008 Reg.Sess. and Ch. 7 of 2007-2008 Third Ex.Sess., and Prop. 99

END OF DOCUMENT

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West's Annotated California Codes Currentness
Penal Code (Refs & Annos)
Part 1. Of Crimes and Punishments
Title 9. Of Crimes Against the Person Involving Sexual Assault, and Crimes Against Public Decency and Good Morals (Refs & Annos)
Chapter 5.5. Sex Offenders (Refs & Annos)
→ **§ 290.06. Administration of SARATSO**

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

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

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

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

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

(5) Each probation department shall assess every eligible person under its supervision who was not assessed pursuant to paragraph (4). The assessment shall take place prior to the termination of probation, but no later than January 1, 2010.

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

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

(d) On or before January 1, 2008, the SARATSO Review Committee shall research the appropriateness and feasibility of providing a means by which an eligible person subject to assessment may, at his or her own expense, be assessed with the SARATSO by a governmental entity prior to his or her scheduled assessment. If the committee

unanimously agrees that such a process is appropriate and feasible, it shall advise the Governor and the Legislature of the selected tool, and it shall post its decision on the Department of Corrections and Rehabilitation's Internet Web site. Sixty days after the decision is posted, the established process shall become effective.

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

CREDIT(S)

(Added by Stats.2006, c. 337 (S.B.1128), § 15, eff. Sept. 20, 2006.)

HISTORICAL AND STATUTORY NOTES

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For short title of act, legislative findings and declarations, and appropriations, severability, cost reimbursement, and urgency effective provisions relating to Stats.2006, c. 337 (S.B.1128), see Historical and Statutory Notes under Government Code § 68152.

Another § 290.06, added by Stats.2006, c. 336 (S.B.1178), § 3, eff. Sept. 20, 2006, relating to the administration of SARATCO and the definition of eligible person, was repealed by Stats.2006, c. 886 (A.B.1849), § 3, eff. Sept. 30, 2006.

For operative and urgency effective provisions relating to Stats.2006, c. 886 (A.B.1849), see Historical and Statutory Notes following Penal Code § 290.46.

CROSS REFERENCES

Department of Corrections, generally, see Penal Code § 5000 et seq.
Department of Mental Health, generally, see Welfare and Institutions Code § 4000 et seq.
Parolees at high risk of committing sex crimes, intensive and specialized parole supervision, relapse prevention treatment programs and control and containment programming, see Penal Code § 3008.
Probation, SARATSO test results to be included in probation officer's report, see Penal Code §§ 1203, 1203c.
Probationers at high risk for committing sexual offenses, intensive and specialized probation supervision, see Penal Code § 1203e.
Sex offenders on parole, assessment and monitoring, see Penal Code § 3004.
Sex offenders on probation, assessment and monitoring, see Penal Code § 1202.8

LAW REVIEW AND JOURNAL COMMENTARIES

Megan's Law or Sarah's Law? A comparative analysis of public notification statutes in the United States and England. Meghann J. Dugan, 23 Loy.L.A.Int'l & Comp.L.Rev. 617 (2001).

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3 Witkin Cal. Crim. L. 3d Punishment § 504, Supervision of Probationer.

West's Ann. Cal. Penal Code § 290.06, CA PENAL § 290.06

Current with urgency legislation through Ch. 266 of 2008 Reg.Sess. and Ch. 7 of 2007-2008 Third Ex.Sess., and Prop. 99

END OF DOCUMENT

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West's Annotated California Codes Currentness
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Chapter 5.5. Sex Offenders (Refs & Annos)
→ **§ 290.07. Access to sex offender records by persons authorized to administer SARATSO**

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

CREDIT(S)

(Added by Stats.2006, c. 337 (S.B.1128), § 16, eff. Sept. 20, 2006.)

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Westlaw Topic No. 257A.

West's Ann. Cal. Penal Code § 290.07, CA PENAL § 290.07

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Chapter 5.5. Sex Offenders (Refs & Annos)
→ **§ 290.08. Retention of registered sex offender records; time period**

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

CREDIT(S)

(Added by Stats.2006, c. 337 (S.B.1128), § 17, eff. Sept. 20, 2006.)

HISTORICAL AND STATUTORY NOTES

2008 Main Volume

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Westlaw Topic No. 257A.

West's Ann. Cal. Penal Code § 290.08, CA PENAL § 290.08

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Penal Code (Refs & Annos)
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Title 9. Of Crimes Against the Person Involving Sexual Assault, and Crimes Against Public Decency and Good Morals (Refs & Annos)
Chapter 5.5. Sex Offenders (Refs & Annos)

§ 290.46. Sex offender information made available to public via Internet Web site; ongoing updates; information included and restricted; offenses and offenders included; notification; misuse of information; report to legislature

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

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

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

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

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

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

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

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

(iii) Any state facility that, prior to January 1, 2007, released from incarceration a person who was incarcerated because of a crime for which he or she is required to register as a sex offender pursuant to Section 290 shall provide the year of release for his or her most recent offense requiring registration to the Department of Justice in a manner and format approved by the department. The information provided by the Department of Corrections and Rehabilitation shall be limited to information that is currently maintained in an electronic format.

(iv) Any state facility that, prior to January 1, 2007, released a person who is required to register pursuant to Section 290 from incarceration whose incarceration was for a felony committed subsequently to the offense for which he or she is required to register shall advise the Department of Justice of that fact in a manner and format approved by the department. The information provided by the Department of Corrections and Rehabilitation shall be limited to information that is currently maintained in an electronic format.

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

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

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

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

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

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

(D) Section 264.1.

(E) Section 269.

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

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

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

(I) Section 288.3, provided that the offense is a felony.

(J) Section 288.4, provided that the offense is a felony.

(K) Section 288.5.

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

(M) Section 288.7.

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

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

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

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

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

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

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

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

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

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

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

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

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

(D) Section 266j.

(E) Section 267.

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

(G) Section 288.3, provided that the offense is a misdemeanor.

(H) Section 288.4, provided that the offense is a misdemeanor.

(I) Section 626.81.

(J) Section 647.6.

(K) Section 653c.

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

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

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

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

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

(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 that the offender was the victim's parent, stepparent, sibling, or 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 that the offender was the victim's parent, stepparent, sibling, or 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 available to the public on the Internet Web site as provided in this section.

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

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

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

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

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

(h) For purposes of this section, "offense" includes the statutory predecessors of that offense, or any offense committed in another jurisdiction that, if committed or attempted to be committed in this state, would have been punishable in this state as an offense listed in subdivision (c) 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 1596.871 of the Health and Safety Code, and Section 432.7 of the Labor Code.

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

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

(m) The public notification provisions of this section are applicable to every person described in this section,

without regard to when his or her crimes were committed or his or her duty to register pursuant to Section 290 arose, and to every offense described in this section, regardless of when it was committed.

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

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

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

CREDIT(S)

(Added by Stats.2004, c. 745 (A.B.488), § 1, eff. Sept. 24, 2004. Amended by Stats.2005, c. 721 (A.B.437), § 1; Stats.2005, c. 722 (A.B.1323), § 7, eff. Oct. 7, 2005; Stats.2006, c. 337 (S.B.1128), § 19, eff. Sept. 20, 2006; Stats.2006, c. 886 (A.B.1849), § 4.2, eff. Sept. 30, 2006; Stats.2007, c. 579 (S.B.172), § 36, eff. Oct. 13, 2007.)

HISTORICAL AND STATUTORY NOTES

2008 Main Volume

Sections 2 to 5 of Stats.2004, c. 745 (A.B.488), provide:

"SEC. 2. It is the intent of the Legislature that the Department of Justice continue to maximize all available resources to ensure the highest degree of accuracy in the sex registration database, and that the department assist local agencies in developing strategies to achieve that goal.

"SEC. 3. The sum of six hundred fifty thousand dollars ($650,000) is hereby appropriated from the General Fund to the Department of Justice for the purpose of implementing this act.

"SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

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

"In order to ensure that members of the public have adequate information about the identities and locations of sex offenders who may put them and their families at risk, it is necessary that this act take effect immediately."

Governor Schwarzenegger issued the following signing message regarding Stats.2004, c. 745 (A.B.488):

"To the Members of the California State Assembly:

"I am signing Assembly Bill 488.

"This bill represents a good first step in providing the most valuable tool we can give to parents to protect their children from sexual predators -- information. By providing sex offender information on the Internet, California will finally join the majority of other states that make this information accessible to parents and others.

"That being said, we have a long way to go to make California a leader in protecting our children. I encourage the Legislature to work together next year to provide a more comprehensive measure that will ensure more of the Megan's Law database is available to the public with information on their neighbors and neighborhood.

"Sincerely,

"Arnold Schwarzenegger"

Stats.2005, c. 722 (A.B.1323), rewrote this section, which had read:

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

"(b)(1) On or before July 1, 2005, with respect to a person who has been convicted of the commission or the attempted commission of any of the offenses listed in this subdivision or the statutory predecessors of any of these offenses, or any offense which, if committed or attempted to be committed in this state, would have been punishable as one or more of the offenses listed in this subdivision, the Department of Justice shall make available to the public via the Internet Web site his or her names and known aliases, a photograph, a physical description, including gender and race, date of birth, criminal history, the address at which the person resides, and any other information that the Department of Justice deems relevant, but not the information excluded pursuant to subdivision (a).

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

"(A) Subdivision (b) of Section 207.

"(B) Subdivision (b) of Section 209, except kidnapping to commit robbery.

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

"(D) Section 264.1.

"(E) Section 269.

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

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

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

"(I) Section 288.5.

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

"(3) This subdivision shall also apply to any person who has ever been adjudicated a sexually violent predator as defined in Section 6600 of the Welfare and Institutions Code.

"(c)(1) On or before July 1, 2005, with respect to a person who has been convicted of the commission or the attempted commission of any of the offenses listed in paragraph (2) or the statutory predecessors of any of these offenses, or any offense which, if committed or attempted to be committed in this state, would have been punishable as one or more of the offenses listed in this subdivision, the Department of Justice shall make available to the public via the Internet Web site his or her names and known aliases, a photograph, a physical description, including gender and race, date of birth, criminal history, the community of residence and ZIP Code in which the person resides, and any other information that the Department of Justice deems relevant, but not the information excluded pursuant to subdivision (a). However, the address at which the person resides shall not be disclosed until a determination is made that the person is, by virtue of his or her additional prior or subsequent conviction of an offense listed in paragraph (2) of subdivision (a) of Section 290, subject to this subdivision. On or before July 1, 2006, the Department of Justice shall determine whether any person convicted of an offense listed in paragraph (2) also has one or more prior or subsequent convictions of an offense listed in paragraph (2) of subdivision (a) of Section 290, and, for those persons, the Department of Justice shall make available to the public via the Internet Web site the address at which the person resides.

"(2) This subdivision shall apply to the following offenses, provided that the person has one or more prior or subsequent convictions of an offense listed in paragraph (2) of subdivision (a) of Section 290:

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

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

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

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

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

"(d)(1) On or before July 1, 2005, with respect to a person who has been convicted of the commission or the attempted commission of any of the offenses listed in this subdivision or the statutory predecessors of any of these offenses, or of any offense which, if committed or attempted to be committed in this state, would have been punishable as one or more of the offenses listed in this subdivision, the Department of Justice shall make available to the public via the Internet Web site his or her names and known aliases, a photograph, a physical description, including gender and race, date of birth, criminal history, the community of residence and ZIP Code in which the person resides, and any other information that the Department of Justice deems relevant, but not the information excluded pursuant to subdivision (a) or the address at which the person resides.

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

"(A) Section 220, except assault to commit mayhem, with no prior or subsequent conviction of an offense listed in paragraph (2) of subdivision (a) of Section 290.

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

"(C) Paragraph (1), (3), or (4) of subdivision (a) of Section 261, with no prior or subsequent conviction of an offense listed in paragraph (2) of subdivision (a) of Section 290.

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

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

"(F) Section 266j.

"(G) Section 267.

"(H) Paragraph (2) of subdivision (b), or subdivision (f), (g), or (i), of Section 286, with no prior or subsequent conviction of an offense listed in paragraph (2) of subdivision (a) of Section 290.

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

"(J) Paragraph (2) of subdivision (b), or subdivision (f), (g), or (i), of Section 288a, with no prior or subsequent conviction of an offense listed in paragraph (2) of subdivision (a) of Section 290.

"(K) Subdivision (b), (d), (e), or (i) of Section 289, with no prior or subsequent conviction of an offense listed in paragraph (2) of subdivision (a) of Section 290.

"(L) Section 647.6.

"(e)(1) If a person has been convicted of the commission or the attempted commission of any of the offenses listed in this subdivision or the statutory predecessors of any of these offenses, or of any offense which, if committed or attempted to be committed in this state, would have been punishable as one or more 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 for exclusion from the Internet Web site with the Department of Justice. If the department determines that the person meets the requirements of this subdivision, the department shall grant the exclusion and no information concerning him or her 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) An offense listed in subdivision (b), (c), or (d) if the offender is eligible for, granted, and successfully completes probation pursuant to Section 1203.066 of the Penal Code.

"(f) The Department of Justice shall make a reasonable effort to provide notification to persons who have been convicted of the commission or attempted commission of an offense specified in subdivision (b), (c), or (d), that on or before July 1, 2005, the department is required to make information about him or her available to the public via an Internet Web site as specified in this section. The Department of Justice shall also make a reasonable effort to provide notice that he or she may be eligible for exclusion from the Internet Web site if he or she may have been convicted of an offense for which exclusion is available pursuant to subdivision (e).

"(g) 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.

"(h)(1) Any person who uses information disclosed pursuant to the Internet Web site 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 the Internet Web site 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.

"(i) Any person who is required to register pursuant to Section 290 who enters the Web site is punishable 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.

"(j)(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 1596.871 of the Health and Safety Code, and Section 432.7 of the Labor Code.

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

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

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

"(l) The Department of Justice and its employees shall be immune from liability for good faith conduct under this section."

Sections 12 to 15 of Stats.2005, c. 722 (A.B.1323), provide:

"SEC. 12. The Legislature finds and declares the following:

"(a) The findings and declarations made by the Legislature in Section 1 of Chapter 908 of the Statutes of 1996, which enacted California's law relating to public notification regarding registered sex offenders, also apply to public notification made via the Internet Web site mandated by this section.

"(b) Releasing the home addresses and other information pertaining to specified registered sex offenders is not intended to further punish them for their offenses, but to allow the public to be aware of their presence in the community and take appropriate and lawful safety precautions on behalf of themselves and their children.

"(c) The notice concerning sex offender information required by Section 2079.10a of the Civil Code is not expected to change immediately upon the effective date of this act or immediately upon the notification to the Secretary of State pursuant to Section 290.47 of the Penal Code, as added by this act. It is expected that forms accompanying real estate transactions may reflect the notice in the prior law for a reasonable period following those dates.

"SEC. 13. Section 3.5 of this bill incorporates amendments to Section 290 of the Penal Code proposed by both this bill and AB 439 [Stats.2005, c. 704]. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2006, but this bill becomes operative first, (2) each bill amends Section 290 of the Penal Code, and (3) this bill is enacted after AB 439 [Stats.2005, c. 704], in which case Section 290 of the Penal Code, as amended by Section 3 of this bill, shall remain operative only until the operative date of AB 439 [Stats.2005, c. 704], at which time Section 3.5 of this bill shall become operative.

"SEC. 14. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime

within the meaning of Section 6 of Article XIII B of the California Constitution.

"SEC. 15. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

"In order to assure that members of the public have adequate information about the identities and locations of sex offenders who may put them and their families at risk, it is necessary that this act take effect immediately."

Section affected by two or more acts at the same session of the legislature, see Government Code § 9605.

Stats.2006, c. 337 (S.B.1128), designated subd. (a) as subd. (a)(1) and added par. (2); in subd. (b)(1), inserted "prior adjudication as a sexually violent predator,"; in subd. (b)(2), redesignated subpar. (I) as (J), subpar. (J) as (L), and subpar. (K) as (M), and inserted subpars. (I) and (K); in subd. (d)(2), redesignated subpar. (G) as (I) and subpar. (H) as (K), and inserted subpars. (G), (H), and (J); in subd. (e)(2)(B), substituted "if" for "provided"; in subd. (e)(2)(C), in both clauses (i) and (ii), deleted "both of the following:" following "demonstrates", and incorporated items (I) and (II) into each clause by deleting the item number and inserting "that" and "and that" preceding "the"; in subd. (e), added pars. (3) and (4); and added subd. (p).

Section 60 of Stats.2006, c. 337 (S.B.1128), provides:

"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 [Stats.2006, c. 886]. 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 [Stats.2006, c. 886], 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 [Stats.2006, c. 886], at which time Section 19.5 of this bill shall become operative."

An amendment of this section by § 19.5 of Stats.2006, c. 337 (S.B.1128), failed to become operative under the provisions of § 60 of that Act.

For short title of act, legislative findings and declarations, and appropriations, severability, cost reimbursement, and urgency effective provisions relating to Stats.2006, c. 337 (S.B.1128), see Historical and Statutory Notes under Government Code § 68152.

Stats.2006, c. 886 (A.B.1849), in subd. (a), designated par. (1) and added par. (2); in subd. (b)(1), inserted "prior adjudication as a sexually violent predator,"; inserted. subpars. (I) and (M) and redesignated remaining subparagraphs; in subd. (d)(1), inserted subpars. (G) to (J) and redesignated the remaining subparagraph; in subd. (e)(2)(B), substituted "if" for "provided"; in subd. (e)(2)(C)(i) and (ii), deleted "both of the following:" following "demonstrates", and incorporated items (I) and (II) into each clause by deleting the item number and inserted "that" and "and that" preceding "the"; added pars. (3) and (4); and added subd. (p).

Section 7 of Stats.2006, c. 886 (A.B.1849), provides:

"SEC. 7. (a) Section 4.1 of this bill incorporates amendments to Section 290.46 of the Penal Code proposed by both this bill and AB 2712 [vetoed]. 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) SB 1128 [c. 337] is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 2712 [vetoed], in which case Section 290.46 of the Penal Code, as amended by Section 4 of this bill, shall

remain operative only until the operative date of AB 2712 [vetoed], at which time Section 4.1 of this bill shall become operative and Sections 4.2 and 4.3 of this bill shall not become operative.

"(b) Section 4.2 of this bill incorporates amendments to Section 290.46 of the Penal Code proposed by both this bill and SB 1128 [c. 337]. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2007, (2) each bill amends Section 290.46 of the Penal Code, (3) AB 2712 [vetoed] is not enacted or as enacted does not amend that section, and (4) this bill is enacted after SB 1128 [c. 337] in which case Section 290.46 of the Penal Code as amended by SB 1128 [c. 337], shall remain operative only until the operative date of this bill, at which time Section 4.2 of this bill shall become operative, and Sections 4, 4.1, and 4.3 of this bill shall not become operative.

"(c) Section 4.3 of this bill incorporates amendments to Section 290.46 of the Penal Code proposed by this bill, AB 2712 [vetoed], and SB 1128 [c. 337]. It shall only become operative if (1) all three bills are enacted and become effective on or before January 1, 2007, (2) all three bills amend Section 290.46 of the Penal Code, and (3) this bill is enacted after AB 2712 [vetoed] and SB 1128 [c. 337], in which case Section 290.46 of the Penal Code as amended by SB 1128 [c. 337], shall remain operative only until the operative date of this bill, at which time Section 4.2 of this bill shall become operative and shall remain operative only until the operative date of AB 2712 [vetoed], at which time Section 4.3 of this bill shall become operative, and Sections 4 and 4.1 of this bill shall not become operative."

An amendment of this section by §§ 4, 4.1 and 4.3 of Stats.2006, c. 886, failed to become operative under the provisions of § 7 of that Act.

Sections 8 to 11 of Stats.2006, c. 886 (A.B.1849), provide:

"SEC. 8. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

"SEC. 9. This bill shall only become operative if Senate Bill 1128 [c. 337] of the 2005-06 Regular Session is also enacted and becomes effective on or before January 1, 2007.

"SEC. 10. Sections 1, 2, 3, 5, and 6 of this act shall become operative only if Senate Bill No. 1178 [c. 336] is also enacted and this act is enacted after Senate Bill 1178 [c. 336].

"SEC. 11. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

"In order to ensure the public safety of California families and their children and to ensure that the Megan's Law database provides adequate information about registered sex offenders living in California, it is necessary that this act take effect immediately."

For executive order S-08-06, issued by Governor Schwarzenegger on May 15, 2006, relating to creation of a High Risk Sex Offender Task Force, see Historical and Statutory Notes under Penal Code § 3003.

For executive order S-15-06 issued by Governor Schwarzenegger, see Historical and Statutory Notes under Penal Code § 3003.

Stats.2007, c. 579 (S.B.172), in subd. (a)(3), inserted "State"; in subd. (b)(2), inserted subpar. (J), and redesignated

the remaining subparagraphs as (K) to (N); in subd. (c)(1), substituted "subdivision (c)" for "paragraph (2) of subdivision (a)" in two places; in subd. (d)(1), inserted subpar. (H), redesignated the remaining subparagraphs as (I) to (L), and in subd. (L), substituted "subdivision (c)" for "subparagraph (A) of paragraph (2) of subdivision (a)"; and in subd. (h), substituted "subdivision (c)" for "subparagraph (A) of paragraph (2) of subdivision (a)".

For legislative intent and urgency effective provisions relating to Stats.2007, c. 579 (S.B.172), see Historical and Statutory Notes under Penal Code § 290.

CROSS REFERENCES

Attorney General, generally, see Government Code § 12500 et seq.
Community care facilities, registration as sex offender, disclosure by community care facility client, operator disclosure, see Health and Safety Code § 1522.01.
Department of Corrections, generally, see Penal Code § 5000 et seq.
Department of Mental Health, generally, see Welfare and Institutions Code § 4000 et seq.
Felonies, definition and penalties, see Penal Code §§ 17 and 18.
Lease or rental agreements for residential real property and contracts for sale of residential real property comprised of one to four dwelling units, notice about registered sex offenders, see Civil Code § 2079.10a.
Misdemeanors, definition and penalties, see Penal Code §§ 17, 19 and 19.2.
Prevention of public funding of erectile dysfunction drugs for sex offenders, information disclosure, see Penal Code § 290.02.
Sex offender registration, compilation of information for specified offenses, "900" telephone number, income deposit, violations and penalties, and report to legislature, see Penal Code § 290.4.

LAW REVIEW AND JOURNAL COMMENTARIES

A better approach to juvenile sex offender registration in California. Christina D. Rule, 42 U.S.F. L. Rev. 497 (2007).

Megan's Law or Sarah's Law? A comparative analysis of public notification statutes in the United States and England. Meghann J. Dugan, 23 Loy.L.A.Int'l & Comp.L.Rev. 617 (2001).

Review of Selected 2005 California Legislation (Chapter 721: Providing sex offenders' conviction and release dates to the public). Laura Friedman, 37 McGeorge L. Rev. 261 (2006).

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Mental Health 469(1).
Westlaw Topic No. 257A.

RESEARCH REFERENCES

Encyclopedias

CA Jur. 3d Criminal Law: Post-Trial Proceedings § 41, Disclosure of Information.

Cal. Civ. Prac. Real Property Litigation § 1:32, Disclosure Statement Regarding Registered Criminal Offenders.

Forms

West's California Code Forms, Civil § 2079.10A Form 1, Disclosure of Registered Sex Offenders.

Treatises and Practice Aids

Cal. Common Interest Devs.: Law and Practice § 24:16, Residential Purchase Agreement and Escrow Instructions.

Rutter, Cal. Practice Guide: Landlord-Tenant Ch. 2C-1, Broad Anti-Discrimination Policies Under California Law.

Employment Coordinator Employment Practices § 33:13, California.

Emp. Discrim. Coord. Analysis of State Law § 8:61, Preemployment Inquiries.

Investigating Employee Conduct § 7:3, Arrest and Criminal Records.

Investigating Employee Conduct App C, Arrest and Conviction Records.

Miller and Starr California Real Estate § 1:144, Duty of Seller of Real Property to Disclose--Statutory Duty of Disclosure.

Miller and Starr California Real Estate § 20:12, California Fair Employment and Housing Act.

Miller and Starr California Real Estate § 19:123, Landlord's Duty to Disclose Defects to a Tenant.

16 NO. 6 Miller & Starr, California Real Estate Newsalert 2, Discrimination.

16 NO. 4 Miller & Starr, California Real Estate Newsalert 5, Contracts.

17 NO. 2 Miller & Starr, California Real Estate Newsalert 1, The "Big Daddy" of Civil Rights Acts Nears Fifty.

3 Witkin Cal. Crim. L. 3d Punishment § 189, Collection of Information.

3 Witkin Cal. Crim. L. 3d Punishment § 190, Public Access.

3 Witkin Cal. Crim. L. 3d Punishment § 191, Disclosure.

NOTES OF DECISIONS

1. Construction with federal law

Imposition of sex offender registration and public notification requirements against defendant who was convicted of false imprisonment and assault did not constitute punishment beyond permissible range that would require jury

findings under Sixth Amendment, and thus judge properly imposed such conditions. People v. Presley (App. 3 Dist. 2007) 67 Cal.Rptr.3d 826, 156 Cal.App.4th 1027, review denied. Jury 34(7)

2. Construction with other laws

The prohibition against the unauthorized use of registered sex offender identifying information obtained from the California "Megan's Law" Web site does not in itself qualify registered sex offenders as a "protected class" for purposes of housing discrimination under the Fair Employment and Housing Act. Op.Atty.Gen. 05-301 (April 27, 2006), 2006 WL 1144373.

West's Ann. Cal. Penal Code § 290.46, CA PENAL § 290.46

Current with urgency legislation through Ch. 266 of 2008 Reg.Sess. and Ch. 7 of 2007-2008 Third Ex.Sess., and Prop. 99

END OF DOCUMENT

SB 172 Senate Bill - CHAPTEREDBILL NUMBER: SB 172 CHAPTERED
BILL TEXT

CHAPTER 579
FILED WITH SECRETARY OF STATE OCTOBER 13, 2007
APPROVED BY GOVERNOR OCTOBER 13, 2007
PASSED THE SENATE SEPTEMBER 12, 2007
PASSED THE ASSEMBLY SEPTEMBER 10, 2007
AMENDED IN ASSEMBLY SEPTEMBER 7, 2007
AMENDED IN ASSEMBLY SEPTEMBER 5, 2007
AMENDED IN ASSEMBLY JUNE 28, 2007
AMENDED IN ASSEMBLY JUNE 19, 2007
AMENDED IN SENATE APRIL 19, 2007

INTRODUCED BY Senator Alquist
(Principal coauthor: Assembly Member Solorio)

FEBRUARY 5, 2007

An act to amend Sections 1522, 1568.09, 1569.17, and 1596.871 of the Health and Safety Code, and to amend Sections 289.5, 290.01, 290.04, 290.05, 290.3, 290.46, 296.2, 311.11, 646.9, 801.1, 803, 1202.7, 1417.8, 3000, 3000.07, 3004, 3060.6, 5054.1, and 5054.2 of, to amend and renumber Sections 288.3 and 3005 of, to add Sections 290.001, 290.002, 290.003, 290.004, 290.005, 290.006, 290.007, 290.008, 290.009, 290.010, 290.011, 290.012, 290.013, 290.014, 290.015, 290.016, 290.017, 290.018, 290.019, 290.020, 290.021, 290.022, and 290.023 to, and to repeal and add Section 290 to, the Penal Code, relating to sex offenders, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 172, Alquist. Crimes: sex offenders.

Existing law provides for various penalty provisions related to sex offenders.

This bill would make nonsubstantive, conforming changes to those provisions. The bill would make clarifying changes to provisions related to the risk assessment tool to be used to identify sex offenders, and would make related technical changes.

Existing law requires persons who have been convicted of specified crimes, and other persons as required by a court, to register as a sex offender. Existing law sets forth the procedure for doing so.

This bill would reorganize and renumber the provisions that set forth that procedure, and would make conforming technical changes in related provisions of law.

This bill would incorporate additional changes in Section 1522 of the Health and Safety Code, proposed by SB 776, to be operative only if SB 776 and this bill are both chaptered and become effective on or before January 1, 2008, and this bill is chaptered last.

This bill would incorporate additional changes in Section 646.9 of the Penal Code, proposed by AB 289, to be operative only if AB 289 and this bill are both chaptered and become effective on or before January 1, 2008, and this bill is chaptered last.

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

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 1522 of the Health and Safety Code is amended to read:

1522. The Legislature recognizes the need to generate timely and accurate positive fingerprint identification of applicants as a condition of issuing licenses, permits, or certificates of approval for persons to operate or provide direct care services in a community care facility, foster family home, or a certified family home of a licensed foster family agency. Therefore, the Legislature supports the use of the fingerprint live-scan technology, as identified in the long-range plan of the Department of Justice for fully automating the processing of fingerprints and other data by the year 1999, otherwise known as the California Crime Information Intelligence System (CAL-CII), to be used for applicant fingerprints. It is the intent of the Legislature in enacting this section to require the fingerprints of those individuals whose contact with community care clients may pose a risk to the clients' health and safety. An individual shall be required to obtain either a criminal record clearance or a criminal record exemption from the State Department of Social Services before his or her initial presence in a community care facility.

(a) (1) Before issuing a license or special permit to any person or persons to operate or manage a community care facility, the State Department of Social Services shall secure from an appropriate law enforcement agency a criminal record to determine whether the applicant or any other person specified in subdivision (b) has ever been convicted of a crime other than a minor traffic violation or arrested for any crime specified in Section 290 of the Penal Code, for violating Section 245 or 273.5, of the Penal Code, subdivision (b) of Section 273a of the Penal Code, or, prior to January 1, 1994, paragraph (2) of Section 273a of the Penal Code, or for any crime for which the department cannot grant an exemption if the person was convicted and the person has not been exonerated.

(2) The criminal history information shall include the full criminal record, if any, of those persons, and subsequent arrest information pursuant to Section 11105.2 of the Penal Code.

(3) Except during the 2003-04, 2004-05, 2005-06, 2006-07, and 2007-08 fiscal years, neither the Department of Justice nor the State Department of Social Services may charge a fee for the fingerprinting of an applicant for a license or special permit to operate a facility providing nonmedical board, room, and care for six or less children or for obtaining a criminal record of the applicant pursuant to this section.

(4) The following shall apply to the criminal record information:

(A) If the State Department of Social Services finds that the applicant, or any other person specified in subdivision (b), has been convicted of a crime other than a minor traffic violation, the application shall be denied, unless the director grants an exemption pursuant to subdivision (g).

(B) If the State Department of Social Services finds that the applicant, or any other person specified in subdivision (b) is awaiting trial for a crime other than a minor traffic violation, the

State Department of Social Services may cease processing the application until the conclusion of the trial.

(C) If no criminal record information has been recorded, the Department of Justice shall provide the applicant and the State Department of Social Services with a statement of that fact.

(D) If the State Department of Social Services finds after licensure that the licensee, or any other person specified in paragraph (2) of subdivision (b), has been convicted of a crime other than a minor traffic violation, the license may be revoked, unless the director grants an exemption pursuant to subdivision (g).

(E) An applicant and any other person specified in subdivision (b) shall submit fingerprint images and related information to the Department of Justice for the purpose of searching the criminal records of the Federal Bureau of Investigation, in addition to the criminal records search required by this subdivision. If an applicant and all other persons described in subdivision (b) meet all of the conditions for licensure, except receipt of the Federal Bureau of Investigation's criminal offender record information search response for the applicant or any of the persons described in subdivision (b), the department may issue a license if the applicant and each person described in subdivision (b) has signed and submitted a statement that he or she has never been convicted of a crime in the United States, other than a traffic infraction, as defined in paragraph (1) of subdivision (a) of Section 42001 of the Vehicle Code. If, after licensure, the department determines that the licensee or any other person specified in subdivision (b) has a criminal record, the license may be revoked pursuant to Section 1550. The department may also suspend the license pending an administrative hearing pursuant to Section 1550.5.

(F) The State Department of Social Services shall develop procedures to provide the individual's state and federal criminal history information with the written notification of his or her exemption denial or revocation based on the criminal record. Receipt of the criminal history information shall be optional on the part of the individual, as set forth in the agency's procedures. The procedure shall protect the confidentiality and privacy of the individual's record, and the criminal history information shall not be made available to the employer.

(G) Notwithstanding any other provision of law, the department is authorized to provide an individual with a copy of his or her state or federal level criminal offender record information search response as provided to that department by the Department of Justice if the department has denied a criminal background clearance based on this information and the individual makes a written request to the department for a copy specifying an address to which it is to be sent. The state or federal level criminal offender record information search response shall not be modified or altered from its form or content as provided by the Department of Justice and shall be provided to the address specified by the individual in their written request. The department shall retain a copy of the individual's written request and the response and date provided.

(b) (1) In addition to the applicant, this section shall be applicable to criminal convictions of the following persons:

(A) Adults responsible for administration or direct supervision of staff.

(B) Any person, other than a client, residing in the facility.

(C) Any person who provides client assistance in dressing,

grooming, bathing, or personal hygiene. Any nurse assistant or home health aide meeting the requirements of Section 1338.5 or 1736.6, respectively, who is not employed, retained, or contracted by the licensee, and who has been certified or recertified on or after July 1, 1998, shall be deemed to meet the criminal record clearance requirements of this section. A certified nurse assistant and certified home health aide who will be providing client assistance and who falls under this exemption shall provide one copy of his or her current certification, prior to providing care, to the community care facility. The facility shall maintain the copy of the certification on file as long as care is being provided by the certified nurse assistant or certified home health aide at the facility. Nothing in this paragraph restricts the right of the department to exclude a certified nurse assistant or certified home health aide from a licensed community care facility pursuant to Section 1558.

(D) Any staff person, volunteer, or employee who has contact with the clients.

(E) If the applicant is a firm, partnership, association, or corporation, the chief executive officer or other person serving in like capacity.

(F) Additional officers of the governing body of the applicant, or other persons with a financial interest in the applicant, as determined necessary by the department by regulation. The criteria used in the development of these regulations shall be based on the person's capability to exercise substantial influence over the operation of the facility.

(2) The following persons are exempt from the requirements applicable under paragraph (1):

(A) A medical professional as defined in department regulations who holds a valid license or certification from the person's governing California medical care regulatory entity and who is not employed, retained, or contracted by the licensee if all of the following apply:

(i) The criminal record of the person has been cleared as a condition of licensure or certification by the person's governing California medical care regulatory entity.

(ii) The person is providing time-limited specialized clinical care or services.

(iii) The person is providing care or services within the person's scope of practice.

(iv) The person is not a community care facility licensee or an employee of the facility.

(B) A third-party repair person or similar retained contractor if all of the following apply:

(i) The person is hired for a defined, time-limited job.

(ii) The person is not left alone with clients.

(iii) When clients are present in the room in which the repairperson or contractor is working, a staff person who has a criminal record clearance or exemption is also present.

(C) Employees of a licensed home health agency and other members of licensed hospice interdisciplinary teams who have a contract with a client or resident of the facility and are in the facility at the request of that client or resident's legal decisionmaker. The exemption does not apply to a person who is a community care facility licensee or an employee of the facility.

(D) Clergy and other spiritual caregivers who are performing

services in common areas of the community care facility or who are advising an individual client at the request of, or with the permission of, the client or legal decisionmaker, are exempt from fingerprint and criminal background check requirements imposed by community care licensing. This exemption does not apply to a person who is a community care licensee or employee of the facility.

(E) Members of fraternal, service, or similar organizations who conduct group activities for clients if all of the following apply:

(i) Members are not left alone with clients.

(ii) Members do not transport clients off the facility premises.

(iii) The same organization does not conduct group activities for clients more often than defined by the department's regulations.

(3) In addition to the exemptions in paragraph (2), the following persons in foster family homes, certified family homes, and small family homes are exempt from the requirements applicable under paragraph (1):

(A) Adult friends and family of the licensed or certified foster parent, who come into the home to visit for a length of time no longer than defined by the department in regulations, provided that the adult friends and family of the licensee are not left alone with the foster children. However, the licensee, acting as a reasonable and prudent parent, as defined in paragraph (2) of subdivision (a) of Section 362.04 of the Welfare and Institutions Code, may allow his or her adult friends and family to provide short-term care to the foster child and act as an appropriate occasional short-term babysitter for the child.

(B) Parents of a foster child's friends when the foster child is visiting the friend's home and the friend, licensed or certified foster parent, or both are also present. However, the licensee, acting as a reasonable and prudent parent, may allow the parent of the foster child's friends to act as an appropriate short-term babysitter for the child without the friend being present.

(C) Individuals who are engaged by any licensed or certified foster parent to provide short-term care to the child for periods not to exceed 24 hours. Caregivers shall use a reasonable and prudent parent standard in selecting appropriate individuals to act as appropriate occasional short-term babysitters.

(4) In addition to the exemptions specified in paragraph (2), the following persons in adult day care and adult day support centers are exempt from the requirements applicable under paragraph (1):

(A) Unless contraindicated by the client's individualized program plan (IPP) or needs and service plan, a spouse, significant other, relative, or close friend of a client, or an attendant or a facilitator for a client with a developmental disability if the attendant or facilitator is not employed, retained, or contracted by the licensee. This exemption applies only if the person is visiting the client or providing direct care and supervision to the client.

(B) A volunteer if all of the following applies:

(i) The volunteer is supervised by the licensee or a facility employee with a criminal record clearance or exemption.

(ii) The volunteer is never left alone with clients.

(iii) The volunteer does not provide any client assistance with dressing, grooming, bathing, or personal hygiene other than washing of hands.

(5) (A) In addition to the exemptions specified in paragraph (2), the following persons in adult residential and social rehabilitation facilities, unless contraindicated by the client's individualized

program plan (IPP) or needs and services plan, are exempt from the requirements applicable under paragraph (1): a spouse, significant other, relative, or close friend of a client, or an attendant or a facilitator for a client with a developmental disability if the attendant or facilitator is not employed, retained, or contracted by the licensee. This exemption applies only if the person is visiting the client or providing direct care and supervision to that client.

(B) Nothing in this subdivision shall prevent a licensee from requiring a criminal record clearance of any individual exempt from the requirements of this section, provided that the individual has client contact.

(6) Any person similar to those described in this subdivision, as defined by the department in regulations.

(c) (1) Subsequent to initial licensure, any person specified in subdivision (b) and not exempted from fingerprinting shall, as a condition to employment, residence, or presence in a community care facility, be fingerprinted and sign a declaration under penalty of perjury regarding any prior criminal convictions. The licensee shall submit fingerprint images and related information to the Department of Justice and the Federal Bureau of Investigation, through the Department of Justice, for a state and federal level criminal offender record information search, or to comply with paragraph (1) of subdivision (h), prior to the person's employment, residence, or initial presence in the community care facility. These fingerprint images and related information shall be sent by electronic transmission in a manner approved by the State Department of Social Services and the Department of Justice for the purpose of obtaining a permanent set of fingerprints, and shall be submitted to the Department of Justice by the licensee. A licensee's failure to submit fingerprints to the Department of Justice or to comply with paragraph (1) of subdivision (h), as required in this section, shall result in the citation of a deficiency and the immediate assessment of civil penalties in the amount of one hundred dollars ($100) per violation per day for a maximum of five days, unless the violation is a second or subsequent violation within a 12-month period in which case the civil penalties shall be in the amount of one hundred dollars ($100) per violation for a maximum of 30 days, and shall be grounds for disciplining the licensee pursuant to Section 1550. The department may assess civil penalties for continued violations as permitted by Section 1548. The fingerprint images and related information shall then be submitted to the Department of Justice for processing. Upon request of the licensee, who shall enclose a self-addressed stamped postcard for this purpose, the Department of Justice shall verify receipt of the fingerprints.

(2) Within 14 calendar days of the receipt of the fingerprint images, the Department of Justice shall notify the State Department of Social Services of the criminal record information, as provided for in subdivision (a). If no criminal record information has been recorded, the Department of Justice shall provide the licensee and the State Department of Social Services with a statement of that fact within 14 calendar days of receipt of the fingerprint images. Documentation of the individual's clearance or exemption shall be maintained by the licensee and be available for inspection. If new fingerprint images are required for processing, the Department of Justice shall, within 14 calendar days from the date of receipt of the fingerprints, notify the licensee that the fingerprints were illegible, the Department of Justice shall notify the State

Department of Social Services, as required by Section 1522.04, and shall also notify the licensee by mail, within 14 days of electronic transmission of the fingerprints to the Department of Justice, if the person has no criminal history recorded. A violation of the regulations adopted pursuant to Section 1522.04 shall result in the citation of a deficiency and an immediate assessment of civil penalties in the amount of one hundred dollars ($100) per violation per day for a maximum of five days, unless the violation is a second or subsequent violation within a 12-month period in which case the civil penalties shall be in the amount of one hundred dollars ($100) per violation for a maximum of 30 days, and shall be grounds for disciplining the licensee pursuant to Section 1550. The department may assess civil penalties for continued violations as permitted by Section 1548.

(3) Except for persons specified in paragraph (2) of subdivision (b), the licensee shall endeavor to ascertain the previous employment history of persons required to be fingerprinted under this subdivision. If it is determined by the State Department of Social Services, on the basis of the fingerprint images and related information submitted to the Department of Justice, that the person has been convicted of, or is awaiting trial for, a sex offense against a minor, or has been convicted for an offense specified in Section 243.4, 273a, 273d, 273g, or 368 of the Penal Code, or a felony, the State Department of Social Services shall notify the licensee to act immediately to terminate the person's employment, remove the person from the community care facility, or bar the person from entering the community care facility. The State Department of Social Services may subsequently grant an exemption pursuant to subdivision (g). If the conviction or arrest was for another crime, except a minor traffic violation, the licensee shall, upon notification by the State Department of Social Services, act immediately to either (A) terminate the person's employment, remove the person from the community care facility, or bar the person from entering the community care facility; or (B) seek an exemption pursuant to subdivision (g). The State Department of Social Services shall determine if the person shall be allowed to remain in the facility until a decision on the exemption is rendered. A licensee's failure to comply with the department's prohibition of employment, contact with clients, or presence in the facility as required by this paragraph shall be grounds for disciplining the licensee pursuant to Section 1550.

(4) The department may issue an exemption on its own motion pursuant to subdivision (g) if the person's criminal history indicates that the person is of good character based on the age, seriousness, and frequency of the conviction or convictions. The department, in consultation with interested parties, shall develop regulations to establish the criteria to grant an exemption pursuant to this paragraph.

(5) Concurrently with notifying the licensee pursuant to paragraph (3), the department shall notify the affected individual of his or her right to seek an exemption pursuant to subdivision (g). The individual may seek an exemption only if the licensee terminates the person's employment or removes the person from the facility after receiving notice from the department pursuant to paragraph (3).

(d) (1) Before issuing a license, special permit, or certificate of approval to any person or persons to operate or manage a foster family home or certified family home as described in Section 1506,

the State Department of Social Services or other approving authority shall secure from an appropriate law enforcement agency a criminal record to determine whether the applicant or any person specified in subdivision (b) has ever been convicted of a crime other than a minor traffic violation or arrested for any crime specified in subdivision (c) of Section 290 of the Penal Code, for violating Section 245 or 273.5, subdivision (b) of Section 273a or, prior to January 1, 1994, paragraph (2) of Section 273a of the Penal Code, or for any crime for which the department cannot grant an exemption if the person was convicted and the person has not been exonerated.

(2) The criminal history information shall include the full criminal record, if any, of those persons.

(3) Neither the Department of Justice nor the State Department of Social Services may charge a fee for the fingerprinting of an applicant for a license, special permit, or certificate of approval described in this subdivision. The record, if any, shall be taken into consideration when evaluating a prospective applicant.

(4) The following shall apply to the criminal record information:

(A) If the applicant or other persons specified in subdivision (b) have convictions that would make the applicant's home unfit as a foster family home or a certified family home, the license, special permit, or certificate of approval shall be denied.

(B) If the State Department of Social Services finds that the applicant, or any person specified in subdivision (b) is awaiting trial for a crime other than a minor traffic violation, the State Department of Social Services or other approving authority may cease processing the application until the conclusion of the trial.

(C) For the purposes of this subdivision, a criminal record clearance provided under Section 8712 of the Family Code may be used by the department or other approving agency.

(D) An applicant for a foster family home license or for certification as a family home, and any other person specified in subdivision (b), shall submit a set of fingerprint images and related information to the Department of Justice and the Federal Bureau of Investigation, through the Department of Justice, for a state and federal level criminal offender record information search, in addition to the criminal records search required by subdivision (a). If an applicant meets all other conditions for licensure, except receipt of the Federal Bureau of Investigation's criminal history information for the applicant and all persons described in subdivision (b), the department may issue a license, or the foster family agency may issue a certificate of approval, if the applicant, and each person described in subdivision (b), has signed and submitted a statement that he or she has never been convicted of a crime in the United States, other than a traffic infraction, as defined in paragraph (1) of subdivision (a) of Section 42001 of the Vehicle Code. If, after licensure or certification, the department determines that the licensee, certified foster parent, or any person specified in subdivision (b) has a criminal record, the license may be revoked pursuant to Section 1550 and the certificate of approval revoked pursuant to subdivision (b) of Section 1534. The department may also suspend the license pending an administrative hearing pursuant to Section 1550.5.

(5) Any person specified in this subdivision shall, as a part of the application, be fingerprinted and sign a declaration under penalty of perjury regarding any prior criminal convictions or arrests for any crime against a child, spousal or cohabitant abuse

or, any crime for which the department cannot grant an exemption if the person was convicted and shall submit these fingerprints to the licensing agency or other approving authority.

(6) (A) The foster family agency shall obtain fingerprint images and related information from certified home applicants and from persons specified in subdivision (b) and shall submit them directly to the Department of Justice by electronic transmission in a manner approved by the State Department of Social Services and the Department of Justice. A foster family home licensee or foster family agency shall submit these fingerprint images and related information to the Department of Justice and the Federal Bureau of Investigation, through the Department of Justice, for a state and federal level criminal offender record information search, or to comply with paragraph (1) of subdivision (b) prior to the person's employment, residence, or initial presence in the foster family home or certified family home. A foster family agency's failure to submit fingerprint images and related information to the Department of Justice, or comply with paragraph (1) of subdivision (h), as required in this section, shall result in a citation of a deficiency, and the immediate civil penalties of one hundred dollars ($100) per violation per day for a maximum of five days, unless the violation is a second or subsequent violation within a 12-month period in which case the civil penalties shall be in the amount of one hundred dollars ($100) per violation for a maximum of 30 days, and shall be grounds for disciplining the licensee pursuant to Section 1550. A violation of the regulation adopted pursuant to Section 1522.04 shall result in the citation of a deficiency and an immediate assessment of civil penalties in the amount of one hundred dollars ($100) per violation per day for a maximum of five days, unless the violation is a second or subsequent violation within a 12-month period in which case the civil penalties shall be in the amount of one hundred dollars ($100) per violation for a maximum of 30 days, and shall be grounds for disciplining the foster family agency pursuant to Section 1550. A licensee's failure to submit fingerprint images and related information to the Department of Justice, or comply with paragraph (1) of subdivision (h), as required in this section, may result in the citation of a deficiency and

immediate civil penalties of one hundred dollars ($100) per violation. A licensee's violation of regulations adopted pursuant to Section 1522.04 may result in the citation of a deficiency and an immediate assessment of civil penalties in the amount of one hundred dollars ($100) per violation. The State Department of Social Services may assess penalties for continued violations, as permitted by Section 1548. The fingerprint images shall then be submitted to the Department of Justice for processing.

(B) Upon request of the licensee, who shall enclose a self-addressed envelope for this purpose, the Department of Justice shall verify receipt of the fingerprints. Within five working days of the receipt of the criminal record or information regarding criminal convictions from the Department of Justice, the department shall notify the applicant of any criminal arrests or convictions. If no arrests or convictions are recorded, the Department of Justice shall provide the foster family home licensee or the foster family agency with a statement of that fact concurrent with providing the information to the State Department of Social Services.

(7) If the State Department of Social Services finds that the applicant, or any other person specified in subdivision (b), has been

convicted of a crime other than a minor traffic violation, the application shall be denied, unless the director grants an exemption pursuant to subdivision (g).

(8) If the State Department of Social Services finds after licensure or the granting of the certificate of approval that the licensee, certified foster parent, or any other person specified in paragraph (2) of subdivision (b), has been convicted of a crime other than a minor traffic violation, the license or certificate of approval may be revoked by the department or the foster family agency, whichever is applicable, unless the director grants an exemption pursuant to subdivision (g). A licensee's failure to comply with the department's prohibition of employment, contact with clients, or presence in the facility as required by paragraph (3) of subdivision (c) shall be grounds for disciplining the licensee pursuant to Section 1550.

(e) The State Department of Social Services may not use a record of arrest to deny, revoke, or terminate any application, license, employment, or residence unless the department investigates the incident and secures evidence, whether or not related to the incident of arrest, that is admissible in an administrative hearing to establish conduct by the person that may pose a risk to the health and safety of any person who is or may become a client. The State Department of Social Services is authorized to obtain any arrest or conviction records or reports from any law enforcement agency as necessary to the performance of its duties to inspect, license, and investigate community care facilities and individuals associated with a community care facility.

(f) (1) For purposes of this section or any other provision of this chapter, a conviction means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that the State Department of Social Services is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, when the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, notwithstanding a subsequent order pursuant to Sections 1203.4 and 1203.4a of the Penal Code permitting the person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment. For purposes of this section or any other provision of this chapter, the record of a conviction, or a copy thereof certified by the clerk of the court or by a judge of the court in which the conviction occurred, shall be conclusive evidence of the conviction. For purposes of this section or any other provision of this chapter, the arrest disposition report certified by the Department of Justice, or documents admissible in a criminal action pursuant to Section 969b of the Penal Code, shall be prima facie evidence of the conviction, notwithstanding any other provision of law prohibiting the admission of these documents in a civil or administrative action.

(2) For purposes of this section or any other provision of this chapter, the department shall consider criminal convictions from another state or federal court as if the criminal offense was committed in this state.

(g) (1) After review of the record, the director may grant an exemption from disqualification for a license or special permit as specified in paragraphs (1) and (4) of subdivision (a), or for a license, special permit, or certificate of approval as specified in

paragraphs (4) and (5) of subdivision (d), or for employment, residence, or presence in a community care facility as specified in paragraphs (3), (4), and (5) of subdivision (c), if the director has substantial and convincing evidence to support a reasonable belief that the applicant and the person convicted of the crime, if other than the applicant, are of good character as to justify issuance of the license or special permit or granting an exemption for purposes of subdivision (c). Except as otherwise provided in this subdivision, an exemption may not be granted pursuant to this subdivision if the conviction was for any of the following offenses:

(A) (i) An offense specified in Section 220, 243.4, or 264.1, subdivision (a) of Section 273a or, prior to January 1, 1994, paragraph (1) of Section 273a, Section 273d, 288, or 289, subdivision (c) of Section 290, or Section 368 of the Penal Code, or was a conviction of another crime against an individual specified in subdivision (c) of Section 667.5 of the Penal Code.

(ii) Notwithstanding clause (i), the director may grant an exemption regarding the conviction for an offense described in paragraph (1), (2), (7), or (8) of subdivision (c) of Section 667.5 of the Penal Code, if the employee or prospective employee has been rehabilitated as provided in Section 4852.03 of the Penal Code, has maintained the conduct required in Section 4852.05 of the Penal Code for at least 10 years, and has the recommendation of the district attorney representing the employee's county of residence, or if the employee or prospective employee has received a certificate of rehabilitation pursuant to Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code.

(B) A felony offense specified in Section 729 of the Business and Professions Code or Section 206 or 215, subdivision (a) of Section 347, subdivision (b) of Section 417, or subdivision (a) of Section 451 of the Penal Code.

(2) The department may not prohibit a person from being employed or having contact with clients in a facility on the basis of a denied criminal record exemption request or arrest information unless the department complies with the requirements of Section 1558.

(h) (1) For purposes of compliance with this section, the department may permit an individual to transfer a current criminal record clearance, as defined in subdivision (a), from one facility to another, as long as the criminal record clearance has been processed through a state licensing district office, and is being transferred to another facility licensed by a state licensing district office. The request shall be in writing to the State Department of Social Services, and shall include a copy of the person's driver's license or valid identification card issued by the Department of Motor Vehicles, or a valid photo identification issued by another state or the United States government if the person is not a California resident. Upon request of the licensee, who shall enclose a self-addressed envelope for this purpose, the State Department of Social Services shall verify whether the individual has a clearance that can be transferred.

(2) The State Department of Social Services shall hold criminal record clearances in its active files for a minimum of two years after an employee is no longer employed at a licensed facility in order for the criminal record clearance to be transferred.

(3) The following shall apply to a criminal record clearance or exemption from the department or a county office with department-delegated licensing authority:

(A) A county office with department-delegated licensing authority may accept a clearance or exemption from the department.

(B) The department may accept a clearance or exemption from any county office with department-delegated licensing authority.

(C) A county office with department-delegated licensing authority may accept a clearance or exemption from any other county office with department-delegated licensing authority.

(4) With respect to notifications issued by the Department of Justice pursuant to Section 11105.2 of the Penal Code concerning an individual whose criminal record clearance was originally processed by the department or a county office with department-delegated licensing authority, all of the following shall apply:

(A) The Department of Justice shall process a request from the department or a county office with department-delegated licensing authority to receive the notice only if all of the following conditions are met:

(i) The request shall be submitted to the Department of Justice by the agency to be substituted to receive the notification.

(ii) The request shall be for the same applicant type as the type for which the original clearance was obtained.

(iii) The request shall contain all prescribed data elements and format protocols pursuant to a written agreement between the department and the Department of Justice.

(B) (i) On or before January 7, 2005, the department shall notify the Department of Justice of all county offices that have department-delegated licensing authority.

(ii) The department shall notify the Department of Justice within 15 calendar days of the date on which a new county office receives department-delegated licensing authority or a county's delegated licensing authority is rescinded.

(C) The Department of Justice shall charge the department or a county office with department-delegated licensing authority a fee for each time a request to substitute the recipient agency is received for purposes of this paragraph. This fee shall not exceed the cost of providing the service.

(i) The full criminal record obtained for purposes of this section may be used by the department or by a licensed adoption agency as a clearance required for adoption purposes.

(j) If a licensee or facility is required by law to deny employment or to terminate employment of any employee based on written notification from the state department that the employee has a prior criminal conviction or is determined unsuitable for employment under Section 1558, the licensee or facility shall not incur civil liability or unemployment insurance liability as a result of that denial or termination.

(k) The State Department of Social Services may charge a fee for the costs of processing electronic fingerprint images and related information.

(l) Amendments to this section made in the 1999 portion of the 1999-2000 Regular Session shall be implemented commencing 60 days after the effective date of the act amending this section in the 1999 portion of the 1999-2000 Regular Session, except that those provisions for the submission of fingerprints for searching the records of the Federal Bureau of Investigation shall be implemented 90 days after the effective date of that act.

SEC. 1.5. Section 1522 of the Health and Safety Code is amended to read:

1522. The Legislature recognizes the need to generate timely and accurate positive fingerprint identification of applicants as a condition of issuing licenses, permits, or certificates of approval for persons to operate or provide direct care services in a community care facility, foster family home, or a certified family home of a licensed foster family agency. Therefore, the Legislature supports the use of the fingerprint live-scan technology, as identified in the long-range plan of the Department of Justice for fully automating the processing of fingerprints and other data by the year 1999, otherwise known as the California Crime Information Intelligence System (CAL-CII), to be used for applicant fingerprints. It is the intent of the Legislature in enacting this section to require the fingerprints of those individuals whose contact with community care clients may pose a risk to the clients' health and safety. An individual shall be required to obtain either a criminal record clearance or a criminal record exemption from the State Department of Social Services before his or her initial presence in a community care facility.

(a) (1) Before issuing a license or special permit to any person or persons to operate or manage a community care facility, the State Department of Social Services shall secure from an appropriate law enforcement agency a criminal record to determine whether the applicant or any other person specified in subdivision (b) has ever been convicted of a crime other than a minor traffic violation or arrested for any crime specified in Section 290 of the Penal Code, for violating Section 245 or 273.5, of the Penal Code, subdivision (b) of Section 273a of the Penal Code, or, prior to January 1, 1994, paragraph (2) of Section 273a of the Penal Code, or for any crime for which the department cannot grant an exemption if the person was convicted and the person has not been exonerated.

(2) The criminal history information shall include the full criminal record, if any, of those persons, and subsequent arrest information pursuant to Section 11105.2 of the Penal Code.

(3) Except during the 2003-04, 2004-05, 2005-06, 2006-07, and 2007-08 fiscal years, neither the Department of Justice nor the State Department of Social Services may charge a fee for the fingerprinting of an applicant for a license or special permit to operate a facility providing nonmedical board, room, and care for six or less children or for obtaining a criminal record of the applicant pursuant to this section.

(4) The following shall apply to the criminal record information:

(A) If the State Department of Social Services finds that the applicant, or any other person specified in subdivision (b), has been convicted of a crime other than a minor traffic violation, the application shall be denied, unless the director grants an exemption pursuant to subdivision (g).

(B) If the State Department of Social Services finds that the applicant, or any other person specified in subdivision (b) is awaiting trial for a crime other than a minor traffic violation, the State Department of Social Services may cease processing the application until the conclusion of the trial.

(C) If no criminal record information has been recorded, the Department of Justice shall provide the applicant and the State Department of Social Services with a statement of that fact.

(D) If the State Department of Social Services finds after licensure that the licensee, or any other person specified in paragraph (2) of subdivision (b), has been convicted of a crime other

than a minor traffic violation, the license may be revoked, unless the director grants an exemption pursuant to subdivision (g).

(E) An applicant and any other person specified in subdivision (b) shall submit fingerprint images and related information to the Department of Justice for the purpose of searching the criminal records of the Federal Bureau of Investigation, in addition to the criminal records search required by this subdivision. If an applicant and all other persons described in subdivision (b) meet all of the conditions for licensure, except receipt of the Federal Bureau of Investigation's criminal offender record information search response for the applicant or any of the persons described in subdivision (b), the department may issue a license if the applicant and each person described in subdivision (b) has signed and submitted a statement that he or she has never been convicted of a crime in the United States, other than a traffic infraction, as defined in paragraph (1) of subdivision (a) of Section 42001 of the Vehicle Code. If, after licensure, the department determines that the licensee or any other person specified in subdivision (b) has a criminal record, the license may be revoked pursuant to Section 1550. The department may also suspend the license pending an administrative hearing pursuant to Section 1550.5.

(F) The State Department of Social Services shall develop procedures to provide the individual's state and federal criminal history information with the written notification of his or her exemption denial or revocation based on the criminal record. Receipt of the criminal history information shall be optional on the part of the individual, as set forth in the agency's procedures. The procedure shall protect the confidentiality and privacy of the individual's record, and the criminal history information shall not be made available to the employer.

(G) Notwithstanding any other provision of law, the department is authorized to provide an individual with a copy of his or her state or federal level criminal offender record information search response as provided to that department by the Department of Justice if the department has denied a criminal background clearance based on this information and the individual makes a written request to the department for a copy specifying an address to which it is to be sent. The state or federal level criminal offender record information search response shall not be modified or altered from its form or content as provided by the Department of Justice and shall be provided to the address specified by the individual in their written request. The department shall retain a copy of the individual's written request and the response and date provided.

(b) (1) In addition to the applicant, this section shall be applicable to criminal convictions of the following persons:

(A) Adults responsible for administration or direct supervision of staff.

(B) Any person, other than a client, residing in the facility.

(C) Any person who provides client assistance in dressing, grooming, bathing, or personal hygiene. Any nurse assistant or home health aide meeting the requirements of Section 1338.5 or 1736.6, respectively, who is not employed, retained, or contracted by the licensee, and who has been certified or recertified on or after July 1, 1998, shall be deemed to meet the criminal record clearance requirements of this section. A certified nurse assistant and certified home health aide who will be providing client assistance and who falls under this exemption shall provide one copy of his or

her current certification, prior to providing care, to the community care facility. The facility shall maintain the copy of the certification on file as long as care is being provided by the certified nurse assistant or certified home health aide at the facility. Nothing in this paragraph restricts the right of the department to exclude a certified nurse assistant or certified home health aide from a licensed community care facility pursuant to Section 1558.

(D) Any staff person, volunteer, or employee who has contact with the clients.

(E) If the applicant is a firm, partnership, association, or corporation, the chief executive officer or other person serving in like capacity.

(F) Additional officers of the governing body of the applicant, or other persons with a financial interest in the applicant, as determined necessary by the department by regulation. The criteria used in the development of these regulations shall be based on the person's capability to exercise substantial influence over the operation of the facility.

(2) The following persons are exempt from the requirements applicable under paragraph (1):

(A) A medical professional as defined in department regulations who holds a valid license or certification from the person's governing California medical care regulatory entity and who is not employed, retained, or contracted by the licensee if all of the following apply:

(i) The criminal record of the person has been cleared as a condition of licensure or certification by the person's governing California medical care regulatory entity.

(ii) The person is providing time-limited specialized clinical care or services.

(iii) The person is providing care or services within the person's scope of practice.

(iv) The person is not a community care facility licensee or an employee of the facility.

(B) A third-party repair person or similar retained contractor if all of the following apply:

(i) The person is hired for a defined, time-limited job.

(ii) The person is not left alone with clients.

(iii) When clients are present in the room in which the repairperson or contractor is working, a staff person who has a criminal record clearance or exemption is also present.

(C) Employees of a licensed home health agency and other members of licensed hospice interdisciplinary teams who have a contract with a client or resident of the facility and are in the facility at the request of that client or resident's legal decisionmaker. The exemption does not apply to a person who is a community care facility licensee or an employee of the facility.

(D) Clergy and other spiritual caregivers who are performing services in common areas of the community care facility or who are advising an individual client at the request of, or with the permission of, the client or legal decisionmaker, are exempt from fingerprint and criminal background check requirements imposed by community care licensing. This exemption does not apply to a person who is a community care licensee or employee of the facility.

(E) Members of fraternal, service, or similar organizations who conduct group activities for clients if all of the following apply:

(i) Members are not left alone with clients.

(ii) Members do not transport clients off the facility premises.

(iii) The same organization does not conduct group activities for clients more often than defined by the department's regulations.

(3) In addition to the exemptions in paragraph (2), the following persons in foster family homes, certified family homes, and small family homes are exempt from the requirements applicable under paragraph (1):

(A) Adult friends and family of the licensed or certified foster parent, who come into the home to visit for a length of time no longer than defined by the department in regulations, provided that the adult friends and family of the licensee are not left alone with the foster children. However, the licensee, acting as a reasonable and prudent parent, as defined in paragraph (2) of subdivision (a) of Section 362.04 of the Welfare and Institutions Code, may allow his or her adult friends and family to provide short-term care to the foster child and act as an appropriate occasional short-term babysitter for the child.

(B) Parents of a foster child's friends when the foster child is visiting the friend's home and the friend, licensed or certified foster parent, or both are also present. However, the licensee, acting as a reasonable and prudent parent, may allow the parent of the foster child's friends to act as an appropriate short-term babysitter for the child without the friend being present.

(C) Individuals who are engaged by any licensed or certified foster parent to provide short-term care to the child for periods not to exceed 24 hours. Caregivers shall use a reasonable and prudent parent standard in selecting appropriate individuals to act as appropriate occasional short-term babysitters.

(4) In addition to the exemptions specified in paragraph (2), the following persons in adult day care and adult day support centers are exempt from the requirements applicable under paragraph (1):

(A) Unless contraindicated by the client's individualized program plan (IPP) or needs and service plan, a spouse, significant other, relative, or close friend of a client, or an attendant or a facilitator for a client with a developmental disability if the attendant or facilitator is not employed, retained, or contracted by the licensee. This exemption applies only if the person is visiting the client or providing direct care and supervision to the client.

(B) A volunteer if all of the following applies:

(i) The volunteer is supervised by the licensee or a facility employee with a criminal record clearance or exemption.

(ii) The volunteer is never left alone with clients.

(iii) The volunteer does not provide any client assistance with dressing, grooming, bathing, or personal hygiene other than washing of hands.

(5) (A) In addition to the exemptions specified in paragraph (2), the following persons in adult residential and social rehabilitation facilities, unless contraindicated by the client's individualized program plan (IPP) or needs and services plan, are exempt from the requirements applicable under paragraph (1): a spouse, significant other, relative, or close friend of a client, or an attendant or a facilitator for a client with a developmental disability if the attendant or facilitator is not employed, retained, or contracted by the licensee. This exemption applies only if the person is visiting the client or providing direct care and supervision to that client.

(B) Nothing in this subdivision shall prevent a licensee from

requiring a criminal record clearance of any individual exempt from the requirements of this section, provided that the individual has client contact.

(6) Any person similar to those described in this subdivision, as defined by the department in regulations.

(c) (1) Subsequent to initial licensure, any person specified in subdivision (b) and not exempted from fingerprinting shall, as a condition to employment, residence, or presence in a community care facility, be fingerprinted and sign a declaration under penalty of perjury regarding any prior criminal convictions. The licensee shall submit fingerprint images and related information to the Department of Justice and the Federal Bureau of Investigation, through the Department of Justice, for a state and federal level criminal offender record information search, or to comply with paragraph (1) of subdivision (h), prior to the person's employment, residence, or initial presence in the community care facility. These fingerprint images and related information shall be sent by electronic transmission in a manner approved by the State Department of Social Services and the Department of Justice for the purpose of obtaining a permanent set of fingerprints, and shall be submitted to the Department of Justice by the licensee. A licensee's failure to submit fingerprints to the Department of Justice or to comply with paragraph (1) of subdivision (h), as required in this section, shall result in the citation of a deficiency and the immediate assessment of civil penalties in the amount of one hundred dollars ($100) per violation per day for a maximum of five days, unless the violation is a second or subsequent violation within a 12-month period in which case the civil penalties shall be in the amount of one hundred dollars ($100) per violation for a maximum of 30 days, and shall be grounds for disciplining the licensee pursuant to Section 1550. The department may assess civil penalties for continued violations as permitted by Section 1548. The fingerprint images and related information shall then be submitted to the Department of Justice for processing. Upon request of the licensee, who shall enclose a self-addressed stamped postcard for this purpose, the Department of Justice shall verify receipt of the fingerprints.

(2) Within 14 calendar days of the receipt of the fingerprint images, the Department of Justice shall notify the State Department of Social Services of the criminal record information, as provided for in subdivision (a). If no criminal record information has been recorded, the Department of Justice shall provide the licensee and the State Department of Social Services with a statement of that fact within 14 calendar days of receipt of the fingerprint images. Documentation of the individual's clearance or exemption shall be maintained by the licensee and be available for inspection. If new fingerprint images are required for processing, the Department of Justice shall, within 14 calendar days from the date of receipt of the fingerprints, notify the licensee that the fingerprints were illegible, the Department of Justice shall notify the State Department of Social Services, as required by Section 1522.04, and shall also notify the licensee by mail, within 14 days of electronic transmission of the fingerprints to the Department of Justice, if the person has no criminal history recorded. A violation of the regulations adopted pursuant to Section 1522.04 shall result in the citation of a deficiency and an immediate assessment of civil penalties in the amount of one hundred dollars ($100) per violation

per day for a maximum of five days, unless the violation is a second or subsequent violation within a 12-month period in which case the civil penalties shall be in the amount of one hundred dollars ($100) per violation for a maximum of 30 days, and shall be grounds for disciplining the licensee pursuant to Section 1550. The department may assess civil penalties for continued violations as permitted by Section 1548.

(3) Except for persons specified in paragraph (2) of subdivision (b), the licensee shall endeavor to ascertain the previous employment history of persons required to be fingerprinted under this subdivision. If it is determined by the State Department of Social Services, on the basis of the fingerprint images and related information submitted to the Department of Justice, that the person has been convicted of, or is awaiting trial for, a sex offense against a minor, or has been convicted for an offense specified in Section 243.4, 273a, 273d, 273g, or 368 of the Penal Code, or a felony, the State Department of Social Services shall notify the licensee to act immediately to terminate the person's employment, remove the person from the community care facility, or bar the person from entering the community care facility. The State Department of Social Services may subsequently grant an exemption pursuant to subdivision (g). If the conviction or arrest was for another crime, except a minor traffic violation, the licensee shall, upon notification by the State Department of Social Services, act immediately to either (A) terminate the person's employment, remove the person from the community care facility, or bar the person from entering the community care facility; or (B) seek an exemption pursuant to subdivision (g). The State Department of Social Services shall determine if the person shall be allowed to remain in the facility until a decision on the exemption is rendered. A licensee's failure to comply with the department's prohibition of employment, contact with clients, or presence in the facility as required by this paragraph shall be grounds for disciplining the licensee pursuant to Section 1550.

(4) The department may issue an exemption on its own motion pursuant to subdivision (g) if the person's criminal history indicates that the person is of good character based on the age, seriousness, and frequency of the conviction or convictions. The department, in consultation with interested parties, shall develop regulations to establish the criteria to grant an exemption pursuant to this paragraph.

(5) Concurrently with notifying the licensee pursuant to paragraph (3), the department shall notify the affected individual of his or her right to seek an exemption pursuant to subdivision (g). The individual may seek an exemption only if the licensee terminates the person's employment or removes the person from the facility after receiving notice from the department pursuant to paragraph (3).

(d) (1) Before issuing a license, special permit, or certificate of approval to any person or persons to operate or manage a foster family home or certified family home as described in Section 1506, the State Department of Social Services or other approving authority shall secure from an appropriate law enforcement agency a criminal record to determine whether the applicant or any person specified in subdivision (b) has ever been convicted of a crime other than a minor traffic violation or arrested for any crime specified in subdivision (c) of Section 290 of the Penal Code, for violating Section 245 or 273.5, subdivision (b) of Section 273a or, prior to January 1, 1994,

paragraph (2) of Section 273a of the Penal Code, or for any crime for which the department cannot grant an exemption if the person was convicted and the person has not been exonerated.

(2) The criminal history information shall include the full criminal record, if any, of those persons.

(3) Neither the Department of Justice nor the State Department of Social Services may charge a fee for the fingerprinting of an applicant for a license, special permit, or certificate of approval described in this subdivision. The record, if any, shall be taken into consideration when evaluating a prospective applicant.

(4) The following shall apply to the criminal record information:

(A) If the applicant or other persons specified in subdivision (b) have convictions that would make the applicant's home unfit as a foster family home or a certified family home, the license, special permit, or certificate of approval shall be denied.

(B) If the State Department of Social Services finds that the applicant, or any person specified in subdivision (b) is awaiting trial for a crime other than a minor traffic violation, the State Department of Social Services or other approving authority may cease processing the application until the conclusion of the trial.

(C) For the purposes of this subdivision, a criminal record clearance provided under Section 8712 of the Family Code may be used by the department or other approving agency.

(D) An applicant for a foster family home license or for certification as a family home, and any other person specified in subdivision (b), shall submit a set of fingerprint images and related information to the Department of Justice and the Federal Bureau of Investigation, through the Department of Justice, for a state and federal level criminal offender record information search, in addition to the criminal records search required by subdivision (a). If an applicant meets all other conditions for licensure, except receipt of the Federal Bureau of Investigation's criminal history information for the applicant and all persons described in subdivision (b), the department may issue a license, or the foster family agency may issue a certificate of approval, if the applicant, and each person described in subdivision (b), has signed and submitted a statement that he or she has never been convicted of a crime in the United States, other than a traffic infraction, as defined in paragraph (1) of subdivision (a) of Section 42001 of the Vehicle Code. If, after licensure or certification, the department determines that the licensee, certified foster parent, or any person specified in subdivision (b) has a criminal record, the license may be revoked pursuant to Section 1550 and the certificate of approval revoked pursuant to subdivision (b) of Section 1534. The department may also suspend the license pending an administrative hearing pursuant to Section 1550.5.

(5) Any person specified in this subdivision shall, as a part of the application, be fingerprinted and sign a declaration under penalty of perjury regarding any prior criminal convictions or arrests for any crime against a child, spousal or cohabitant abuse or, any crime for which the department cannot grant an exemption if the person was convicted and shall submit these fingerprints to the licensing agency or other approving authority.

(6) (A) The foster family agency shall obtain fingerprint images and related information from certified home applicants and from persons specified in subdivision (b) and shall submit them directly to the Department of Justice by electronic transmission in a manner

approved by the State Department of Social Services and the Department of Justice. A foster family home licensee or foster family agency shall submit these fingerprint images and related information to the Department of Justice and the Federal Bureau of Investigation, through the Department of Justice, for a state and federal level criminal offender record information search, or to comply with paragraph (1) of subdivision (b) prior to the person's employment, residence, or initial presence in the foster family home or certified family home. A foster family agency's failure to submit fingerprint images and related information to the Department of Justice, or comply with paragraph (1) of subdivision (h), as required in this section, shall result in a citation of a deficiency, and the immediate civil penalties of one hundred dollars ($100) per violation per day for a maximum of five days, unless the violation is a second or subsequent violation within a 12-month period in which case the civil penalties shall be in the amount of one hundred dollars ($100) per violation for a maximum of 30 days, and shall be grounds for disciplining the licensee pursuant to Section 1550. A violation of the regulation adopted pursuant to Section 1522.04 shall result in the citation of a deficiency and an immediate assessment of civil penalties in the amount of one hundred dollars ($100) per violation per day for a maximum of five days, unless the violation is a second or subsequent violation within a 12-month period in which case the civil penalties shall be in the amount of one hundred dollars ($100) per violation for a maximum of 30 days, and shall be grounds for disciplining the foster family agency pursuant to Section 1550. A licensee's failure to submit fingerprint images and related information to the Department of Justice, or comply with paragraph (1) of subdivision (h), as required in this section, may result in the citation of a deficiency and immediate civil penalties of one hundred dollars ($100) per violation. A licensee's violation of regulations adopted pursuant to Section 1522.04 may result in the citation of a deficiency and an immediate assessment of civil penalties in the amount of one hundred dollars ($100) per violation. The State Department of Social Services may assess penalties for continued violations, as permitted by Section 1548. The fingerprint images shall then be submitted to the Department of Justice for processing.

(B) Upon request of the licensee, who shall enclose a self-addressed envelope for this purpose, the Department of Justice shall verify receipt of the fingerprints. Within five working days of the receipt of the criminal record or information regarding criminal convictions from the Department of Justice, the department shall notify the applicant of any criminal arrests or convictions. If no arrests or convictions are recorded, the Department of Justice shall provide the foster family home licensee or the foster family agency with a statement of that fact concurrent with providing the information to the State Department of Social Services.

(7) If the State Department of Social Services finds that the applicant, or any other person specified in subdivision (b), has been convicted of a crime other than a minor traffic violation, the application shall be denied, unless the director grants an exemption pursuant to subdivision (g).

(8) If the State Department of Social Services finds after licensure or the granting of the certificate of approval that the licensee, certified foster parent, or any other person specified in paragraph (2) of subdivision (b), has been convicted of a crime other

than a minor traffic violation, the license or certificate of approval may be revoked by the department or the foster family agency, whichever is applicable, unless the director grants an exemption pursuant to subdivision (g). A licensee's failure to comply with the department's prohibition of employment, contact with clients, or presence in the facility as required by paragraph (3) of subdivision (c) shall be grounds for disciplining the licensee pursuant to Section 1550.

(e) The State Department of Social Services may not use a record of arrest to deny, revoke, or terminate any application, license, employment, or residence unless the department investigates the incident and secures evidence, whether or not related to the incident of arrest, that is admissible in an administrative hearing to establish conduct by the person that may pose a risk to the health and safety of any person who is or may become a client. The State Department of Social Services is authorized to obtain any arrest or conviction records or reports from any law enforcement agency as necessary to the performance of its duties to inspect, license, and investigate community care facilities and individuals associated with a community care facility.

(f) (1) For purposes of this section or any other provision of this chapter, a conviction means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that the State Department of Social Services is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, when the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, notwithstanding a subsequent order pursuant to Sections 1203.4 and 1203.4a of the Penal Code permitting the person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment. For purposes of this section or any other provision of this chapter, the record of a conviction, or a copy thereof certified by the clerk of the court or by a judge of the court in which the conviction occurred, shall be conclusive evidence of the conviction. For purposes of this section or any other provision of this chapter, the arrest disposition report certified by the Department of Justice, or documents admissible in a criminal action pursuant to Section 969b of the Penal Code, shall be prima facie evidence of the conviction, notwithstanding any other provision of law prohibiting the admission of these documents in a civil or administrative action.

(2) For purposes of this section or any other provision of this chapter, the department shall consider criminal convictions from another state or federal court as if the criminal offense was committed in this state.

(g) (1) After review of the record, the director may grant an exemption from disqualification for a license or special permit as specified in paragraphs (1) and (4) of subdivision (a), or for a license, special permit, or certificate of approval as specified in paragraphs (4) and (5) of subdivision (d), or for employment, residence, or presence in a community care facility as specified in paragraphs (3), (4), and (5) of subdivision (c), if the director has substantial and convincing evidence to support a reasonable belief that the applicant and the person convicted of the crime, if other than the applicant, are of good character as to justify issuance of the license or special permit or granting an exemption for purposes

of subdivision (c). Except as otherwise provided in this subdivision, an exemption may not be granted pursuant to this subdivision if the conviction was for any of the following offenses:

(A) (i) An offense specified in Section 220, 243.4, or 264.1, subdivision (a) of Section 273a or, prior to January 1, 1994, paragraph (1) of Section 273a, Section 273d, 288, or 289, subdivision (c) of Section 290, or Section 368 of the Penal Code, or was a conviction of another crime against an individual specified in subdivision (c) of Section 667.5 of the Penal Code.

(ii) Notwithstanding clause (i), the director may grant an exemption regarding the conviction for an offense described in paragraph (1), (2), (7), or (8) of subdivision (c) of Section 667.5 of the Penal Code, if the employee or prospective employee has been rehabilitated as provided in Section 4852.03 of the Penal Code, has maintained the conduct required in Section 4852.05 of the Penal Code for at least 10 years, and has the recommendation of the district attorney representing the employee's county of residence, or if the employee or prospective employee has received a certificate of rehabilitation pursuant to Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code.

(B) A felony offense specified in Section 729 of the Business and Professions Code or Section 206 or 215, subdivision (a) of Section 347, subdivision (b) of Section 417, or subdivision (a) of Section 451 of the Penal Code.

(2) The department may not prohibit a person from being employed or having contact with clients in a facility on the basis of a denied criminal record exemption request or arrest information unless the department complies with the requirements of Section 1558.

(h) (1) For purposes of compliance with this section, the department may permit an individual to transfer a current criminal record clearance, as defined in subdivision (a), from one facility to another, as long as the criminal record clearance has been processed through a state licensing district office, and is being transferred to another facility licensed by a state licensing district office. The request shall be in writing to the State Department of Social Services, and shall include a copy of the person's driver's license or valid identification card issued by the Department of Motor Vehicles, or a valid photo identification issued by another state or the United States government if the person is not a California resident. Upon request of the licensee, who shall enclose a self-addressed envelope for this purpose, the State Department of Social Services shall verify whether the individual has a clearance that can be transferred.

(2) The State Department of Social Services shall hold criminal record clearances in its active files for a minimum of two years after an employee is no longer employed at a licensed facility in order for the criminal record clearance to be transferred.

(3) The following shall apply to a criminal record clearance or exemption from the department or a county office with department-delegated licensing authority:

(A) A county office with department-delegated licensing authority may accept a clearance or exemption from the department.

(B) The department may accept a clearance or exemption from any county office with department-delegated licensing authority.

(C) A county office with department-delegated licensing authority may accept a clearance or exemption from any other county office with department-delegated licensing authority.

(4) With respect to notifications issued by the Department of Justice pursuant to Section 11105.2 of the Penal Code concerning an individual whose criminal record clearance was originally processed by the department or a county office with department-delegated licensing authority, all of the following shall apply:

(A) The Department of Justice shall process a request from the department or a county office with department-delegated licensing authority to receive the notice only if all of the following conditions are met:

(i) The request shall be submitted to the Department of Justice by the agency to be substituted to receive the notification.

(ii) The request shall be for the same applicant type as the type for which the original clearance was obtained.

(iii) The request shall contain all prescribed data elements and format protocols pursuant to a written agreement between the department and the Department of Justice.

(B) (i) On or before January 7, 2005, the department shall notify the Department of Justice of all county offices that have department-delegated licensing authority.

(ii) The department shall notify the Department of Justice within 15 calendar days of the date on which a new county office receives department-delegated licensing authority or a county's delegated licensing authority is rescinded.

(C) The Department of Justice shall charge the department, a county office with department-delegated licensing authority, or county child welfare agency with criminal record clearance and exemption authority, a fee for each time a request to substitute the recipient agency is received for purposes of this paragraph. This fee shall not exceed the cost of providing the service.

(5) (A) A county child welfare agency with authority to secure clearances pursuant to Section 16504.5 of the Welfare and Institutions Code and to grant exemptions pursuant to Section 361.4 of the Welfare and Institutions Code may accept a clearance or exemption from another county with criminal record and exemption authority pursuant to these sections.

(B) With respect to notifications issued by the Department of Justice pursuant to Section 11105.2 of the Penal Code concerning an individual whose criminal record clearance was originally processed by a county child welfare agency with criminal record clearance and exemption authority, the Department of Justice shall process a request from a county child welfare agency with criminal record and exemption authority to receive the notice only if all of the following conditions are met:

(i) The request shall be submitted to the Department of Justice by the agency to be substituted to receive the notification.

(ii) The request shall be for the same applicant type as the type for which the original clearance was obtained.

(iii) The request shall contain all prescribed data elements and format protocols pursuant to a written agreement between the State Department of Social Services and the Department of Justice.

(i) The full criminal record obtained for purposes of this section may be used by the department or by a licensed adoption agency as a clearance required for adoption purposes.

(j) If a licensee or facility is required by law to deny employment or to terminate employment of any employee based on written notification from the state department that the employee has a prior criminal conviction or is determined unsuitable for

employment under Section 1558, the licensee or facility shall not incur civil liability or unemployment insurance liability as a result of that denial or termination.

(k) The State Department of Social Services may charge a fee for the costs of processing electronic fingerprint images and related information.

(l) Amendments to this section made in the 1999 portion of the 1999-2000 Regular Session shall be implemented commencing 60 days after the effective date of the act amending this section in the 1999 portion of the 1999-2000 Regular Session, except that those provisions for the submission of fingerprints for searching the records of the Federal Bureau of Investigation shall be implemented 90 days after the effective date of that act.

SEC. 2. Section 1568.09 of the Health and Safety Code is amended to read:

1568.09. It is the intent of the Legislature in enacting this section to require the electronic fingerprint images of those individuals whose contact with residents of residential care facilities for persons with a chronic, life-threatening illness may pose a risk to the residents' health and safety.

It is the intent of the Legislature, in enacting this section, to require the electronic fingerprint images of those individuals whose contact with community care clients may pose a risk to the clients' health and safety. An individual shall be required to obtain either a criminal record clearance or a criminal record exemption from the State Department of Social Services before his or her initial presence in a residential care facility for persons with chronic, life-threatening illnesses.

(a) (1) Before issuing a license to any person or persons to operate or manage a residential care facility, the department shall secure from an appropriate law enforcement agency a criminal record to determine whether the applicant or any other person specified in subdivision (b) has ever been convicted of a crime other than a minor traffic violation or arrested for any crime specified in subdivision (c) of Section 290 of the Penal Code, for violating Section 245 or 273.5, subdivision (b) of Section 273a or, prior to January 1, 1994, paragraph (2) of Section 273a of the Penal Code, or for any crime for which the department cannot grant an exemption if the person was convicted and the person has not been exonerated.

(2) The criminal history information shall include the full criminal record if any, of those persons, and subsequent arrest information pursuant to Section 11105.2 of the Penal Code.

(3) The following shall apply to the criminal record information:

(A) If the State Department of Social Services finds that the applicant or any other person specified in subdivision (b) has been convicted of a crime, other than a minor traffic violation, the application shall be denied, unless the director grants an exemption pursuant to subdivision (f).

(B) If the State Department of Social Services finds that the applicant, or any other person specified in subdivision (b) is awaiting trial for a crime other than a minor traffic violation, the State Department of Social Services may cease processing the application until the conclusion of the trial.

(C) If no criminal record information has been recorded, the Department of Justice shall provide the applicant and the State Department of Social Services with a statement of that fact.

(D) If the State Department of Social Services finds after licensure that the licensee, or any other person specified in paragraph (2) of subdivision (b), has been convicted of a crime other than a minor traffic violation, the license may be revoked, unless the director grants an exemption pursuant to subdivision (f).

(E) An applicant and any other person specified in subdivision (b) shall submit fingerprint images and related information to the Department of Justice and the Federal Bureau of Investigation, through the Department of Justice, for a state and federal level criminal offender record information search, in addition to the search required by this subdivision. If an applicant meets all other conditions for licensure, except receipt of the Federal Bureau of Investigation's criminal history information for the applicant and persons listed in subdivision (b), the department may issue a license if the applicant and each person described by subdivision (b) has signed and submitted a statement that he or she has never been convicted of a crime in the United States, other than a traffic infraction as defined in paragraph (1) of subdivision (a) of Section 42001 of the Vehicle Code. If, after licensure, the department determines that the licensee or person specified in subdivision (b) has a criminal record, the license may be revoked pursuant to subdivision (a) of Section 1568.082. The department may also suspend the license pending an administrative hearing pursuant to subdivision (b) of Section 1568.082.

(b) In addition to the applicant, the provisions of this section shall be applicable to criminal convictions of the following persons:

(1) Adults responsible for administration or direct supervision of staff of the facility.

(2) Any person, other than a resident, residing in the facility.

(3) Any person who provides resident assistance in dressing, grooming, bathing, or personal hygiene. Any nurse assistant or home health aide meeting the requirements of Section 1338.5 or 1736.6, respectively, who is not employed, retained, or contracted by the licensee, and who has been certified or recertified on or after July 1, 1998, shall be deemed to meet the criminal record clearance requirements of this section. A certified nurse assistant and certified home health aide who will be providing client assistance and who falls under this exemption shall provide one copy of his or her current certification, prior to providing care, to the residential care facility for persons with chronic, life-threatening illness. The facility shall maintain the copy of the certification on file as long as care is being provided by the certified nurse assistant or certified home health aide at the facility. Nothing in this paragraph restricts the right of the department to exclude a certified nurse assistant or certified home health aide from a licensed residential care facility for persons with chronic, life-threatening illness pursuant to Section 1568.092.

(4) (A) Any staff person, volunteer, or employee who has contact with the residents.

(B) A volunteer shall be exempt from the requirements of this subdivision if he or she is a relative, significant other, or close friend of a client receiving care in the facility and the volunteer does not provide direct care and supervision of residents. A volunteer who provides direct care and supervision shall be exempt if the volunteer is a resident's spouse, significant other, close friend, or family member and provides direct care and supervision to

that resident only at the request of the resident. The department may define in regulations persons similar to those described in this subparagraph who may be exempt from the requirements of this subdivision.

(5) If the applicant is a firm, partnership, association, or corporation, the chief executive officer or other person serving in that capacity.

(6) Additional officers of the governing body of the applicant, or other persons with a financial interest in the applicant, as determined necessary by the department by regulation. The criteria used in the development of these regulations shall be based on the person's capability to exercise substantial influence over the operation of the facility.

(c) (1) (A) Subsequent to initial licensure, any person specified in subdivision (b) and not exempted from fingerprinting shall, as a condition to employment, residence, or presence in a residential care facility, be fingerprinted and sign a declaration under penalty of perjury regarding any prior criminal convictions. The licensee shall submit fingerprint images and related information to the Department of Justice and the Federal Bureau of Investigation, through the Department of Justice, for a state and federal level criminal offender record information search, or to comply with paragraph (1) of subdivision (g), prior to the person's employment, residence, or initial presence in the residential care facility.

(B) These fingerprint images and related information shall be electronically submitted to the Department of Justice in a manner approved by the State Department of Social Services and the Department of Justice, for the purpose of obtaining a permanent set of fingerprints. A licensee's failure to submit fingerprint images and related information to the Department of Justice, or to comply with paragraph (1) of subdivision (g), as required in this section, shall result in the citation of a deficiency and an immediate assessment of civil penalties in the amount of one hundred dollars ($100) per violation per day for a maximum of five days, unless the violation is a second or subsequent violation within a 12-month period in which case the civil penalties shall be in the amount of one hundred dollars ($100) per violation for a maximum of 30 days, and shall be grounds for disciplining the licensee pursuant to Section 1568.082. The State Department of Social Services may assess civil penalties for continued violations as allowed in Section 1568.0822. The fingerprint images and related information shall then be submitted to the Department of Justice for processing. The licensee shall maintain and make available for inspection documentation of the individual's clearance or exemption.

(2) A violation of the regulations adopted pursuant to Section 1522.04 shall result in the citation of a deficiency and an immediate assessment of civil penalties in the amount of one hundred dollars ($100) per violation per day for a maximum of five days, unless the violation is a second or subsequent violation within a 12-month period in which case the civil penalties shall be in the amount of one hundred dollars ($100) per violation for a maximum of 30 days, and shall be grounds for disciplining the licensee pursuant to Section 1568.082. The department may assess civil penalties for continued violations as permitted by Section 1568.0822.

(3) Within 14 calendar days of the receipt of the fingerprint images, the Department of Justice shall notify the State Department of Social Services of the criminal record information, as provided

for in this subdivision. If no criminal record information has been recorded, the Department of Justice shall provide the licensee and the State Department of Social Services with a statement of that fact within 14 calendar days of receipt of the fingerprint images. If new fingerprint images are required for processing, the Department of Justice shall, within 14 calendar days from the date of receipt of the fingerprint images, notify the licensee that the fingerprint images were illegible. The Department of Justice shall notify the department, as required by Section 1522.04, and shall notify the licensee by mail within 14 days of electronic transmission of the fingerprint images to the Department of Justice, if the person has no criminal history record.

(4) Except for persons specified in paragraph (2) of subdivision (b), the licensee shall endeavor to ascertain the previous employment history of persons required to be fingerprinted under this subdivision. If it is determined by the State Department of Social Services, on the basis of the fingerprint images submitted to the Department of Justice, that the person has been convicted of a sex offense against a minor, an offense specified in Section 243.4, 273a, 273d, 273g, or 368 of the Penal Code, or a felony, the department shall notify the licensee to act immediately to terminate the person's employment, remove the person from the residential care facility, or bar the person from entering the residential care facility. The department may subsequently grant an exemption pursuant to subdivision (f). If the conviction was for another crime, except a minor traffic violation, the licensee shall, upon notification by the department, act immediately to either (1) terminate the person's employment, remove the person from the residential care facility, or bar the person from entering the residential care facility; or (2) seek an exemption pursuant to subdivision (f). The department shall determine if the person shall be allowed to remain in the facility until a decision on the exemption is rendered. A licensee's failure to comply with the department's prohibition of employment, contact with clients, or presence in the facility as required by this paragraph shall result in a citation of deficiency and an immediate assessment of civil penalties by the department against the licensee, in the amount of one hundred dollars ($100) per violation per day for a maximum of five days, unless the violation is a second or subsequent violation within a 12-month period in which case the civil penalties shall be in the amount of one hundred dollars ($100) per violation for a maximum of 30 days, and shall be grounds for disciplining the licensee pursuant to Section 1568.082.

(5) The department may issue an exemption on its own motion pursuant to subdivision (f) if the person's criminal history indicates that the person is of good character based on the age, seriousness, and frequency of the conviction or convictions. The department, in consultation with interested parties, shall develop regulations to establish the criteria to grant an exemption pursuant to this paragraph.

(6) Concurrently with notifying the licensee pursuant to paragraph (4), the department shall notify the affected individual of his or her right to seek an exemption pursuant to subdivision (f). The individual may seek an exemption only if the licensee terminates the person's employment or removes the person from the facility after receiving notice from the department pursuant to paragraph (4).

(d) (1) For purposes of this section or any other provision of this chapter, a conviction means a plea or verdict of guilty or a

conviction following a plea of nolo contendere. Any action that the department is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, when the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of the sentence, notwithstanding a subsequent order pursuant to Sections 1203.4 and 1203.4a of the Penal Code permitting that person to withdraw his or her plea of guilty and to enter a plea of not guilty, setting aside the verdict of guilty, or dismissing the accusation, information, or indictment. For purposes of this chapter, the record of a conviction, or a copy thereof certified by the clerk of the court or by a judge of the court in which the conviction occurred, shall be conclusive evidence of the conviction. For purposes of this section or any other provision of this chapter, the arrest disposition report certified by the Department of Justice, or documents admissible in a criminal action pursuant to Section 969b of the Penal Code, shall be prima facie evidence of the conviction, notwithstanding any other provision of law prohibiting the admission of these documents in a civil or administrative action.

(2) For purposes of this section or any other provision of this chapter, the department shall consider criminal convictions from another state or federal court as if the criminal offense was committed in this state.

(e) The State Department of Social Services may not use a record of arrest to deny, revoke, or terminate any application, license, employment, or residence unless the department investigates the incident and secures evidence, whether or not related to the incident of arrest, that is admissible in an administrative hearing to establish conduct by the person that may pose a risk to the health and safety of any person who is or may become a client. The State Department of Social Services is authorized to obtain any arrest or conviction records or reports from any law enforcement agency as necessary to the performance of its duties to inspect, license, and investigate community care facilities and individuals associated with a community care facility.

(f) (1) After review of the record, the director may grant an exemption from disqualification for a license as specified in paragraphs (1) and (4) of subdivision (a), or for employment, residence, or presence in a residential care facility as specified in paragraphs (4), (5), and (6) of subdivision (c) if the director has substantial and convincing evidence to support a reasonable belief that the applicant and the person convicted of the crime, if other than the applicant, are of such good character as to justify issuance of the license or special permit or granting an exemption for purposes of subdivision (c). However, an exemption may not be granted pursuant to this subdivision if the conviction was for any of the following offenses:

(A) An offense specified in Section 220, 243.4, or 264.1, subdivision (a) of Section 273a or, prior to January 1, 1994, paragraph (1) of Section 273a, Section 273d, 288, or 289, subdivision (c) of Section 290, or Section 368 of the Penal Code, or was a conviction of another crime against an individual specified in subdivision (c) of Section 667.5 of the Penal Code.

(B) A felony offense specified in Section 729 of the Business and Professions Code or Section 206 or 215, subdivision (a) of Section 347, subdivision (b) of Section 417, or subdivision (a) of Section 451 of the Penal Code.

(2) The department may not prohibit a person from being employed or having contact with clients in a facility on the basis of a denied criminal record exemption request or arrest information unless the department complies with the requirements of Section 1568.092.

(g) (1) For purposes of compliance with this section, the department may permit an individual to transfer a current criminal record clearance, as defined in subdivision (a), from one facility to another, as long as the criminal record clearance has been processed through a state licensing district office, and is being transferred to another facility licensed by a state licensing district office. The request shall be in writing to the department, and shall include a copy of the person's driver's license or valid identification card issued by the Department of Motor Vehicles, or a valid photo identification issued by another state or the United States government if the person is not a California resident. Upon request of the licensee, who shall enclose a self-addressed stamped envelope for this purpose, the department shall verify whether the individual has a clearance that can be transferred.

(2) The State Department of Social Services shall hold criminal record clearances in its active files for a minimum of two years after an employee is no longer employed at a licensed facility in order for the criminal record clearance to be transferred.

(h) If a licensee or facility is required by law to deny employment or to terminate employment of any employee based on written notification from the state department that the employee has a prior criminal conviction or is determined unsuitable for employment under Section 1568.092, the licensee or facility shall not incur civil liability or unemployment insurance liability as a result of that denial or termination.

(i) (1) The Department of Justice shall charge a fee sufficient to cover its cost in providing services to comply with the 14-day requirement contained in subdivision (c) for provision to the department of criminal record information.

(2) Paragraph (1) shall cease to be implemented when the department adopts emergency regulations pursuant to Section 1522.04, and shall become inoperative when permanent regulations are adopted under that section.

(j) Notwithstanding any other provision of law, the department may provide an individual with a copy of his or her state or federal level criminal offender record information search response as provided to that department by the Department of Justice if the department has denied a criminal background clearance based on this information and the individual makes a written request to the department for a copy specifying an address to which it is to be sent. The state or federal level criminal offender record information search response shall not be modified or altered from its form or content as provided by the Department of Justice and shall be provided to the address specified by the individual in his or her written request. The department shall retain a copy of the individual's written request and the response and date provided.

SEC. 3. Section 1569.17 of the Health and Safety Code is amended to read:

1569.17. The Legislature recognizes the need to generate timely and accurate positive fingerprint identification of applicants as a condition of issuing licenses, permits, or certificates of approval for persons to operate or provide direct care services in a residential care facility for the elderly. It is the intent of the

Legislature in enacting this section to require the fingerprints of those individuals whose contact with clients of residential care facilities for the elderly may pose a risk to the clients' health and safety. An individual shall be required to obtain either a criminal record clearance or a criminal record exemption from the State Department of Social Services before his or her initial presence in a residential care facility for the elderly.

(a) (1) Before issuing a license to any person or persons to operate or manage a residential care facility for the elderly, the department shall secure from an appropriate law enforcement agency a criminal record to determine whether the applicant or any other person specified in subdivision (b) has ever been convicted of a crime other than a minor traffic violation or arrested for any crime specified in subdivision (c) of Section 290 of the Penal Code, for violating Section 245 or 273.5, subdivision (b) of Section 273a or, prior to January 1, 1994, paragraph (2) of Section 273a of the Penal Code, or for any crime for which the department cannot grant an exemption if the person was convicted and the person has not been exonerated.

(2) The criminal history information shall include the full criminal record, if any, of those persons, and subsequent arrest information pursuant to Section 11105.2 of the Penal Code.

(3) The following shall apply to the criminal record information:

(A) If the State Department of Social Services finds that the applicant or any other person specified in subdivision (b) has been convicted of a crime, other than a minor traffic violation, the application shall be denied, unless the director grants an exemption pursuant to subdivision (f).

(B) If the State Department of Social Services finds that the applicant, or any other person specified in subdivision (b) is awaiting trial for a crime other than a minor traffic violation, the State Department of Social Services may cease processing the application until the conclusion of the trial.

(C) If no criminal record information has been recorded, the Department of Justice shall provide the applicant and the State Department of Social Services with a statement of that fact.

(D) If the State Department of Social Services finds after licensure that the licensee, or any other person specified in paragraph (2) of subdivision (b), has been convicted of a crime other than a minor traffic violation, the license may be revoked, unless the director grants an exemption pursuant to subdivision (f).

(E) An applicant and any other person specified in subdivision (b) shall submit fingerprint images and related information to the Department of Justice and the Federal Bureau of Investigation, through the Department of Justice, for a state and federal level criminal offender record information search, in addition to the search required by subdivision (a). If an applicant meets all other conditions for licensure, except receipt of the Federal Bureau of Investigation's criminal history information for the applicant and persons listed in subdivision (b), the department may issue a license if the applicant and each person described by subdivision (b) has signed and submitted a statement that he or she has never been convicted of a crime in the United States, other than a traffic infraction as defined in paragraph (1) of subdivision (a) of Section 42001 of the Vehicle Code. If, after licensure, the department determines that the licensee or person specified in subdivision (b) has a criminal record, the license may be revoked pursuant to Section

1569.50. The department may also suspend the license pending an administrative hearing pursuant to Sections 1569.50 and 1569.51.

(b) In addition to the applicant, the provisions of this section shall apply to criminal convictions of the following persons:

(1) (A) Adults responsible for administration or direct supervision of staff.

(B) Any person, other than a client, residing in the facility. Residents of unlicensed independent senior housing facilities that are located in contiguous buildings on the same property as a residential care facility for the elderly shall be exempt from these requirements.

(C) Any person who provides client assistance in dressing, grooming, bathing, or personal hygiene. Any nurse assistant or home health aide meeting the requirements of Section 1338.5 or 1736.6, respectively, who is not employed, retained, or contracted by the licensee, and who has been certified or recertified on or after July 1, 1998, shall be deemed to meet the criminal record clearance requirements of this section. A certified nurse assistant and certified home health aide who will be providing client assistance and who falls under this exemption shall provide one copy of his or her current certification, prior to providing care, to the residential care facility for the elderly. The facility shall maintain the copy of the certification on file as long as the care is being provided by the certified nurse assistant or certified home health aide at the facility. Nothing in this paragraph restricts the right of the department to exclude a certified nurse assistant or certified home health aide from a licensed residential care facility for the elderly pursuant to Section 1569.58.

(D) Any staff person, volunteer, or employee who has contact with the clients.

(E) If the applicant is a firm, partnership, association, or corporation, the chief executive officer or other person serving in a similar capacity.

(F) Additional officers of the governing body of the applicant or other persons with a financial interest in the applicant, as determined necessary by the department by regulation. The criteria used in the development of these regulations shall be based on the person's capability to exercise substantial influence over the operation of the facility.

(2) The following persons are exempt from requirements applicable under paragraph (1):

(A) A spouse, relative, significant other, or close friend of a client shall be exempt if this person is visiting the client or provides direct care and supervision to that client only.

(B) A volunteer to whom all of the following apply:

(i) The volunteer is at the facility during normal waking hours.

(ii) The volunteer is directly supervised by the licensee or a facility employee with a criminal record clearance or exemption.

(iii) The volunteer spends no more than 16 hours per week at the facility.

(iv) The volunteer does not provide clients with assistance in dressing, grooming, bathing, or personal hygiene.

(v) The volunteer is not left alone with clients in care.

(C) A third-party contractor retained by the facility if the contractor is not left alone with clients in care.

(D) A third-party contractor or other business professional retained by a client and at the facility at the request or by

permission of that client. These individuals may not be left alone with other clients.

(E) Licensed or certified medical professionals are exempt from fingerprint and criminal background check requirements imposed by community care licensing. This exemption does not apply to a person who is a community care facility licensee or an employee of the facility.

(F) Employees of licensed home health agencies and members of licensed hospice interdisciplinary teams who have contact with a resident of a residential care facility at the request of the resident or resident's legal decisionmaker are exempt from fingerprint and criminal background check requirements imposed by community care licensing. This exemption does not apply to a person who is a community care facility licensee or an employee of the facility.

(G) Clergy and other spiritual caregivers who are performing services in common areas of the residential care facility, or who are advising an individual resident at the request of, or with permission of, the resident, are exempt from fingerprint and criminal background check requirements imposed by community care licensing. This exemption does not apply to a person who is a community care facility licensee or an employee of the facility.

(H) Any person similar to those described in this subdivision, as defined by the department in regulations.

(I) Nothing in this paragraph shall prevent a licensee from requiring a criminal record clearance of any individual exempt from the requirements of this section, provided that the individual has client contact.

(c) (1) (A) Subsequent to initial licensure, any person required to be fingerprinted pursuant to subdivision (b) shall, as a condition to employment, residence, or presence in a residential facility for the elderly, be fingerprinted and sign a declaration under penalty of perjury regarding any prior criminal convictions. The licensee shall submit these fingerprint images and related information to the Department of Justice and the Federal Bureau of Investigation, through the Department of Justice, for a state and federal level criminal offender record information search, or to comply with paragraph (1) of subdivision (g) prior to the person's employment, residence, or initial presence in the residential care facility for the elderly.

(B) These fingerprint images and related information shall be electronically transmitted in a manner approved by the State Department of Social Services and the Department of Justice. A licensee's failure to submit fingerprint images and related information to the Department of Justice, or to comply with paragraph (1) of subdivision (g), as required in this section, shall result in the citation of a deficiency and an immediate assessment of civil penalties in the amount of one hundred dollars ($100) per violation per day for a maximum of five days, unless the violation is a second or subsequent violation within a 12-month period in which case the civil penalties shall be in the amount of one hundred dollars ($100) per violation for a maximum of 30 days, and shall be grounds for disciplining the licensee pursuant to Section 1569.50. The State Department of Social Services may assess civil penalties for continued violations as permitted by Section 1569.49. The licensee shall then submit these fingerprint images to the State Department of

Social Services for processing. Documentation of the individual's clearance or exemption shall be maintained by the licensee and be available for inspection. The Department of Justice shall notify the department, as required by Section 1522.04, and notify the licensee by mail within 14 days of electronic transmission of the fingerprints to the Department of Justice, if the person has no criminal record. A violation of the regulations adopted pursuant to Section 1522.04 shall result in the citation of a deficiency and an immediate assessment of civil penalties in the amount of one hundred dollars ($100) per violation per day for a maximum of five days, unless the violation is a second or subsequent violation within a 12-month period in which case the civil penalties shall be in the amount of one hundred dollars ($100) per violation for a maximum of 30 days, and shall be grounds for disciplining the licensee pursuant to Section 1569.50. The department may assess civil penalties for continued violations as permitted by Section 1569.49.

(2) Within 14 calendar days of the receipt of the fingerprint images, the Department of Justice shall notify the State Department of Social Services of the criminal record information, as provided for in this subdivision. If no criminal record information has been recorded, the Department of Justice shall provide the licensee and the State Department of Social Services with a statement of that fact within 14 calendar days of receipt of the fingerprint images. If new fingerprint images are required for processing, the Department of Justice shall, within 14 calendar days from the date of receipt of the fingerprint images, notify the licensee that the fingerprint images were illegible.

(3) Except for persons specified in paragraph (2) of subdivision (b), the licensee shall endeavor to ascertain the previous employment history of persons required to be fingerprinted under this subdivision. If the State Department of Social Services determines, on the basis of the fingerprint images submitted to the Department of Justice, that the person has been convicted of a sex offense against a minor, an offense specified in Section 243.4, 273a, 273d, 273g, or 368 of the Penal Code, or a felony, the State Department of Social Services shall notify the licensee in writing within 15 calendar days of the receipt of the notification from the Department of Justice to act immediately to terminate the person's employment, remove the person from the residential care facility for the elderly, or bar the person from entering the residential care facility for the elderly. The State Department of Social Services may subsequently grant an exemption pursuant to subdivision (f). If the conviction was for another crime, except a minor traffic violation, the licensee shall, upon notification by the State Department of Social Services, act immediately to either (1) terminate the person's employment, remove the person from the residential care facility for the elderly, or bar the person from entering the residential care facility for the elderly or (2) seek an exemption pursuant to subdivision (f). The department shall determine if the person shall be allowed to remain in the facility until a decision on the exemption is rendered by the department. A licensee's failure to comply with the department's prohibition of employment, contact with clients, or presence in the facility as required by this paragraph shall result in a citation of deficiency and an immediate assessment of civil penalties by the department against the licensee, in the amount of one hundred dollars ($100) per violation per day for a maximum of five days, unless the violation is a second or subsequent violation within a 12-month

period in which case the civil penalties shall be in the amount of one hundred dollars ($100) per violation for a maximum of 30 days, and shall be grounds for disciplining the licensee pursuant to Section 1569.50.

(4) The department may issue an exemption on its own motion pursuant to subdivision (f) if the person's criminal history indicates that the person is of good character based on the age, seriousness, and frequency of the conviction or convictions. The department, in consultation with interested parties, shall develop regulations to establish the criteria to grant an exemption pursuant to this paragraph.

(5) Concurrently with notifying the licensee pursuant to paragraph (4), the department shall notify the affected individual of his or her right to seek an exemption pursuant to subdivision (f). The individual may seek an exemption only if the licensee terminates the person's employment or removes the person from the facility after receiving notice from the department pursuant to paragraph (4).

(d) (1) For purposes of this section or any other provision of this chapter, a conviction means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that the department is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, when the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of the sentence, notwithstanding a subsequent order pursuant to the provisions of Sections 1203.4 and 1203.4a of the Penal Code permitting a person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment. For purposes of this section or any other provision of this chapter, the record of a conviction, or a copy thereof certified by the clerk of the court or by a judge of the court in which the conviction occurred, shall be conclusive evidence of the conviction. For purposes of this section or any other provision of this chapter, the arrest disposition report certified by the Department of Justice or documents admissible in a criminal action pursuant to Section 969b of the Penal Code shall be prima facie evidence of the conviction, notwithstanding any other provision of law prohibiting the admission of these documents in a civil or administrative action.

(2) For purposes of this section or any other provision of this chapter, the department shall consider criminal convictions from another state or federal court as if the criminal offense was committed in this state.

(e) The State Department of Social Services may not use a record of arrest to deny, revoke, or terminate any application, license, employment, or residence unless the department investigates the incident and secures evidence, whether or not related to the incident of arrest, that is admissible in an administrative hearing to establish conduct by the person that may pose a risk to the health and safety of any person who is or may become a client. The State Department of Social Services is authorized to obtain any arrest or conviction records or reports from any law enforcement agency as necessary to the performance of its duties to inspect, license, and investigate community care facilities and individuals associated with a community care facility.

(f) (1) After review of the record, the director may grant an exemption from disqualification for a license as specified in

paragraphs (1) and (4) of subdivision (a), or for employment, residence, or presence in a residential care facility for the elderly as specified in paragraphs (4), (5), and (6) of subdivision (c) if the director has substantial and convincing evidence to support a reasonable belief that the applicant and the person convicted of the crime, if other than the applicant, are of such good character as to justify issuance of the license or special permit or granting an exemption for purposes of subdivision (c). However, an exemption may not be granted pursuant to this subdivision if the conviction was for any of the following offenses:

(A) An offense specified in Section 220, 243.4, or 264.1, subdivision (a) of Section 273a or, prior to January 1, 1994, paragraph (1) of Section 273a, Section 273d, 288, or 289, subdivision (c) of Section 290, or Section 368 of the Penal Code, or was a conviction of another crime against an individual specified in subdivision (c) of Section 667.5 of the Penal Code.

(B) A felony offense specified in Section 729 of the Business and Professions Code or Section 206 or 215, subdivision (a) of Section 347, subdivision (b) of Section 417, or subdivision (a) of Section 451 of the Penal Code.

(2) The director shall notify in writing the licensee or the applicant of his or her decision within 60 days of receipt of all information from the applicant and other sources determined necessary by the director for the rendering of a decision pursuant to this subdivision.

(3) The department may not prohibit a person from being employed or having contact with clients in a facility on the basis of a denied criminal record exemption request or arrest information unless the department complies with the requirements of Section 1569.58.

(g) (1) For purposes of compliance with this section, the department may permit an individual to transfer a current criminal record clearance, as defined in subdivision (a), from one facility to another, as long as the criminal record clearance has been processed through a state licensing district office, and is being transferred to another facility licensed by a state licensing district office. The request shall be submitted in writing to the department, and shall include a copy of the person's driver's license or valid identification card issued by the Department of Motor Vehicles, or a valid photo identification issued by another state or the United States government if the person is not a California resident. Upon request of the licensee, who shall enclose a self-addressed stamped envelope for this purpose, the department shall verify whether the individual has a clearance that can be transferred.

(2) The State Department of Social Services shall hold criminal record clearances in its active files for a minimum of two years after an employee is no longer employed at a licensed facility in order for the criminal record clearances to be transferred under this section.

(h) If a licensee or facility is required by law to deny employment or to terminate employment of any employee based on written notification from the department that the employee has a prior criminal conviction or is determined unsuitable for employment under Section 1569.58, the licensee or facility shall not incur civil liability or unemployment insurance liability as a result of that denial or termination.

(i) Notwithstanding any other provision of law, the department may provide an individual with a copy of his or her state or federal

level criminal offender record information search response as provided to that department by the Department of Justice if the department has denied a criminal background clearance based on this information and the individual makes a written request to the department for a copy specifying an address to which it is to be sent. The state or federal level criminal offender record information search response shall not be modified or altered from its form or content as provided by the Department of Justice and shall be provided to the address specified by the individual in his or her written request. The department shall retain a copy of the individual's written request and the response and date provided.

SEC. 4. Section 1596.871 of the Health and Safety Code is amended to read:

1596.871. The Legislature recognizes the need to generate timely and accurate positive fingerprint identification of applicants as a condition of issuing licenses, permits, or certificates of approval for persons to operate or provide direct care services in a child care center or family child care home. It is the intent of the Legislature in enacting this section to require the fingerprints of those individuals whose contact with child day care facility clients may pose a risk to the children's health and safety. An individual shall be required to obtain either a criminal record clearance or a criminal record exemption from the State Department of Social Services before his or her initial presence in a child day care facility.

(a) (1) Before issuing a license or special permit to any person to operate or manage a day care facility, the department shall secure from an appropriate law enforcement agency a criminal record to determine whether the applicant or any other person specified in subdivision (b) has ever been convicted of a crime other than a minor traffic violation or arrested for any crime specified in subdivision (c) of Section 290 of the Penal Code, for violating Section 245 or 273.5, subdivision (b) of Section 273a or, prior to January 1, 1994, paragraph (2) of Section 273a of the Penal Code, or for any crime for which the department cannot grant an exemption if the person was convicted and the person has not been exonerated.

(2) The criminal history information shall include the full criminal record, if any, of those persons, and subsequent arrest information pursuant to Section 11105.2 of the Penal Code.

(3) Except during the 2003-04, 2004-05, 2005-06, 2006-07, and 2007-08 fiscal years, neither the Department of Justice nor the department may charge a fee for the fingerprinting of an applicant who will serve six or fewer children or any family day care applicant for a license, or for obtaining a criminal record of an applicant pursuant to this section.

(4) The following shall apply to the criminal record information:

(A) If the State Department of Social Services finds that the applicant or any other person specified in subdivision (b) has been convicted of a crime, other than a minor traffic violation, the application shall be denied, unless the director grants an exemption pursuant to subdivision (f).

(B) If the State Department of Social Services finds that the applicant, or any other person specified in subdivision (b), is awaiting trial for a crime other than a minor traffic violation, the State Department of Social Services may cease processing the application until the conclusion of the trial.

(C) If no criminal record information has been recorded, the

Department of Justice shall provide the applicant and the State Department of Social Services with a statement of that fact.

(D) If the State Department of Social Services finds after licensure that the licensee, or any other person specified in paragraph (2) of subdivision (b), has been convicted of a crime other than a minor traffic violation, the license may be revoked, unless the director grants an exemption pursuant to subdivision (f).

(E) An applicant and any other person specified in subdivision (b) shall submit fingerprint images and related information to the Department of Justice and the Federal Bureau of Investigation, through the Department of Justice, for a state and federal level criminal offender record information search, in addition to the search required by subdivision (a). If an applicant meets all other conditions for licensure, except receipt of the Federal Bureau of Investigation's criminal history information for the applicant and persons listed in subdivision (b), the department may issue a license if the applicant and each person described by subdivision (b) has signed and submitted a statement that he or she has never been convicted of a crime in the United States, other than a traffic infraction as defined in paragraph (1) of subdivision (a) of Section 42001 of the Vehicle Code. If, after licensure, the department determines that the licensee or person specified in subdivision (b) has a criminal record, the license may be revoked pursuant to Section 1596.885. The department may also suspend the license pending an administrative hearing pursuant to Section 1596.886.

(b) (1) In addition to the applicant, this section shall be applicable to criminal convictions of the following persons:

(A) Adults responsible for administration or direct supervision of staff.

(B) Any person, other than a child, residing in the facility.

(C) Any person who provides care and supervision to the children.

(D) Any staff person, volunteer, or employee who has contact with the children.

(i) A volunteer providing time-limited specialized services shall be exempt from the requirements of this subdivision if this person is directly supervised by the licensee or a facility employee with a criminal record clearance or exemption, the volunteer spends no more than 16 hours per week at the facility, and the volunteer is not left alone with children in care.

(ii) A student enrolled or participating at an accredited educational institution shall be exempt from the requirements of this subdivision if the student is directly supervised by the licensee or a facility employee with a criminal record clearance or exemption, the facility has an agreement with the educational institution concerning the placement of the student, the student spends no more than 16 hours per week at the facility, and the student is not left alone with children in care.

(iii) A volunteer who is a relative, legal guardian, or foster parent of a client in the facility shall be exempt from the requirements of this subdivision.

(iv) A contracted repair person retained by the facility, if not left alone with children in care, shall be exempt from the requirements of this subdivision.

(v) Any person similar to those described in this subdivision, as defined by the department in regulations.

(E) If the applicant is a firm, partnership, association, or corporation, the chief executive officer, other person serving in

like capacity, or a person designated by the chief executive officer as responsible for the operation of the facility, as designated by the applicant agency.

(F) If the applicant is a local educational agency, the president of the governing board, the school district superintendent, or a person designated to administer the operation of the facility, as designated by the local educational agency.

(G) Additional officers of the governing body of the applicant, or other persons with a financial interest in the applicant, as determined necessary by the department by regulation. The criteria used in the development of these regulations shall be based on the person's capability to exercise substantial influence over the operation of the facility.

(H) This section does not apply to employees of child care and development programs under contract with the State Department of Education who have completed a criminal record clearance as part of an application to the Commission on Teacher Credentialing, and who possess a current credential or permit issued by the commission, including employees of child care and development programs that serve both children subsidized under, and children not subsidized under, a State Department of Education contract. The Commission on Teacher Credentialing shall notify the department upon revocation of a current credential or permit issued to an employee of a child care and development program under contract with the State Department of Education.

(I) This section does not apply to employees of a child care and development program operated by a school district, county office of education, or community college district under contract with the State Department of Education who have completed a criminal record clearance as a condition of employment. The school district, county office of education, or community college district upon receiving information that the status of an employee's criminal record clearance has changed shall submit that information to the department.

(2) Nothing in this subdivision shall prevent a licensee from requiring a criminal record clearance of any individuals exempt from the requirements under this subdivision.

(c) (1) (A) Subsequent to initial licensure, any person specified in subdivision (b) and not exempted from fingerprinting shall, as a condition to employment, residence, or presence in a child day care facility be fingerprinted and sign a declaration under penalty of perjury regarding any prior criminal conviction. The licensee shall submit fingerprint images and related information to the Department of Justice and the Federal Bureau of Investigation, through the Department of Justice, or to comply with paragraph (1) of subdivision (h), prior to the person's employment, residence, or initial presence in the child day care facility.

(B) These fingerprint images for the purpose of obtaining a permanent set of fingerprints shall be electronically submitted to the Department of Justice in a manner approved by the State Department of Social Services and to the Department of Justice, or to comply with paragraph (1) of subdivision (h), as required in this section, shall result in the citation of a deficiency, and an immediate assessment of civil penalties in the amount of one hundred dollars ($100) per violation per day for a maximum of five days, unless the violation is a second or subsequent violation within a 12-month period in which case the civil penalties shall be in the

amount of one hundred dollars ($100) per violation for a maximum of 30 days, and shall be grounds for disciplining the licensee pursuant to Section 1596.885 or Section 1596.886. The State Department of Social Services may assess civil penalties for continued violations permitted by Sections 1596.99 and 1597.62. The fingerprint images and related information shall then be submitted to the department for processing. Within 14 calendar days of the receipt of the fingerprint images, the Department of Justice shall notify the State Department of Social Services of the criminal record information, as provided in this subdivision. If no criminal record information has been recorded, the Department of Justice shall provide the licensee and the State Department of Social Services with a statement of that fact within 14 calendar days of receipt of the fingerprint images. If new fingerprint images are required for processing, the Department of Justice shall, within 14 calendar days from the date of receipt of the fingerprint images, notify the licensee that the fingerprints were illegible.

(C) Documentation of the individual's clearance or exemption shall be maintained by the licensee, and shall be available for inspection. When live-scan technology is operational, as defined in Section 1522.04, the Department of Justice shall notify the department, as required by that section, and notify the licensee by mail within 14 days of electronic transmission of the fingerprints to the Department of Justice, if the person has no criminal record. Any violation of the regulations adopted pursuant to Section 1522.04 shall result in the citation of a deficiency and an immediate assessment of civil penalties in the amount of one hundred dollars ($100) per violation per day for a maximum of five days, unless the violation is a second or subsequent violation within a 12-month period in which case the civil penalties shall be in the amount of one hundred dollars ($100) per violation for a maximum of 30 days, and shall be grounds for disciplining the licensee pursuant to Section 1596.885 or Section 1596.886. The department may assess civil penalties for continued violations, as permitted by Sections 1596.99 and 1597.62.

(2) Except for persons specified in paragraph (2) of subdivision (b), the licensee shall endeavor to ascertain the previous employment history of persons required to be fingerprinted under this subdivision. If it is determined by the department, on the basis of fingerprints submitted to the Department of Justice, that the person has been convicted of a sex offense against a minor, an offense specified in Section 243.4, 273a, 273d, 273g, or 368 of the Penal Code, or a felony, the State Department of Social Services shall notify the licensee to act immediately to terminate the person's employment, remove the person from the child day care facility, or bar the person from entering the child day care facility. The department may subsequently grant an exemption pursuant to subdivision (f). If the conviction was for another crime except a minor traffic violation, the licensee shall, upon notification by the State Department of Social Services, act immediately to either (1) terminate the person's employment, remove the person from the child day care facility, or bar the person from entering the child day care facility; or (2) seek an exemption pursuant to subdivision (f). The department shall determine if the person shall be allowed to remain in the facility until a decision on the exemption is rendered. A licensee's failure to comply with the department's prohibition of employment, contact with

clients, or presence in the facility as required by this paragraph shall result in a citation of deficiency and an immediate assessment of civil penalties by the department against the licensee, in the amount of one hundred dollars ($100) per violation per day for a maximum of five days, unless the violation is a second or subsequent violation within a 12-month period in which case the civil penalties shall be in the amount of one hundred dollars ($100) per violation for a maximum of 30 days, and shall be grounds for disciplining the licensee pursuant to Section 1596.885 or 1596.886.

(3) The department may issue an exemption on its own motion pursuant to subdivision (f) if the person's criminal history indicates that the person is of good character based on the age, seriousness, and frequency of the conviction or convictions. The department, in consultation with interested parties, shall develop regulations to establish the criteria to grant an exemption pursuant to this paragraph.

(4) Concurrently with notifying the licensee pursuant to paragraph (3), the department shall notify the affected individual of his or her right to seek an exemption pursuant to subdivision (f). The individual may seek an exemption only if the licensee terminates the person's employment or removes the person from the facility after receiving notice from the department pursuant to paragraph (3).

(d) (1) For purposes of this section or any other provision of this chapter, a conviction means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that the department is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, when the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, notwithstanding a subsequent order pursuant to Sections 1203.4 and 1203.4a of the Penal Code permitting the person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment. For purposes of this section or any other provision of this chapter, the record of a conviction, or a copy thereof certified by the clerk of the court or by a judge of the court in which the conviction occurred, shall be conclusive evidence of the conviction. For purposes of this section or any other provision of this chapter, the arrest disposition report certified by the Department of Justice, or documents admissible in a criminal action pursuant to Section 969b of the Penal Code, shall be prima facie evidence of conviction, notwithstanding any other provision of law prohibiting the admission of these documents in a civil or administrative action.

(2) For purposes of this section or any other provision of this chapter, the department shall consider criminal convictions from another state or federal court as if the criminal offense was committed in this state.

(e) The State Department of Social Services may not use a record of arrest to deny, revoke, or terminate any application, license, employment, or residence unless the department investigates the incident and secures evidence, whether or not related to the incident of arrest, that is admissible in an administrative hearing to establish conduct by the person that may pose a risk to the health and safety of any person who is or may become a client. The State Department of Social Services is authorized to obtain any arrest or conviction records or reports from any law enforcement agency as

necessary to the performance of its duties to inspect, license, and investigate community care facilities and individuals associated with a community care facility.

(f) (1) After review of the record, the director may grant an exemption from disqualification for a license or special permit as specified in paragraphs (1) and (4) of subdivision (a), or for employment, residence, or presence in a child day care facility as specified in paragraphs (3), (4), and (5) of subdivision (c) if the director has substantial and convincing evidence to support a reasonable belief that the applicant and the person convicted of the crime, if other than the applicant, are of good character so as to justify issuance of the license or special permit or granting an exemption for purposes of subdivision (c). However, an exemption may not be granted pursuant to this subdivision if the conviction was for any of the following offenses:

(A) An offense specified in Section 220, 243.4, or 264.1, subdivision (a) of Section 273a or, prior to January 1, 1994, paragraph (1) of Section 273a, Section 273d, 288, or 289, subdivision (c) of Section 290, or Section 368 of the Penal Code, or was a conviction of another crime against an individual specified in subdivision (c) of Section 667.5 of the Penal Code.

(B) A felony offense specified in Section 729 of the Business and Professions Code or Section 206 or 215, subdivision (a) of Section 347, subdivision (b) of Section 417, or subdivision (a) or (b) of Section 451 of the Penal Code.

(2) The department may not prohibit a person from being employed or having contact with clients in a facility on the basis of a denied criminal record exemption request or arrest information unless the department complies with the requirements of Section 1596.8897.

(g) Upon request of the licensee, who shall enclose a self-addressed stamped postcard for this purpose, the Department of Justice shall verify receipt of the fingerprint images.

(h) (1) For the purposes of compliance with this section, the department may permit an individual to transfer a current criminal record clearance, as defined in subdivision (a), from one facility to another, as long as the criminal record clearance has been processed through a state licensing district office, and is being transferred to another facility licensed by a state licensing district office. The request shall be in writing to the department, and shall include a copy of the person's driver's license or valid identification card issued by the Department of Motor Vehicles, or a valid photo identification issued by another state or the United States government if the person is not a California resident. Upon request of the licensee, who shall enclose a self-addressed stamped envelope for this purpose, the department shall verify whether the individual has a clearance that can be transferred.

(2) The State Department of Social Services shall hold criminal record clearances in its active files for a minimum of two years after an employee is no longer employed at a licensed facility in order for the criminal record clearances to be transferred.

(3) The following shall apply to a criminal record clearance or exemption from the department or a county office with department-delegated licensing authority:

(A) A county office with department-delegated licensing authority may accept a clearance or exemption from the department.

(B) The department may accept a clearance or exemption from any county office with department-delegated licensing authority.

(C) A county office with department-delegated licensing authority may accept a clearance or exemption from any other county office with department-delegated licensing authority.

(4) With respect to notifications issued by the Department of Justice pursuant to Section 11105.2 of the Penal Code concerning an individual whose criminal record clearance was originally processed by the department or a county office with department-delegated licensing authority, all of the following shall apply:

(A) The Department of Justice shall process a request from the department or a county office with department-delegated licensing authority to receive the notice, only if all of the following conditions are met:

(i) The request shall be submitted to the Department of Justice by the agency to be substituted to receive the notification.

(ii) The request shall be for the same applicant type as the type for which the original clearance was obtained.

(iii) The request shall contain all prescribed data elements and format protocols pursuant to a written agreement between the department and the Department of Justice.

(B) (i) On or before January 7, 2005, the department shall notify the Department of Justice of all county offices that have department-delegated licensing authority.

(ii) The department shall notify the Department of Justice within 15 calendar days of the date on which a new county office receives department-delegated licensing authority or a county's delegated licensing authority is rescinded.

(C) The Department of Justice shall charge the department or a county office with department-delegated licensing authority a fee for each time a request to substitute the recipient agency is received for purposes of this paragraph. This fee shall not exceed the cost of providing the service.

(i) Notwithstanding any other provision of law, the department may provide an individual with a copy of his or her state or federal level criminal offender record information search response as provided to that department by the Department of Justice if the department has denied a criminal background clearance based on this information and the individual makes a written request to the department for a copy specifying an address to which it is to be sent. The state or federal level criminal offender record information search response shall not be modified or altered from its form or content as provided by the Department of Justice and shall be provided to the address specified by the individual in his or her written request. The department shall retain a copy of the individual's written request and the response and date provided.

SEC. 5. Section 288.3 of the Penal Code, as added by Section 7 of Chapter 337 of the Statutes of 2006, is amended and renumbered to read:

288.4. (a) (1) Every person who, motivated by an unnatural or abnormal sexual interest in children, arranges a meeting with a minor or a 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 his or her genitals or pubic or rectal area, or engaging in lewd or lascivious behavior, shall be punished by a fine not exceeding five thousand dollars ($5,000), by imprisonment in a county jail not exceeding one year, or by both the fine and imprisonment.

(2) Every person who violates this subdivision after a prior conviction for an offense listed in subdivision (c) of Section 290

shall be punished by 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) Nothing in this section shall preclude or prohibit prosecution under any other provision of law.

SEC. 6. Section 289.5 of the Penal Code is amended to read:

289.5. (a) Every person who flees to this state with the intent to avoid prosecution for an offense which, if committed or attempted in this state, would have been punishable as one or more of the offenses described in subdivision (c) of Section 290, and who has been charged with that offense under the laws of the jurisdiction from which the person fled, is guilty of a misdemeanor.

(b) Every person who flees to this state with the intent to avoid custody or confinement imposed for conviction of an offense under the laws of the jurisdiction from which the person fled, which offense, if committed or attempted in this state, would have been punishable as one or more of the offenses described in subdivision (c) of Section 290, is guilty of a misdemeanor.

(c) No person shall be charged and prosecuted for an offense under this section unless the prosecutor has requested the other jurisdiction to extradite the person and the other jurisdiction has refused to do so.

(d) Any person who is convicted of any felony sex offense described in subdivision (c) of Section 290, that is committed after fleeing to this state under the circumstances described in subdivision (a) or (b) of this section, shall, in addition and consecutive to the punishment for that conviction, receive an additional term of two years' imprisonment.

SEC. 7. Section 290 of the Penal Code is repealed.

SEC. 8. Section 290 is added to the Penal Code, to read:

290. (a) Sections 290 to 290.023, inclusive, shall be known and may be cited as the Sex Offender Registration Act. All references to "the Act" in those sections are to the Sex Offender Registration Act.

(b) Every person described in subdivision (c), for the rest of his or her life while residing in California, or while attending school or working in California, as described in Sections 290.002 and 290.01, shall be required to register with the chief of police of the city in which he or she is residing, or the sheriff of the county if he or she is residing in an unincorporated area or city that has no police department, and, additionally, with the chief of police of a campus of the University of California, the California State University, or community college if he or she is residing upon the campus or in any of its facilities, within five working days of coming into, or changing his or her residence within, any city, county, or city and county, or campus in which he or she temporarily resides, and shall be required to register thereafter in accordance with the Act.

(c) The following persons shall be required to register:

Any person who, since July 1, 1944, has been or is hereafter convicted in any court in this state or in any federal or military court of a violation of Section 187 committed in the perpetration, or an attempt to perpetrate, rape or any act punishable under Section 286, 288, 288a, or 289, Section 207 or 209 committed with intent to violate Section 261, 286, 288, 288a, or 289, Section 220, except

assault to commit mayhem, Section 243.4, paragraph (1), (2), (3), (4), or (6) of subdivision (a) of Section 261, paragraph (1) of subdivision (a) of Section 262 involving the use of force or violence for which the person is sentenced to the state prison, Section 264.1, 266, or 266c, subdivision (b) of Section 266h, subdivision (b) of Section 266i, Section 266j, 267, 269, 285, 286, 288, 288a, 288.3, 288.4, 288.5, 288.7, 289, or 311.1, subdivision (b), (c), or (d) of Section 311.2, Section 311.3, 311.4, 311.10, 311.11, or 647.6, former Section 647a, subdivision (c) of Section 653f, subdivision 1 or 2 of Section 314, any offense involving lewd or lascivious conduct under Section 272, or any felony violation of Section 288.2; any statutory predecessor that includes all elements of one of the above-mentioned offenses; or any person who since that date has been or is hereafter convicted of the attempt or conspiracy to commit any of the above-mentioned offenses.

SEC. 9. Section 290.001 is added to the Penal Code, to read:

290.001. Every person who has ever been adjudicated a sexually violent predator, as defined in Section 6600 of the Welfare and Institutions Code, shall register in accordance with the Act.

SEC. 10. Section 290.002 is added to the Penal Code, to read:

290.002. 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 the Act. Persons described in the Act 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 the Act. 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 section shall, in addition to the information required pursuant to Section 290.015, provide the registering authority with the name of his or her place of employment or the name of the school attended in California, and his or her address or location in his or her state of residence. The registration requirement for persons subject to this section shall become operative on November 25, 2000. The terms "employed or carries on a vocation" include employment whether or not financially compensated, volunteered, or performed for government or educational benefit.

SEC. 11. Section 290.003 is added to the Penal Code, to read:

290.003. Any person who, since July 1, 1944, has been or hereafter is released, discharged, or paroled from a penal institution where he or she was confined because of the commission or attempted commission of one of the offenses described in subdivision (c) of Section 290, shall register in accordance with the Act.

SEC. 12. Section 290.004 is added to the Penal Code, to read:

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

SEC. 13. Section 290.005 is added to the Penal Code, to read:

290.005. The following persons shall register in accordance with the Act:

(a) Any person who, since July 1, 1944, has been, or is hereafter convicted in any other court, including any state, federal, or military court, of any offense that, if committed or attempted in this state, would have been punishable as one or more of the offenses described in subdivision (c) of Section 290, including offenses in which the person was a principal, as defined in Section 31.

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

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

(d) Notwithstanding subdivision (c), a person convicted in another state of an offense similar to one of the following offenses who is required to register in the state of conviction shall not be required to register in California unless the out-of-state offense contains all of the elements of a registerable California offense described in subdivision (c) of Section 290:

(1) Indecent exposure, pursuant to Section 314.

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

(3) Incest, pursuant to Section 285.

(4) Sodomy, pursuant to Section 286, or oral copulation, pursuant to Section 288a, provided that the offender notifies the Department of Justice that the sodomy or oral copulation conviction was for conduct between consenting adults, as described in Section 290.019, and the department is able, upon the exercise of reasonable diligence, to verify that fact.

(5) Pimping, pursuant to Section 266h, or pandering, pursuant to Section 266i.

SEC. 14. Section 290.006 is added to the Penal Code, to read:

290.006. Any person ordered by any court to register pursuant to the Act for any offense not included specifically in subdivision (c) of Section 290, shall so register, if the court finds at the time of conviction or sentencing that the person committed the offense as a result of sexual compulsion or for purposes of sexual gratification. The court shall state on the record the reasons for its findings and the reasons for requiring registration.

SEC. 15. Section 290.007 is added to the Penal Code, to read:

290.007. Any person required to register pursuant to any provision of the Act shall register in accordance with the Act, regardless of whether the person's conviction has been dismissed pursuant to Section 1203.4, unless the person obtains a certificate of rehabilitation and is entitled to relief from registration pursuant to Section 290.5.

SEC. 16. Section 290.008 is added to the Penal Code, to read:

290.008. (a) Any person who, on or after January 1, 1986, is discharged or paroled from the Department of Corrections and Rehabilitation to the custody of which he or she was committed after having been adjudicated a ward of the juvenile court pursuant to Section 602 of the Welfare and Institutions Code because of the commission or attempted commission of any offense described in subdivision (c) shall register in accordance with the Act.

(b) Any person who is discharged or paroled from a facility in another state that is equivalent to the Division of Juvenile Justice, to the custody of which he or she was committed because of an offense which, if committed or attempted in this state, would have been punishable as one or more of the offenses described in subdivision (c) shall register in accordance with the Act.

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

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

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

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

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

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

SEC. 17. Section 290.009 is added to the Penal Code, to read:

290.009. Any person required to register under the Act who is enrolled as a student or is an employee or carries on a vocation, with or without compensation, at an institution of higher learning in this state, shall register pursuant to the provisions of the Act.

SEC. 18. Section 290.010 is added to the Penal Code, to read:

290.010. If the person who is registering has more than one residence address at which he or she regularly resides, he or she shall register in accordance with the Act in each of the jurisdictions in which he or she regularly resides, regardless of the number of days or nights spent there. If all of the addresses are within the same jurisdiction, the person shall provide the registering authority with all of the addresses where he or she regularly resides.

SEC. 19. Section 290.011 is added to the Penal Code, to read:

290.011. Every person who is required to register pursuant to the Act who is living as a transient shall be required to register for the rest of his or her life as follows:

(a) He or she shall register, or reregister if the person has previously registered, within five working days from release from incarceration, placement or commitment, or release on probation,

pursuant to subdivision (b) of Section 290, except that if the person previously registered as a transient less than 30 days from the date of his or her release from incarceration, he or she does not need to reregister as a transient until his or her next required 30-day update of registration. If a transient is not physically present in any one jurisdiction for five consecutive working days, he or she shall register in the jurisdiction in which he or she is physically present on the fifth working day following release, pursuant to subdivision (b) of Section 290. Beginning on or before the 30th day following initial registration upon release, a transient shall reregister no less than once every 30 days thereafter. A transient shall register with the chief of police of the city in which he or she is physically present within that 30-day period, or the sheriff of the county if he or she is physically present in an unincorporated area or city that has no police department, and additionally, with the chief of police of a campus of the University of California, the California State University, or community college if he or she is physically present upon the campus or in any of its facilities. A transient shall reregister no less than once every 30 days regardless of the length of time he or she has been physically present in the particular jurisdiction in which he or she reregisters. If a transient fails to reregister within any 30-day period, he or she may be prosecuted in any jurisdiction in which he or she is physically present.

(b) A transient who moves to a residence shall have five working days within which to register at that address, in accordance with subdivision (b) of Section 290. A person registered at a residence address in accordance with that provision who becomes transient shall have five working days within which to reregister as a transient in accordance with subdivision (a).

(c) Beginning on his or her first birthday following registration, a transient shall register annually, within five working days of his or her birthday, to update his

or her registration with the entities described in subdivision (a). A transient shall register in whichever jurisdiction he or she is physically present on that date. At the 30-day updates and the annual update, a transient shall provide current information as required on the Department of Justice annual update form, including the information described in paragraphs (1) to (3), inclusive of subdivision (a) of Section 290.015, and the information specified in subdivision (d).

(d) 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.

(e) Failure to comply with the requirement of reregistering every 30 days following initial registration pursuant to subdivision (a) shall be punished in accordance with subdivision (g) of Section 290.018. Failure to comply with any other requirement of this section shall be punished in accordance with either subdivision (a) or (b) of Section 290.018.

(f) 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.

(g) 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.

(h) 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 section became effective.

SEC. 20. Section 290.012 is added to the Penal Code, to read:

290.012. (a) 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 subdivision (b) of Section 290. 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 paragraphs (1) to (3), inclusive of subdivision (a) of Section 290.015. The registering agency shall give the registrant a copy of the registration requirements from the Department of Justice form.

(b) 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. Every person who, as a sexually violent predator, is required to verify his or her registration every 90 days, shall be notified wherever he or she next registers of his or her increased registration obligations. This notice shall be provided in writing by the registering agency or agencies. Failure to receive this notice shall be a defense to the penalties prescribed in subdivision (f) of Section 290.018.

(c) In addition, every person subject to the Act, while living as a transient in California shall update his or her registration at least every 30 days, in accordance with Section 290.011.

(d) 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).

SEC. 21. Section 290.013 is added to the Penal Code, to read:

290.013. (a) Any person who was last registered at a residence address pursuant to the Act 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.

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

SEC. 22. Section 290.014 is added to the Penal Code, to read:

290.014. If any person who is required to register pursuant to the Act changes his or her name, the person shall inform, in person, the law enforcement agency or agencies with which he or she is currently registered within five working days. The law enforcement agency or agencies shall forward a copy of this information to the Department of Justice within three working days of its receipt.

SEC. 23. Section 290.015 is added to the Penal Code, to read:

290.015. (a) A person who is subject to the Act shall register, or reregister if the person has previously registered, upon release from incarceration, placement, commitment, or release on probation pursuant to subdivision (b) of Section 290. This section shall not apply to a person who is incarcerated for less than 30 days if he or she has registered as required by the Act, he or she returns after incarceration to the last registered address, and the annual update of registration that is required to occur within five working days of his or her birthday, pursuant to subdivision (a) of Section 290.012, did not fall within that incarceration period. The registration shall consist of all of the following:

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

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

(3) The license plate number of any vehicle owned by, regularly

driven by, or registered in the name of the person.

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

(5) Copies of adequate proof of residence, which shall be limited to a California driver's license, California identification card, recent rent or utility receipt, printed personalized checks or other recent banking documents showing that person's name and address, or any other information that the registering official believes is reliable. If the person has no residence and no reasonable expectation of obtaining a residence in the foreseeable future, the person shall so advise the registering official and shall 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.

(b) Within three days thereafter, 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.

SEC. 24. Section 290.016 is added to the Penal Code, to read:

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

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

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

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

(b) Within three days thereafter, the preregistering official shall forward the statement, fingerprints, photograph, and vehicle license plate number, if any, to the Department of Justice.

SEC. 25. Section 290.017 is added to the Penal Code, to read:

290.017. (a) 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, who is required to register pursuant to the Act, shall, prior to discharge, parole, or release, be informed of his or her duty to register under the Act 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 the Act 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.

(b) 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 the Act 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) Any person who is required to register pursuant to the Act and who is released on probation, shall, prior to release or discharge, be informed of the duty to register under the Act 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 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 of the form to the person, send one copy to the Department of Justice, and forward one copy to the appropriate law enforcement agency or agencies having local jurisdiction where the person expects to reside upon his or her discharge, parole, or release.

(d) Any person who is required to register pursuant to the Act and who is granted conditional release without supervised probation, or discharged upon payment of a fine, shall, prior to release or discharge, be informed of the duty to register under the Act in open court by the court in which the person has been convicted, and the court 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 has been explained to him or her. If the court finds that it is in the interest of the efficiency of the court, the court may assign the bailiff to require the person to read and sign forms under the Act. The court 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 court shall give one copy of the form to the person, send one copy to the Department of Justice, and forward one copy to the appropriate law enforcement agency or agencies having local jurisdiction where the person expects to reside upon his or her discharge, parole, or release.

SEC. 26. Section 290.018 is added to the Penal Code, to read:

290.018. (a) Any person who is required to register under the Act based on a misdemeanor conviction or juvenile adjudication who willfully violates any requirement of the Act is guilty of a misdemeanor punishable by imprisonment in a county jail not exceeding one year.

(b) Except as provided in subdivisions (f), (h), and (j), any person who is required to register under the Act based on a felony conviction or juvenile adjudication who willfully violates any requirement of the Act or who has a prior conviction or juvenile adjudication for the offense of failing to register under the Act and who subsequently and willfully violates any requirement of the Act

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

(c) If probation is granted or if the imposition or execution of sentence is suspended, it shall be a condition of the probation or suspension that the person serve at least 90 days in a county jail. The penalty described in subdivision (b) or this subdivision shall apply whether or not the person has been released on parole or has been discharged from parole.

(d) Any person determined to be a mentally disordered sex offender or who has been found guilty in the guilt phase of trial for an offense for which registration is required under the Act, but who has been found not guilty by reason of insanity in the sanity phase of the trial, or who has had a petition sustained in a juvenile adjudication for an offense for which registration is required pursuant to Section 290.008, but who has been found not guilty by reason of insanity, who willfully violates any requirement of the Act is guilty of a misdemeanor and shall be punished by imprisonment in a county jail not exceeding one year. For any second or subsequent willful violation of any requirement of the Act, the person is guilty of a felony and shall be punished by imprisonment in the state prison for 16 months, or two or three years.

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

(f) Any person who has ever been adjudicated a sexually violent predator, as defined in Section 6600 of the Welfare and Institutions Code, and who fails to verify his or her registration every 90 days as required pursuant to subdivision (b) of Section 290.012, shall be punished by imprisonment in the state prison, or in a county jail not exceeding one year.

(g) Except as otherwise provided in subdivision (f), any person who is required to register or reregister pursuant to Section 290.011 and willfully fails to comply with the requirement that he or she reregister no less than every 30 days is guilty of a misdemeanor and shall be punished by imprisonment in a county jail for at least 30 days, but not exceeding six months. A person who willfully fails to comply with the requirement that he or she reregister no less than every 30 days shall not be charged with this violation more often than once for a failure to register in any period of 90 days. Any person who willfully commits a third or subsequent violation of the requirements of Section 290.011 that he or she reregister no less than every 30 days shall be punished in accordance with either subdivision (a) or (b).

(h) Any person who fails to provide proof of residence as required by paragraph (5) of subdivision (a) of Section 290.015, regardless of the offense upon which the duty to register is based, is guilty of a misdemeanor punishable by imprisonment in a county jail not exceeding six months.

(i) Any person who is required to register under the Act who willfully violates any requirement of the Act is guilty of a

continuing offense as to each requirement he or she violated.

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

(k) Whenever any person is released on parole or probation and is required to register under the Act but fails to do so within the time prescribed, the parole authority or the court, as the case may be, shall order the parole or probation of the person revoked. For purposes of this subdivision, "parole authority" has the same meaning as described in Section 3000.

SEC. 27. Section 290.019 is added to the Penal Code, to read:

290.019. (a) Notwithstanding any other section in the Act, a person who was convicted before January 1, 1976, under subdivision (a) of Section 286, or Section 288a, shall not be required to register pursuant to the Act for that conviction if the conviction was for conduct between consenting adults that was decriminalized by Chapter 71 of the Statutes of 1975 or Chapter 1139 of the Statutes of 1976. The Department of Justice shall remove that person from the Sex Offender Registry, and the person is discharged from his or her duty to register pursuant to either of the following procedures:

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

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

(b) 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 the Act, 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 the Act. 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 the Act. Any person whose claim has been denied by the department pursuant to this subdivision may petition the court to appeal the department's denial of the person's claim.

SEC. 28. Section 290.020 is added to the Penal Code, to read:

290.020. In any case in which a person who would be required to register pursuant to the Act for a felony conviction is to be temporarily sent outside the institution where he or she is confined on any assignment within a city or county including firefighting, disaster control, or of whatever nature the assignment may be, the local law enforcement agency having jurisdiction over the place or places where the assignment shall occur shall be notified within a reasonable time prior to removal from the institution. This section shall not apply to any person who is temporarily released under guard from the institution where he or she is confined.

SEC. 29. Section 290.021 is added to the Penal Code, to read:

290.021. Except as otherwise provided by law, the statements, photographs, and fingerprints required by the Act shall not be open to inspection by the public or by any person other than a regularly employed peace officer or other law enforcement officer.

SEC. 30. Section 290.022 is added to the Penal Code, to read:

290.022. On or before July 1, 2010, the Department of Justice shall renovate the VCIN to do the following:

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

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

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

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

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

SEC. 31. Section 290.023 is added to the Penal Code, to read:

290.023. The registration provisions of the Act are applicable to every person described in the Act, without regard to when his or her crime or crimes were committed or his or her duty to register pursuant to the Act arose, and to every offense described in the Act, regardless of when it was committed.

SEC. 32. Section 290.01 of the Penal Code is amended to read:

290.01. (a) (1) Commencing October 28, 2002, every person required to register pursuant to Sections 290 to 290.009, inclusive, of the Sex Offender Registration Act who is enrolled as a student of any university, college, community college, or other institution of higher learning, or is, with or without compensation, a full-time or part-time employee of that university, college, community college, or other institution of higher learning, or is carrying on a vocation at the university, college, community college, or other institution of higher learning, for more than 14 days, or for an aggregate period exceeding 30 days in a calendar year, shall, in addition to the registration required by the Sex Offender Registration Act, register with the campus police department within five working days of commencing enrollment or employment at that university, college, community college, or other institution of higher learning, on a form as may be required by the Department of Justice. The terms "employed or carries on a vocation" include employment whether or not financially compensated, volunteered, or performed for government or educational benefit. The registrant shall also notify the campus police department within five working days of ceasing to be enrolled or employed, or ceasing to carry on a vocation, at the university, college, community college, or other institution of higher learning.

(2) For purposes of this section, a campus police department is a police department of the University of California, California State University, or California Community College, established pursuant to Section 72330, 89560, or 92600 of the Education Code, or is a police department staffed with deputized or appointed personnel with peace officer status as provided in Section 830.6 of the Penal Code and is the law enforcement agency with the primary responsibility for investigating crimes occurring on the college or university campus on which it is located.

(b) If the university, college, community college, or other institution of higher learning has no campus police department, the registrant shall instead register pursuant to subdivision (a) with the police of the city in which the campus is located or the sheriff of the county in which the campus is located if the campus is located in an unincorporated area or in a city that has no police department, on a form as may be required by the Department of Justice. The requirements of subdivisions (a) and (b) are in addition to the requirements of the Sex Offender Registration Act.

(c) A first violation of this section is a misdemeanor punishable by a fine not to exceed one thousand dollars ($1,000). A second violation of this section is a misdemeanor punishable by imprisonment in a county jail for not more than six months, by a fine not to exceed one thousand dollars ($1,000), or by both that imprisonment and fine. A third or subsequent violation of this section is a misdemeanor punishable by imprisonment in a county jail for not more than one year, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine.

(d) (1) (A) The following information regarding a registered sex offender on campus as to whom information shall not be made available to the public via the Internet Web site as provided in Section 290.46 may be released to members of the campus community by any campus police department or, if the university, college, community college, or other institution of higher learning has no police department, the police department or sheriff's department with jurisdiction over the campus, and any employees of those agencies, as required by Section 1092(f)(1)(I) of Title 20 of the United States Code:

(i) The offender's full name.

(ii) The offender's known aliases.

(iii) The offender's gender.

(iv) The offender's race.

(v) The offender's physical description.

(vi) The offender's photograph.

(vii) The offender's date of birth.

(viii) Crimes resulting in registration under Section 290.

(ix) The date of last registration or reregistration.

(B) The authority provided in this subdivision is in addition to the authority of a peace officer or law enforcement agency to provide information about a registered sex offender pursuant to Section 290.45, and exists notwithstanding Section 290.021 or any other provision of law.

(2) Any law enforcement entity and employees of any law enforcement entity listed in paragraph (1) shall be immune from civil or criminal liability for good faith conduct under this subdivision.

(3) Nothing in this subdivision shall be construed to authorize

campus police departments or, if the university, college, community college, or other institution has no police department, the police department or sheriff's department with jurisdiction over the campus, to make disclosures about registrants intended to reach persons beyond the campus community.

(4) (A) Before being provided any information by an agency pursuant to this subdivision, a member of the campus community who requests that information shall sign a statement, on a form provided by the Department of Justice, stating that he or she is not a registered sex offender, that he or she understands the purpose of the release of information is to allow members of the campus community to protect themselves and their children from sex offenders, and that he or she understands it is unlawful to use information obtained pursuant to this subdivision to commit a crime against any registrant or to engage in illegal discrimination or harassment of any registrant. The signed statement shall be maintained in a file in the agency's office for a minimum of five years.

(B) An agency disseminating printed information pursuant to this subdivision shall maintain records of the means and dates of dissemination for a minimum of five years.

(5) For purposes of this subdivision, "campus community" means those persons present at, and those persons regularly frequenting, any place associated with an institution of higher education, including campuses; administrative and educational offices; laboratories; satellite facilities owned or utilized by the institution for educational instruction, business, or institutional events; and public areas contiguous to any campus or facility that are regularly frequented by students, employees, or volunteers of the campus.

SEC. 33. Section 290.04 of the Penal Code is amended 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 Mental Health, in consultation with a representative of the Department of 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 Department of Mental Health, shall be to ensure that the SARATSO reflects the most reliable, objective and well-established protocols for predicting sex offender risk of recidivism, has been scientifically validated and cross validated, and is, or is reasonably likely to be, widely accepted by the courts. The committee shall consult with experts in the fields of risk assessment and the use of actuarial instruments in predicting sex offender risk, sex offending, sex offender treatment, mental health, and law, as it deems appropriate.

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

(2) On or before January 1, 2008, the SARATSO Review Committee

shall determine whether the STATIC-99 should be supplemented with an actuarial instrument that measures dynamic risk factors or whether the STATIC-99 should be replaced as the SARATSO with a different risk assessment tool. If the committee unanimously agrees on changes to be made to the SARATSO, it shall advise the Governor and the Legislature of the changes, and the State Department of Mental Health shall post the decision on its Internet Web site. Sixty days after the decision is posted, the selected tool shall become the SARATSO for adult males.

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

(d) On or before July 1, 2007, the SARATSO Review Committee shall research risk assessment tools for male juveniles required to register as sex offenders. If the committee unanimously agrees on an appropriate risk assessment tool to be used to assess this population, it shall advise the Governor and the Legislature of the selected tool, and the State Department of Mental Health shall post the decision on its Internet Web site. Sixty days after the decision is posted, the selected tool shall become the SARATSO for male juveniles.

(e) On or before July 1, 2007, the SARATSO Review Committee shall research risk assessment tools for female juveniles required to register as sex offenders. If the committee unanimously agrees on an appropriate risk assessment tool to be used to assess this population, it shall advise the Governor and the Legislature of the selected tool, and the State Department of Mental Health shall post the decision on its Internet Web site. Sixty days after the decision is posted, the selected tool shall become the SARATSO for female juveniles.

(f) The committee shall periodically evaluate the SARATSO for each specified population. If the committee unanimously agrees on a change to the SARATSO for any population, it shall advise the Governor and the Legislature of the selected tool, and the State Department of Mental Health shall post the decision on its Internet Web site. Sixty days after the decision is posted, the selected tool shall become the SARATSO for that population.

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

SEC. 34. Section 290.05 of the Penal Code is amended to read:

290.05. (a) The SARATSO Training Committee shall be comprised of a representative of the State Department of Mental Health, a representative of the Department of Corrections and Rehabilitation, a representative of the Attorney General's Office, and a representative of the Chief Probation Officers of California.

(b) On or before January 1, 2008, the SARATSO Training Committee, in consultation with the Corrections Standards Authority and the Commission on Peace Officer Standards and Training, shall develop a

training program for persons authorized by this code to administer the SARATSO, as set forth in Section 290.04.

(c) (1) The Department of Corrections and Rehabilitation shall be responsible for overseeing the training of persons who will administer the SARATSO pursuant to paragraph (1) or (2) of subdivision (a) of Section 290.06.

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

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

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

(d) The training shall be conducted by experts in the field of risk assessment and the use of actuarial instruments in predicting sex offender risk. Subject to requirements established by the committee, the Department of Corrections and Rehabilitation, the State Department of Mental Health, probation departments, and authorized local law enforcement agencies shall designate key persons within their organizations to attend training and, as authorized by the department, to train others within their organizations designated to perform risk assessments as required or authorized by law. Any person who administers the SARATSO shall receive training no less frequently than every two years.

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

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

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

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

(b) Except as provided in subdivision (d), out of the moneys deposited pursuant to subdivision (a) as a result of second and subsequent convictions of Section 290, one-third shall first be transferred to the Department of Justice Sexual Habitual Offender Fund, as provided in paragraph (1) of this subdivision. Out of the remainder of all moneys deposited pursuant to subdivision (a), 50 percent shall be transferred to the Department of Justice Sexual Habitual Offender Fund, as provided in paragraph (1), 25 percent shall be transferred to the Department of Justice DNA Testing Fund, as provided in paragraph (2), and 25 percent shall be allocated

equally to counties that maintain a local DNA testing laboratory, as provided in paragraph (3).

(1) Those moneys so designated shall be transferred to the Department of Justice Sexual Habitual Offender Fund created pursuant to paragraph (5) of subdivision (b) of Section 11170 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 deoxyribonucleic acid (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 (c) of Section 290, that results in incarceration in a facility under the jurisdiction of the Department of Corrections and Rehabilitation. All moneys collected by the Department of Corrections and Rehabilitation under this subdivision shall be transferred, once a month, to the Controller for deposit in the General Fund, as provided in subdivision (a), for transfer by the Controller, as provided in subdivision (b).

(d) An amount equal to one hundred dollars ($100) for every fine imposed pursuant to subdivision (a) in excess of one hundred dollars ($100) shall be transferred to the Department of Corrections and Rehabilitation to defray the cost of the global positioning system used to monitor sex offender parolees.

SEC. 36. 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 specified in this section. The department shall update the Internet Web site on an ongoing basis. All information identifying the victim by name, birth date, address, or relationship to the registrant shall be excluded from the Internet Web site. The name or address of the person's employer and the listed person's criminal history other than the specific crimes for which the person is required to register shall not be included on the Internet Web site. The Internet Web site shall be translated into languages other than English as determined by the department.

(2) (A) On or before July 1, 2010, the Department of Justice shall make available to the public, via an Internet Web site as specified in this section, as to any person described in subdivisions (b), (c),

or (d), the following information:

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

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

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

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

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

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

(iii) Any state facility that, prior to January 1, 2007, released from incarceration a person who was incarcerated because of a crime for which he or she is required to register as a sex offender pursuant to Section 290 shall provide the year of release for his or her most recent offense requiring registration to the Department of Justice in a manner and format approved by the department. The information provided by the Department of Corrections and Rehabilitation shall be limited to information that is currently maintained in an electronic format.

(iv) Any state facility that, prior to January 1, 2007, released a person who is required to register pursuant to Section 290 from incarceration whose incarceration was for a felony committed subsequently to the offense for which he or she is required to register shall advise the Department of Justice of that fact in a manner and format approved by the department. The information provided by the Department of Corrections and Rehabilitation shall be limited to information that is currently maintained in an electronic format.

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

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

that the Department of Justice deems relevant, but not the information excluded pursuant to subdivision (a).

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

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

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

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

(D) Section 264.1.

(E) Section 269.

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

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

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

(I) Section 288.3, provided that the offense is a felony.

(J) Section 288.4, provided that the offense is a felony.

(K) Section 288.5.

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

(M) Section 288.7.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(D) Section 266j.

(E) Section 267.

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

(G) Section 288.3, provided that the offense is a misdemeanor.

(H) Section 288.4, provided that the offense is a misdemeanor.

(I) Section 626.81.

(J) Section 647.6.

(K) Section 653c.

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

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

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

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

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

(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 that the offender was the victim's parent, stepparent, sibling, or 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 that the offender was the victim's parent, stepparent, sibling, or 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 available to the public on the Internet Web site as provided in this section.

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

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

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

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

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

Department of Justice's Internet Web site pursuant to subdivision (b) or (c).

(h) For purposes of this section, "offense" includes the statutory predecessors of that offense, or any offense committed in another jurisdiction that, if committed or attempted to be committed in this state, would have been punishable in this state as an offense listed in subdivision (c) 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 1596.871 of the Health and Safety Code, and Section 432.7 of the Labor Code.

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

(B) Whenever there is reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of misuse of the information available via an Internet Web site established

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

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

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

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

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

SEC. 37. Section 296.2 of the Penal Code is amended to read:

296.2. (a) Whenever the DNA Laboratory of the Department of Justice notifies the Department of Corrections and Rehabilitation or any law enforcement agency that a biological specimen or sample, or print impression is not usable for any reason, the person who provided the original specimen, sample, or print impression shall submit to collection of additional specimens, samples, or print impressions. The Department of Corrections and Rehabilitation or other responsible law enforcement agency shall collect additional specimens, samples, and print impressions from these persons as necessary to fulfill the requirements of this chapter, and transmit these specimens, samples, and print impressions to the appropriate agencies of the Department of Justice.

(b) If a person, including any juvenile, is convicted of, pleads guilty or no contest to, is found not guilty by reason of insanity of, or is adjudged a ward of the court under Section 602 of the Welfare and Institutions Code for committing, any of the offenses described in subdivision (a) of Section 296, and has given a blood specimen or other biological sample or samples to law enforcement for any purpose, the DNA Laboratory of the Department of Justice is authorized to analyze the blood specimen and other biological sample or samples for forensic identification markers, including DNA markers, and to include the DNA and forensic identification profiles from these specimens and samples in the state's DNA and forensic identification databank and databases.

This subdivision applies whether or not the blood specimen or other biological sample originally was collected from the sexual or

violent offender pursuant to the databank and database program, and whether or not the crime committed predated the enactment of the state's DNA and forensic identification databank program, or any amendments thereto. This subdivision does not relieve a person convicted of a crime described in subdivision (a) of Section 296, or otherwise subject to this chapter, from the requirement to give blood specimens, saliva samples, and thumb and palm print impressions for the DNA and forensic identification databank and database program as described in this chapter.

(c) Any person who is required to register under the Sex Offender Registration Act who has not provided the specimens, samples, and print impressions described in this chapter for any reason including the release of the person prior to the enactment of the state's DNA and forensic identification database and databank program, an oversight or error, or because of the transfer of the person from another state, the person, as an additional requirement of registration or of updating his or her annual registration pursuant to the Sex Offender Registration Act shall give specimens, samples, and print impressions as described in this chapter for inclusion in the state's DNA and forensic identification database and databank.

At the time the person registers or updates his or her registration, he or she shall receive an appointment designating a time and place for the collection of the specimens, samples, and print impressions described in this chapter, if he or she has not already complied with the provisions of this chapter.

As specified in the appointment, the person shall report to a county jail facility in the county where he or she resides or is temporarily located to have specimens, samples, and print impressions collected pursuant to this chapter or other facility approved by the Department of Justice for this collection. The specimens, samples, and print impressions shall be collected in accordance with subdivision (f) of Section 295.

If, prior to the time of the annual registration update, a person is notified by the Department of Justice, a probation or parole officer, other law enforcement officer, or officer of the court, that he or she is subject to this chapter, then the person shall provide the specimens, samples, and print impressions required by this chapter within 10 calendar days of the notification at a county jail facility or other facility approved by the department for this collection.

SEC. 38. Section 311.11 of the Penal Code is amended to read:

311.11. (a) Every person who knowingly possesses or controls any matter, 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, the production of which involves the use of a person under the age of 18 years, knowing that the matter depicts a person under the age of 18 years personally engaging in or simulating sexual conduct, as defined in subdivision (d) of Section 311.4, is guilty of a felony and shall be punished by imprisonment in the state prison, or a county jail for up to one year, or by a fine not exceeding two thousand five hundred dollars ($2,500), or by both the fine and imprisonment.

(b) Every person who commits a violation of subdivision (a), and

who has been previously convicted of a violation of this section, an offense requiring registration under the Sex Offender Registration Act, or an attempt to commit any of the above-mentioned offenses, is guilty of a felony and shall be punished by imprisonment in the state prison for two, four, or six years.

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

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

SEC. 39. Section 646.9 of the Penal Code is amended to read:

646.9. (a) Any person who willfully, maliciously, and repeatedly follows or willfully and maliciously harasses another person and who makes a credible threat with the intent to place that person in reasonable fear for his or her safety, or the safety of his or her immediate family is guilty of the crime of stalking, punishable by imprisonment in a county jail for not more than one year, or by a fine of not more than one thousand dollars ($1,000), or by both that fine and imprisonment, or by imprisonment in the state prison.

(b) Any person who violates subdivision (a) when there is a temporary restraining order, injunction, or any other court order in effect prohibiting the behavior described in subdivision (a) against the same party, shall be punished by imprisonment in the state prison for two, three, or four years.

(c) (1) Every person who, after having been convicted of a felony under Section 273.5, 273.6, or 422, commits a violation of subdivision (a) shall be punished by imprisonment in a county jail for not more than one year, or by a fine of not more than one thousand dollars ($1,000), or by both that fine and imprisonment, or by imprisonment in the state prison for two, three, or five years.

(2) Every person who, after having been convicted of a felony under subdivision (a), commits a violation of this section shall be punished by imprisonment in the state prison for two, three, or five years.

(d) In addition to the penalties provided in this section, the sentencing court may order a person convicted of a felony under this section to register as a sex offender pursuant to Section 290.006.

(e) For the purposes of this section, "harasses" means engages in a knowing and willful course of conduct directed at a specific person that seriously alarms, annoys, torments, or terrorizes the person, and that serves no legitimate purpose.

(f) For the purposes of this section, "course of conduct" means two or more acts occurring over a period of time, however short, evidencing a continuity of purpose. Constitutionally protected activity is not included within the meaning of "course of conduct."

(g) For the purposes of this section, "credible threat" means a verbal or written threat, including that performed through the use of an electronic communication device, or a threat implied by a pattern of conduct or a combination of verbal, written, or electronically communicated statements and conduct, made with the intent to place the person that is the target of the threat in reasonable fear for his or her safety or the safety of his or her family, and made with the apparent ability to carry out the threat so as to cause the person who is the target of the threat to reasonably fear for his or her safety or the safety of his or her family. It is not necessary to

prove that the defendant had the intent to actually carry out the threat. The present incarceration of a person making the threat shall not be a bar to prosecution under this section. Constitutionally protected activity is not included within the meaning of "credible threat."

(h) For purposes of this section, the term "electronic communication device" includes, but is not limited to, telephones, cellular phones, computers, video recorders, fax machines, or pagers. "Electronic communication" has the same meaning as the term defined in Subsection 12 of Section 2510 of Title 18 of the United States Code.

(i) This section shall not apply to conduct that occurs during labor picketing.

(j) If probation is granted, or the execution or imposition of a sentence is suspended, for any person convicted under this section, it shall be a condition of probation that the person participate in counseling, as designated by the court. However, the court, upon a showing of good cause, may find that the counseling requirement shall not be imposed.

(k) The sentencing court also shall consider issuing an order restraining the defendant from any contact with the victim, that may be valid for up to 10 years, as determined by the court. It is the intent of the Legislature that the length of any restraining order be based upon the seriousness of the facts before the court, the probability of future violations, and the safety of the victim and his or her immediate family.

() For purposes of this section, "immediate family" means any spouse, parent, child, any person related by consanguinity or affinity within the second degree, or any other person who regularly resides in the household, or who, within the prior six months, regularly resided in the household.

(m) The court shall consider whether the defendant would benefit from treatment pursuant to Section 2684. If it is determined to be appropriate, the court shall recommend that the Department of Corrections and Rehabilitation make a certification as provided in Section 2684. Upon the certification, the defendant shall be evaluated and transferred to the appropriate hospital for treatment pursuant to Section 2684.

SEC. 39.5. Section 646.9 of the Penal Code is amended to read:

646.9. (a) Any person who willfully, maliciously, and repeatedly follows or willfully and maliciously harasses another person and who makes a credible threat with the intent to place that person in reasonable fear for his or her safety, or the safety of his or her immediate family is guilty of the crime of stalking, punishable by imprisonment in a county jail for not more than one year, or by a fine of not more than one thousand dollars ($1,000), or by both that fine and imprisonment, or by imprisonment in the state prison.

(b) Any person who violates subdivision (a) when there is a temporary restraining order, injunction, or any other court order in effect prohibiting the behavior described in subdivision (a) against the same party, shall be punished by imprisonment in the state prison for two, three, or four years.

(c) (1) Every person who, after having been convicted of a felony under Section 273.5, 273.6, or 422, commits a violation of subdivision (a) shall be punished by imprisonment in a county jail for not more than one year, or by a fine of not more than one thousand dollars ($1,000), or by both that fine and imprisonment, or

by imprisonment in the state prison for two, three, or five years.

(2) Every person who, after having been convicted of a felony under subdivision (a), commits a violation of this section shall be punished by imprisonment in the state prison for two, three, or five years.

(d) In addition to the penalties provided in this section, the sentencing court may order a person convicted of a felony under this section to register as a sex offender pursuant to Section 290.006.

(e) For the purposes of this section, "harasses" means engages in a knowing and willful course of conduct directed at a specific person that seriously alarms, annoys, torments, or terrorizes the person, and that serves no legitimate purpose.

(f) For the purposes of this section, "course of conduct" means two or more acts occurring over a period of time, however short, evidencing a continuity of purpose. Constitutionally protected activity is not included within the meaning of "course of conduct."

(g) For the purposes of this section, "credible threat" means a verbal or written threat, including that performed through the use of an electronic communication device, or a threat implied by a pattern of conduct or a combination of verbal, written, or electronically communicated statements and conduct, made with the intent to place the person that is the target of the threat in reasonable fear for his or her safety or the safety of his or her family, and made with the apparent ability to carry out the threat so as to cause the person who is the target of the threat to reasonably fear for his or her safety or the safety of his or her family. It is not necessary to prove that the defendant had the intent to actually carry out the threat. The present incarceration of a person making the threat shall not be a bar to prosecution under this section. Constitutionally protected activity is not included within the meaning of "credible threat."

(h) For purposes of this section, the term "electronic communication device" includes, but is not limited to, telephones, cellular phones, computers, video recorders, fax machines, or pagers. "Electronic communication" has the same meaning as the term defined in Subsection 12 of Section 2510 of Title 18 of the United States Code.

(i) This section shall not apply to conduct that occurs during labor picketing.

(j) If probation is granted, or the execution or imposition of a sentence is suspended, for any person convicted under this section, it shall be a condition of probation that the person participate in counseling, as designated by the court. However, the court, upon a showing of good cause, may find that the counseling requirement shall not be imposed.

(k) (1) The sentencing court also shall consider issuing an order restraining the defendant from any contact with the victim, that may be valid for up to 10 years, as determined by the court. It is the intent of the Legislature that the length of any restraining order be based upon the seriousness of the facts before the court, the probability of future violations, and the safety of the victim and his or her immediate family.

(2) This protective order may be issued by the court whether the defendant is sentenced to state prison, county jail, or if imposition of sentence is suspended and the defendant is placed on probation.

() For purposes of this section, "immediate family" means any spouse, parent, child, any person related by consanguinity or

affinity within the second degree, or any other person who regularly resides in the household, or who, within the prior six months, regularly resided in the household.

(m) The court shall consider whether the defendant would benefit from treatment pursuant to Section 2684. If it is determined to be appropriate, the court shall recommend that the Department of Corrections and Rehabilitation make a certification as provided in Section 2684. Upon the certification, the defendant shall be evaluated and transferred to the appropriate hospital for treatment pursuant to Section 2684.

SEC. 40. Section 801.1 of the Penal Code is amended to read:

801.1. (a) Notwithstanding any other limitation of time described in this chapter, prosecution for a felony offense described in Section 261, 286, 288, 288.5, 288a, or 289, or Section 289.5, as enacted by Chapter 293 of the Statutes of 1991 relating to penetration by an unknown object, that is alleged to have been committed when the victim was under the age of 18 years, may be commenced any time prior to the victim's 28th birthday.

(b) Notwithstanding any other limitation of time described in this chapter, if subdivision (a) does not apply, prosecution for a felony offense described in subdivision (c) of Section 290 shall be commenced within 10 years after commission of the offense.

SEC. 41. Section 803 of the Penal Code is amended to read:

803. (a) Except as provided in this section, a limitation of time prescribed in this chapter is not tolled or extended for any reason.

(b) No time during which prosecution of the same person for the same conduct is pending in a court of this state is a part of a limitation of time prescribed in this chapter.

(c) A limitation of time prescribed in this chapter does not commence to run until the discovery of an offense described in this subdivision. This subdivision applies to an offense punishable by imprisonment in the state prison, a material element of which is fraud or breach of a fiduciary obligation, the commission of the crimes of theft or embezzlement upon an elder or dependent adult, or the basis of which is misconduct in office by a public officer, employee, or appointee, including, but not limited to, the following offenses:

(1) Grand theft of any type, forgery, falsification of public records, or acceptance of a bribe by a public official or a public employee.

(2) A violation of Section 72, 118, 118a, 132, 134, or 186.10.

(3) A violation of Section 25540, of any type, or Section 25541 of the Corporations Code.

(4) A violation of Section 1090 or 27443 of the Government Code.

(5) Felony welfare fraud or Medi-Cal fraud in violation of Section 11483 or 14107 of the Welfare and Institutions Code.

(6) Felony insurance fraud in violation of Section 548 or 550 of this code or former Section 1871.1, or Section 1871.4, of the Insurance Code.

(7) A violation of Section 580, 581, 582, 583, or 584 of the Business and Professions Code.

(8) A violation of Section 22430 of the Business and Professions Code.

(9) A violation of Section 10690 of the Health and Safety Code.

(10) A violation of Section 529a.

(11) A violation of subdivision (d) or (e) of Section 368.

(d) If the defendant is out of the state when or after the offense is committed, the prosecution may be commenced as provided in Section 804 within the limitations of time prescribed by this chapter, and no time up to a maximum of three years during which the defendant is not within the state shall be a part of those limitations.

(e) A limitation of time prescribed in this chapter does not commence to run until the offense has been discovered, or could have reasonably been discovered, with regard to offenses under Division 7 (commencing with Section 13000) of the Water Code, under Chapter 6.5 (commencing with Section 25100) of, Chapter 6.7 (commencing with Section 25280) of, or Chapter 6.8 (commencing with Section 25300) of, Division 20 of, or Part 4 (commencing with Section 41500) of Division 26 of, the Health and Safety Code, or under Section 386, or offenses under Chapter 5 (commencing with Section 2000) of Division 2 of, Chapter 9 (commencing with Section 4000) of Division 2 of, Section 6126 of, Chapter 10 (commencing with Section 7301) of Division 3 of, or Chapter 19.5 (commencing with Section 22440) of Division 8 of, the Business and Professions Code.

(f) (1) Notwithstanding any other limitation of time described in this chapter, a criminal complaint may be filed within one year of the date of a report to a California law enforcement agency by a person of any age alleging that he or she, while under the age of 18 years, was the victim of a crime described in Section 261, 286, 288, 288a, 288.5, or 289, or Section 289.5, as enacted by Chapter 293 of the Statutes of 1991 relating to penetration by an unknown object.

(2) This subdivision applies only if all of the following occur:

(A) The limitation period specified in Section 800, 801, or 801.1, whichever is later, has expired.

(B) The crime involved substantial sexual conduct, as described in subdivision (b) of Section 1203.066, excluding masturbation that is not mutual.

(C) There is independent evidence that corroborates the victim's allegation. If the victim was 21 years of age or older at the time of the report, the independent evidence shall clearly and convincingly corroborate the victim's allegation.

(3) No evidence may be used to corroborate the victim's allegation that otherwise would be inadmissible during trial. Independent evidence does not include the opinions of mental health professionals.

(4) (A) In a criminal investigation involving any of the crimes listed in paragraph (1) committed against a child, when the applicable limitations period has not expired, that period shall be tolled from the time a party initiates litigation challenging a grand jury subpoena until the end of the litigation, including any associated writ or appellate proceeding, or until the final disclosure of evidence to the investigating or prosecuting agency, if that disclosure is ordered pursuant to the subpoena after the litigation.

(B) Nothing in this subdivision affects the definition or applicability of any evidentiary privilege.

(C) This subdivision shall not apply where a court finds that the grand jury subpoena was issued or caused to be issued in bad faith.

(g) (1) Notwithstanding any other limitation of time described in this chapter, a criminal complaint may be filed within one year of the date on which the identity of the suspect is conclusively

established by DNA testing, if both of the following conditions are met:

(A) The crime is one that is described in subdivision (c) of Section 290.

(B) The offense was committed prior to January 1, 2001, and biological evidence collected in connection with the offense is analyzed for DNA type no later than January 1, 2004, or the offense was committed on or after January 1, 2001, and biological evidence collected in connection with the offense is analyzed for DNA type no later than two years from the date of the offense.

(2) For purposes of this section, "DNA" means deoxyribonucleic acid.

(h) For any crime, the proof of which depends substantially upon evidence that was seized under a warrant, but which is unavailable to the prosecuting authority under the procedures described in People v. Superior Court (Laff) (2001) 25 Cal.4th 703, People v. Superior Court (Bauman & Rose) (1995) 37 Cal.App.4th 1757, or subdivision (c) of Section 1524, relating to claims of evidentiary privilege or attorney work product, the limitation of time prescribed in this chapter shall be tolled from the time of the seizure until final disclosure of the evidence to the prosecuting authority. Nothing in this section otherwise affects the definition or applicability of any evidentiary privilege or attorney work product.

SEC. 42. Section 1202.7 of the Penal Code is amended to read:

1202.7. The Legislature finds and declares that the provision of probation services is an essential element in the administration of criminal justice. The safety of the public, which shall be a primary goal through the enforcement of court-ordered conditions of probation; the nature of the offense; the interests of justice, including punishment, reintegration of the offender into the community, and enforcement of conditions of probation; the loss to the victim; and the needs of the defendant shall be the primary considerations in the granting of probation. It is the intent of the Legislature that efforts be made with respect to persons who are subject to Section 290.011 who are on probation to engage them in treatment.

SEC. 43. Section 1417.8 of the Penal Code is amended to read:

1417.8. (a) Notwithstanding any other provision of this chapter, the court shall direct that any photograph of any minor that has been found by the court to be harmful matter, as defined in Section 313, and introduced or filed as an exhibit in any criminal proceeding specified in subdivision (b) be handled as follows:

(1) Prior to the final determination of the action or proceeding, the photograph shall be available only to the parties or to a person named in a court order to receive the photograph.

(2) After the final determination of the action or proceeding, the photograph shall be preserved with the permanent record maintained by the clerk of the court. The photograph may be disposed of or destroyed after preservation through any appropriate photographic or electronic medium. If the photograph is disposed of, it shall be rendered unidentifiable before the disposal. No person shall have access to the photograph unless that person has been named in a court order to receive the photograph. Any copy, negative, reprint, or other duplication of the photograph in the possession of the state, a state agency, the defendant, or an agent of the defendant, shall be delivered to the clerk of the court for disposal whether or not the defendant was convicted of the offense.

(b) The procedure provided by subdivision (a) shall apply to actions listed under subdivision (c) of Section 290, and to acts under the following provisions:

(1) Section 261.5.

(2) Section 272.

(3) Chapter 7.5 (commencing with Section 311) of Title 9 of Part 1.

(4) Chapter 7.6 (commencing with Section 313) of Title 9 of Part 1.

(c) For the purposes of this section, "photograph" means any photographic image contained in a digital format or on any chemical, mechanical, magnetic, or electronic medium.

SEC. 44. Section 3000 of the Penal Code is amended to read:

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

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

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

(4) The parole period of any person found to be a sexually violent predator shall be tolled until that person is found to no longer be a sexually violent predator, at which time the period of parole, or any remaining portion thereof, shall begin to run.

(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, except that any inmate sentenced for an offense specified in paragraph (3), (4), (5), (6), (11), (16), or (18) of subdivision (c) of Section 667.5 shall be released on parole for a period not exceeding five years, unless in either case the parole authority for good cause waives parole and discharges the inmate from the custody of the department.

(2) In the case of any inmate sentenced under Section 1168, the period of parole shall not exceed five years in the case of an inmate imprisoned for any offense other than first or second degree murder for which the inmate has received a life sentence, and shall not exceed three years in the case of any other inmate, unless in either case the parole authority for good cause waives parole and discharges

the inmate from custody of the department. This subdivision shall also be applicable to inmates who committed crimes prior to July 1, 1977, to the extent specified in Section 1170.2.

(3) Notwithstanding paragraphs (1) and (2), in the case of any offense for which the inmate has received a life sentence pursuant to Section 667.61 or 667.71, the period of parole shall be 10 years.

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

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

(A) Except as provided in Section 3064, in no case may a prisoner subject to three years on parole be retained under parole supervision or in custody for a period longer than four years from the date of his or her initial parole.

(B) Except as provided in Section 3064, in no case may a prisoner subject to five years on parole be retained under parole supervision or in custody for a period longer than seven years from the date of his or her initial parole.

(C) Except as provided in Section 3064, in no case may a prisoner subject to 10 years on parole be retained under parole supervision or in custody for a period longer than 15 years from the date of his or her initial parole.

(6) The Department of Corrections and Rehabilitation shall meet with each inmate at least 30 days prior to his or her good time release date and shall provide, under guidelines specified by the parole authority, the conditions of parole and the length of parole up to the maximum period of time provided by law. The inmate has the right to reconsideration of the length of parole and conditions thereof by the parole authority. The Department of Corrections and Rehabilitation or the Board of Parole Hearings may impose as a condition of parole that a prisoner make payments on the prisoner's outstanding restitution fines or orders imposed pursuant to subdivision (a) or (c) of Section 13967 of the Government Code, as operative prior to September 28, 1994, or subdivision (b) or (f) of Section 1202.4.

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

(8) The sole authority to issue warrants for the return to actual custody of any state prisoner released on parole rests with the Board of Parole Hearings, except for any escaped state prisoner or any state prisoner released prior to his or her scheduled release date who should be returned to custody, and Section 3060 shall apply.

(9) It is the intent of the Legislature that efforts be made with respect to persons who are subject to Section 290.011 who are on parole to engage them in treatment.

SEC. 45. Section 3000.07 of the Penal Code is amended to read:

3000.07. (a) Every inmate who has been convicted for any felony violation of a "registerable sex offense" described in subdivision (c) of Section 290 or any attempt to commit any of the above-mentioned offenses and who is committed to prison and released on parole pursuant to Section 3000 or 3000.1 shall be monitored by a global positioning system for the term of his or her parole, or for the duration or any remaining part thereof, whichever period of time is less.

(b) Any inmate released on parole pursuant to this section shall be required to pay for the costs associated with the monitoring by a global positioning system. However, the Department of Corrections and Rehabilitation shall waive any or all of that payment upon a finding of an inability to pay. The department shall consider any remaining amounts the inmate has been ordered to pay in fines, assessments and restitution fines, fees, and orders, and shall give priority to the payment of those items before requiring that the inmate pay for the global positioning monitoring. No inmate shall be denied parole on the basis of his or her inability to pay for those monitoring costs.

SEC. 46. Section 3004 of the Penal Code is amended to read:

3004. (a) Notwithstanding any other law, the parole authority may require, as a condition of release on parole or reinstatement on parole, or as an intermediate sanction in lieu of return to prison, that an inmate or parolee agree in writing to the use of electronic monitoring or supervising devices for the purpose of helping to verify his or her compliance with all other conditions of parole. The devices shall not be used to eavesdrop or record any conversation, except a conversation between the parolee and the agent supervising the parolee which is to be used solely for the purposes of voice identification.

(b) Every inmate who has been convicted for any felony violation of a "registerable sex offense" described in subdivision (c) of Section 290 or any attempt to commit any of the above-mentioned offenses and who is committed to prison and released on parole pursuant to Section 3000 or 3000.1 shall be monitored by a global positioning system for life.

(c) Any inmate released on parole pursuant to this section shall be required to pay for the costs associated with the monitoring by a global positioning system. However, the Department of Corrections and Rehabilitation shall waive any or all of that payment upon a finding of an inability to pay. The department shall consider any remaining amounts the inmate has been ordered to pay in fines, assessments and restitution fines, fees, and orders, and shall give priority to the payment of those items before requiring that the inmate pay for the global positioning monitoring.

SEC. 47. Section 3005 of the Penal Code is amended and renumbered to read:

3008. (a) The Department of Corrections and Rehabilitation shall ensure that all parolees under active supervision who are deemed to pose a high risk to the public of committing sex crimes, as determined by the State-Authorized Risk Assessment Tool for Sex Offenders (SARATSO), as set forth in Sections 290.04 to 290.06, inclusive, are placed on intensive and specialized parole supervision and are required to report frequently to designated parole officers. The department may place any other parolee convicted of an offense that requires him or her to register as a sex offender pursuant to Section 290 who is on active supervision on intensive and specialized supervision and require him or her to report frequently to

designated parole officers.

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

(c) The department shall develop control and containment programming for sex offenders who have been deemed to pose a high risk to the public of committing a sex crime, as determined by the SARATSO, and shall require participation in appropriate programming as a condition of parole.

SEC. 48. Section 3060.6 of the Penal Code is amended to read:

3060.6. Notwithstanding any other provision of law, on or after January 1, 2001, whenever any paroled person is returned to custody or has his or her parole revoked for conduct described in subdivision (c) of Section 290, the parole authority shall report the circumstances that were the basis for the return to custody or revocation of parole to the law enforcement agency and the district attorney that has primary jurisdiction over the community in which the circumstances occurred and to the Department of Corrections and Rehabilitation. Upon the release of the paroled person, the Department of Corrections and Rehabilitation shall inform the law enforcement agency and the district attorney that has primary jurisdiction over the community in which the circumstances occurred and, if different, the county in which the person is paroled or discharged, of the circumstances that were the basis for the return to custody or revocation of parole.

SEC. 49. Section 5054.1 of the Penal Code is amended to read:

5054.1. The Secretary of the Department of Corrections and Rehabilitation has full power to order returned to custody any person under the secretary's jurisdiction. The written order of the secretary shall be sufficient warrant for any peace officer to return to actual custody any escaped state prisoner or any state prisoner released prior to his or her scheduled release date who should be returned to custody. All peace officers shall execute an order as otherwise provided by law.

SEC. 50. Section 5054.2 of the Penal Code is amended to read:

5054.2. Whenever a person is incarcerated in a state prison for violating Section 261, 264.1, 266c, 285, 286, 288, 288a, 288.5, or 289, and the victim of one or more of those offenses is a child under the age of 18 years, the Secretary of the Department of Corrections and Rehabilitation shall protect the interest of that child victim by prohibiting visitation between the incarcerated person and the child victim pursuant to Section 1202.05. The secretary shall allow visitation only when the juvenile court, pursuant to Section 362.6 of the Welfare and Institutions Code, finds that visitation between the incarcerated person and his or her child victim is in the best interests of the child victim.

SEC. 51. (a) Section 1.5 of this bill incorporates amendments to Section 1522 of the Health and Safety Code proposed by both this bill and SB 776. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2008, (2) each bill amends Section 1522 of the Health and Safety Code, and (3) this bill is enacted after SB 776, in which case Section 1522 of the

Health and Safety Code, as amended by Section 1 of this bill, shall remain operative only until the operative date of SB 776, at which time Section 1.5 of this bill shall become operative.

(b) Section 39.5 of this bill incorporates amendments to Section 646.9 of the Penal Code proposed by both this bill and AB 289. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2008, (2) each bill amends Section 646.9 of the Penal Code, and (3) this bill is enacted after AB 289, in which case Section 646.9 of the Penal Code, as amended by Section 39 of this bill, shall remain operative only until the operative date of AB 289, at which time Section 39.5 of this bill shall become operative.

SEC. 52. It is the intent of the Legislature that any reference to Section 290 of the Penal Code that appears in any other provision of a bill enacted during the 2007-08 Regular Session be construed to refer to a corresponding provision of Section 290 of the Penal Code as renumbered by this act.

SEC. 53. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to ensure that conforming changes are made to laws relating to sex offenders, it is necessary that this act take effect immediately.

BILL ANALYSIS

SENATE COMMITTEE ON PUBLIC SAFETY
Senator Gloria Romero, Chair
2007-2008 Regular Session

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SB 172 (Alquist)
As Amended April 19, 2007
Hearing date: April 24, 2007
Penal Code; Health & Safety Code (URGENCY)
JM:br

SEX OFFENDERS

HISTORY

Source: Author

Prior Legislation: SB 1128 (Alquist) - Ch. 337, Stats. 2006

Support: California State Sheriffs' Association; California Probation, Parole and Correctional Association; Peace Officers Research Association of California

Opposition:None known

KEY ISSUE

SHOULD SPECIFIED TECHNICAL AND CLARIFYING AMENDMENTS BE MADE TO THE SEX OFFENDER PUNISHMENT, CONTROL AND CONTAINMENT ACT OF 2006 (SB 1128 [ALQUIST], CH. 337, STATS. 2006)?

PURPOSE

The purpose of this bill is to make technical and clarifying changes to the Sex Offender Punishment, Control and Containment Act of 2006 (SB 1128 [Alquist]), as specified.

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Existing law , through the enactment of SB 1128 (Alquist, Ch. 337, Stats. 2006), the Sex Offender Punishment, Control and Containment Act, provides that many if not most convicted sex offenders must be evaluated for risk. (See, Pen. Code 290.04.) This Act enacted many additional provisions concerning sex offenders, as specified.

This bill makes largely technical changes, corrections and conforming changes to sections that were added to the law or amended by SB 1128 and Proposition 83, as approved by the voters in the November 2006 General Election.

Existing law contains two related, yet separate and distinct, sections concerning contacting or arranging a meeting with a minor for purposes of engaging in sexual conduct. These provisions were added to the law by SB 1128 and Proposition 83. (Pen. Code 288.3.)

This bill assigns a new section number - 288.4 - to the new crime defined in SB 1128 of the 2006 legislative session.

This bill corrects numerous cross-references to include new section number 288.4.

This bill makes numerous corrections to statutory references to the Department of Corrections and Rehabilitation.

This bill makes non-substantive, grammatical and composition corrections to statutory provisions.

RECEIVERSHIP/OVERCROWDING CRISIS AGGRAVATION ("ROCA") IMPLICATIONS

California currently faces an extraordinary and severe prison

and jail overcrowding crisis. California's prison capacity is nearly exhausted as prisons today are being operated with a

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significant level of overcrowding. In addition, California's jails likewise are significantly overcrowded. Twenty California counties are operating under jail population caps. According to the State Sheriffs' Association, "counties are currently releasing 18,000 pre and post-sentenced inmates every month and many counties are so overcrowded they do not accept misdemeanor bookings in any form, ..." In January of this year the Legislative Analyst's office summarized the trajectory of California's inmate population over the last two decades:

> During the past 20 years, jail and prison populations have increased significantly. County jail populations have increased by about 66 percent over that period, an amount that has been limited by court-ordered population caps. The prison population has grown even more dramatically during that period, tripling since the mid-1980s.

The level of overcrowding, and the impact of the population crisis on the day-to-day prison operations, is staggering:

> As of December 31, 2006, the California Department of Corrections and Rehabilitation (CDCR) was estimated to have 173,100 inmates in the state prison system, based on CDCR's fall 2006 population projections. However, . . . the department only operates or contracts for a total of 156,500 permanent bed capacity (not including

out-of-state beds, . . .), resulting in a shortfall of about 16,600 prison beds relative to the inmate population. The most significant bed shortfalls are for Level I, II, and IV inmates, as

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Analysis of the 2007-08 Budget Bill: Judicial and Criminal Justice, Legislative Analyst's Office (February 21, 2007).

Memorandum from CSSA President Gary Penrod to Governor, February 14, 2007.

California's Criminal Justice System: A Primer. Legislative Analyst's Office (January 2007).

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well as at reception centers. As a result of the bed deficits, CDCR houses about 10 percent of the inmate population in temporary beds, such as in dayrooms and gyms. In addition, many inmates are housed in facilities designed for different security levels. For example, there are currently about 6,000 high security (Level IV) inmates housed in beds designed for Level III inmates.

. . . (S)ignificant overcrowding has both operational and fiscal consequences. Overcrowding and the use of temporary beds create security concerns, particularly for medium- and high-security inmates. Gyms and dayrooms are not designed to provide security coverage as well as in permanent housing units, and overcrowding can contribute to inmate unrest, disturbances, and assaults. This can result in additional state costs for medical treatment, workers' compensation, and staff overtime. In addition, overcrowding can limit the ability of prisons to provide rehabilitative, health care, and other types of programs because prisons were not designed with sufficient space to provide these services to the increased population. The difficulty in providing inmate programs and services is exacerbated by the use of program space to house inmates. Also, to the extent that

> inmate unrest is caused by overcrowding, rehabilitation programs and other services can be disrupted by the resulting lockdowns.

As a result of numerous lawsuits, the state has entered into several consent decrees agreeing to improve conditions in the state's prisons. As these cases have continued over the past several years, prison conditions nonetheless have failed to improve and, over the last year, the scrutiny of the federal courts over California's prisons has intensified.

Analysis 2007-08 Budget Bill, supra, fn. 1.

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In February of 2006, the federal court appointed a receiver to take over the direct management and operation of the prison medical health care delivery system from the state. Motions filed in December of 2006 are now pending before three federal court judges in which plaintiffs are seeking a court-ordered limit on the prison population pursuant to the federal Prison Litigation Reform Act. Medical, mental health and dental care programs at CDCR each are "currently under varying levels of federal court supervision based on court rulings that the state has failed to provide inmates with adequate care as required under the Eighth Amendment to the U.S. Constitution. The courts found key deficiencies in the state's correctional programs, including: (1) an inadequate number of staff to deliver health care services, (2) an inadequate amount of clinical space within prisons, (3) failures to follow nationally recognized health care guidelines for treating inmate-patients, and (4) poor coordination between health care staff and custody staff."

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Primer, supra, fn. 4.

This bill does not appear to aggravate the prison and jail overcrowding crisis outlined above.

COMMENTS

1. Need for This Bill

According to the author:

> SB 1128 (Alquist), Chapter 337, Statutes of 2006, made numerous changes to the laws concerning sex crimes and related provisions. The law enacted a system of evaluations for sex offenders for risk. The bill increased penalties for the most dangerous sex offenders. The bill defined a new crime that can be applied against pedophiles who attempt to use the Internet to induce children to engage in sexual conduct.
>
> This bill makes technical changes and corrects numerous statutory references to SB 1128. For example, under existing law, two sections with the same number exist that apply to persons who attempt to use the Internet to lure children to have sex. Both of these sections are valid and enforceable. However, the existence of two separate sections with the same number is confusing. This bill corrects that confusion by denominating the child luring section created by SB 1128 of 2006 as Penal Code Section 288.4.

2. Correcting Duplicative Numbering of Two Separate and Distinct Laws on Child Luring

As noted in the author's statement, existing law includes two separate and distinct sections in the Penal Code numbered 288.3.

Each section addresses luring children over the Internet for sexual purposes. Each section is valid and enforceable. However, the existence of two separate and distinct crimes with

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the same Penal Code section number could be very confusing for the courts, practitioners, law enforcement, corrections personnel and the courts. Significant time and effort could be required to determine which crime a defendant convicted of a violation of Section 288.3 committed.

Section 288.3, as defined in SB 1128 of 2006, specifically includes a provision allowing the use of law enforcement "stings" in which a law enforcement officer poses as a child in communications with adults who are trying to lure children over the Internet to engage in sex. This provision is renumbered Penal Code Section 288.4 by this bill.

Section 288.3 as defined in Proposition 83 of the November 2006 election is drafted such that the person contacted by an adult defendant must be proved to have been a child. This provision shall remain as Penal Code Section 288.3. Cross-references throughout the Penal Code have been corrected in this bill to reflect the renumbering.

SHOULD THE TWO PENAL CODE PROVISIONS REGARDING CHILD LURING THAT CURRENTLY CONTAIN THE SAME PENAL CODE SECTION BE RENUMBERED TO AVOID CONFUSION?

3. Additional Corrections

The bill contains a number of technical changes. These changes are also non-substantive. For example, numerous references to the Department of Corrections are corrected to reflect the new name of the agency - the Department of Corrections and Rehabilitation. Penal Code Section 3005 was renumbered as 3008 to avoid confusion with a repealed section of that same number.

SHOULD NUMEROUS NON-SUBSTANTIVE CORRECTIONS IN SEX OFFENSE

STATUTES BE MADE?

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SB 172

(Alquist)

PageH

SB 172 Senate Bill - Bill Analysis
BILL ANALYSIS

SENATE RULES COMMITTEE Office of Senate Floor Analyses 1020 N Street, Suite 524 (916) 651-1520 Fax: (916) 327-4478	SB 172

UNFINISHED BUSINESS

Bill No: SB 172
Author: Alquist (D)
Amended: 9/7/07
Vote: 27 - Urgency

SENATE PUBLIC SAFETY COMMITTEE : 5-0, 4/24/07
AYES: Romero, Cogdill, Cedillo, Margett, Ridley-Thomas

SENATE FLOOR : 38-0, 5/7/07
AYES: Aanestad, Ackerman, Alquist, Ashburn, Battin, Calderon, Cedillo, Cogdill, Corbett, Correa, Cox, Denham, Ducheny, Dutton, Florez, Harman, Hollingsworth, Kehoe, Kuehl, Lowenthal, Machado, Maldonado, Margett, McClintock, Migden, Negrete McLeod, Oropeza, Padilla, Perata, Ridley-Thomas, Romero, Runner, Scott, Steinberg, Torlakson, Vincent, Wyland, Yee
NO VOTE RECORDED: Simitian, Wiggins

ASSEMBLY FLOOR : 76-0, 9/10/07 - See last page for vote

SUBJECT : Sex offenders

SOURCE : Author

DIGEST : This bill makes technical and clarifying changes to the Sex Offender Punishment, Control and Containment Act of 2006.

Assembly Amendments (1) make clarifying changes to provisions related to the risk assessment tool to be used

CONTINUED

to identify sex offenders, and make related technical changes, and (2) deleted technical changes made to Section 290.3 of the Penal Code.

ANALYSIS : Existing law provides for various penalty provisions related to sex offenders.

This bill makes nonsubstantive, conforming changes to those provisions. This bill makes clarifying changes to provisions related to the risk assessment tool to be used to identify sex offenders, and makes related technical changes.

Existing law requires persons who have been convicted of specified crimes, and other persons as required by a court, to register as a sex offender. Existing law sets forth the procedure for doing so.

This bill reorganizes and renumbers the provisions that set forth that procedure, and makes conforming technical changes in related provisions of law.

This bill incorporates additional changes in Section 1522 of the Health and Safety Code, proposed by SB 776, to be operative only if SB 776 and this bill are both chaptered and become effective on or before January 1, 2008, and this bill is chaptered last.

This bill incorporates additional changes in Section 646.9 of the Penal Code, proposed by AB 289, to be operative only if AB 289 and this bill are both chaptered and become effective on or before January 1, 2008, and this bill is chaptered last.

Prior Legislation

SB 1128 (Alquist), Chapter 337, Statutes of 2006, which passed the Senate on 8/31/06 (40-0).

FISCAL EFFECT : Appropriation: No Fiscal Com.: No Local: No

SUPPORT : (Verified 9/7/07)

California State Sheriffs' Association
California Probation, Parole and Correctional Association
Peace Officers Research Association of California

ARGUMENTS IN SUPPORT : According to the author's office, SB 1128 (Alquist), Chapter 337, Statutes of 2006, made numerous changes to the laws concerning sex crimes and related provisions. The law enacted a system of evaluations for sex offenders for risk. The bill increased penalties for the most dangerous sex offenders. The bill defined a new crime that can be applied against pedophiles who attempt to use the Internet to induce children to engage in sexual conduct.

This bill makes technical changes and corrects numerous statutory references to SB 1128. For example, under existing law, two sections with the same number exist that apply to persons who attempt to use the Internet to lure children to have sex. Both of these sections are valid and enforceable. However, the existence of two separate sections with the same number is confusing. This bill corrects that confusion by denominating the child luring section created by SB 1128 of 2006 as Penal Code Section 288.4.

ASSEMBLY FLOOR :
AYES: Adams, Aghazarian, Anderson, Arambula, Bass, Beall, Benoit, Berg, Berryhill, Blakeslee, Brownley, Caballero, Charles Calderon, Carter, Cook, Coto, Davis, De La Torre, De Leon, DeSaulnier, DeVore, Duvall, Dymally, Emmerson, Eng, Evans, Feuer, Fuentes, Fuller, Gaines, Galgiani, Garcia, Garrick, Hayashi, Hernandez, Horton, Houston, Huff, Huffman, Jeffries, Jones, Karnette, Keene, Krekorian, La Malfa, Laird, Leno, Levine, Lieber, Lieu, Ma, Maze, Mendoza, Mullin, Nakanishi, Nava, Niello, Parra, Plescia, Portantino, Price, Sharon Runner, Ruskin, Salas, Saldana, Silva, Smyth, Solorio, Spitzer, Swanson, Torrico, Tran, Villines, Walters, Wolk, Nunez
NO VOTE RECORDED: Hancock, Soto, Strickland, Vacancy

RJG:nl 9/11/07 Senate Floor Analyses

SUPPORT/OPPOSITION: SEE ABOVE

**** END ****

SB 172 Senate Bill - Bill Analysis
BILL ANALYSIS

SENATE THIRD READING
SB 172 (Alquist)
As Amended September 7, 2007
2/3 vote. Urgency

SENATE VOTE :38-0

PUBLIC SAFETY 6-0

Ayes:	Solorio, Aghazarian, Anderson, De La Torre, Ma, Portantino		

SUMMARY : Renumbers a provision of law related to communicating with a person under the age of 18 with the intent to commit a specified sex offense, as specified. Specifically, this bill :

1) Provides the State Authorized Risk Assessment Tool for Sex Offenders (SARATSO) Review Committee shall research assessment tools for female juvenile offenders, as specified, and if one is agreed upon, SARATSO shall advise the Governor and the Legislature of the selected tool and the Department of Mental Health (DMH) shall post the decision on its Web site. Sixty days after the decision is posted, the selected tool shall become the SARATSO for female juvenile offenders.

2) States the SARATSO Training Committee shall be comprised of a chief probation officer selected by the Chief Probation Officers of California, a representative of DMH, and a representative of the Attorney General's Office.

3) Requires the Training Committee to consult with the Corrections Standards Authority and the Commission on Peace Officer Standards and Training to develop a training program, as specified for persons to administer the SARATSO, as specified.

4) Double-joins this bill with SB 766 (Vincent) and AB 289 (Spitzer) to avoid chaptering problems.

5) Re-organizes and renumbers provisions of law relating to sex offender registration requirements that were contained in AB 1706 (Committee on Public Safety).

6) Makes other non-substantive corrections and technical changes.

EXISTING LAW :

1) States every person who, motivated by an unnatural or abnormal sexual interest in children, arranges a meeting with a minor or a person he/she believes to be a minor for the purpose of exposing his/her genitals or pubic or rectal area, having the child expose his/her genitals or pubic or rectal area, or engaging in lewd or lascivious behavior, shall be punished by a fine not exceeding $5,000; by imprisonment in a county jail not exceeding one year; or, by both the fine and imprisonment.

2) Provides that every person who violates existing law after a prior conviction for a registered sex offense shall be punished by imprisonment in the state prison.

3) States every person described in existing law 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.

4) States every person who contacts or communicates with a minor, or attempts to contact or communicate with a minor, who knows or reasonably should know that the person is a minor, with intent to commit a specified sex offense involving the minor shall be punished by imprisonment in the state prison for the term prescribed for an attempt to commit the intended offense.

5) Defines "contacts or communicates with" as direct and indirect contact or communication that may be achieved personally or by use of an agent or agency, any print medium, any postal service, a common carrier or communication common carrier, any electronic communications system, or any telecommunications, wire, computer, or radio communications device or system.

FISCAL EFFECT : None

COMMENTS : According to the author, "This bill will make technical changes and corrections to statutes added or amended by the Sex Offender Punishment, Control and Containment Act of 2006, enacted by SB 1128 (Alquist), Chapter 337, Statutes of 2006, and Proposition 83, Jessica's Law, as approved by the voters in the November 2006 General Election. The law now contains two Penal Code Section 288.3 (one added by SB 1128 and one added by Proposition 83), each of which applies to persons who use the Internet to lure children to have sex, and each of which is valid and enforceable. This bill will renumber one of those sections as 'Penal Code Section 288.4' and correct cross-references to include the new Penal Code Section 288.4.

"In addition, this bill will make changes to a new risk assessment system established by SB 1128. SB 1128 'create[d] a standardized, statewide system to identify, assess, monitor and contain known sex offenders . . . .' SB 1128 identified an actuarial risk assessment tool for adult males, and it established the SARATSO Review Committee to research and identify risk assessment tools for females and juveniles. Upon the unanimous recommendation of multiple experts on sex offender risk assessment tools, the SARATSO Review Committee has requested several amendments to the statute that directs them to identify tools to clarify ambiguities and to permit them to exercise their authority in what they believe was the manner intended by SB 1128. For example, according to the expert, requiring multiple cross-validations of a tool (as opposed to one cross-validation) is not necessary to ensure its integrity but will result in delays of selecting a tool for juveniles and women of approximately six years.

"Likewise, according to the experts, requiring that any tool be 'widely accepted by the courts' is not necessary to ensure its integrity; the committee should be able to rely on risk assessment experts who have testified in court about lesser tools that have been widely accepted and who, as experts, believe that a newer tool is reasonably likely to be wildly accepted by the courts. And, again, requiring wide acceptance by the courts will result in significant delays in selecting any risk assessment tool. This bill will add a chief probation officer as a member of the committee that will establish training standards a training schedule for those persons who will administer the risk assessment tools.

Please see the policy committee analysis for full discussion of

this bill.

Analysis Prepared by : Kimberly Horiuchi / PUB. S. / (916) 319-3744

FN: 0003297

Date of Hearing: July 3, 2007
Counsel: Kimberly A. Horiuchi

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Jose Solorio, Chair

SB 172 (Alquist) - As Amended: June 28, 2007

SUMMARY : Renumbers a provision of law related to communicating with a person under the age of 18 with the intent to commit a specified sex offense, as specified. Specifically, this bill :

1) Provides the State Authorized Risk Assessment Tool for Sex Offenders (SARATSO) Review Committee shall research assessment tools for female juvenile offenders, as specified, and if one is agreed upon, SARATSO shall advise the Governor and the Legislature of the selected tool and the Department of Mental Health (DMH) shall post the decision on its Web site. Sixty days after the decision is posted, the selected tool shall become the SARATSO for female juvenile offenders.

2) States the SARATSO Training Committee shall be comprised of a chief probation officer selected by the Chief Probation Officers of California, a representative of DMH, and a representative of the Attorney General's Office.

3) Requires the Training Committee to consult with the Corrections Standards Authority and the Commission on Peace Officer Standards and Training to develop a training program, as specified for persons to administer the SARATSO, as specified.

4) Makes other non-substantive corrections and technical changes.

EXISTING LAW :

1) States every person who, motivated by an unnatural or abnormal sexual interest in children, arranges a meeting with a minor or a 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 his or her genitals or pubic or rectal area, or engaging in lewd or lascivious behavior, shall be

punished by a fine not exceeding $5,000; by imprisonment in a county jail not exceeding one year; or by both the fine and imprisonment. [Penal Code Section 288.3(a)(1).]

2) Provides that every person who violates existing law after a prior conviction for a registered sex offense shall be punished by imprisonment in the state prison. [Penal Code Section 288.3(a)(2).]

3) States every person described in existing law 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. [Penal Code Section 288.3(b).]

4) States every person who contacts or communicates with a minor, or attempts to contact or communicate with a minor, who knows or reasonably should know that the person is a minor, with intent to commit a specified sex offense involving the minor shall be punished by imprisonment in the state prison for the term prescribed for an attempt to commit the intended offense. [Penal Code Section 288.3(a).]

5) Defines "contacts or communicates with" as direct and indirect contact or communication that may be achieved personally or by use of an agent or agency, any print medium, any postal service, a common carrier or communication common carrier, any electronic communications system, or any telecommunications, wire, computer, or radio communications device or system. [Penal Code Section 288.3(b).]

FISCAL EFFECT : Unknown

COMMENTS :

1) Author's Statement : According to the author, "This bill will make technical changes and corrections to statutes added or amended by the Sex Offender Punishment, Control and Containment Act of 2006, enacted by SB 1128 (Alquist), Chapter 337, Statutes of 2006, and Proposition 83, Jessica's Law, as approved by the voters in the November 2006 General Election. The law now contains two Penal Code Section 288.3 (one added by SB 1128 and one added by Proposition 83), each of which applies to persons who use the Internet to lure children to have sex, and each of which is valid and enforceable. This bill will renumber one of those sections as 'Penal Code

Section 288.4' and correct cross-references to include the new Penal Code Section 288.4.

"In addition, this bill will make changes to a new risk assessment system established by SB 1128. SB 1128 'create[d] a standardized, statewide system to identify, assess, monitor and contain known sex offenders . . . .' [Penal Code Section 290.46(b).] SB 1128 identified an actuarial risk assessment tool for adult males, and it established the SARATSO Review Committee to research and identify risk assessment tools for females and juveniles. (Penal Code Section 290.04.) Upon the unanimous recommendation of multiple experts on sex offender risk assessment tools, the SARATSO Review Committee has requested several amendments to the statute that directs them to identify tools to clarify ambiguities and to permit them to exercise their authority in what they believe was the manner intended by SB 1128. For example, according to the expert, requiring multiple cross-validations of a tool (as opposed to one cross-validation) is not necessary to ensure its integrity but will result in delays of selecting a tool for juveniles and women of approximately six years.

"Likewise, according to the experts, requiring that any tool be 'widely accepted by the courts' is not necessary to ensure its integrity; the committee should be able to rely on risk assessment experts who have testified in court about lesser tools that have been widely accepted and who, as experts, believe that a newer tool is reasonably likely to be wildly accepted by the courts. And, again, requiring wide acceptance by the courts will result in significant delays in selecting any risk assessment tool. This bill will add a chief probation officer as a member of the committee that will establish training standards a training schedule for those persons who will administer the risk assessment tools.

2)Background : This bill remedies chaptering problems arising from the enactment of both SB 1128 and Proposition 83 (Jessica's Law) passed by the voters on November 7, 2006. SB 1128 provided that for any person who, motivated by an unnatural or abnormal sexual interest in children, arranges a meeting with a minor for specified sexual purposes shall be sentenced to up to one year in the county jail. Any person who goes to a specified meeting place with the above mentioned intent is guilty of a felony and shall be sentenced to a term of two, three or four years. Proposition 83 created a new

Penal Code Section 288.3 that punished any person who contacts or communicates with a minor with the intent to commit a specified sex offense as if he or she attempted to commit a specified sex offense. Hence, both versions of Penal Code Section 288.3 are currently existing law. This bill renumbers the version enacted by SB 1128 as Penal Code Section 288.4.

3) Prior Legislation : SB 1128 (Alquist), Chapter 337, Statutes of 2006, among other things, punishes any person who, motivated by an unnatural or abnormal sexual interest in children, arranges a meeting with a minor or a 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 his or her genitals or pubic or rectal area, or engaging in lewd or lascivious behavior, by a fine not exceeding 5,000; by imprisonment in a county jail not exceeding one year; or by both the fine and imprisonment.

4) Arguments in Support : According to the Office of Attorney General , "[SB 172], as amended, will renumber a code section applicable to person who use the Internet to lure children to have sex so as to avoid duplicate section numbers; correct statutory references to the Department of Corrections and Rehabilitation at the request of the statutorily created SARATSO Review Committee and, upon unanimous recommendation of experts consulted by the Committee, make changes to the criteria considered by the Committee in selecting risk assessment tools; and add a chief probation officer as a member of the Committee that will establish training standards and a training schedule for those person who will administer the risk assessment tool."

REGISTERED SUPPORT / OPPOSITION :

Support

California Probation, Parole and Correctional Association
California State Sheriffs' Association
Office of the Attorney General
Police Officers Research Association of California

Opposition

None

AB 1849 Assembly Bill - CHAPTEREDBILL NUMBER: AB 1849 CHAPTERED
BILL TEXT

CHAPTER 886
FILED WITH SECRETARY OF STATE SEPTEMBER 30, 2006
APPROVED BY GOVERNOR SEPTEMBER 30, 2006
PASSED THE ASSEMBLY AUGUST 31, 2006
PASSED THE SENATE AUGUST 30, 2006
AMENDED IN SENATE AUGUST 30, 2006
AMENDED IN SENATE AUGUST 29, 2006
AMENDED IN SENATE AUGUST 24, 2006
AMENDED IN SENATE AUGUST 22, 2006
AMENDED IN SENATE AUGUST 7, 2006
AMENDED IN ASSEMBLY MAY 26, 2006
AMENDED IN ASSEMBLY MARCH 15, 2006
AMENDED IN ASSEMBLY FEBRUARY 27, 2006

INTRODUCED BY Assembly Member Leslie
(Coauthors: Assembly Members Benoit, Cogdill, Cohn, Daucher, DeVore, Emmerson, Garcia, Harman, Haynes, Shirley Horton, Houston, Huff, Leno, Maze, Mountjoy, Parra, Strickland, Tran, Vargas, and Wyland)
(Coauthors: Senators Alquist and Cox)

JANUARY 12, 2006

An act to amend Sections 290.46, 1202.8, and 3004 of, and to repeal Sections 290.04. 290.05, and 290.06 of, the Penal Code, relating to sex offenders, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 1849, Leslie Sex offenders.

Existing law requires the Department of Justice to make information concerning certain persons who are required to register as sex offenders available to the public via an Internet Web site, including the offender's criminal history.

This bill would also require that on or before July 1, 2010, the year of the conviction of the offender's last sexual offense, the year of release from incarceration for that offense, and whether he or she was subsequently incarcerated for any other felony, be posted on the Internet Web site, as specified. This bill would also require any state facility that releases a sex offender to provide the year of conviction and year of release for his or her most recent offense requiring registration as a sex offender to the department, or that releases a person who is required to register as a sex offender from incarceration whose incarceration was for a felony committed subsequently to the offense for which he or she is required to register to advise the department, as specified.

Senate Bill No, 1178 proposes to enact provisions requiring certain offenders to be assessed with the State Authorized Risk Assessment Tool for Sex Offenders for purposes of parole and probation.

This bill would further revise those provisions to, among other things, make certain requirements applicable commencing January 1, 2009, to become operative only if SB 1178 is also enacted and this bill is enacted last.

This bill would incorporate additional changes in Section 290.46 of the Penal Code proposed by AB 2712 and SB 1128 contingent upon the prior enactment of one or both of those bills.

This bill would provide that it shall only become operative if SB 1128 is enacted.

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

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 290.04 of the Penal Code, as added by Senate Bill No. 1178, is repealed.

SEC. 2. Section 290.05 of the Penal Code, as added by Senate Bill No. 1178, is repealed.

SEC. 3. Section 290.06 of the Penal Code, as added by Senate Bill No. 1178, is repealed.

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

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

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

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

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

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

(B) (i) Any state facility that releases from incarceration a person who was incarcerated because of a crime for which he or she is required to register as a sex offender pursuant to Section 290 shall, within 30 days of release, provide the year of release for his or her most recent offense requiring registration to the Department

of Justice in a manner and format approved by the department.

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

(iii) Any state facility that, prior to January 1, 2007, released from incarceration a person who was incarcerated because of a crime for which he or she is required to register as a sex offender pursuant to Section 290 shall provide the year of release for his or her most recent offense requiring registration to the Department of Justice in a manner and format approved by the department. The information provided by the Department of Corrections and Rehabilitation shall be limited to information that is currently maintained in an electronic format.

(iv) Any state facility that, prior to January 1, 2007, released a person who is required to register pursuant to Section 290 from incarceration whose incarceration was for a felony committed subsequently to the offense for which he or she is required to register shall advise the Department of Justice of that fact in a manner and format approved by the department. The information provided by the Department of Corrections and Rehabilitation shall be limited to information that is currently maintained in an electronic format.

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

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

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

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

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

(D) Section 264.1.

(E) Section 269.

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

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

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

(I) Section 288.5.

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

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

(c) (1) On or before July 1, 2005, with respect to a person who has been convicted of the commission or the attempted commission of any of the offenses listed in paragraph (2), the Department of Justice shall make available to the public via the Internet Web site his or her name and known aliases, a photograph, a physical description, including gender and race, date of birth, criminal

history, the community of residence and ZIP Code in which the person resides or the county in which the person is registered as a transient, and any other information that the Department of Justice deems relevant, but not the information excluded pursuant to subdivision (a). On or before July 1, 2006, the Department of Justice shall determine whether any person convicted of an offense listed in paragraph (2) also has one or more prior or subsequent convictions of an offense listed in paragraph (2) of subdivision (a) of Section 290, and, for those persons, the Department of Justice shall make available to the public via the Internet Web site the address at which the person resides. However, the address at which the person resides shall not be disclosed until a determination is made that the person is, by virtue of his or her additional prior or subsequent conviction of an offense listed in paragraph (2) of subdivision (a) of Section 290, subject to this subdivision.

(2) This subdivision shall apply to the following offenses:

(A) Section 220, except assault to commit mayhem.

(B) Paragraph (1), (3), or (4) of subdivision (a) of Section 261.

(C) Paragraph (2) of subdivision (b), or subdivision (f), (g), or (i), of Section 286.

(D) Paragraph (2) of subdivision (b), or subdivision (f), (g), or (i), of Section 288a.

(E) Subdivision (b), (d), (e), or (i) of Section 289.

(d) (1) On or before July 1, 2005, with respect to a person who has been convicted of the commission or the attempted commission of any of the offenses listed in, or who is described in, this subdivision, the Department of Justice shall make available to the public via the Internet Web site his or her name and known aliases, a photograph, a physical description, including gender and race, date of birth, criminal history, the community of residence and ZIP Code in which the person resides or the county in which the person is registered as a transient, and any other information that the Department of Justice deems relevant, but not the information excluded pursuant to subdivision (a) or the address at which the person resides.

(2) This subdivision shall apply to the following offenses and offenders:

(A) Subdivision (a) of Section 243.4, provided that the offense is a felony.

(B) Section 266, provided that the offense is a felony.

(C) Section 266c, provided that the offense is a felony.

(D) Section 266j.

(E) Section 267.

(F) Subdivision (c) of Section 288, provided that the offense is a misdemeanor.

(G) Section 647.6.

(H) Any person required to register pursuant to Section 290 based upon an out-of-state conviction, unless that person is excluded from the Internet Web site pursuant to subdivision (e). However, if the Department of Justice has determined that the out-of-state crime, if committed or attempted in this state, would have been punishable in this state as a crime described in subparagraph (A) of paragraph (2) of subdivision (a) of Section 290, the person shall be placed on the Internet Web site as provided in subdivision (b) or (c), as applicable to the crime.

(e) (1) If a person has been convicted of the commission or the

attempted commission of any of the offenses listed in this subdivision, and he or she has been convicted of no other offense listed in subdivision (b), (c), or (d) other than those listed in this subdivision, that person may file an application with the Department of Justice, on a form approved by the department, for exclusion from the Internet Web site. If the department determines that the person meets the requirements of this subdivision, the department shall grant the exclusion and no information concerning the person shall be made available via the Internet Web site described in this section. He or she bears the burden of proving the facts that make him or her eligible for exclusion from the Internet Web site. However, a person who has filed for or been granted an exclusion from the Internet Web site is not relieved of his or her duty to register as a sex offender pursuant to Section 290 nor from any otherwise applicable provision of law.

(2) This subdivision shall apply to the following offenses:

(A) A felony violation of subdivision (a) of Section 243.4.

(B) Section 647.6, 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 offender was the victim's parent, stepparent, sibling, or grandparent.

(II) The crime did not involve either oral copulation or penetration of the vagina or rectum of either the victim or the offender by the penis of the other or by any foreign object.

(ii) An offense for which the offender is on probation at the time of his or her application, provided that the offender submits to the department a certified copy of a probation report, presentencing report, report prepared pursuant to Section 288.1, or other official court document that clearly demonstrates both of the following:

(I) The offender was the victim's parent, stepparent, sibling, or grandparent.

(II) The crime did not involve either oral copulation or penetration of the vagina or rectum of either the victim or the offender by the penis of the other or by any foreign object.

(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.

(f) The Department of Justice shall make a reasonable effort to provide notification to persons who have been convicted of the commission or attempted commission of an offense specified in subdivision (b), (c), or (d), that on or before July 1, 2005, the department is required to make information about specified sex offenders available to the public via an Internet Web site as specified in this section. The Department of Justice shall also make a reasonable effort to provide notice that some offenders are eligible to apply for exclusion from the Internet Web site.

(g) (1) A designated law enforcement entity, as defined in subdivision (f) of Section 290.45, may make available information concerning persons who are required to register pursuant to Section 290 to the public via an Internet Web site as specified in paragraph (2).

(2) The law enforcement entity may make available by way of an Internet Web site the information described in subdivision (c) if it determines that the public disclosure of the information about a specific offender by way of the entity's Internet Web site is necessary to ensure the public safety based upon information available to the entity concerning that specific offender.

(3) The information that may be provided pursuant to this subdivision may include the information specified in subdivision (b) of Section 290.45. However, that offender's address may not be disclosed unless he or she is a person whose address is on the Department of Justice's Internet Web site pursuant to subdivision (b) or (c).

(h) For purposes of this section, "offense" includes the statutory predecessors of that offense, or any offense committed in another jurisdiction that, if committed or attempted to be committed in this state, would have been punishable in this state as an offense listed in subparagraph (A) of paragraph (2) of 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 1596.871 of the Health and Safety Code, and Section 432.7 of the Labor Code.

(4) (A) Any use of information disclosed pursuant to this section for purposes other than those provided by paragraph (1) or in violation of paragraph (2) shall make the user liable for the actual damages, and any amount that may be determined by a jury or a court sitting without a jury, not exceeding three times the amount of actual damage, and not less than two hundred fifty dollars ($250), and attorney's fees, exemplary damages, or a civil penalty not exceeding twenty-five thousand dollars ($25,000).

(B) Whenever there is reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of misuse of the information available via an Internet Web site established pursuant to this section in violation of paragraph (2), the Attorney General, any district attorney, or city attorney, or any person aggrieved by the misuse is authorized to bring a civil action in the appropriate court requesting preventive relief, including an application for a permanent or temporary injunction, restraining order, or other order against the person or group of persons responsible for the pattern or practice of misuse. The foregoing remedies shall be independent of any other remedies or procedures that may be available to an aggrieved party under other provisions of law, including Part 2 (commencing with Section 43) of Division 1 of the Civil Code.

(m) The public notification provisions of this section are applicable to every person described in this section, without regard to when his or her crimes were committed or his or her duty to register pursuant to Section 290 arose, and to every offense described in this section, regardless of when it was committed.

(n) On or before July 1, 2006, and every year thereafter, the Department of Justice shall make a report to the Legislature concerning the operation of this section.

(o) A designated law enforcement entity and its employees shall be immune from liability for good faith conduct under this section.

SEC. 4.1. 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 specified in this section. The department shall update the Internet Web site on an ongoing basis. All information identifying the victim by name, birth date, address, or relationship to the registrant shall be excluded from the Internet Web site. The name or address of the person's employer and the listed person's criminal history other than the specific crimes for which the person is required to register shall not be included on the Internet Web site. The Internet Web site shall be translated into languages other than English as determined by the department.

(2) (A) On or before July 1, 2010, the Department of Justice shall make available to the public, via an Internet Web site as specified in this section, as to any person described in subdivisions (b), (c), or (d), the following information:

(i) The year of conviction of his or her most recent offense requiring registration pursuant to Section 290.

(ii) The year he or she was released from incarceration for that offense.

(iii) Whether he or she was subsequently incarcerated for any other felony, if that fact is reported to the department. If the department has no information about a subsequent incarceration for any felony, that fact shall be noted on the Internet Web site.

However, no year of conviction shall be made available to the public unless the department also is able to make available the corresponding year of release of incarceration for that offense, and the required notation regarding any subsequent felony.

(B) (i) Any state facility that releases from incarceration a person who was incarcerated because of a crime for which he or she is required to register as a sex offender pursuant to Section 290 shall, within 30 days of release, provide the year of release for his or her most recent offense requiring registration to the Department of Justice in a manner and format approved by the department.

(ii) Any state facility that releases a person who is required to register pursuant to Section 290 from incarceration whose incarceration was for a felony committed subsequently to the offense for which he or she is required to register shall, within 30 days of release, advise the Department of Justice of that fact.

(iii) Any state facility that, prior to January 1, 2007, released from incarceration a person who was incarcerated because of a crime for which he or she is required to register as a sex offender pursuant to Section 290 shall provide the year of release for his or her most recent offense requiring registration to the Department of Justice in a manner and format approved by the department. The information provided by the Department of Corrections and Rehabilitation shall be limited to information that is currently maintained in an electronic format.

(iv) Any state facility that, prior to January 1, 2007, released a person who is required to register pursuant to Section 290 from incarceration whose incarceration was for a felony committed subsequently to the offense for which he or she is required to register shall advise the Department of Justice of that fact in a manner and format approved by the department. The information provided by the Department of Corrections and Rehabilitation shall be limited to information that is currently maintained in an electronic format.

(b) (1) On or before July 1, 2005, with respect to a person who has been convicted of the commission or the attempted commission of any of the offenses listed in, or who is described in, paragraph (2), the Department of Justice shall make available to the public via the Internet Web site his or her name and known aliases, a photograph, a physical description, including gender and race, date of birth, criminal history, the address at which the person resides, and any other information that the Department of Justice deems relevant, but not the information excluded pursuant to subdivision (a).

(2) This subdivision shall apply to the following offenses and offenders:

(A) Section 207 committed with intent to violate Section 261, 286, 288, 288a, or 289.

(B) Section 209 committed with intent to violate Section 261, 286, 288, 288a, or 289.

(C) Paragraph (2) or (6) of subdivision (a) of Section 261.

(D) Section 264.1.

(E) Section 269.

(F) Subdivision (c) or (d) of Section 286.

(G) Subdivision (a), (b), or (c) of Section 288, provided that the offense is a felony.

(H) Subdivision (c) or (d) of Section 288a.

(I) Section 288.5.

(J) Subdivision (a) or (j) of Section 289.

(K) Any person who has ever been adjudicated a sexually violent predator as defined in Section 6600 of the Welfare and Institutions Code.

(c) (1) On or before July 1, 2005, with respect to a person who has been convicted of the commission or the attempted commission of any of the offenses listed in paragraph (2), the Department of Justice shall make available to the public via the Internet Web site his or her name and known aliases, a photograph, a physical description, including gender and race, date of birth, criminal history, the community of residence and ZIP Code in which the person resides or the county in which the person is registered as a transient, and any other information that the Department of Justice deems relevant, but not the information excluded pursuant to subdivision (a). On or before July 1, 2006, the Department of Justice shall determine whether any person convicted of an offense listed in paragraph (2) also has one or more prior or subsequent convictions of an offense listed in paragraph (2) of subdivision (a) of Section 290, and, for those persons, the Department of Justice shall make available to the public via the Internet Web site the address at which the person resides. However, the address at which the person resides shall not be disclosed until a determination is made that the person is, by virtue of his or her additional prior or subsequent conviction of an offense listed in paragraph (2) of subdivision (a) of Section 290, subject to this subdivision.

(2) This subdivision shall apply to the following offenses:

(A) Section 220, except assault to commit mayhem.

(B) Paragraph (1), (3), or (4) of subdivision (a) of Section 261.

(C) Paragraph (2) of subdivision (b), or subdivision (f), (g), or (i), of Section 286.

(D) Paragraph (2) of subdivision (b), or subdivision (f), (g), or (i), of Section 288a.

(E) Subdivision (b), (d), (e), or (i) of Section 289.

(d) (1) On or before July 1, 2005, with respect to a person who has been convicted of the commission or the attempted commission of any of the offenses listed in, or who is described in, this subdivision, the Department of Justice shall make available to the public via the Internet Web site his or her name and known aliases, a photograph, a physical description, including gender and race, date of birth, criminal history, the community of residence and ZIP Code in which the person resides or the county in which the person is registered as a transient, and any other information that the Department of Justice deems relevant, but not the information excluded pursuant to subdivision (a) or the address at which the person resides.

(2) This subdivision shall apply to the following offenses and offenders:

(A) Subdivision (a) of Section 243.4, provided that the offense is a felony.

(B) Section 266, provided that the offense is a felony.

(C) Section 266c, provided that the offense is a felony.

(D) Section 266j.

(E) Section 267.

(F) Subdivision (c) of Section 288, provided that the offense is a misdemeanor.

(G) Section 647.6.

(H) Any person required to register pursuant to Section 290 based upon an out-of-state conviction, unless that person is excluded from the Internet Web site pursuant to subdivision (e). However, if the Department of Justice has determined that the out-of-state crime, if committed or attempted in this state, would have been punishable in this state as a crime described in subparagraph (A) of paragraph (2) of subdivision (a) of Section 290, the person shall be placed on the Internet Web site as provided in subdivision (b) or (c), as applicable to the crime.

(e) (1) If a person has been convicted of the commission or the attempted commission of any of the offenses listed in this subdivision, and he or she has been convicted of no other offense listed in subdivision (b), (c), or (d) other than those listed in this subdivision, that person may file an application with the Department of Justice, on a form approved by the department, for exclusion from the Internet Web site. If the department determines that the person meets the requirements of this subdivision, the department shall grant the exclusion and no information concerning the person shall be made available via the Internet Web site described in this section. He or she bears the burden of proving the facts that make him or her eligible for exclusion from the Internet Web site. However, a person who has filed for or been granted an exclusion from the Internet Web site is not relieved of his or her duty to register as a sex offender pursuant to Section 290 nor from any otherwise applicable provision of law.

(2) This subdivision shall apply to the following offenses:

(A) A felony violation of subdivision (a) of Section 243.4.

(B) Section 647.6, 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 offender was the victim's parent, stepparent, sibling, or grandparent.

(II) The crime did not involve either oral copulation or penetration of the vagina or rectum of either the victim or the offender by the penis of the other or by any foreign object.

(ii) An offense for which the offender is on probation at the time of his or her application, provided that the offender submits to the department a certified copy of a probation report, presentencing report, report prepared pursuant to Section 288.1, or other official court document that clearly demonstrates both of the following:

(I) The offender was the victim's parent, stepparent, sibling, or grandparent.

(II) The crime did not involve either oral copulation or penetration of the vagina or rectum of either the victim or the offender by the penis of the other or by any foreign object.

(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.

(f) The Department of Justice shall make a reasonable effort to provide notification to persons who have been convicted of the commission or attempted commission of an offense specified in subdivision (b), (c), or (d), that on or before July 1, 2005, the department is required to make information about specified sex offenders available to the public via an Internet Web site as specified in this section. The Department of Justice shall also make a reasonable effort to provide notice that some offenders are eligible to apply for exclusion from the Internet Web site.

(g) (1) A designated law enforcement entity, as defined in subdivision (f) of Section 290.45, may make available information concerning persons who are required to register pursuant to Section 290 to the public via an Internet Web site as specified in paragraph (2).

(2) The law enforcement entity may make available by way of an Internet Web site the information described in subdivision (c) if it determines that the public disclosure of the information about a specific offender by way of the entity's Internet Web site is necessary to ensure the public safety based upon information available to the entity concerning that specific offender.

(3) The information that may be provided pursuant to this subdivision may include the information specified in subdivision (b) of Section 290.45. However, that offender's address may not be disclosed unless he or she is a person whose address is on the Department of Justice's Internet Web site pursuant to subdivision (b) or (c).

(h) For purposes of this section, "offense" includes the statutory predecessors of that offense, or any offense committed in another jurisdiction that, if committed or attempted to be committed in this state, would have been punishable in this state as an offense listed in subparagraph (A) of paragraph (2) of 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. This authorization does not create a duty to use the information.

(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 1596.871 of the Health and Safety Code, and Section 432.7 of the Labor Code.

(4) (A) Any use of information disclosed pursuant to this section for purposes other than those provided by paragraph (1) or in violation of paragraph (2) shall make the user liable for the actual damages, and any amount that may be determined by a jury or a court sitting without a jury, not exceeding three times the amount of actual damage, and not less than two hundred fifty dollars ($250), and attorney's fees, exemplary damages, or a civil penalty not exceeding twenty-five thousand dollars ($25,000).

(B) Whenever there is reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of misuse of the information available via an Internet Web site established pursuant to this section in violation of paragraph (2), the Attorney General, any district attorney, or city attorney, or any person aggrieved by the misuse is authorized to bring a civil action in the appropriate court requesting preventive relief, including an application for a permanent or temporary injunction, restraining order, or other order against the person or group of persons responsible for the pattern or practice of misuse. The foregoing remedies shall be independent of any other remedies or procedures that may be available to an aggrieved party under other provisions of law, including Part 2 (commencing with Section 43) of Division 1 of the Civil Code.

(m) The public notification provisions of this section are applicable to every person described in this section, without regard to when his or her crimes were committed or his or her duty to register pursuant to Section 290 arose, and to every offense described in this section, regardless of when it was committed.

(n) On or before July 1, 2006, and every year thereafter, the Department of Justice shall make a report to the Legislature concerning the operation of this section.

(o) A designated law enforcement entity and its employees shall be immune from liability for good faith conduct under this section.

SEC. 4.2. 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 specified in this section. The department shall update the Internet Web site on an ongoing basis. All information identifying the victim by name, birth date, address, or relationship to the registrant shall be excluded from the Internet Web site. The name or address of the person's employer and the listed person's criminal history other than the specific crimes for which the person is required to register shall not be included on the Internet Web site. The Internet Web site shall be translated into languages other than English as determined by the department.

(2) (A) On or before July 1, 2010, the Department of Justice shall make available to the public, via an Internet Web site as specified in this section, as to any person described in subdivisions (b), (c), or (d), the following information:

(i) The year of conviction of his or her most recent offense requiring registration pursuant to Section 290.

(ii) The year he or she was released from incarceration for that offense.

(iii) Whether he or she was subsequently incarcerated for any other felony, if that fact is reported to the department. If the department has no information about a subsequent incarceration for any felony, that fact shall be noted on the Internet Web site.

However, no year of conviction shall be made available to the public unless the department also is able to make available the corresponding year of release of incarceration for that offense, and the required notation regarding any subsequent felony.

(B) (i) Any state facility that releases from incarceration a person who was incarcerated because of a crime for which he or she is required to register as a sex offender pursuant to Section 290 shall, within 30 days of release, provide the year of release for his or her most recent offense requiring registration to the Department of Justice in a manner and format approved by the department.

(ii) Any state facility that releases a person who is required to register pursuant to Section 290 from incarceration whose incarceration was for a felony committed subsequently to the offense for which he or she is required to register shall, within 30 days of release, advise the Department of Justice of that fact.

(iii) Any state facility that, prior to January 1, 2007, released from incarceration a person who was incarcerated because of a crime for which he or she is required to register as a sex offender pursuant to Section 290 shall provide the year of release for his or her most recent offense requiring registration to the Department of Justice in a manner and format approved by the department. The information provided by the Department of Corrections and Rehabilitation shall be limited to information that is currently maintained in an electronic format.

(iv) Any state facility that, prior to January 1, 2007, released a person who is required to register pursuant to Section 290 from incarceration whose incarceration was for a felony committed subsequently to the offense for which he or she is required to register shall advise the Department of Justice of that fact in a manner and format approved by the department. The information provided by the Department of Corrections and Rehabilitation shall be limited to information that is currently maintained in an electronic format.

(3) The Department of Mental Health shall provide to the

Department of Justice Sex Offender Tracking Program the names of all persons committed to its custody pursuant to Article 4 (commencing with Section 6600) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code, within 30 days of commitment, and shall provide the names of all of those persons released from its custody within five working days of release.

(b) (1) On or before July 1, 2005, with respect to a person who has been convicted of the commission or the attempted commission of any of the offenses listed in, or who is described in, paragraph (2), the Department of Justice shall make available to the public via the Internet Web site his or her name and known aliases, a photograph, a physical description, including gender and race, date of birth, criminal history, prior adjudication as a sexually violent predator, the address at which the person resides, and any other information that the Department of Justice deems relevant, but not the information excluded pursuant to subdivision (a).

(2) This subdivision shall apply to the following offenses and offenders:

(A) Section 207 committed with intent to violate Section 261, 286, 288, 288a, or 289.

(B) Section 209 committed with intent to violate Section 261, 286, 288, 288a, or 289.

(C) Paragraph (2) or (6) of subdivision (a) of Section 261.

(D) Section 264.1.

(E) Section 269.

(F) Subdivision (c) or (d) of Section 286.

(G) Subdivision (a), (b), or (c) of Section 288, provided that the offense is a felony.

(H) Subdivision (c) or (d) of Section 288a.

(I) Section 288.3, provided that the offense is a felony.

(J) Section 288.5.

(K) Subdivision (a) or (j) of Section 289.

(L) Section 288.7.

(M) Any person who has ever been adjudicated a sexually violent predator as defined in Section 6600 of the Welfare and Institutions Code.

(c) (1) On or before July 1, 2005, with respect to a person who has been convicted of the commission or the attempted commission of any of the offenses listed in paragraph (2), the Department of Justice shall make available to the public via the Internet Web site his or her name and known aliases, a photograph, a physical description, including gender and race, date of birth, criminal history, the community of residence and ZIP Code in which the person resides or the county in which the person is registered as a transient, and any other information that the Department of Justice deems relevant, but not the information excluded pursuant to subdivision (a). On or before July 1, 2006, the Department of Justice shall determine whether any person convicted of an offense listed in paragraph (2) also has one or more prior or subsequent convictions of an offense listed in paragraph (2) of subdivision (a) of Section 290, and, for those persons, the Department of Justice shall make available to the public via the Internet Web site the address at which the person resides. However, the address at which the person resides shall not be disclosed until a determination is made that the person is, by virtue of his or her additional prior or subsequent conviction of an offense listed in paragraph (2) of subdivision (a) of Section 290, subject to this subdivision.

(2) This subdivision shall apply to the following offenses:
(A) Section 220, except assault to commit mayhem.
(B) Paragraph (1), (3), or (4) of subdivision (a) of Section 261.

(C) Paragraph (2) of subdivision (b), or subdivision (f), (g), or (i), of Section 286.
(D) Paragraph (2) of subdivision (b), or subdivision (f), (g), or (i), of Section 288a.
(E) Subdivision (b), (d), (e), or (i) of Section 289.
(d) (1) On or before July 1, 2005, with respect to a person who has been convicted of the commission or the attempted commission of any of the offenses listed in, or who is described in, this subdivision, the Department of Justice shall make available to the public via the Internet Web site his or her name and known aliases, a photograph, a physical description, including gender and race, date of birth, criminal history, the community of residence and ZIP Code in which the person resides or the county in which the person is registered as a transient, and any other information that the Department of Justice deems relevant, but not the information excluded pursuant to subdivision (a) or the address at which the person resides.
(2) This subdivision shall apply to the following offenses and offenders:
(A) Subdivision (a) of Section 243.4, provided that the offense is a felony.
(B) Section 266, provided that the offense is a felony.
(C) Section 266c, provided that the offense is a felony.
(D) Section 266j.
(E) Section 267.
(F) Subdivision (c) of Section 288, provided that the offense is a misdemeanor.
(G) Section 288.3, provided that the offense is a misdemeanor.
(H) Section 626.81.
(I) Section 647.6.
(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, if 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 that the offender was the victim's parent, stepparent, sibling, or 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 that the offender was the victim's parent, stepparent, sibling, or 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 available to the public on the Internet Web site as provided in this section.

(4) Effective January 1, 2012, no person shall be excluded pursuant to this subdivision unless the offender has submitted to the department documentation sufficient for the department to determine that he or she has a SARATSO risk level of low or moderate-low.

(f) The Department of Justice shall make a reasonable effort to provide notification to persons who have been convicted of the commission or attempted commission of an offense specified in subdivision (b), (c), or (d), that on or before July 1, 2005, the department is required to make information about specified sex offenders available to the public via an Internet Web site as specified in this section. The Department of Justice shall also make a reasonable effort to provide notice that some offenders are eligible to apply for exclusion from the Internet Web site.

(g) (1) A designated law enforcement entity, as defined in

subdivision (f) of Section 290.45, may make available information concerning persons who are required to register pursuant to Section 290 to the public via an Internet Web site as specified in paragraph (2).

(2) The law enforcement entity may make available by way of an Internet Web site the information described in subdivision (c) if it determines that the public disclosure of the information about a specific offender by way of the entity's Internet Web site is necessary to ensure the public safety based upon information available to the entity concerning that specific offender.

(3) The information that may be provided pursuant to this subdivision may include the information specified in subdivision (b) of Section 290.45. However, that offender's address may not be disclosed unless he or she is a person whose address is on the Department of Justice's Internet Web site pursuant to subdivision (b) or (c).

(h) For purposes of this section, "offense" includes the statutory predecessors of that offense, or any offense committed in another jurisdiction that, if committed or attempted to be committed in this state, would have been punishable in this state as an offense listed in subparagraph (A) of paragraph (2) of 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 1596.871 of the Health and Safety Code, and Section 432.7 of the Labor Code.

(4) (A) Any use of information disclosed pursuant to this section for purposes other than those provided by paragraph (1) or in violation of paragraph (2) shall make the user liable for the actual damages, and any amount that may be determined by a jury or a court sitting without a jury, not exceeding three times the amount of actual damage, and not less than two hundred fifty dollars ($250), and attorney's fees, exemplary damages, or a civil penalty not exceeding twenty-five thousand dollars ($25,000).

(B) Whenever there is reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of misuse of the information available via an Internet Web site established pursuant to this section in violation of paragraph (2), the Attorney General, any district attorney, or city attorney, or any person aggrieved by the misuse is authorized to bring a civil action in the appropriate court requesting preventive relief, including an application for a permanent or temporary injunction, restraining order, or other order against the person or group of persons responsible for the pattern or practice of misuse. The foregoing remedies shall be independent of any other remedies or procedures that may be available to an aggrieved party under other provisions of law, including Part 2 (commencing with Section 43) of Division 1 of the Civil Code.

(m) The public notification provisions of this section are applicable to every person described in this section, without regard to when his or her crimes were committed or his or her duty to register pursuant to Section 290 arose, and to every offense described in this section, regardless of when it was committed.

(n) On or before July 1, 2006, and every year thereafter, the Department of Justice shall make a report to the Legislature concerning the operation of this section.

(o) A designated law enforcement entity and its employees shall be immune from liability for good faith conduct under this section.

(p) The Attorney General, in collaboration with local law enforcement and others knowledgeable about sex offenders, shall develop strategies to assist members of the public in understanding and using publicly available information about registered sex offenders to further public safety. These strategies may include, but are not limited to, a hotline for community inquiries, neighborhood and business guidelines for how to respond to information posted on this Web site, and any other resource that promotes public education about these offenders.

SEC. 4.3. 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 specified in this section. The department shall update the Internet Web site on an ongoing basis. All information identifying the victim by name, birth date, address, or relationship to the registrant shall be excluded from the Internet Web site. The name or address of the person's employer and the listed person's criminal history other than the specific crimes for which the person is required to register shall not be included on the Internet Web site. The Internet Web site shall

be translated into languages other than English as determined by the department.

(2) (A) On or before July 1, 2010, the Department of Justice shall make available to the public, via an Internet Web site as specified in this section, as to any person described in subdivisions (b), (c), or (d), the following information:

(i) The year of conviction of his or her most recent offense requiring registration pursuant to Section 290.

(ii) The year he or she was released from incarceration for that offense.

(iii) Whether he or she was subsequently incarcerated for any other felony, if that fact is reported to the department. If the department has no information about a subsequent incarceration for any felony, that fact shall be noted on the Internet Web site.

However, no year of conviction shall be made available to the public unless the department also is able to make available the corresponding year of release of incarceration for that offense, and the required notation regarding any subsequent felony.

(B) (i) Any state facility that releases from incarceration a person who was incarcerated because of a crime for which he or she is required to register as a sex offender pursuant to Section 290 shall, within 30 days of release, provide the year of release for his or her most recent offense requiring registration to the Department of Justice in a manner and format approved by the department.

(ii) Any state facility that releases a person who is required to register pursuant to Section 290 from incarceration whose incarceration was for a felony committed subsequently to the offense for which he or she is required to register shall, within 30 days of release, advise the Department of Justice of that fact.

(iii) Any state facility that, prior to January 1, 2007, released from incarceration a person who was incarcerated because of a crime for which he or she is required to register as a sex offender pursuant to Section 290 shall provide the year of release for his or her most recent offense requiring registration to the Department of Justice in a manner and format approved by the department. The information provided by the Department of Corrections and Rehabilitation shall be limited to information that is currently maintained in an electronic format.

(iv) Any state facility that, prior to January 1, 2007, released a person who is required to register pursuant to Section 290 from incarceration whose incarceration was for a felony committed subsequently to the offense for which he or she is required to register shall advise the Department of Justice of that fact in a manner and format approved by the department. The information provided by the Department of Corrections and Rehabilitation shall be limited to information that is currently maintained in an electronic format.

(3) The Department of Mental Health shall provide to the Department of Justice Sex Offender Tracking Program the names of all persons committed to its custody pursuant to Article 4 (commencing with Section 6600) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code, within 30 days of commitment, and shall provide the names of all of those persons released from its custody within five working days of release.

(b) (1) On or before July 1, 2005, with respect to a person who has been convicted of the commission or the attempted commission of any of the offenses listed in, or who is described in, paragraph (2),

the Department of Justice shall make available to the public via the Internet Web site his or her name and known aliases, a photograph, a physical description, including gender and race, date of birth, criminal history, prior adjudication as a sexually violent predator, the address at which the person resides, and any other information that the Department of Justice deems relevant, but not the information excluded pursuant to subdivision (a).

(2) This subdivision shall apply to the following offenses and offenders:

(A) Section 207 committed with intent to violate Section 261, 286, 288, 288a, or 289.

(B) Section 209 committed with intent to violate Section 261, 286, 288, 288a, or 289.

(C) Paragraph (2) or (6) of subdivision (a) of Section 261.

(D) Section 264.1.

(E) Section 269.

(F) Subdivision (c) or (d) of Section 286.

(G) Subdivision (a), (b), or (c) of Section 288, provided that the offense is a felony.

(H) Subdivision (c) or (d) of Section 288a.

(I) Section 288.3, provided that the offense is a felony.

(J) Section 288.5.

(K) Subdivision (a) or (j) of Section 289.

(L) Section 288.7.

(M) Any person who has ever been adjudicated a sexually violent predator as defined in Section 6600 of the Welfare and Institutions Code.

(c) (1) On or before July 1, 2005, with respect to a person who has been convicted of the commission or the attempted commission of any of the offenses listed in paragraph (2), the Department of Justice shall make available to the public via the Internet Web site his or her name and known aliases, a photograph, a physical description, including gender and race, date of birth, criminal history, the community of residence and ZIP Code in which the person resides or the county in which the person is registered as a transient, and any other information that the Department of Justice deems relevant, but not the information excluded pursuant to subdivision (a). On or before July 1, 2006, the Department of Justice shall determine whether any person convicted of an offense listed in paragraph (2) also has one or more prior or subsequent convictions of an offense listed in paragraph (2) of subdivision (a) of Section 290, and, for those persons, the Department of Justice shall make available to the public via the Internet Web site the address at which the person resides. However, the address at which the person resides shall not be disclosed until a determination is made that the person is, by virtue of his or her additional prior or subsequent conviction of an offense listed in paragraph (2) of subdivision (a) of Section 290, subject to this subdivision.

(2) This subdivision shall apply to the following offenses:

(A) Section 220, except assault to commit mayhem.

(B) Paragraph (1), (3), or (4) of subdivision (a) of Section 261.

(C) Paragraph (2) of subdivision (b), or subdivision (f), (g), or (i), of Section 286.

(D) Paragraph (2) of subdivision (b), or subdivision (f), (g), or (i), of Section 288a.

(E) Subdivision (b), (d), (e), or (i) of Section 289.

(d) (1) On or before July 1, 2005, with respect to a person who has been convicted of the commission or the attempted commission of any of the offenses listed in, or who is described in, this subdivision, the Department of Justice shall make available to the public via the Internet Web site his or her name and known aliases, a photograph, a physical description, including gender and race, date of birth, criminal history, the community of residence and ZIP Code in which the person resides or the county in which the person is registered as a transient, and any other information that the Department of Justice deems relevant, but not the information excluded pursuant to subdivision (a) or the address at which the person resides.

(2) This subdivision shall apply to the following offenses and offenders:

(A) Subdivision (a) of Section 243.4, provided that the offense is a felony.

(B) Section 266, provided that the offense is a felony.

(C) Section 266c, provided that the offense is a felony.

(D) Section 266j.

(E) Section 267.

(F) Subdivision (c) of Section 288, provided that the offense is a misdemeanor.

(G) Section 288.3, provided that the offense is a misdemeanor.

(H) Section 626.81.

(I) Section 647.6.

(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, if 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 that the offender was the victim's parent, stepparent, sibling, or 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 that the offender was the victim's parent, stepparent, sibling, or 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 available to the public on the Internet Web site as provided in this section.

(4) Effective January 1, 2012, no person shall be excluded pursuant to this subdivision unless the offender has submitted to the department documentation sufficient for the department to determine that he or she has a SARATSO risk level of low or moderate-low.

(f) The Department of Justice shall make a reasonable effort to provide notification to persons who have been convicted of the commission or attempted commission of an offense specified in subdivision (b), (c), or (d), that on or before July 1, 2005, the department is required to make information about specified sex offenders available to the public via an Internet Web site as specified in this section. The Department of Justice shall also make a reasonable effort to provide notice that some offenders are eligible to apply for exclusion from the Internet Web site.

(g) (1) A designated law enforcement entity, as defined in subdivision (f) of Section 290.45, may make available information concerning persons who are required to register pursuant to Section 290 to the public via an Internet Web site as specified in paragraph (2).

(2) The law enforcement entity may make available by way of an Internet Web site the information described in subdivision (c) if it determines that the public disclosure of the information about a specific offender by way of the entity's Internet Web site is necessary to ensure the public safety based upon information

available to the entity concerning that specific offender.

(3) The information that may be provided pursuant to this subdivision may include the information specified in subdivision (b) of Section 290.45. However, that offender's address may not be disclosed unless he or she is a person whose address is on the Department of Justice's Internet Web site pursuant to subdivision (b) or (c).

(h) For purposes of this section, "offense" includes the statutory predecessors of that offense, or any offense committed in another jurisdiction that, if committed or attempted to be committed in this state, would have been punishable in this state as an offense listed in subparagraph (A) of paragraph (2) of 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. This authorization does not create a duty to use the information.

(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 1596.871 of the Health and Safety Code, and Section 432.7 of the Labor Code.

(4) (A) Any use of information disclosed pursuant to this section for purposes other than those provided by paragraph (1) or in violation of paragraph (2) shall make the user liable for the actual damages, and any amount that may be determined by a jury or a court

sitting without a jury, not exceeding three times the amount of actual damage, and not less than two hundred fifty dollars ($250), and attorney's fees, exemplary damages, or a civil penalty not exceeding twenty-five thousand dollars ($25,000).

(B) Whenever there is reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of misuse of the information available via an Internet Web site established pursuant to this section in violation of paragraph (2), the Attorney General, any district attorney, or city attorney, or any person aggrieved by the misuse is authorized to bring a civil action in the appropriate court requesting preventive relief, including an application for a permanent or temporary injunction, restraining order, or other order against the person or group of persons responsible for the pattern or practice of misuse. The foregoing remedies shall be independent of any other remedies or procedures that may be available to an aggrieved party under other provisions of law, including Part 2 (commencing with Section 43) of Division 1 of the Civil Code.

(m) The public notification provisions of this section are applicable to every person described in this section, without regard to when his or her crimes were committed or his or her duty to register pursuant to Section 290 arose, and to every offense described in this section, regardless of when it was committed.

(n) On or before July 1, 2006, and every year thereafter, the Department of Justice shall make a report to the Legislature concerning the operation of this section.

(o) A designated law enforcement entity and its employees shall be immune from liability for good faith conduct under this section.

(p) The Attorney General, in collaboration with local law enforcement and others knowledgeable about sex offenders, shall develop strategies to assist members of the public in understanding and using publicly available information about registered sex offenders to further public safety. These strategies may include, but are not limited to, a hotline for community inquiries, neighborhood and business guidelines for how to respond to information posted on this Web site, and any other resource that promotes public education about these offenders.

SEC. 5. Section 1202.8 of the Penal Code, as amended by Senate Bill No. 1178, is amended to read:

1202.8. (a) Persons placed on probation by a court shall be under the supervision of the county probation officer who shall determine both the level and type of supervision consistent with the court-ordered conditions of probation.

(b) Commencing January 1, 2009, every person who has been assessed with the State Authorized Risk Assessment Tool for Sex Offenders (SARATSO) pursuant to Sections 290.04 to 290.06, inclusive, and who has a SARATSO risk level of high shall be continuously electronically monitored while on probation, unless the court determines that such monitoring is unnecessary for a particular person. The monitoring device used for these purposes shall be identified as one that employs the latest available proven effective monitoring technology. Nothing in this section prohibits probation authorities from using electronic monitoring technology pursuant to any other provision of law.

(c) Within 30 days of a court making an order to provide restitution to a victim or to the Restitution Fund, the probation officer shall establish an account into which any restitution

payments that are not deposited into the Restitution Fund shall be deposited.

(d) Beginning January 1, 2009, and every two years thereafter, each probation department shall report to the Corrections Standard Authority all relevant statistics and relevant information regarding on the effectiveness of continuous electronic monitoring of offenders pursuant to subdivision (b). The report shall include the costs of monitoring and the recidivism rates of those persons who have been monitored. The Corrections Standard Authority shall compile the reports and submit a single report to the Legislature and the Governor every two years through 2017.

SEC. 6. Section 3004 of the Penal Code, as amended by Senate Bill No. 1178, is amended to read:

3004. (a) Notwithstanding any other law, the parole authority may require, as a condition of release on parole or reinstatement on parole, or as an intermediate sanction in lieu of return to prison, that an inmate or parolee agree in writing to the use of electronic monitoring or supervising devices for the purpose of helping to verify his or her compliance with all other conditions of parole. The devices shall not be used to eavesdrop or record any conversation, except a conversation between the parolee and the agent supervising the parolee which is to be used solely for the purposes of voice identification.

(b) Commencing January 1, 2009, every person who has been assessed with the State Authorized Risk Assessment Tool for Sex Offenders (SARATSO) pursuant to Sections 290.04 to 290.06, inclusive, and who has a SARATSO risk level of high shall be continuously electronically monitored while on parole, unless the department determines that such monitoring is unnecessary for a particular person. The monitoring device used for these purposes shall be identified as one that employs the latest available proven effective monitoring technology. Nothing in this section prohibits parole authorities from using electronic monitoring technology pursuant to any other provision of law.

(c) Beginning January 1, 2009, and every two years thereafter through 2017, the Department of Corrections and Rehabilitation shall report to the Legislature and to the Governor all relevant statistics and relevant information regarding the effectiveness of continuous electronic monitoring of offenders pursuant to subdivision (b). The report shall include the costs of monitoring and the recidivism rates of those persons who have been monitored.

SEC. 7. (a) Section 4.1 of this bill incorporates amendments to Section 290.46 of the Penal Code proposed by both this bill and AB 2712. 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) SB 1128 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 2712, in which case Section 290.46 of the Penal Code, as amended by Section 4 of this bill, shall remain operative only until the operative date of AB 2712, at which time Section 4.1 of this bill shall become operative and Sections 4.2 and 4.3 of this bill shall not become operative.

(b) Section 4.2 of this bill incorporates amendments to Section 290.46 of the Penal Code proposed by both this bill and SB 1128. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2007, (2) each bill amends Section

290.46 of the Penal Code, (3) AB 2712 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after SB 1128 in which case Section 290.46 of the Penal Code as amended by SB 1128, shall remain operative only until the operative date of this bill, at which time Section 4.2 of this bill shall become operative, and Sections 4, 4.1, and 4.3 of this bill shall not become operative.

(c) Section 4.3 of this bill incorporates amendments to Section 290.46 of the Penal Code proposed by this bill, AB 2712, and SB 1128. It shall only become operative if (1) all three bills are enacted and become effective on or before January 1, 2007, (2) all three bills amend Section 290.46 of the Penal Code, and (3) this bill is enacted after AB 2712 and SB 1128, in which case Section 290.46 of the Penal Code as amended by SB 1128, shall remain operative only until the operative date of this bill, at which time Section 4.2 of this bill shall become operative and shall remain operative only until the operative date of AB 2712, at which time Section 4.3 of this bill shall become operative, and Sections 4 and 4.1 of this bill shall not become operative.

SEC. 8. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

SEC. 9. This bill shall only become operative if Senate Bill 1128 of the 2005-06 Regular Session is also enacted and becomes effective on or before January 1, 2007.

SEC. 10. Sections 1, 2, 3, 5, and 6 of this act shall become operative only if Senate Bill No. 1178 is also enacted and this act is enacted after Senate Bill 1178.

SEC. 11. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to ensure the public safety of California families and their children and to ensure that the Megan's Law database provides adequate information about registered sex offenders living in California, it is necessary that this act take effect immediately.

AB 1849 Assembly Bill - Bill Analysis
BILL ANALYSIS

SENATE RULES COMMITTEE Office of Senate Floor Analyses 1020 N Street, Suite 524 (916) 651-1520 Fax: (916) 327-4478	AB 1849

THIRD READING

Bill No: AB 1849
Author: Leslie (R), et al
Amended: 8/30/06 in Senate
Vote: 27 - Urgency

SENATE PUBLIC SAFETY COMMITTEE : 2-2, 6/20/06 (FAIL)
AYES: Poochigian, Margett
NOES: Migden, Romero
NO VOTE RECORDED: Cedillo, Perata

SENATE PUBLIC SAFETY COMMITTEE : 5-0, 6/27/06
AYES: Migden, Cedillo, Margett, Perata, Romero
NO VOTE RECORDED: Poochigian

SENATE APPROPRIATIONS COMMITTEE : 13-0, 8/17/06
AYES: Murray, Aanestad, Alarcon, Alquist, Ashburn, Battin, Dutton, Escutia, Florez, Ortiz, Poochigian, Romero, Torlakson

ASSEMBLY FLOOR : 80-0, 5/31/06 - See last page for vote

SUBJECT : Registered sex offenders: disclosure of conviction and release dates

SOURCE : Author

DIGEST : This bill requires the Department of Justice (DOJ) to include the year the registrant was released from incarceration on the Megans Law web site on or before July

CONTINUED

1, 2010, as specified.

Senate Floor Amendments of 8/30/06 clarify and narrow the information required to be provide to DOJ from the Department of corrections and Rehabilitation to require year of release from custody information only, as specified. This bill additionally removes language from the bill distinguishing information about an event that occurred prior to 1978.

Senate Floor Amendments of 8/29/06 (1) exclude local detention facilities from this bill, (2) require state facilities to provide the information if it is "readily accessible t the facility" and is currently maintained in an electronic format, as specified, (3) add an urgency clause, and (4) make additional technical revisions.

Senate Floor Amendments of 8/24/06 add double-jointing language.

ANALYSIS : Existing law requires DOJ to make information concerning certain persons who are required to register as sex offenders available to the public via an Internet web site, including the offender's criminal history.

This bill also requires that on or before July 1, 2010, the year of release for the offender's last sexual offense, and whether he/she was subsequently
incarcerated for any other felony, be posted on the Internet web site, as specified. This bill also requires any state facility that releases a sex offender to provide the year of release for his/her most recent offense requiring registration as a sex offender to DOJ. The information provided by the California Department of Corrections and Rehabilitation shall be limited to information that is currently maintained in an electronic format.

This bill is double-jointed with SB 1128 (Alquist) and AB 2712 (Leno).

FISCAL EFFECT : Appropriation: No Fiscal Com.: Yes Local: Yes

According to the Senate Appropriations Committee:

Fiscal Impact (in thousands)

Major Provisions	2006-07	2007-08	2008-09	Fund
Megan's Law changes beginning	Multimillion dollar costs in 2010-11			General

The DOJ projects total costs in excess of $10 million over the first three years to fund 25 analyst, technician and programmer positions, several consultants to develop and test programs, and purchase equipment for increased storage. Ongoing costs after the first three years of development are complete are estimated at $760,000 to cover the expenses of five positions and ongoing maintenance.

SUPPORT : (Verified 8/30/06)

California Association of Health Facilities
California Coalition Against Sexual Assault
California District Attorney's Association
California Peace Officers' Association
California Police Activities League
California Police Chiefs' Association
California State Sheriff's Association
Los Angeles County District Attorney's Office
Los Angeles County Sheriff
Office of the Attorney General
Taxpayers for Improving Public Safety

OPPOSITION : (Verified 8/29/06)

California Sexual Assault Investigators Association

ARGUMENTS IN SUPPORT : The author states that "Adding the year of conviction and release from incarceration to the DOJ's web site will help the public determine the relative danger of registered sex offenders."

ARGUMENTS IN OPPOSITION : The California Sexual Assault Investigators Association, which opposes this bill, argues this additional information will provide a false sense of

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security:

"Based on our experience in the field dealing with both sex offenders as well as their victims, we view the listing of the date of conviction on the Megan's Law database as potentially decreasing public safety. Specifically, we believe that when the public views the database online, they will get a false sense of security in some situations by assigning a level of risk to an offender based on these dates. Simply because a conviction for a sex offense occurred a long time ago, is not a good indicator of an offender's dangerousness to the public.

"?(I)t is difficult to predict an offender's likelihood to reoffend; it is especially difficult for someone without the experience and the benefit of all the information about the offender. For example, statistics show that many sex offenses go unreported and therefore an old conviction date may lead one to believe the person no longer poses a risk but in some cases may still be offending. The opposite could also be the case."

ASSEMBLY FLOOR :
AYES: Aghazarian, Arambula, Baca, Bass, Benoit, Berg, Bermudez, Blakeslee, Bogh, Calderon, Canciamilla, Chan, Chavez, Chu, Cogdill, Cohn, Coto, Daucher, De La Torre, DeVore, Dymally, Emmerson, Evans, Frommer, Garcia, Goldberg, Hancock, Harman, Haynes, Jerome Horton, Shirley Horton, Houston, Huff, Jones, Karnette, Keene, Klehs, Koretz, La Malfa, La Suer, Laird, Leno, Leslie, Levine, Lieber, Lieu, Liu, Matthews, Maze, McCarthy, Montanez, Mountjoy, Mullin, Nakanishi, Nation, Nava, Negrete McLeod, Niello, Oropeza, Parra, Pavley, Plescia, Richman, Ridley-Thomas, Sharon Runner, Ruskin, Saldana, Salinas, Spitzer, Strickland, Torrico, Tran, Umberg, Vargas, Villines, Walters, Wolk, Wyland, Yee, Nunez

RJG:mel 8/30/06 Senate Floor Analyses

SUPPORT/OPPOSITION: SEE ABOVE

**** END ****

AB 1849 Assembly Bill - Bill Analysis
BILL ANALYSIS
AB 1849

CONCURRENCE IN SENATE AMENDMENTS
AB 1849 (Leslie)
As Amended August 30, 2006
2/3 vote. Urgency

ASSEMBLY:	80-0	(May 31, 2006)	SENATE:	40-0	(August 30, 2006)

Original Committee Reference: PUB. S.

SUMMARY : Requires that on or before July 1, 2010, the Department of Justice (DOJ) shall add specified additional information to the Megan's Law database of specified sex offenders publicly available on the Internet.

The Senate amendments :

1) Require that the year of conviction and the year of release from incarceration for the offender's last sexual offense, and whether the offender was subsequently incarcerated for nay other felony be posted on the Internet website, as specified.

2) Require any state or local facility that releases a sex offender to provide the year of release for the offender's most recent offense requiring registration as a sex offender to DOJ.

3) Require any state or local facility that releases a person required to register as a sex offender registrant from incarceration for a felony committed after the sex offense for which he or she is required to register to advise DOJ within 30 days of release, of that fact.

4) Require any state or local facility that, prior to January 1, 2007, released a sex offender registrant from incarceration for a felony committed after the sex offense to advise DOJ of that fact, as specified.

5) Require DOJ to note on the Internet website the fact that DOJ has no information about any subsequent felony, if DOJ has no such information.

6) Add chaptering amendments to avoid chaptering out AB 2712

(Leno), SB 1128 (Alquist) and SB 1178 (Speier).

7) Add an urgency clause.

EXISTING LAW :

1) Establishes a tiered system of public notification via the Internet of the location of registered sex offenders, with specific home addresses provided for some offenses and only the community of residence or zip code for other offenses.

2) States that if a sex offender registrant was last registered at a residence address and changes his or her residence, either within California or out of state, shall notify, in person, the last registering agency or agencies that he or she is moving within five working days of the move, and of the new address, if known, or transient location, and any plans to return to California.

3) Provides that if the person does not know the new residence address at the time of the move, the registrant shall notify, in person, the last registering agency, within five days of the move, that he or she is moving. Further requires the registrant to later notify the last registering agency, in writing, sent by certified or registered mail, of the new address or location, within five working days of moving into the new residence or location.

4) States that the use of any of the information on the Megan's Law Web site shall not be used for purposes related to health insurance; insurance; loans; credit; employment; education, scholarships, or fellowships; housing or accommodations; or, benefits, privileges or services provided by any business establishment.

AS PASSED BY THE ASSEMBLY , this bill:

1) Required that the year of the conviction for the most recent crime requiring registration be posted on the Internet.

2) Required that the year of release from incarceration for the registrant's most recent crime requiring registration be posted on the Internet.

3) Provided that the DOJ shall not provide the year of conviction

unless DOJ is also able to make available the year of release from incarceration.

4) Required state or local facilities that release registered sex offenders from incarceration to provide to DOJ the year of conviction and the year of release from incarceration, as specified.

5) Required any state or local facility that, prior to January 1, 2007, released registered sex offenders from incarceration to provide to DOJ the year of conviction and the year of release from incarceration, as specified.

FISCAL EFFECT : DOJ projects total costs in excess of $10 million over the first three years to fund 25 analyst, technician and programmer positions, several consultants to develop and test programs, and purchase equipment for increased storage. On-going costs after the first three years of development are complete are estimated at $760,000 to cover the expenses of five positions and ongoing maintenance.

COMMENTS : According to the author: "The Megan's Law database lacks crucial elements that I believe are necessary to allow parents to gain a full perspective of sex offenders living in their neighborhoods. This bill would greatly enhance the database, make it more useful for Californians."

Please see the policy committee analysis for full discussion of this bill.

Analysis Prepared by : Kathleen Ragan / PUB. S. / (916) 319-3744 FN: 0017721

AB 1849 Assembly Bill - Bill Analysis
BILL ANALYSIS

Senate Appropriations Committee Fiscal Summary
Senator Kevin Murray, Chairman

1849 (Leslie)

Hearing Date: 8/17/06 Amended: 8/7/06
Consultant: Nora Lynn Policy Vote: Public Safety 5-0

BILL SUMMARY:

AB 1849 requires the Department of Justice (DOJ) to include additional information about registered sex offenders as specified on its Megan's Law website by July 1, 2010.

Fiscal Impact (in thousands)

Major Provisions	2006-07	2007-08	2008-09	Fund
Megan's Law changes beginning	Multimillion-dollar costs in 2010-11; see staff comments			General

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STAFF COMMENTS: SUSPENSE FILE

Current law requires DOJ to include a sex registrant's name, known aliases, a photograph, a physical description, gender, race, date of birth, criminal history, and any other information the department deems relevant unless specifically excluded by statute.

AB 1849 requires the website to show the year of the sex offender's most recent offense requiring sex offender registration; the year the registrant was released from incarceration for that crime; and if the registrant was subsequently incarcerated for any other felony if that fact has been reported to the department and, if not, that fact noted on the website.

DOJ projects total costs in excess of $10 million over the first three years to fund 25 analyst, technician and programmer positions, several consultants to develop and test programs, and purchase equipment for increased storage. On-going costs after

the first three years of development are complete are estimated at $760,000 to cover the expenses of five positions and ongoing maintenance.

AB 1849 Assembly Bill - Bill Analysis
BILL ANALYSIS

AB 1849
Page 1

ASSEMBLY THIRD READING
AB 1849 (Leslie)
As Amended May 26, 2006
Majority vote

PUBLIC SAFETY	6-0	APPROPRIATIONS	(vote not available)
Ayes:	Leno, La Suer, Cohn, Dymally, Goldberg, Spitzer		

SUMMARY : Requires that on or before July 1, 2010, the Department of Justice (DOJ) to add specified additional information to the Megan's Law database of specified sex offenders publicly available on the Internet. Specifically, this bill :

1) Requires that the year of the conviction for the most recent crime requiring registration be posted on the Internet.

2) Requires that the year of release from incarceration for the registrant's most recent crime requiring registration be posted on the Internet.

3) Provides that the DOJ shall not provide the year of conviction unless DOJ is also able to make available the year of release from incarceration.

4) Requires state or local facilities that release registered sex offenders from incarceration to provide to DOJ the year of conviction and the year of release from incarceration, as specified.

5) Requires any state or local facility that, prior to January 1, 2007, released registered sex offenders from incarceration to provide to DOJ the year of conviction and the year of release from incarceration, as specified.

EXISTING LAW :

1) Establishes a tiered system of public notification via the Internet of the location of registered sex offenders, with specific home addresses provided for some offenses and only the community of residence or zip code for other offenses.

2) Provides that the Internet Web site shall identify the following information about registered sex offenders:

   a) Name and known aliases;

   b) A photograph;

   c) A physical description, including gender and race;

   d) Criminal history, as specified; and,

   e) Home address or community of residence and zip code, depending upon the offense requiring registration.

3) States that if a sex offender registrant was last registered at a residence address and changes his or her residence, either within California or out of state, shall notify, in person, the last registering agency or agencies that he or she is moving within five working days of the move, and of the new address, if known, or transient location, and any plans to return to California.

4) Provides that if the person does not know the new residence address at the time of the move, the registrant shall notify, in person, the last registering agency, within five days of the move, that he or she is moving. Further requires the registrant to later notify the last registering agency, in writing, sent by certified or registered mail, of the new address or location, within five working days of moving into the new residence or location.

5) States that the use of any of the information on the Internet Megan's Law Web site shall not be used for purposes related to health insurance; insurance; loans; credit; employment; education, scholarships, or fellowships; housing or accommodations; or benefits, privileges or services provided by any business establishment.

FISCAL EFFECT : According to the Assembly Appropriations

Committee, significant one-time and annual General Fund costs, in the range of $2 million for several years, to create an information system by which DOJ can extract current and accurate inmate release date information from CDCR and from local jails. Ongoing costs, once a system is operational, would likely be in the $300,000 range. Local costs to provide DOJ the appropriate information would be state-reimbursable.

COMMENTS : According to the author: "The Megan's Law database lacks crucial elements that I believe are necessary to allow parents to gain a full perspective of sex offenders living in their neighborhoods. This bill would greatly enhance the database, make it more useful for Californians."

Please see the policy committee analysis for full discussion of this bill.

Analysis Prepared by : Kathleen Ragan / PUB. S. / (916) 319-3744

FN: 0015015

AB 1849 Assembly Bill - Bill Analysis
BILL ANALYSIS

Date of Hearing: April 5, 2006

ASSEMBLY COMMITTEE ON APPROPRIATIONS
Judy Chu, Chair

AB 1849 (Leslie) - As Amended: March 15, 2006

Policy Committee: Public
SafetyVote: 6-0

Urgency: No State Mandated Local Program:
No Reimbursable: No

SUMMARY

This bill requires the Department of Justice (DOJ) to include on its registered sex offender web site the conviction dates for crimes requiring registration and the date the sex offender was released from jail or prison for those offenses.

FISCAL EFFECT

1) Significant annual GF costs - in the range of $8 million - to renovate DOJ's Violent Crime Information Network (VCIN) to enable it to handle the additional information.

2) Significant one-time and annual GF costs, in the range of $2 million for several years, to create an information system by which DOJ can extract current and accurate inmate release date information from the Department of Corrections and Rehabilitation (COCR) and from local jails. Ongoing costs, once a system is operational, would likely be in the $300,000 range. Local costs to provide DOJ the appropriate information would be state-reimbursable.

COMMENTS

1) Rationale . The author contends adding conviction and incarceration release dates to the DOJ's web site will help the public determine the relative danger of registered sex offenders.

Proponents contend that while the type of crime is included on the web site, there is no reference to the date the individual committed the crime or when he or she was released from prison

or jail. Adding such references will help web site users better assess the threat an individual may pose.

2) Current law requires the web site to include the following information:

a) Name and known aliases.
b) Photograph.
c) Physical description, including gender and race.
d) Criminal history (generally the specific offense for which registration is required).
e) Home address or community of residence and zip code, depending upon the offense.

3) Practical/Technical Concerns . DOJ, while not opposed to adding this information to the web site, states it has neither the funds nor the ability to accurately include this information. DOJ states that its Violent Crime Information Network (VCIN), the infrastructure behind the registered sex offender website cannot accommodate the increased fields and information this bill proposes to add. VCIN is undergoing a four-year, $9 million renovation ($1.8 million is included in the 2005-06 budget and $1.9 million is proposed in the 2006-07 budget) that would enable the system to handle this information.

The capacity of VCIN to handle additional information, however, is not the only issue. DOJ notes that incarceration release date information is simply not readily available, particularly for the tens of thousands of sex offenders convicted before 1990, as there is no requirement - or system - for the CDCR or local jails to provide release dates.

Also of concern is the requirement that DOJ post "the date of the commission " of the crime; the " year of the conviction " would be more appropriate and manageable, while providing the same degree of public safety.

To acknowledge current fiscal and information limitations, it may be appropriate to amend the bill to add an effective deadline date for provision of the new information, such as the 2009-10 budget year.

4) Related Legislation . AB 437 (Parra) was similar to this measure, but was chaptered out last year. AB 437 passed off of this committee's Suspense File unanimously and received no

dissenting votes in the Assembly or the Senate.

Unlike AB 1849, however, AB 437 required DOJ to include the dates of offense and release only when funding for this purpose is available and only when DOJ has access to complete information, neither of which is currently the case. This provision was deleted in the Assembly Public Safety Committee hearing on AB 1849.

SB 1128 (Alquist), pending in the Senate, requires DOJ to upgrade the VCIN, to an extent that would allow for the additional fields proposed by this measure, and similar to the DOJ renovation underway, by January 2010.

Analysis Prepared by : Geoff Long / APPR. / (916) 319-2081

Effective: September 20, 2006

West's Annotated California Codes Currentness
Penal Code (Refs & Annos)
Part 2. Of Criminal Procedure (Refs & Annos)
Title 8. Of Judgment and Execution
Chapter 1. The Judgment (Refs & Annos)

§ 1203. Probation; conditional sentence; probation officer investigation, report, and recommendations; restitution fine; court determination; misdemeanor conviction; persons ineligible for probation; release to another state; financial evaluation regarding restitution

(a) As used in this code, "probation" means the suspension of the imposition or execution of a sentence and the order of conditional and revocable release in the community under the supervision of a probation officer. As used in this code, "conditional sentence" means the suspension of the imposition or execution of a sentence and the order of revocable release in the community subject to conditions established by the court without the supervision of a probation officer. It is the intent of the Legislature that both conditional sentence and probation are authorized whenever probation is authorized in any code as a sentencing option for infractions or misdemeanors.

(b)(1) Except as provided in subdivision (j), if a person is convicted of a felony and is eligible for probation, before judgment is pronounced, the court shall immediately refer the matter to a probation officer to investigate and report to the court, at a specified time, upon the circumstances surrounding the crime and the prior history and record of the person, which may be considered either in aggravation or mitigation of the punishment.

(2)(A) The probation officer shall immediately investigate and make a written report to the court of his or her findings and recommendations, including his or her recommendations as to the granting or denying of probation and the conditions of probation, if granted.

(B) Pursuant to Section 828 of the Welfare and Institutions Code, the probation officer shall include in his or her report any information gathered by a law enforcement agency relating to the taking of the defendant into custody as a minor, which shall be considered for purposes of determining whether adjudications of commissions of crimes as a juvenile warrant a finding that there are circumstances in aggravation pursuant to Section 1170 or to deny probation.

(C) If the person was convicted of an offense that requires him or her to register as a sex offender pursuant to Section 290, the probation officer's report shall include the results of the State-Authorized Risk Assessment Tool for Sex Offenders (SARATSO) administered pursuant to Sections 290.04 to 290.06, inclusive, if applicable.

(D) The probation officer shall also include in the report his or her recommendation of both of the following:

(i) The amount the defendant should be required to pay as a restitution fine pursuant to subdivision (b) of Section 1202.4.

(ii) Whether the court shall require, as a condition of probation, restitution to the victim or to the Restitution Fund and the amount thereof.

(E) The report shall be made available to the court and the prosecuting and defense attorneys at least five days, or upon request of the defendant or prosecuting attorney nine days, prior to the time fixed by the court for the hearing and determination of the report, and shall be filed with the clerk of the court as a record in the case at the time of the hearing. The time within which the report shall be made available and filed may be waived by written stipulation of the prosecuting and defense attorneys that is filed with the court or an oral stipulation in open court that is made and entered upon the minutes of the court.

(3) At a time fixed by the court, the court shall hear and determine the application, if one has been made, or, in any case, the suitability of probation in the particular case. At the hearing, the court shall consider any report of the probation officer, including the results of the SARATSO, if applicable, and shall make a statement that it has considered the report, which shall be filed with the clerk of the court as a record in the case. If the court determines that there are circumstances in mitigation of the punishment prescribed by law or that the ends of justice would be served by granting probation to the person, it may place the person on probation. If probation is denied, the clerk of the court shall immediately send a copy of the report to the Department of Corrections and Rehabilitation at the prison or other institution to which the person is delivered.

(4) The preparation of the report or the consideration of the report by the court may be waived only by a written stipulation of the prosecuting and defense attorneys that is filed with the court or an oral stipulation in open court that is made and entered upon the minutes of the court, except that there shall be no waiver unless the court consents thereto. However, if the defendant is ultimately sentenced and committed to the state prison, a probation report shall be completed pursuant to Section 1203c.

(c) If a defendant is not represented by an attorney, the court shall order the probation officer who makes the probation report to discuss its contents with the defendant.

(d) If a person is convicted of a misdemeanor, the court may either refer the matter to the probation officer for an investigation and a report or summarily pronounce a conditional sentence. If the person was convicted of an offense that requires him or her to register as a sex offender pursuant to Section 290, the court shall refer the matter to the probation officer for the purpose of obtaining a report on the results of the State-Authorized Risk Assessment Tool for Sex Offenders administered pursuant to Sections 290. 04 to 290.06, inclusive, if applicable, which the court shall consider. If the case is not referred to the probation officer, in sentencing the person, the court may consider any information concerning the person that could have been included in a probation report. The court shall inform the person of the information to be considered and permit him or her to answer or controvert the information. For this purpose, upon the request of the person, the court shall grant a continuance before the judgment is pronounced.

(e) Except in unusual cases where the interests of justice would best be served if the person is granted probation, probation shall not be granted to any of the following persons:

(1) Unless the person had a lawful right to carry a deadly weapon, other than a firearm, at the time of the perpetration of the crime or his or her arrest, any person who has been convicted of arson, robbery, carjacking, burglary, burglary with explosives, rape with force or violence, torture, aggravated mayhem, murder, attempt to commit murder, trainwrecking, kidnapping, escape from the state prison, or a conspiracy to commit one or more of those crimes and who was armed with the weapon at either of those times.

(2) Any person who used, or attempted to use, a deadly weapon upon a human being in connection with the perpetration of the crime of which he or she has been convicted.

(3) Any person who willfully inflicted great bodily injury or torture in the perpetration of the crime of which he or she has been convicted.

(4) Any person who has been previously convicted twice in this state of a felony or in any other place of a public offense which, if committed in this state, would have been punishable as a felony.

(5) Unless the person has never been previously convicted once in this state of a felony or in any other place of a public offense which, if committed in this state, would have been punishable as a felony, any person who has been convicted of burglary with explosives, rape with force or violence, torture, aggravated mayhem, murder, attempt to commit murder, trainwrecking, extortion, kidnapping, escape from the state prison, a violation of Section 286, 288, 288a, or 288.5, or a conspiracy to commit one or more of those crimes.

(6) Any person who has been previously convicted once in this state of a felony or in any other place of a public offense which, if committed in this state, would have been punishable as a felony, if he or she committed any of the following acts:

(A) Unless the person had a lawful right to carry a deadly weapon at the time of the perpetration of the previous crime or his or her arrest for the previous crime, he or she was armed with a weapon at either of those times.

(B) The person used, or attempted to use, a deadly weapon upon a human being in connection with the perpetration of the previous crime.

(C) The person willfully inflicted great bodily injury or torture in the perpetration of the previous crime.

(7) Any public official or peace officer of this state or any city, county, or other political subdivision who, in the discharge of the duties of his or her public office or employment, accepted or gave or offered to accept or give any bribe, embezzled public money, or was guilty of extortion.

(8) Any person who knowingly furnishes or gives away phencyclidine.

(9) Any person who intentionally inflicted great bodily injury in the commission of arson under subdivision (a) of Section 451 or who intentionally set fire to, burned, or caused the burning of, an inhabited structure or inhabited property in violation of subdivision (b) of Section 451.

(10) Any person who, in the commission of a felony, inflicts great bodily injury or causes the death of a human being by the discharge of a firearm from or at an occupied motor vehicle proceeding on a public street or highway.

(11) Any person who possesses a short-barreled rifle or a short-barreled shotgun under Section 12020, a machinegun under Section 12220, or a silencer under Section 12520.

(12) Any person who is convicted of violating Section 8101 of the Welfare and Institutions Code.

(13) Any person who is described in paragraph (2) or (3) of subdivision (g) of Section 12072.

(f) When probation is granted in a case which comes within subdivision (e), the court shall specify on the record and shall enter on the minutes the circumstances indicating that the interests of justice would best be served by that disposition.

(g) If a person is not eligible for probation, the judge shall refer the matter to the probation officer for an investigation of the facts relevant to determination of the amount of a restitution fine pursuant to subdivision (b) of Section 1202.4 in all cases where the determination is applicable. The judge, in his or her discretion, may direct the

probation officer to investigate all facts relevant to the sentencing of the person. Upon that referral, the probation officer shall immediately investigate the circumstances surrounding the crime and the prior record and history of the person and make a written report to the court of his or her findings. The findings shall include a recommendation of the amount of the restitution fine as provided in subdivision (b) of Section 1202.4.

(h) If a defendant is convicted of a felony and a probation report is prepared pursuant to subdivision (b) or (g), the probation officer may obtain and include in the report a statement of the comments of the victim concerning the offense. The court may direct the probation officer not to obtain a statement if the victim has in fact testified at any of the court proceedings 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.

CREDIT(S)

(Enacted 1872. Amended by Stats.1903, c. 34, p. 34, § 1; Stats.1905, c. 166, p. 162, § 1; Stats.1909, c. 232, p. 357, § 1; Stats.1911, c. 381, p. 689, § 1; Stats.1913, c. 137, p. 221, § 1; Stats.1917, c. 732, p. 1409, § 1; Stats.1919, c. 604, p. 1244, § 1; Stats.1921, c. 752, p. 1296, § 1; Stats.1923, c. 144, p. 291, § 1; Stats.1927, c. 770, p. 1493, § 1; Stats.1929, c. 737, p. 1384, § 1; Stats.1931, c. 786, p. 1633, § 1; Stats.1935, c. 604, p. 1706, § 1; Stats.1945, c. 765, p. 1448, § 1; Stats.1947, c. 1178, p. 2660, § 2; Stats.1949, c. 1329, p. 2324, § 1; Stats.1951, c. 1438, p. 3396, § 1; Stats.1955, c. 309, p. 761, § 2; Stats.1957, c. 385, p. 1218, § 1; Stats.1957, c. 2054, p. 3648, § 1; Stats.1965, c. 1720, p. 3867, § 1; Stats.1968, c. 101, p. 311, § 1; Stats.1969, c. 522, p. 1134, § 2; Stats.1971, c. 706, p. 1367, § 1; Stats.1975, c. 1004, p. 2354, § 1; Stats.1977, c. 162, p. 629, § 2, eff. June 29, 1977, operative July 1, 1977; Stats.1977, c. 165, p. 653, § 20, eff. June 29, 1977, operative July 1, 1977; Stats.1977, c. 1122, p. 3599, § 4; Stats.1977, c. 1123, p. 3605, § 5; Stats.1978, c. 581, p. 2000, § 1; Stats.1978, c. 1262, p. 4097, § 2; Stats.1979, c. 1174, p. 4583, § 2; Stats.1979, c. 1175, p. 4593, § 2; Stats.1981, c. 1076, § 1; Stats.1982, c. 247, § 1, eff. June 9, 1982; Stats.1982, c. 1282, p. 4743, § 2; Stats.1983, c. 932, § 2; Stats.1983, c. 1063, § 1; Stats.1984, c. 1340, § 3; Stats.1985, c. 1485, § 3; Stats.1987, c. 134, § 11, eff. July 7, 1987; Stats.1987, c. 828, § 71; Stats.1987, c. 1155, § 2, eff. Sept. 26, 1987; Stats.1987, c. 1379, § 2, eff. Sept. 29, 1987; Stats.1989, c. 936, § 1; Stats.1989, c. 1402, § 11.5; Stats.1993, c. 59 (S.B.399), § 14; Stats.1993, c. 273 (A.B.306), § 1; Stats.1993, c. 610 (A.B.6), § 18, eff. Oct. 1, 1993; Stats.1993, c. 610 (A.B.6), § 18.3, eff. Oct. 1, 1993, operative Jan. 1, 1994; Stats.1993, c. 611 (S.B.60), § 20,

eff. Oct. 1, 1993; Stats.1993, c. 611 (S.B.60), § 20.3, eff. Oct. 1, 1993, operative Jan. 1, 1994; Stats.1994, c. 146 (A.B.3601), § 167; Stats.1994, c. 23 (A.B.482), § 2; Stats.1994, c. 451 (A.B.2470), § 2; Stats.1993-94, 1st Ex.Sess., c. 30 (A.B.141) § 1; Stats.1993-94, 1st Ex.Sess., c. 33 (S.B.36), § 2; Stats.1993-94, 1st Ex.Sess., c. 33 (S.B.36), § 2.5; Stats.1995, c. 313 (A.B.817), § 7, eff. Aug. 3, 1995; Stats.1996, c. 123 (A.B.2376), § 1; Stats.1996, c. 719 (A.B.893), § 1; Stats.2006, c. 337 (S.B.1128), § 38, eff. Sept. 20, 2006.)

OFFICIAL FORMS

2004 Main Volume

<Mandatory and optional Forms adopted and approved by the Judicial Council are set out in West's California Judicial Council Forms Pamphlet.>

HISTORICAL AND STATUTORY NOTES

2008 Electronic Update

2006 Legislation

Stats.2006, c. 337, in subd. (b)(2), inserted subpar. (C) and redesignated former subpars. (C) and (D) as subpars. (D) and (E), and in subpar. (E), in the first sentence, deleted a comma preceding and inserted a comma following "nine days"; in subd. (b)(3), inserted, in the second sentence, ", including the results of the SARATSO, if applicable," and a comma following "the report", and in the fourth sentence, "and Rehabilitation"; in subd. (d), inserted the second sentence; and in subd. (e)(11), inserted "machinegun".

For short title of act, legislative findings and declarations, and appropriations, severability, cost reimbursement, and urgency effective provisions relating to Stats.2006, c. 337 (S.B.1128), see Historical and Statutory Notes under Government Code § 68152.

2004 Main Volume

As enacted in 1872, the section read:

"After a plea or verdict of guilty, where a discretion is conferred upon the Court, as to the extent of the punishment, the Court, upon the oral suggestion of either party that there are circumstances which may be properly taken into view either in aggravation or mitigation of the punishment may, in its discretion, hear the same summarily, at a specified time, and upon such notice to the adverse party as it may direct."

The 1903 amendment rewrote the section to read:

"After plea or verdict of guilty, where discretion is conferred upon the court as to the extent of the punishment, the court, upon oral suggestions of either party that there are circumstances which may properly be taken into view, either in aggravation or mitigation of the punishment, may, in its discretion, hear the same summarily at a specified time and upon such notice to the adverse party as it may direct. At such specified time, if it shall appear by the record furnished by the probation officer, or otherwise, and from the circumstances, of any person over the age of sixteen years so having plead guilty or having been convicted of the crime, that there are circumstances in mitigation of the punishment, or that the ends of justice will be subserved thereby, the court shall have power, in its discretion, to place the defendant upon probation in the manner following:

"1. The court, judge or justice thereof, may suspend the imposing of sentence and may direct that such suspension may continue for such period of time, not exceeding the maximum possible term of such sentence, and upon such terms and conditions as it shall determine, and shall place such person on probation, under the charge and supervision of the probation officer of said court during such suspension.

"2. If the judgment is to pay a fine, and that the defendant be imprisoned until it be paid the court, judge, or justice, upon imposing sentence, may direct that the execution of the sentence of imprisonment be suspended for such period of time, not exceeding the maximum possible term of such sentence, and on such terms as it shall determine, and shall place the defendant on probation, under the charge and supervision of the probation officer during such suspension, to the end that he may be given the opportunity to pay the fine; provided, however, that upon the payment of the fine being made, judgment shall be satisfied and the probation cease.

"3. At any time during the probationary term of the person released on probation, in accordance with the provisions of this section, any probation officer may, without warrant, or other process, at any time until the final disposition of the case, rearrest any person so placed in his care and bring him before the court, or the court may, in his discretion, issue a warrant for the rearrest of any such person and may thereupon revoke and terminate such probation, if the interest of justice so requires, and if the court, in its judgment, shall have reason to believe from the report of the probation officer, or otherwise, that the person so placed upon probation is violating the conditions of his probation, or engaging in criminal practices, or has become abandoned to improper associates, or a vicious life. Upon such revocation and termination, the court may, if the sentence has been suspended, pronounce judgment at any time after the said suspension of the sentence within the longest period for which the defendant might have been sentenced, but if the judgment has been pronounced and the execution thereof has been suspended, the court may revoke such suspension, whereupon the judgment shall be in full force and effect, and the person shall be delivered over to the proper officer to serve his sentence.

"4. The court shall have power at any time during the term of probation to revoke or modify its order of suspension of imposition or execution of sentence. It may, at any time, when the ends of justice will be subserved thereby, and when the good conduct and reform of the person so held on probation shall warrant it, terminate the period of probation and discharge the person so held, and in all cases, if the court has not seen fit to revoke the order of probation and impose sentence or pronounce judgment, the defendant shall, at the end of the term of probation, be by the court discharged."

The 1905 amendment, in the introductory paragraph, rewrote the second sentence to read: "In such cases and after the case of the defendant has been investigated by the probation officer and a written report filed of record in the court in accordance with this statute, and in accordance with section 131 of the Code of Civil Procedure, the court shall have power in its discretion to place the defendant upon probation in the manner following, if it shall appear to the judge, by such report so furnished by the probation officer or otherwise, as to any such defendant over the age of sixteen years so having pleaded guilty or having been convicted of crime, that there are circumstances in mitigation of punishment or that the ends of justice and the interest of society and the reform of the defendant will be subserved thereby, viz:".

At the end of subd. 1, the amendment added provision for placing the defendant under the charge and supervision of the probation officer of the court of another county.

In subd. 3, the former first sentence was divided into two sentences, the second of which contained new provisions for a recommendation by the probation officer. Added considerations were the interest of society or the reform of the defendant. In the former second sentence, which became the third sentence, there was added at the end thereof a provision excluding time during which execution of judgment was suspended from consideration as part of the term of imprisonment.

The 1909 amendment deleted the changes which had been made in 1905 and restored the section to read as it did in 1903 except that the amendment added a new subd. 5, dealing with change of plea and reading as follows: "5. Every defendant who has fulfilled the conditions of his probation for the entire period thereof, or who shall have been discharged from probation prior to the termination of the period thereof, shall at any time prior to the expiration of the maximum period of punishment for the offense of which he has been convicted, dating from said discharge from probation or said termination of said period of probation, be permitted by the court to withdraw his plea of guilty and enter a plea of not guilty; or, if he has been convicted after a plea of not guilty, the court shall set aside the verdict of guilty and the court shall thereupon dismiss the accusation or information against such defendant who shall thereafter be released from all penalties and disabilities resulting from the offense or crime of which he has been convicted."

The 1911 amendment, in the introductory paragraph, provided that upon the oral suggestions of either party, "or of its own motion," that there are circumstances, etc., the court may in its discretion "refer the same to the probation officer, directing said probation officer to investigate, and to report, recommending either for or against release upon probation, at a specified time, and the court shall" hear the same summarily at "such specified times", instead of "a specified time", etc. In the second sentence, it was provided, that if it shall appear "from the report", instead of "by the record", furnished, etc., and reference was made to any person over the age of "eighteen (18) years", instead of "sixteen years".

In subd. 1, the 1911 amendment gave the court, etc., authority to suspend the imposing, "or the execution" of sentence, etc., upon such terms and conditions as it shall determine, "which terms and conditions may include, in the discretion of the court, the requirement of bonds, for the appearance of the person released upon probation before the court, at any time that the court may require such appearance in the investigation of any alleged violation of said terms and conditions of probation, and such bonds may be at any time by the court exonerated without affecting any of the other terms or conditions of such probation; and in case of such suspension of imposition or execution of sentence, the court" shall place such person on probation etc., "or under the charge and supervision of the probation officer of the county in which such probationer is by the court permitted to reside".

In subd. 3, in the second sentence, the court was authorized to pronounce judgment "after the said suspension of the sentence for any time", instead of "at any time after the said suspension of sentence", within the longest period, etc.

In subd. 5, it was provided that "in either case" the court shall thereupon dismiss the accusation, etc.

The 1911 amendment also added subds. 6 to 10 as follows:

"6. The same probation officers and assistant probation officers and deputy probation officers shall serve under this act as are appointed under the act known at the juvenile court law, and entitled "An act concerning dependent and delinquent minor children, providing for their care, custody, and maintenance until twenty-one years of age; providing for their commitment to the Whittier State School and the Preston State School of Industry, and the manner of such commitment and release therefrom, establishing a probation committee and probation officers to deal with such children, and fixing the salaries of probation officers; providing for detention homes for said children; providing for the punishment of persons responsible for, or contributing to, the dependency or delinquency of children; and giving to the superior court jurisdiction of such offenses, and repealing inconsistent acts," approved March 8, 1909, or under any laws amending or superseding the same.

"7. Such probation officers shall serve under this act whenever required to do so by any court having original jurisdiction of criminal actions in this state.

"8. At the time of the plea or verdict of guilty of any crime of any person over eighteen years of age, the probation officer of the county of the jurisdiction of said crime shall, when so directed by the court, inquire into the

antecedents, character, history, family environment, and offense of such person, and must report the same to the court, and file his report in writing in the records of said court. His report shall contain his recommendation for or against the release of such person on probation. If any such person shall be released on probation and committed to the care of the probation officer, such officer shall keep a complete and accurate record in suitable books or other form in writing, of the history of the case in court, and of the name of the probation officer, and his acts in connection with said case; also the age, sex, nativity, residence, education, habits of temperance, whether married or single, and the conduct, employment, and occupation, and parents' occupation, and condition of such person so committed to his care during the term of such probation and the result of such probation. Such record of such probation officer shall be and constitute a part of the records of the court, and shall at all times be open to the inspection of the court, or of any person appointed by the court for that purpose, as well as of all magistrates, and the chief of police, or other head of the police, unless otherwise ordered by the court. Said books of record shall be furnished for the use of said probation officer of said county, and shall be paid for out of the county treasury.

"9. The probation officer shall furnish to each person who has been released on probation, and committed to his care, a written statement of the terms and conditions of his probation, unless such statement has been furnished by the court, and shall report to the court, judge or justice, releasing such person upon probation, any violation or breach of the terms and conditions imposed by such court on the person placed in his care.

"10. Such probation officer shall have, as to the person so committed to the care of said probation officer, the powers of a peace officer."

The 1913 amendment, in subd. 1, added at the end of the first sentence a proviso fixing the maximum period of suspension of sentence at two years and the maximum possible term of sentence at less than two years. The amendment added a new sentence authorizing suspension of sentence for five years for a violation of §§ 270 or 270a. The provision, which had been added in 1911, relating to the placing of a defendant under the supervision of a probation officer of another county was deleted and the subject matter was covered by new subd. 7.

Former subd. 7, which had been added in 1911, was omitted and a new subd. 7 was added, reading: "7. Whenever any person is released upon probation under the provisions of this act, the case may be transferred to any court of the same rank in any other county, or city and county, of this state in which such person resides, or to which such person may remove, and such court shall thereupon commit such person to the care and custody of the probation officer of the county, or city and county, to which such person has been transferred; such court shall thereafter have entire jurisdiction over such case, with like power to make transfer whenever to such court such transfer may seem proper."

The 1913 amendment also added subd. 8a reading:

"Every probation officer, within 15 days after the 30th day of June, and within 15 days after the 31st day of December, of each year, shall make in writing and file as a public document with the county clerk a report to the superior court of the county or city and county in which such probation officer is appointed to serve, and shall furnish a copy of such report to each judge in said county or city and county who has released any person on probation who at the time of such report remains on probation; and a further copy to the secretary of the state board of charities and corrections. Such report shall state, without giving names, the exact number of persons, segregating male and female, and segregating misdemeanors and felonies, who have been released on probation to such probation officer, as such number exists, deducting all cases of expiration, discharge, dismissal, and restoration of rights, on said 30th day of June and said 31st day of December; and such report shall further segregate such persons as having been released on probation, as the case may be, in 1903, 1904, 1905, and so on, up to and including the calendar year in which such report is made and filed."

The 1917 amendment provided lettered subdivisions instead of numbered subdivisions, the subdivisions followed in

the same chronological order, except that a new subd. (g), relating to the adult probation board was added. In subd. (d), the court was given added authority to discharge a probationer but was restricted by a provision that "no such order shall be made without written notice first given by the court or the clerk thereof to the proper probation officer of the intention to revoke or modify its order".

In subd. (f), formerly subd. 6, reference was made to a more recent enactment of the juvenile court law and an exception was added in the case of offenses committed in counties and cities and counties of the second class and counties of the third class.

The 1919 amendment made a series of technical changes.

The 1921 amendment revised subd. (g) to make it applicable in any city and county and in any county having a population of more than 300,000 and not operating under a freeholder's charter, instead of in counties and cities and counties in the second class.

The 1923 amendment, in the introductory paragraph, referred to the "conviction" by plea or verdict of guilty "of a public offense" where discretion is conferred upon the court "or any board or commission or other authority" as to the extent of the punishment. Other references were made to "board or commission or other authority", instead of merely to the court. The vital amendment of the introductory paragraph was the addition of the proviso excluding from the benefits of the section cases of murder, robbery, burglary, rape by force and violence, or where in the perpetration of such crimes a deadly weapon is used.

The 1927 amendment, in the introductory paragraph, changed the proviso excluding certain persons from benefits under the section to exclude any defendant who at the time of the perpetration of the crime or at the time of his arrest was armed with a deadly weapon (unless at the time he had a lawful right to carry the same), and to exclude one who used or attempted to use a deadly weapon in connection with the perpetration of the crime, one who in the perpetration of the crime inflicted great bodily injury or torture, one who is unable to satisfy the court that he had never been previously convicted of a felony, and any public official or employee who in the discharge of his duties accepts or gives or offers to accept or give a bribe or embezzles public money or is guilty of extortion.

The 1927 amendment extensively revised the rest of the section. It returned to the use of numbered subdivisions. The section vastly enlarged the power of the court with respect to punishment which could be imposed as a condition of the probation, permitting imprisonment in the county jail, a fine, or both, or neither, to provide for reparation, or to provide for placement in a county road camp or farm, etc. The provision was inserted that in the event of a violation of probation, time spent in jail or other detention under the conditions of probation should be credited against his sentence.

A series of technical amendments were made to the provisions relating to adult probation officers.

The 1929 amendment, in the introductory paragraph, gave the court authority to summarily deny probation, and it provided that "if probation is not denied, the court must immediately", instead of "or in its discretion the court may", refer the matter to the probation officer.

The 1931 amendment, in the introductory paragraph, provided for the denial of probation to any defendant "who shall have been convicted of robbery, burglary, burglary with explosives, rape with force or violence, arson, murder, assault with intent to commit murder, attempt to commit murder, grand theft, train wrecking, feloniously receiving stolen goods, felonious assault with a deadly weapon, kidnaping, mayhem, escape from a state prison, conspiracy to commit any one or more of the aforementioned felonies, or any of the aforementioned felonies, and" who at the time of the perpetration of said crime "or any of them" or at the time of his arrest was armed, etc. Among others excluded were any public official or "peace officer", instead of "employee", of the state, country, etc.

The 1935 amendment rewrote the section to read as follows:

"After the conviction by plea or verdict of guilty of a public offense in cases where discretion is conferred on the court or any board or commission or other authority as to the extent of the punishment the court, upon application of the defendant or of the people or upon its own motion, may summarily deny probation, or at a time fixed may hear and determine in the presence of the defendant the matter of probation of the defendant and the conditions of such probation, if granted; if probation is not denied, the court must immediately refer the matter to the probation officer to investigate and to report to the court at a specified time, upon the circumstances surrounding the crime and concerning the defendant and his prior record, which may be taken into consideration either in aggravation or mitigation of punishment; the probation officer must thereupon make an investigation of circumstances surrounding the crime and the prior record and history of the defendant and make a written report to the court of the facts found upon such investigation and must accompany said report with his written recommendations as to the granting or withholding of probation to the defendant and as to the conditions of probation if it shall be granted and the report and recommendations must be filed with the clerk of the court as a record in the case. At such time or times fixed by the court, the court must hear and determine such application and in connection therewith must consider any report of the probation officer, and must make a statement that it has considered such report which must be filed with the clerk of the court as a record in the case. And if it shall determine that there are circumstances in mitigation of punishment prescribed by law, or that the ends of justice would be subserved by granting probation to the defendant, the court shall have power in its discretion to place the defendant on probation as hereinafter provided; if probation is denied, the clerk of the court must forthwith send a copy of the report and recommendations to the Board of Prison Directors; further provided, however, that probation shall not be granted to any defendant who shall have been convicted of robbery, burglary, burglary with explosives, rape with force or violence, arson, murder, assault with intent to commit murder, attempt to commit murder, grand theft, train wrecking, feloniously receiving stolen goods, felonious assault with a deadly weapon, kidnapping, mayhem, escape from a State prison, conspiracy to commit any one or more of the aforementioned felonies, or any of the aforementioned felonies, and who at the time of the perpetration of said crime or any of them or at the time of his arrest was armed with a deadly weapon (unless at the time he had a lawful right to carry the same), nor to a defendant who used or attempted to use a deadly weapon in connection with the perpetration of the crime of which he was convicted, nor to one who in the perpetration of the crime of which he was convicted inflicted great bodily injury or torture, nor to any defendant unless the court shall be satisfied that he has never in any place been previously convicted of a felony, nor to any public official or peace officer of the State, county, city, city and county, or other political subdivision who, in the discharge of the duties of his public officer or employment, accepted or gave or offered to accept or give any bribe or embezzled public money or was guilty of extortion."

The 1935 act, in addition to rewriting the section, to consist primarily of subject matter formerly contained in the introductory paragraph, added new §§ 1203.1 to 1203.12 which embraced the subject matter formerly contained in subds. 1 to 13.

The 1945 amendment, in the list of offenses for which probation cannot be granted, omitted "grand theft" and "feloniously receiving stolen goods." Following the reference in such list to conspiracy to commit any one or more of the aforementioned felonies, the amendment deleted the additional phrase "or any of the aforementioned felonies".

The amendment changed the exclusion of one unable to satisfy the court that he had never "in any place" been previously convicted of a felony to exclude a defendant unless the court shall be satisfied that he has never been previously convicted of a felony "in this State nor convicted in any other place of a public offense which would have been a felony if committed in this State".

The 1947 amendment, at the beginning of the section, referred to a public offense "not amounting to a felony"; later it provided if probation is not denied, "and in every felony case in which the defendant is eligible to probation before

any judgment is pronounced and whether or not an application for probation has been made," the court must immediately refer the matter to the probation officer, etc. It was provided that the probation officer's report may be considered either in aggravation or mitigation of punishment "in those cases in which the defendant is not eligible for probation, the judge may in his discretion refer the matter to the probation officer for an investigation of the fact relevant to sentence". It was provided that if probation is denied the clerk of the court must sign a copy of the report and recommendations to the "Department of Corrections at the prison or other institution to which the defendant is delivered".

At the end of the section, the amendment added "No probationer shall be released to enter another state of the United States, unless and until his case has been referred to the California Administrator, Interstate Parole Compacts, pursuant to the Uniform Act for Out-of-State Parolee Supervision".

The 1949 amendment, in the list of offenses for which probation could not be granted, deleted felonious assault with a deadly weapon and mayhem. The amendment also prohibited probation to one who at the time of the perpetration of the crime or at the time of his arrest was "himself" armed with a deadly weapon. With reference to use of a deadly weapon, the amendment inserted the qualifying phrase "upon a human being". After providing that probation shall not be granted to certain defendants, the amendment continued, nor to one who in the perpetration of the crime of which he was convicted "wilfully" inflict a great bodily injury or torture, nor to any defendant "unless the court shall be satisfied that he has not been twice previously convicted of felony in this State nor twice previously convicted in any other place or places of public offenses which would have been felonies if committed in this State; nor to any defendant convicted of the crime of robbery, burglary of the first degree, burglary with explosives, rape with force or violence, arson, murder, attempt to commit murder, assault with intent to commit murder, train wrecking, extortion, kidnaping, escape from a state prison, violation of §§ 286, 288 or 288a of this code, or conspiracy to commit any one or more of the aforesaid felonies," unless the court shall be satisfied that he has never been previously convicted of a felony in this State nor previously convicted in any other place of a public offense which would have been a felony if convicted in the State; "nor to any defendant unless the court shall be satisfied that he has never been previously convicted of a felony in this State nor convicted in any other place of a public offense which would have been a felony if committed in this State and at the time of the perpetration of said previous offense or at the time of his arrest for said previous offense he was himself armed with a deadly weapon (unless at the time he had a lawful right to carry the same) or he personally used or attempted to use a deadly weapon upon a human being in connection with the perpetration of said previous offense or in the perpetration of said previous offense he wilfully inflicted great bodily injury or torture".

The 1951 amendment divided the former first sentence into four sentences, divided the former single paragraph into two paragraphs, and added a third paragraph, which read:

"In those cases in which the defendant is not eligible for probation, the judge may in his discretion refer the matter to the probation officer for an investigation of the facts relevant to sentence. The probation officer must thereupon make an investigation of circumstances surrounding the crime and the prior record and history of the defendant and make a written report to the court of the facts found upon such investigation."

Reference was made to felony cases in which the defendant is eligible "for", instead of "to", probation and the amendment deleted the following language:

"In every misdemeanor case, the court may, at its option refer the matter to the probation officer for investigation and report or summarily deny probation or summarily grant probation".

The proviso of the former third sentence became the first sentence of the second paragraph.

The 1955 amendment substituted in the last sentence of the second paragraph the words "Interstate Probation and

Parole Compacts, pursuant to the Uniform Act for Out-of-State Probationer and Parolee Supervision", for the words "Interstate Parole Compacts, pursuant to the Uniform Act for Out-of-State Parolee Supervision."

The 1957 amendments rewrote the fourth sentence and added the fifth sentence of the first paragraph. These sentences then read: "The report and recommendations must be made available to the court and the prosecuting and defense attorneys at least two days prior to the time fixed by the court for the hearing and determination of such report and must be filed with the clerk of the court as a record in the case at the time of said hearing. By written stipulation of the prosecuting attorney and the defense attorney, filed with the court, or by oral stipulation in open court made and entered upon the minutes of the court, the time within which the report and recommendations must be made available and filed, under the preceding provisions of this section, may be waived".

The 1957 amendments deleted robbery, burglary and arson from those crimes which, if committed, would affect the granting of probation and added the following provisions:

"In every misdemeanor case, the court may, at its option refer the matter to the probation officer for investigation and report or summarily deny probation or summarily grant probation.

"The Legislature hereby expresses the policy of the people of the State of California to be that, except in unusual cases where the interest of justice demands a departure from the declared policy, no judge shall grant probation to any person who shall have been convicted of robbery, burglary or arson, and who at the time of the perpetration of said crime or any of them or at the time of his arrest was himself armed with a deadly weapon (unless at the time he had a lawful right to carry the same), nor to a defendant who used or attempted to use a deadly weapon upon a human being in connection with the perpetration of the crime of which he was convicted, nor to one who in the perpetration of the crime of which he was convicted wilfully inflicted great bodily injury or torture, nor to any such person unless the court shall be satisfied that he has never been previously convicted of a felony in this State nor previously convicted in any other place of a public offense which would have been a felony if committed in this State."

The 1965 amendment inserted the phrase "Except as hereafter provided in this section" preceding provisions limiting the granting of probation where specified crimes were permitted and inserted the following paragraph:

"In unusual cases, otherwise subject to the preceding paragraph, in which the interests of justice would best be served thereby, the judge may, with the concurrence of the district attorney, grant probation."

The 1968 amendment added the following provisions:

"If a misdemeanor case is not referred to the probation officer, the court in sentencing the defendant may consider any information concerning the defendant, his prior record, and the circumstances surrounding the crime that could have been included in a probation report. The court shall inform the defendant of the information considered and permit the defendant to answer or controvert such information. For this purpose the court upon request of the defendant shall grant a continuance before pronouncing sentence."

The 1969 amendment provided that the report of the probation officer had to be made available to the court and attorneys at least two days "or, upon the request of the defendant, five days" prior to the time fixed for hearing and determination of such report; changed the spelling of the word "kidnapping" in two places; and added the following:

"With respect to a defendant who is not represented by an attorney, the court shall order the probation officer who makes a probation report pursuant to this section to discuss its contents with the defendant."

Section 4 of Stats.1969, c. 522, p. 1137, provided:

"The Legislature, by this act, does not intend that the preparation or submission of probation reports be accelerated in relation to present law and practice. It is the intention of the Legislature that the courts exercise their discretion in fixing dates for pronouncing judgments five or more days after all the interested parties have received copies of probation reports so that such parties have adequate time to evaluate such reports."

The 1971 amendment rewrote the section, which previously read:

"After the conviction by plea or verdict of guilty of a public offense not amounting to a felony, in cases where discretion in conferred on the court or any board or commission or other authority as to the extent of the punishment, the court, upon application of the defendant or of the people or upon its own motion, may summarily deny probation, or at a time fixed may hear and determine in the presence of the defendant the matter of probation of the defendant and the conditions of such probation, if granted. If probation is not denied, and in every felony case in which the defendant is eligible for probation, before any judgment is pronounced, and whether or not an application for probation has been made, the court must immediately refer the matter to the probation officer to investigate and to report to the court, at a specified time, upon the circumstances surrounding the crime and concerning the defendant and his prior record, which may be taken into consideration either in aggravation or mitigation of punishment. The probation officer must thereupon make an investigation of the circumstances surrounding the crime and of the prior record and history of the defendant, must make a written report to the court of the facts found upon such investigation, and must accompany said report with his written recommendations, including his recommendations as to the granting or withholding of probation to the defendant and as to the conditions of probation if it shall be granted. The report and recommendations must be made available to the court and the prosecuting and defense attorneys at least two days or, upon the request of the defendant, five days prior to the time fixed by the court for the hearing and determination of such report and must be filed with the clerk of the court as a record in the case at the time of said hearing. By written stipulation of the prosecuting attorney and the defense attorney, filed with the court, or by oral stipulation in open court made and entered upon the minutes of the court, the time within which the report and recommendations must be made available and filed, under the preceding provisions of this section, may be waived. At the time or times fixed by the court, the court must hear and determine such application, if one has been made, or in any case the suitability of probation in the particular case, and in connection therewith must consider any report of the probation officer, and must make a statement that it has considered such report which must be filed with the clerk of the court as a record in the case. If the court shall determine that there are circumstances in mitigation of punishment prescribed by law, or that the ends of justice would be subserved by granting probation to the defendant, the court shall have power in its discretion to place the defendant on probation as hereinafter provided; if probation is denied, the clerk of the court must forthwith send a copy of the report and recommendations to the Department of Corrections at the prison or other institution to which the defendant is delivered.

"With respect to a defendant who is not represented by an attorney, the court shall order the probation officer who makes a probation report pursuant to this section to discuss its contents with the defendant.

"In every misdemeanor case, the court may, at its option refer the matter to the probation officer for investigation and report or summarily deny probation or summarily grant probation. If a misdemeanor case is not referred to the probation officer, the court in sentencing the defendant may consider any information concerning the defendant, his prior record, and the circumstances surrounding the crime that could have been included in a probation report. The court shall inform the defendant of the information considered and permit the defendant to answer or controvert such information. For this purpose the court upon request of the defendant shall grant a continuance before pronouncing sentence.

"The Legislature hereby expresses the policy of the people of the State of California to be that, except in unusual cases where the interest of justice demands a departure from the declared policy, no judge shall grant probation to any person who shall have been convicted of robbery, burglary or arson, and who at the time of the perpetration of

said crime or any of them or at the time of his arrest was himself armed with a deadly weapon (unless at the time he had a lawful right to carry the same), nor to a defendant who used or attempted to use a deadly weapon upon a human being in connection with the perpetration of the crime of which he was convicted, nor to one who in the perpetration of the crime of which he was convicted willfully inflicted great bodily injury or torture, nor to any such person unless the court shall be satisfied that he has never been previously convicted of a felony in this state nor previously convicted in any other place of a public offense which would have been a felony if committed in this state.

"Except as hereafter provided in this section, probation shall not be granted to any person who shall have been convicted of burglary with explosives, rape with force or violence, murder, assault with intent to commit murder, attempt to commit murder, train wrecking, kidnapping, escape from a state prison, conspiracy to commit any one or more of the aforementioned felonies, and who at the time of the perpetration of said crime or any of them or at the time of his arrest was himself armed with a deadly weapon (unless at the time he had a lawful right to carry to same), nor to a defendant who used or attempted to use a deadly weapon upon a human being in connection with the perpetration of the crime of which he was convicted, nor to one who in the perpetration of the crime of which he was convicted willfully inflicted great bodily injury or torture, nor to any defendant unless the court shall be satisfied that he has not been twice previously convicted of felony in this state nor twice previously convicted in any other place or places of public offenses which would have been felonies if committed in this state; nor to any defendant convicted of the crime of burglary with explosives, rape with force or violence, murder, attempt to commit murder, assault with intent to commit murder, train wrecking, extortion, kidnapping escape from a state prison, violation of Sections 286, 288 or 288a of this code, or conspiracy to commit any one or more of the aforesaid felonies, unless the court shall be satisfied that he has never been previously convicted of a felony in this state nor previously convicted in any other place of a public offense which would have been a felony if committed in this state; nor to any defendant unless the court shall be satisfied that he has never been previously convicted of a felony in this state nor convicted in any other place of a public offense which would have been a felony if committed in this state and at the time of the perpetration of said previous offense or at the time of his arrest for said previous offense he was himself armed with a deadly weapon (unless at the time he had a lawful right to carry the same) or he personally used or attempted to use a deadly weapon upon a human being in connection with the perpetration of said previous offense or in the perpetration of said previous offense he willfully inflicted great bodily injury or torture; nor to any public official or peace officer of the state, county, city, city and county, or other political subdivision who, in the discharge of the duties of his public office or employment, accepted or gave or offered to accept or give any bribe or embezzled public money or was guilty of extortion.

"In unusual cases, otherwise subject to the preceding paragraph, in which the interests of justice would best be served thereby, the judge may, with the concurrence of the district attorney, grant probation.

"No probationer shall be released to enter another state of the United States, unless and until his case has been referred to the California Administrator, Interstate Probation and Parole Compacts, pursuant to the Uniform Act for Out-of-State Probationer and Parolee Supervision.

"In those cases in which the defendant is not eligible for probation, the judge may in his discretion refer the matter to the probation officer for an investigation of the facts relevant to sentence. The probation officer must thereupon make an investigation of circumstances surrounding the crime and the prior record and history of the defendant and make a written report to the court of the facts found upon such investigation."

Supervisory responsibilities over persons convicted of misdemeanors and infractions, see Historical and Statutory Notes under Penal Code § 1203b.

Amendment of this section by § 2 of Stats.1971, c. 706, p. 1372, failed to become operative under the provisions of § 3 of that Act.

The 1975 amendment rewrote subds. (d) and (e) [now subds. (e) and (f)], which previously read:

"(d) Except in unusual cases where the interests of justice demand a departure, probation shall not be granted to any of the following persons:

"(1) Unless he had a lawful right to carry a deadly weapon at the time of the perpetration of the crime or his arrest, any person who has been convicted of robbery, burglary, or arson and was armed with such weapon at either of such times.

"(2) Any person who has been previously convicted once in this state of a felony or in any other place of a public offense which, if committed in this state, would have been punishable as a felony.

"(e) Except in unusual cases where the interests of justice would best be served if the person is granted probation and where the district attorney concurs, probation shall not be granted to any of the following persons:

"(1) Unless he had a lawful right to carry a deadly weapon at the time of the perpetration of the crime or his arrest, any person who has been convicted of burglary with explosives, rape with force or violence, murder, assault with intent to commit murder, attempt to commit murder, train wrecking, kidnapping, escape from the state prison, or a conspiracy to commit one or more of such crimes and was armed with such weapon at either of such times.

"(2) Any person who used or attempted to use a deadly weapon upon a human being in connection with the perpetration of the crime of which he has been convicted.

"(3) Any person who willfully inflicted great bodily injury or torture in the perpetration of the crime of which he has been convicted.

"(4) Any person who has been previously convicted twice in this state of a felony or in any other place of a public offense which, if committed in this state, would have been punishable as a felony.

"(5) Unless he has never been previously convicted once in this state of a felony or in any other place of a public offense which, if committed in this state, would have been punishable as a felony, any person who has been convicted of burglary with explosives, rape with force or violence, murder, attempt to commit murder, assault with intent to commit murder, train wrecking, extortion, kidnapping, escape from the state prison, a violation of Section 286, 288, or 288a, or a conspiracy to commit one or more of such crimes.

"(6) Any person who has been previously convicted once in this state of a felony or in any other place of a public offense which, if committed in this state, would have been punishable as a felony, if he committed any of the following acts:

"(i) Unless he had a lawful right to carry a deadly weapon at the time of the perpetration of such previous crime or his arrest for such previous crime, he was armed with such weapon at either of such times.

"(ii) He used or attempted to use a deadly weapon upon a human being in connection with the perpetration of such previous crime.

"(iii) He willfully inflicted great bodily injury or torture in the perpetration of such previous crime.

"(7) Any public official or peace officer of this state or any city, county, or other political subdivision who, in the

discharge of the duties of his public office or employment, accepted or gave or offered to accept or give any bribe, embezzled public money, or was guilty of extortion."

The 1977 amendments inserted, what are now the forth and fifth sentences of subd. (b) and substituted "nine" days for "two days or, upon the request of the person, five days" as the time in which the probation report shall be made available prior to the time fixed by the court for the hearing and determination of the report.

The 1978 amendments deleted from what is now subd. (e)(2) "other than a firearm" following "deadly weapon"; inserted in what is now subd. (f) the requirement that the circumstances be specified on the record and entered on the minutes; and added what is now subd. (h).

Amendment of this section be § 1 of Stats.1978, c. 581, p. 2000, and by § 1 of Stats.1978, c. 1262, p. 4094, failed to become operative under the terms of § 3 of c. 1262.

The 1979 amendments added subd. (a) and relettered former subds. (a) to (h) as (b) to (i); in subd. (b), sixth sentence, substituted "defense attorney" for "defense attorneys"; in subd. (e) added para. (8); in subd. (f) substituted a reference to subd. (e) in place of a reference to subd. (d); and in subd. (h) substituted a reference to subds. "(a) or (g)" in place of "(a) or (f)".

Amendment of this section by §§ 2 and 2.5 of Stats.1979, c. 1174, p. 4583, and by § 1 of Stats.1979, c. 1175, p. 4603, failed to become operative under the provisions of § 5 of Stats.1979, c. 1174 and § 3 of Stats.1979, c. 1175.

The 1981 amendment inserted the third sentence in subd. (b).

Amendment of this section by § 2 of Stats.1981, c. 1076, failed to become operative under the provisions of § 4 of that Act.

The 1982 amendment rewrote subd. (a) which had read:

"(a) As used in this code, "probation" shall mean the suspension of the imposition or execution of a sentence and the order of conditional and revocable release in the community. Except as otherwise provided in this code, persons placed on probation by the court shall be under the supervision of the probation officer."

The 1982 amendment added "under the supervision of the probation officer" in first sentence, deleted former second sentence which read: "Except as otherwise provided in this code, persons placed on probation by the court shall be under the supervision of the probation officer" and added second and third sentences of subd. (a); made pronouns applicable to both sexes throughout section; substituted "pronounce a conditional sentence" for "grant or deny probation" in first sentence, and substituted "such information" for "the information" in third sentence of subd. (d); substituted "furnishes or gives away" for "manufactures" and deleted former second and third sentences which required statement of reasons for order of grant of probation and allowed reversal of order for probation on appeal if no substantial basis in record existed for the reasons in par. (8) of subd. (e); and substituted reference to subdivision "(b)" for "(a)" in first sentence of subd. (h).

The 1983 amendment added paragraph (9) to subd. (e).

Amendment of this section by § 3 of Stats.1983, c. 932, failed to become operative under the provisions of § 6 of that Act.

The 1984 amendment substituted, in the fourth sentence of subd. (b), "recommendation of the amount the defendant

should be required to pay as a restitution fine" for "determination of whether the defendant is a person who is required to pay a fine"; substituted, in the fifth sentence of subd. (b), "a recommendation as to" for "for the court's consideration" and "Restitution Fund" for "Indemnity Fund if assistance has been granted to the victim pursuant to Article 1 (commencing with Section 13959) of Chapter 5 of Part 4 of Division 3 of Title 2 of the Government Code, a recommendation thereof, and if so, the amount thereof, and the means and manner of payment"; substituted subdivision designations (e)(6)(A) to (C) for subdivision designations (e)(6)(i) to (iii); rewrote the first and second (formerly the first) sentences of subd. (g), which previously read: "If a person is not eligible for probation, the judge may, in his or her discretion, refer the matter to the probation officer for an investigation of the facts relevant to the sentencing of the person."; added the fourth sentence to subd. (g); and made nonsubstantive grammatical changes.

The 1985 amendment added "Except as provided in subdivision (j)," to the beginning of subd. (b); substituted "his or her arrest" for "his arrest" in subd. (e)(6)(A); and added subd. (j).

Stats.1987, c. 134, § 11, substituted, in subd. (h), "the probation officer may obtain and include in the report" for "the probation officer shall obtain and include in such report".

Section 170 of Stats.1987, c. 828, provides:

"Sec. 170. Any section of any act enacted by the Legislature during the 1987 calendar year, which takes effect on or before January 1, 1988, and which amends or amends and renumbers any section of the codes, as proposed to be amended by this act, other than the amendments to Sections 241, 1203, and 1203.055 of the Penal Code proposed by this act, shall prevail over this act, whether that act is enacted prior to or subsequent to this act."

Stats.1987, c. 1155, § 2 added subd. (e)(10); and substituted, in subd. (h), "shall obtain and include in such report" for "may obtain and include in the report".

The 1987 amendment of this section by c. 1155 explicitly amended the 1987 amendment of this section by c. 134.

Amendment of this section by § 3 of Stats.1987, c. 1155, failed to become operative under the provisions of § 4 of that Act.

Section 1 of Stats.1987, c. 1155, provides:

"The Legislature finds and declares all of the following:

"(a) That it is the right of every person to be secure and protected from the terrorizing activities of violent individuals.

"(b) That the freedom of law-abiding persons to travel upon California's public highways and freeways without fear of intimidation, unreasonable restriction, and endangerment of their own personal safety from violent acts is a basic human right that must be upheld and protected.

"(c) That a safe and secure highway and freeway system is a vital component in the continuance of California's strong economic life and provides the primary means on which millions of Californians depend to travel to and from their workplaces and on which millions of visitors to California depend to travel to those places of interest which have drawn them to our state.

"(d) That, in the summer of 1987, the frequency of violent assaults upon law-abiding motorists on California's public highways and freeways has increased significantly so that, in a two-month period between mid-June and mid-

August of 1987, there were close to 60 incidents of violence on our highways and freeways, in which four people were killed, 19 people injured, and hundreds more were placed in mortal danger.

"(e) That these violent incidents of terror, in many cases, are designed to intimidate, not just specific motorists who somehow gain the ire of these assailants, but the general driving public as well.

"(f) That these acts of terror can and do disrupt the safe operation of the public highway and freeway system and endanger not only the lives of intended victims but the lives of other innocent motorists and bystanders when panic strikes the immediate area.

"(g) That the potential for great bodily injury and death goes far beyond the immediate action, since the behavior of the assailant and the reactions of terrorized motorists can lead to mass confusion and traffic calamities.

"(h) That these freeway terrorists must be adequately punished for the crime they commit against not only innocent individuals but the safety and well-being of the entire motoring public; and that California's highways and freeways must be ridded of this violent element."

Stats.1987, c. 1379, § 2, incorporated the amendment by c. 1155; changed the period prior to the hearing by which the probation report must be made available to the court and prosecuting and defense attorneys from at least nine days to at least five days, or upon request of the defendant or prosecuting attorney, nine days; and deleted, from subd. (e)(1) and (5), "assault with intent to commit murder".

The 1987 amendment of this section by c. 1379 explicitly amended the 1987 amendment of this section by c. 134.

Under the provisions of § 3 of Stats.1987, c. 1379, the 1987 amendments of this section by c. 1155 and c. 1379 were given effect and incorporated in the form set forth in § 2 of c. 1379, with the section as amended by c. 1155 remaining operative only until the operative date of c. 1379. An amendment of this section by § 1 of Stats.1987, c. 1379, failed to become operative under the provisions of § 3 of that Act.

The 1989 amendment inserted reference to § 288.5 in subd. (e)(5); substituted, in subd. (e)(6)(A), "armed with a weapon" for "armed with such weapon"; added subd. (e)(11) relating to possession of short-barreled rifle or shotgun, machine gun, or silencer; and made nonsubstantive changes throughout the section.

Legislative findings and intent relating to Stats.1989, c. 1402, and severability of that act, see Historical Note under Evid. C. § 782.

Under the provisions of § 13.7 of Stats.1989, c. 1402, the 1989 amendments of this section by c. 936 and c. 1402 were given effect and incorporated in the form set forth in § 11.5 of c. 1402. An amendment of this section by § 11 of Stats.1989, c. 1402, failed to become operative under the provisions of § 13.7 of that Act.

Amendment of this section by § 1.5 of Stats.1989, c. 936, failed to become operative under the provisions of § 4 of that Act.

The 1993 amendment by c. 611, § 20, in subd. (e)(1), inserted "carjacking", and inserted "deadly"; and made nonsubstantive changes throughout.

The 1993 amendment by c. 611, § 20.3, in subd. (e)(11), inserted "machine gun"; in subd. (h), in the first sentence, substituted "may" for "shall"; in subd. (i), inserted "and the probationer has reimbursed the county that has jurisdiction over his or her probation case the reasonable cost of processing his or her request for interstate compact

supervision", and inserted the second sentence relating to amount in method of reimbursement.

Section affected by two or more acts at the same session of the legislature, see Government Code § 9605.

Under the provisions of § 53 of Stats.1993, c. 611, the 1993 amendments of this section by c. 273 and c. 611 were given effect and incorporated in the form set forth in § 20 of c. 611, operative until Jan. 1, 1994, then in the form set forth in § 20.3 of c. 611. Amendments of this section by §§ 20.5, and 20.7 of Stats.1993, c. 611, failed to become operative under the provisions of § 53 of that Act.

Under the provisions of § 48 of Stats.1993, c. 610, the 1993 amendments of this section by c. 273 and c. 610 were given effect and incorporated in the form set forth in § 18 of c. 610, operative until Jan. 1, 1994, then in the form set forth in § 18.3 of c. 610. Amendments of this section by §§ 18.5 and 18.7 of Stats.1993, c. 610, failed to become operative under the provisions of § 48 of that Act.

Legislative findings, declarations and intent relating to Stats.1993, c. 59 (S.B.443), see Historical and Statutory Notes under Education Code § 45452.

The 1994 amendment by § 2.5 of c. 33, in subd. (a), substituted "means" for "shall mean" in two places; in subd. (b), inserted par. and subpar. designations; in subd. (e)(1), inserted "torture, aggravated mayhem" following "rape with force or violence,", inserted "who" following "one or more of those crimes and" and substituted "the" for "a deadly" preceding "weapon"; in subd. (e)(5), inserted "torture, aggravated mayhem," following "rape with force or violence"; inserted subds. (e)(12) and (e)(13), relating to persons convicted of violating Welfare and Institutions Code § 8101 and persons described in Penal Code § 12072; and made nonsubstantive changes throughout the section.

Section 13 of Stats.1993-94, 1st Ex.Sess., c. 33 (S.B.36), provides:

"Section 2.5 of this bill incorporates amendments to Section 1203 of the Penal Code proposed by both this bill and AB 141 [c. 30] of the 1993-94 First Extraordinary Session. It shall only become operative if (1) both bills are enacted and become effective, (2) each bill amends Section 1203 of the Penal Code, and (3) this bill is enacted after AB 141. In which case, one of the following alternatives shall be applicable:

"(a) If this bill becomes operative before AB 141, Section 2 of this bill shall be operative until the operative date of AB 141, at which time Section 2.5 of this bill shall become operative.

"(b) If this bill becomes operative after AB 141, Section 1203 of the Penal Code, as amended by AB 141, shall remain operative only until the operative date of this bill, at which time Section 2.5 of this bill shall become operative, and Section 2 of this bill shall not become operative [c. 30 and c. 33 are both effective Nov. 30, 1994]."

Subordination of legislation by Stats.1994, c. 146 (A.B.3601), see Historical and Statutory Notes under Business and Professions Code § 166.

Stats.1994 Cal. 451 (A.B.2470), was both approved by the Governor and filed with the Secretary of State on Sept. 9, 1994. Stats.1993-94, 1st Ex.Sess., c. 33 (S.B.36), was both approved by the Governor and filed with the Secretary of State on Sept. 21, 1994.

Amendment of this section by §§ 2, 3 and 4 of Stats.1993-94, 1st Ex.Sess., c. 30 (A.B.141), failed to become operative under the provisions of § 7 of that Act.

Section affected by two or more acts at the same session of the legislature, see Government Code § 9605.

The text of § 1203 as amended by Stats.1994, c. 451 (A.B.2470), § 2 read:

"(a) As used in this code, 'probation' means the suspension of the imposition or execution of a sentence and the order of conditional and revocable release in the community under the supervision of a probation officer. As used in this code, 'conditional sentence' means the suspension of the imposition or execution of a sentence and the order of revocable release in the community subject to the conditions established by the court without the supervision of the probation officer. It is the intent of the Legislature that both conditional sentence and probation are authorized whenever probation is authorized in any code as a sentencing option for infractions or misdemeanors.

"(b) Except as provided in subdivision (j), if a person is convicted of a felony and is eligible for probation, before judgment is pronounced, the court shall immediately refer the matter to a probation officer to investigate and report to the court, at a specified time, upon the circumstances surrounding the crime and the prior history and record of the person, which may be considered either in aggravation or mitigation of the punishment. The probation officer shall immediately investigate and make a written report to the court of his or her findings and recommendations, including his or her recommendations as to the granting or denying of probation and the conditions of probation, if granted. Pursuant to Section 828 of the Welfare and Institutions Code, the probation officer shall include in his or her report any information gathered by a law enforcement agency relating to the taking of the defendant into custody as a minor, which shall be considered for purposes of determining whether adjudications of commissions of crimes as a juvenile warrant a finding that there are circumstances in aggravation pursuant to Section 1170 or to deny probation. The probation officer shall also include in the report his or her recommendation of the amount the defendant should be required to pay as a restitution fine pursuant to Section 13967 of the Government Code. The probation officer shall also include in his or her report a recommendation as to whether the court shall require, as a condition of probation, restitution to the victim or to the Restitution Fund. The report shall be made available to the court and the prosecuting and defense attorneys at least five days, or, upon request of the defendant or prosecuting attorney, nine days, prior to the time fixed by the court for the hearing and determination of the report, and shall be filed with the clerk of the court as a record in the case at the time of the hearing. The time within which the report shall be made available and filed may be waived by written stipulation of the prosecuting and defense attorneys which is filed with the court or an oral stipulation in open court which is made and entered upon the minutes of the court. At a time fixed by the court, the court shall hear and determine the application, if one has been made, or, in any case, the suitability of probation in the particular case. At the hearing, the court shall consider any report of the probation officer and shall make a statement that it has considered the report which shall be filed with the clerk of the court as a record in the case. If the court determines that there are circumstances in mitigation of the punishment prescribed by law or that the ends of justice would be served by granting probation to the person, it may place the person on probation. If probation is denied, the clerk of the court shall immediately send a copy of the report to the Department of Corrections at the prison or other institution to which the person is delivered.

"(c) If a defendant is not represented by an attorney, the court shall order the probation officer who makes the probation report to discuss its contents with the defendant.

"(d) If a person is convicted of a misdemeanor, the court may either refer the matter to the probation officer for an investigation and a report or summarily pronounce a conditional sentence. If the case is not referred to the probation officer, in sentencing the person, the court may consider any information concerning the person which could have been included in a probation report. The court shall inform the person of the information to be considered and permit him or her to answer or controvert the information. For this purpose, upon the request of the person, the court shall grant a continuance before the judgment is pronounced.

"(e) Except in unusual cases where the interests of justice would best be served if the person is granted probation, probation shall not be granted to any of the following persons:

"(1) Unless the person had a lawful right to carry a deadly weapon, other than a firearm, at the time of the perpetration of the crime or his or her arrest, any person who has been convicted of arson, robbery, carjacking, burglary, burglary with explosives, rape with force or violence, murder, attempt to commit murder, trainwrecking, kidnapping, escape from the state prison, or a conspiracy to commit one or more of those crimes and who was armed with the weapon at either of those times.

"(2) Any person who used, or attempted to use, a deadly weapon upon a human being in connection with the perpetration of the crime of which he or she has been convicted.

"(3) Any person who willfully inflicted great bodily injury or torture in the perpetration of the crime of which he or she has been convicted.

"(4) Any person who has been previously convicted twice in this state of a felony or in any other place of a public offense which, if committed in this state, would have been punishable as a felony.

"(5) Unless the person has never been previously convicted once in this state of a felony or in any other place of a public offense which, if committed in this state, would have been punishable as a felony, any person who has been convicted of burglary with explosives, rape with force or violence, murder, attempt to commit murder, trainwrecking, extortion, kidnapping, escape from the state prison, a violation of Section 286, 288, 288a, or 288.5, or a conspiracy to commit one or more of those crimes.

"(6) Any person who has been previously convicted once in this state of a felony or in any other place of a public offense which, if committed in this state, would have been punishable as a felony, if he or she committed any of the following acts:

"(A) Unless the person had a lawful right to carry a deadly weapon at the time of the perpetration of the previous crime or his or her arrest for the previous crime, he or she was armed with a weapon at either of those times.

"(B) The person used, or attempted to use, a deadly weapon upon a human being in connection with the perpetration of the previous crime.

"(C) The person willfully inflicted great bodily injury or torture in the perpetration of the previous crime.

"(7) Any public official or peace officer of this state or any city, county, or other political subdivision who, in the discharge of the duties of his or her public office or employment, accepted or gave or offered to accept or give any bribe, embezzled public money, or was guilty of extortion.

"(8) Any person who knowingly furnishes or gives away phencyclidine.

"(9) Any person who intentionally inflicted great bodily injury in the commission of arson under subdivision (a) of Section 451 or who intentionally set fire to, burned, or caused the burning of, an inhabited structure or inhabited property in violation of subdivision (b) of Section 451.

"(10) Any person who, in the commission of a felony, inflicts great bodily injury or causes the death of a human being by the discharge of a firearm from or at an occupied motor vehicle proceeding on a public street or highway.

"(11) Any person who possesses a short-barreled rifle or a short-barreled shotgun under Section 12020, a machine gun under Section 12220, or a silencer under Section 12520.

"(12) Any person who is convicted of violating Section 8101 of the Welfare and Institutions Code.

"(13) Any person who is described in paragraph (2) or (3) of subdivision (g) of Section 12072.

"(f) When probation is granted in a case which comes within subdivision (e), the court shall specify on the record and shall enter on the minutes the circumstances indicating that the interests of justice would best be served by that disposition.

"(g) If a person is not eligible for probation, the judge shall refer the matter to the probation officer for an investigation of the facts relevant to determination of the amount of a restitution fine pursuant to Section 13967 of the Government Code in all cases where the determination is applicable. The judge, in his or her discretion, may direct the probation officer to investigate all facts relevant to the sentencing of the person. Upon that referral, the probation officer shall immediately investigate the circumstances surrounding the crime and the prior record and history of the person and make a written report to the court of his or her findings. The findings shall include a recommendation of the amount of the restitution fine as provided in Section 13967 of the Government Code.

"(h) If a defendant is convicted of a felony and a probation report is prepared pursuant to subdivision (b) or (g), the probation officer may obtain and include in the report a statement of the comments of the victim concerning the offense. The court may direct the probation officer not to obtain a statement if the victim has in fact testified at any of the court proceedings concerning the offense.

"(i) No probationer shall be released to enter another state unless his or her case has been referred to the Administrator, 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 and as stated in the order, 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."

The 1994 amendment by c. 451 added subd. (e)(12) relating to violation of § 8101 of the Welfare and Institutions Code; and added subd. (e)(13) relating to persons described in § 12072; and made nonsubstantive changes throughout.

Contingent operation of Stats.1994, c. 451 (A.B.2470), see Historical and Statutory Notes under Penal Code § 186.22.

Legislative intent of A.B.482 (Stats.1994, c. 23), contained in letter to Assembly Daily Journal, see Historical and Statutory Notes under Penal Code § 12020.

Governor's signature message regarding Stats.1994, c. 23 (A.B.482), see Historical and Statutory Notes under Penal Code § 12020.

The 1995 amendment, in subd. (c)(i) relating to the report of the probation, substituted "subdivision (b) of Section 1202.4" for "Section 13967 of the Government Code"; in subd. (c)(ii) added "and the amount thereof"; in subd. (g), relating to situations where the person is not eligible for probation, substituted "subdivision (b) of Section 1202.4" for "Section 13967 of the Government Code" in two places; and in the final paragraph relating to enforcement of orders, following "discretion of the court" deleted "and as stated in the order".

The 1996 amendment by c. 123 in subd. (b)(2)(D), made nonsubstantive changes; and added subd. (b)(4), relating to waiver of preparation or consideration of the probation report.

The 1996 amendment by c. 719 added subd. (k) prohibiting probation to persons convicted of specified violent or serious felonies committed while on probation for a felony offense.

The 1996 amendment of this section by c. 719 explicitly amended the 1996 amendment of this section by c. 123.

Section affected by two or more acts at the same session of the legislature, see Government Code § 9605.

CROSS REFERENCES

Confinement as condition of probation or otherwise, see Penal Code § 19.2.
Controlled substance violations, denial of probation, see Health and Safety Code § 11370.
County financial evaluation officer, see Government Code § 27750 et seq.
Defendant's ability to pay cost of legal assistance, hearing, see Penal Code § 987.81.
Department of Corrections, generally, see Penal Code § 5000 et seq.
Destructive devices, denial of probation following conviction, see Penal Code § 12311.
Determinate sentencing law, determination of presentence custody time credit, rules for criminal cases in the Superior Court, see California Rules of Court, Rule 4.472.
Determination of presentence custody time credit, see California Rules of Court, Rule 4.310.
Effect of amendment of section by two or more acts at the same session of the legislature, see Government Code § 9605.
Employment assistance for discharged prisoners, see Penal Code § 5060.
Escape, see Penal Code § 4530 et seq.
Felonies, definition and penalties, see Penal Code §§ 17 and 18.
Jurisdiction on appeal, see Penal Code § 1265.
Juvenile Court Law,
Probation commission, see Welfare and Institutions Code § 240 et seq.
Probation officers, see Welfare and Institutions Code § 270 et seq.
Medical licensees, transmittal of probation reports to licensing board, see Business and Professions Code § 803.6.
Misdemeanors, definition and penalties, see Penal Code §§ 17, 19 and 19.2.
Multiple offenses, punishment on conviction, see Penal Code § 669.
Non-capital felony, plea of guilty or nolo contendere, see Penal Code § 859a.
Paroles, see Penal Code § 3040 et seq.
Petty theft, prior conviction, see Penal Code § 666.
Previous conviction, see Penal Code §§ 666 et seq., 969 et seq., 1025.
Prior foreign conviction, see Penal Code § 668.
Review, see Penal Code §§ 1237 et seq., 1259, 1469.

Supervision of probation, see Penal Code § 1215.
Suspension of physician's license on granting of probation, see Business and Professions Code §§ 2236, 2237.
Victims of sex offense, request that name not become matter of public record, disclosure of victims' name or address, see Penal Code § 293.
Youth Authority, see Welfare and Institutions Code § 1700 et seq.

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Director of corrections, computation of time and pre-prison credit, see 15 Cal. Code of Regs. § 3371.1.

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NOTES OF DECISIONS

1. Validity

Provision of this section permitting judge, with district attorney's concurrence, to grant probation did not deny due process or equal protection on ground that California prisoner, allegedly otherwise eligible for probation, was denied probation because of lack of district attorney's concurrence, despite lack of prescribed statutory standard as to concurrence, in absence of showing that this section had been applied. Chromiak v. Field, C.A.9 (Cal.)1969, 406 F.2d 502, certiorari denied 90 S.Ct. 581, 396 U.S. 1017, 24 L.Ed.2d 508. Constitutional Law 3819; Constitutional Law 4731

This section was not unconstitutionally vague where the term "unusual cases" was not used in isolation, but was modified by the requirement that the interests of justice demand or would be best served by the granting of probation. People v. Wilson (App. 2 Dist. 1973) 110 Cal.Rptr. 104, 34 Cal.App.3d 524. Constitutional Law 4731; Sentencing And Punishment 1825

Within this section authorizing grant of probation in "unusual" cases which would otherwise be subject to statutory prohibition of probation, where "the interests of justice would best be served thereby," portion which requires concurrence of the district attorney is invalid as constituting violation of doctrine of separation of powers, despite contentions that the power to grant probation is wholly statutory and not part of the inherent judicial power, and that this section provides definite standard marking arbitrary countywide policy impossible; but the concurrence requirement is severable. People v. Clay (App. 4 Dist. 1971) 96 Cal.Rptr. 213, 18 Cal.App.3d 964. Constitutional Law 2371; Sentencing And Punishment 1825; Statutes 64(6)

Question of constitutionality of this section requiring district attorney's concurrence in grant of probation to a defendant who has used or attempted to use deadly weapon upon human being in connection with perpetration of crime of which he was convicted where defendant's case has been found to be unusual and probation is therefore permitted was prematurely raised where court never asked district attorney's concurrence in the granting of probation to defendant convicted of voluntary manslaughter committed with a deadly weapon and where it was not clear that case had been found to be unusual. People v. Villegas (App. 2 Dist. 1971) 92 Cal.Rptr. 663, 14 Cal.App.3d 700. Constitutional Law 978

Question of constitutionality of this section requiring concurrence of district attorney with views of court before grant of probation may be made to person who is otherwise ineligible was moot and did not require ruling where record did not contain probation report and did not show either directly or by inference that probation was denied because of noncurrence of district attorney. People v. Hernandez (App. 5 Dist. 1968) 69 Cal.Rptr. 448, 263 Cal.App.2d 242. Criminal Law 1128(1)

Amendment restricting right of trial judge to grant probation to any defendant who shall have been convicted of robbery or to any public official who, in discharge of duties of his public office of employment, embezzled money, does not violate Constitution by attempting to affect right of courts to issue writs or impair exercise of their trial or appellate jurisdictions. People v. Hess (App. 2 Dist. 1951) 107 Cal.App.2d 407, 237 P.2d 568. Constitutional Law 2371; Sentencing And Punishment 1825

Where court in granting probation fixed confinement in county jail for first six months under this section as amended by Stats.1927, p. 1493, and offense was committed prior to amendment, at which time court had no power to confine defendants, since court in its mercy in endeavoring to reform individuals saw fit to inflict punishment considerably less than that imposed by law for the offense of which they were guilty, defendants were not deprived of substantial right, and therefore amendment could not be said to violate constitutional inhibition against ex post facto laws. In re Nachnaber (App. 2 Dist. 1928) 89 Cal.App. 530, 265 P. 392.

This section, as amended in 1911 was not invalid. Ex parte Giannini (App. 1912) 18 Cal.App. 166, 122 P. 831.

Sentencing And Punishment 1825

2. Constitutional rights

Police officer had authority to search defendant's vehicle, after defendant informed him that he had a gun in trunk of car, under Penal Code § 12031, regardless of whether they have probable cause to believe that it was loaded; thus, drugs which police officer found in plain view during search of automobile were admissible; declining to follow *People v. Kern*, 93 Cal.App.3d 779, 155 Cal.Rptr. 877 (1 Dist.). U.S. v. Brady, C.A.9 (Cal.)1987, 819 F.2d 884, certiorari denied 108 S.Ct. 1032, 484 U.S. 1068, 98 L.Ed.2d 996.

A state may restrict a constitutional right in imposing a probation condition, but only when the restriction is narrowly drawn to serve a compelling state interest. People v. Harrisson (App. 3 Dist. 2005) 36 Cal.Rptr.3d 264, 134 Cal.App.4th 637, modified on denial of rehearing , review denied. Sentencing And Punishment 1963

Conditions of probation that impinge on constitutional rights must be tailored carefully and reasonably related to the compelling state interest in reformation and rehabilitation. In re Byron B. (App. 4 Dist. 2004) 14 Cal.Rptr.3d 805, 119 Cal.App.4th 1013. Sentencing And Punishment 1963

An adult probation condition is overbroad if it unduly restricts the exercise of a constitutional right. In re Byron B. (App. 4 Dist. 2004) 14 Cal.Rptr.3d 805, 119 Cal.App.4th 1013. Sentencing And Punishment 1963

A defendant does not have a constitutional right to a jury trial on issues of restitution. People v. Brach (App. 3 Dist. 2002) 115 Cal.Rptr.2d 753, 95 Cal.App.4th 571, as modified. Jury 24

A condition of probation which requires a defendant to give up a constitutional right is not per se unconstitutional. Gilliam v. Los Angeles Municipal Court (App. 2 Dist. 1979) 159 Cal.Rptr. 74, 97 Cal.App.3d 704, certiorari denied 100 S.Ct. 1085, 445 U.S. 907, 63 L.Ed.2d 323. Sentencing And Punishment 1963

Parolees, as well as probationers, although entitled to Fourth and Fifth Amendment constitutional rights, are not entitled to the full panoply of rights possessed by the average citizen. People v. Icenogle (App. 2 Dist. 1977) 139 Cal.Rptr. 637, 71 Cal.App.3d 576. Pardon And Parole 66

Pen.C. §§ 1381.5, 1389 et seq., according constitutional rights to prisoners in federal correctional institutions and elsewhere by interstate compact on detainers were not applicable to defendant who had had complete trials on charges of burglary and attempted burglary, and order revoking probation granted defendant following suspension of sentences on convictions of such charges would not be set aside on theory that 14-months' delay in considering defendant's request for an immediate hearing on revocation of his probation violated his constitutional right to speedy trial. People v. Buccheri (App. 2 Dist. 1969) 83 Cal.Rptr. 221, 2 Cal.App.3d 842. Sentencing And Punishment 2025; Extradition And Detainers 59

3. Due process

Fifty-day delay of sentence after conviction while judge was awaiting probation report or for convenience of counsel was not denial of due process in view of § 1191 and this section which provide that court may extend time for pronouncing judgment until probation officer's report is received and until any proceedings for granting or denying probation have been disposed of and which authorize court to refer matter to probation officer for investigation of facts relevant to sentence even if a defendant is not entitled to or eligible for probation. Bevins v. Klinger, C.A.9 (Cal.)1966, 365 F.2d 752. Constitutional Law 4718

A defendant's due process rights on restitution are protected if he is given notice of the amount of restitution sought and an opportunity to contest that amount; the rigorous procedural safeguards required during the guilt phase, including the right to a jury, are not required. People v. Brach (App. 3 Dist. 2002) 115 Cal.Rptr.2d 753, 95 Cal.App.4th 571, as modified. Constitutional Law 4737

When a probation report has not been timely received and the defense has made a specific objection and requested a continuance, the failure to follow the requirements of the Penal Code constitutes a denial of due process, requiring remand for resentencing. People v. Bohannon (App. 2 Dist. 2000) 98 Cal.Rptr.2d 488, 82 Cal.App.4th 798, review denied. Constitutional Law 4706

Defendant, found to have violated his probation for conviction of drug violations by failing to report to probationary officer for over two years was properly denied further probation and sentenced to three years imprisonment, despite fact he was allegedly in the area; probation officer's failure to try to locate defendant after he found out that defendant had not finished serving weekends in prison, as required by terms of his probation, did not deny defendant due process, where it had recently been brought to defendant's attention that he had to report to his probation officer where defendant knew the authorities were looking for him, making it obvious he was not mislead regarding his probationary status. People v. Towe (App. 2 Dist. 1984) 204 Cal.Rptr. 733, 158 Cal.App.3d 368. Sentencing And Punishment 2032

Defendant is entitled to an opportunity to respond to adverse sentencing information. People v. Arbuckle (1978) 150 Cal.Rptr. 778, 22 Cal.3d 749, 587 P.2d 220. Sentencing And Punishment 368

Sentencing court's receipt of information adverse to defendant without his knowledge and without affording him opportunity to respond undermines appearance of fairness of proceeding. In re Hancock (App. 4 Dist. 1977) 136 Cal.Rptr. 901, 67 Cal.App.3d 943. Sentencing And Punishment 244

A defendant is not afforded procedural due process protections in probation hearings when procedures employed are "fundamentally unfair" to him. People v. Edwards (1976) 135 Cal.Rptr. 411, 18 Cal.3d 796, 557 P.2d 995. Constitutional Law 4731

A statement of reasons for denying probation when denial is contrary to a recommendation therefore is a preferred practice, but an unfairness that offends procedural due process concepts does not result by an absence of such a statement. People v. Edwards (1976) 135 Cal.Rptr. 411, 18 Cal.3d 796, 557 P.2d 995. Constitutional Law 4733(2)

It was error for trial court to receive ex parte communication from prosecutor concerning defendant's sentencing, without first allowing defendant opportunity to respond to charges contained in communication. In re Calhoun (1976) 130 Cal.Rptr. 139, 17 Cal.3d 75, 549 P.2d 1235. Sentencing And Punishment 238

The same procedural safeguards are not required at probation hearings as in the case of a trial on the issue of guilt, but an applicant for probation is entitled to relief on due process grounds if the hearing procedures are fundamentally unfair. People v. Peterson (1973) 108 Cal.Rptr. 835, 9 Cal.3d 717, 511 P.2d 1187. Constitutional Law 4733(2); Sentencing And Punishment 1907

4. Construction and application

"Conditional sentence" imposed on defendant for reckless driving in California state court constituted "criminal justice sentence" under federal sentencing guidelines, warranting addition of two points to criminal history computation upon conviction for tax evasion, even though probation office did not supervise defendant under state

sentence, since defendant was supervised by being required to report directly to state court. U.S. v. Collins, N.D.Cal.1998, 28 F.Supp.2d 1114. Sentencing And Punishment 790

Statute requiring defendants to pay presentence probation report costs applied to defendant sentenced to state prison rather than probation; statutory language expressly stated that grant of probation was not condition to payment obligation, and legislative history showed that purpose of statutory amendment was to expand obligation to pay costs to case in which defendant was not granted probation. People v. Robinson (App. 3 Dist. 2002) 128 Cal.Rptr.2d 619, 104 Cal.App.4th 902. Sentencing And Punishment 1975(3)

Summary probation is not authorized in felony cases; grant of informal or summary probation is a conditional sentence, and conditional sentences are authorized only in misdemeanor cases. People v. Glee (App. 2 Dist. 2000) 97 Cal.Rptr.2d 847, 82 Cal.App.4th 99, review denied, appeal after new sentencing hearing 2001 WL 1297488, unpublished. Sentencing And Punishment 1906

Although traditional view that a grant of probation is a privileged act of grace or clemency has been discredited in favor of modern view that such a grant should be deemed an alternative form of punishment in those cases when it can be used as a correctional tool, mechanics of granting or denying probation have not been prescribed by statutory or judicial guidelines nor have they often been tested against procedural process requirements. People v. Edwards (1976) 135 Cal.Rptr. 411, 18 Cal.3d 796, 557 P.2d 995. Sentencing And Punishment 1890

This section applies to municipal courts. In re Herron (1933) 217 Cal. 400, 19 P.2d 4. Sentencing And Punishment 1309

The word "probation" as used in Cal.Stats.1981, c. 940, includes informal as well as formal probation. 64 Op.Atty.Gen. 903, 12-29-81.

5. Construction with other laws

Legislature clearly intended Welf. & Inst.C. § 6301 (repealed) to apply to those ineligible for probation under the penal code, where this section relating to probation did not designate any type of offender who was absolutely ineligible for probation regardless of unusual circumstances, and where distinction between whether those described in subsections of this section relating to unusual circumstances were technically eligible for probation unless the court ruled that the case was not an unusual one, or whether they were ineligible unless the court ruled that the case was an unusual one, was a distinction of semantics and not of substance insofar as was concerned. Welf. & Inst.C. § 6301. People v. Wilson (App. 2 Dist. 1973) 110 Cal.Rptr. 104, 34 Cal.App.3d 524. Mental Health 454

Section 12022.5 imposing increased punishment for person who uses firearm in commission or attempted commission of robbery was inapplicable to conviction for assault with a deadly weapon, and therefore, judgment was modified to provide that defendant was armed within meaning of this section and weapon was specified to be a gun. People v. Cervantes (App. 2 Dist. 1970) 91 Cal.Rptr. 691, 13 Cal.App.3d 587. Criminal Law 1184(1); Sentencing And Punishment 80

Determinations of nature of weapon and its use for purposes of applying §§ 3024 (repealed), 12022 prescribing minimum terms for armed offenders and additional punishment for commission of felony while armed are to be made by properly instructed jury on specific allegation as to each count and to be set forth in special verdict as to each count, but determination as to nature of weapon and its use for purpose of this section providing that probation would not be granted to defendant who was armed with deadly weapon at time of perpetration of crime or at arrest is matter for court's consideration, subsequent to completion by jury of its functions. People v. Harrison (App. 3 Dist. 1970) 85 Cal.Rptr. 302, 5 Cal.App.3d 602. Criminal Law 796

This section authorizing court to grant probation in all misdemeanor cases supersedes restriction upon grant of probation to persons so as to permit probation to one with felony conviction if he is given mere county jail sentence so as to make crime misdemeanor. People v. Bernard (App. 2 Dist. 1965) 48 Cal.Rptr. 490, 239 Cal.App.2d 36. Sentencing And Punishment 1838

The definition of a "deadly weapon" in § 3024 (repealed) dealing with minimum terms for armed or prior offenders, is not applicable to this section, providing that probation shall not be granted to a defendant who used a "deadly weapon" on a human being. People v. Henderson (App. 1957) 151 Cal.App.2d 407, 311 P.2d 594. Sentencing And Punishment 1827

Statutes requiring performance of certain acts in connection with granting of probation, such as ordering that probationer's fingerprints be taken and furnishing him with probation papers, are mandatory. People v. Municipal Court of Oxnard-Port Hueneme Judicial Dist., Ventura County (App. 1956) 145 Cal.App.2d 767, 303 P.2d 375. Sentencing And Punishment 1827

The definition of "deadly weapon" contained in indeterminate sentence statute defines the phrase only for purpose of that statute and has no bearing upon meaning of same words when used in other provisions of the Penal Code. People v. Raner (App. 1 Dist. 1948) 86 Cal.App.2d 107, 194 P.2d 37. Sentencing And Punishment 11; Sentencing And Punishment 78

No constitutional provision forbids trial judge to grant probation without first imposing sentence. In re De Voe (App. 2 Dist. 1931) 114 Cal.App. 730, 300 P. 874. Sentencing And Punishment 1931

6. Amendment

Amendment adopted in 1984 to this section dealing with probation reports makes mandatory a referral to the probation department for investigation of facts relevant to the determination of the amount of restitution fines, but leaves to the court's discretion whether the probation officer must also investigate facts relevant to sentencing. People v. Goldstein (App. 1 Dist. 1990) 272 Cal.Rptr. 881, 223 Cal.App.3d 465, review denied. Sentencing And Punishment 276

Effect of 1957 amendment to this section was to create new area where probation should be denied but where it might be granted in unusual cases in discretion of court and to remove from absolute prohibition of probation crimes of robbery, burglary and arson, and except for those three specified crimes, portion of section absolutely prohibiting probation for enumerated crimes continues to constitute an absolute prohibition of probation for those crimes. People v. Orrante (App. 1 Dist. 1962) 20 Cal.Rptr. 480, 201 Cal.App.2d 553. Sentencing And Punishment 1835

Amendment of this section so as to omit provisions for deducting any time served in jail as a condition of probation from term of confinement imposed upon revocation of probation and failure to otherwise provide by statute for such credit disclosed legislative intent that upon revocation of probation and imposition of sentence defendant should not be given credit for time served in jail as a condition of probation. Ex parte Hays (App. 1 Dist. 1953) 120 Cal.App.2d 308, 260 P.2d 1030. Sentencing And Punishment 2041

Amendment of this section so as to omit provisions for deducting any time served in jail as a condition of probation from term of confinement imposed upon revocation of probation and failure to provide otherwise by statute for such credit disclosed legislative intent that upon revocation of probation and imposition of sentence, defendant should not be given credit for time served in jail as a condition of probation. Ex parte Hays (App. 1 Dist. 1953) 120 Cal.App.2d

308, 260 P.2d 1030. Sentencing And Punishment 2041

Amendment of this section, providing that probation should not be granted to any public official or "employee" of state who embezzled public money, by which quoted word was omitted and "peace officer" substituted definitely determined that an employee of the state was eligible for probation. Schaefer v. Superior Court in and for Santa Barbara County (App. 1952) 113 Cal.App.2d 428, 248 P.2d 450. Sentencing And Punishment 1827

The legislature, in amending this section prohibiting probation of one convicted of robbery while armed with deadly weapon by inserting word "himself" before "armed," is presumed to have known of previous judicial construction of statute as forbidding probation of one acting with companion armed with deadly weapon in commission of robbery, though not personally armed with such a weapon, and to have intended to change law so as to forbid probation only of one convicted of robbery while himself armed with deadly weapon. People v. Perkins (1951) 37 Cal.2d 62, 230 P.2d 353. Sentencing And Punishment 1824

Amendment of this section after accused had been placed on probation so as to extend time for pronouncement of judgment until any probationary proceeding has been disposed of was procedural in nature, was not ex post facto, and did not deprive accused of a vested right. People v. Williams (1944) 24 Cal.2d 848, 151 P.2d 244. Constitutional Law 2818; Sentencing And Punishment 1825

Where 60-day sentence was suspended and defendant was placed on probation for 2 years, commitment after expiration of maximum possible term for defendant's offense, which was 6 months, was within jurisdiction of justice's court as against contention that reenactment of statute authorizing suspension of sentence for period not to exceed maximum possible term and providing exceptions repealed statute under which commitment was had. In re Clausen (App. 1 Dist. 1936) 14 Cal.App.2d 246, 57 P.2d 1353. Sentencing And Punishment 1826

Amendments concerning indeterminate sentence and probation were ex post facto, and therefore inapplicable to defendant who committed offense before amendments were enacted. People v. Dawson (1930) 210 Cal. 366, 292 P. 267. Sentencing And Punishment 1006; Sentencing And Punishment 1828; Constitutional Law 2818

Amendment adding clause "not amounting to a felony", without expressly omitting clause "if probation is not denied", from this section providing that court may summarily deny probation or hear and determine in defendant's presence the matter of probation of defendant on conditions, if granted, and providing that court must immediately refer matter to probation officer for investigation if probation is not denied, did not repeal power granted to the court to summarily grant probation in misdemeanor cases without reference to probation officer. 16 Op.Atty.Gen. 72.

7. Purpose, generally

In enacting statute governing persons ineligible for probation, the legislature intended to eliminate the trial court's discretion to grant probation to a defendant convicted of a violent felony while on probation for a violent felony conviction. People v. Neild (App. 4 Dist. 2002) 121 Cal.Rptr.2d 803, 99 Cal.App.4th 1223, modified on denial of rehearing , review denied. Sentencing And Punishment 1802

The legislature in enacting statute forbidding grant of probation for those convicted of a violent felony while on probation for a violent felony conviction did not intend its mandatory language to be subject to language of statute giving the sentencing court discretion to strike allegations that would enhance punishment in the furtherance of justice. People v. Neild (App. 4 Dist. 2002) 121 Cal.Rptr.2d 803, 99 Cal.App.4th 1223, modified on denial of rehearing , review denied. Sentencing And Punishment 1802

Clear intent of probation sections of Penal Code and especially of § 1203.4 providing that upon expiration of period of probation court upon proper motion may set aside felony conviction and dismiss information, thereby releasing defendant from all penalties and disabilities resulting from conviction, is to effect complete rehabilitation of those convicted of crime, and record of one released is wiped clean, subject to reinstatement only when person commits another and subsequent crime or for purposes of certain exceptional situations. People v. Taylor (App. 2 Dist. 1960) 3 Cal.Rptr. 186, 178 Cal.App.2d 472. Sentencing And Punishment 1953

The purpose of amendment in 1957 to this section respecting probation to defendant convicted of robbery was to remove the crime of robbery with a deadly weapon from the list of offenses for which probation is absolutely prohibited. People v. Hollis (App. 2 Dist. 1959) 1 Cal.Rptr. 293, 176 Cal.App.2d 92. Sentencing And Punishment 1824

Legislative branch of government has power to declare that in certain criminal cases probation may not be granted, and it is not province of court to question wisdom of policy behind enactment of such statute. Bennett v. Superior Court of Placer County (App. 1955) 131 Cal.App.2d 841, 281 P.2d 285. Constitutional Law 2507(3)

To justify denial of permission to apply for probation on ground that circumstances of particular case bring defendant within an exception to basic rule with respect to probation, it must appear clearly and with certainty that the legislature intended an exception to such rule to render defendant ineligible for probation. Schaefer v. Superior Court in and for Santa Barbara County (App. 1952) 113 Cal.App.2d 428, 248 P.2d 450. Sentencing And Punishment 1870

The benefits of the probation law are intended for defendants who deny guilt and are convicted, as well as those who plead guilty. People v. Rickson (App. 4 Dist. 1952) 112 Cal.App.2d 475, 246 P.2d 700. Sentencing And Punishment 1883

8. Discretion of court--In general

Probation is a matter solely within the sound, but broad, discretion of the court. People v. Wilson (1973) 110 Cal.Rptr. 104, 34 Cal.App.3d 524; People v. Costa (1930) 290 P. 891, 108 Cal.App. 90.

Probation is act of clemency, the granting or denial of which is within discretion of trial judge. People v. Fernandez (1963) 35 Cal.Rptr. 370, 222 Cal.App.2d 760; People v. Bagley (1963) 32 Cal.Rptr. 663, 218 Cal.App.2d 809.

A petition for probation is addressed to the sound discretion of the trial court. People v. Jennings (1954) 276 P.2d 124, 129 Cal.App.2d 120; People v. Bartges (1954) 273 P.2d 49, 126 Cal.App.2d 763, amended 275 P.2d 518, 128 Cal.App.2d 496; People v. Cooper (1954) 266 P.2d 566, 123 Cal.App.2d 353; People v. Rickson (1952) 246 P.2d 700, 112 Cal.App.2d 475; People v. Dandy (1951) 234 P.2d 61, 106 Cal.App.2d 19; Ex parte Dearo (1950) 214 P.2d 585, 96 Cal.App.2d 141; People v. Jackson (1949) 200 P.2d 204, 89 Cal.App.2d 181; People v. Silverman (1939) 92 P.2d 507, 33 Cal.App.2d 1; People v. Wiley (1939) 91 P.2d 907, 33 Cal.App.2d 424; People v. Yuen (1939) 89 P.2d 438, 32 Cal.App.2d 151, hearing denied 90 P.2d 291, 32 Cal.App.2d 151, certiorari denied 60 S.Ct. 115, 308 U.S. 555, 84 L.Ed. 466; People v. Bill (1934) 35 P.2d 645, 140 Cal.App. 389; People v. Bryant (1929) 281 P. 404, 101 Cal.App. 84.

Whether trial court will grant probation to convicted defendant is within discretion of trial court. People v. Rainey (1954) 271 P.2d 144, 125 Cal.App.2d 739; People v. Adams (1951) 224 P.2d 873, 100 Cal.App.2d 841; People v. Wahrmund (1950) 206 P.2d 56, 91 Cal.App.2d 258; People v. Grijalva (1942) 121 P.2d 32, 48 Cal.App.2d 690; People v. Blankenship (1936) 61 P.2d 352, 16 Cal.App.2d 606; People v. Mortensen (1935) 51 P.2d 450, 10 Cal.App.2d 124; People v. Brahm (1929) 277 P. 896, 98 Cal.App. 733; Svoboda v. Purkitt (1925) 242 P. 81, 75 Cal.App. 148.

Under this section, admission of one convicted of crime to probation rests entirely in trial court's discretion. People v. Frank (1949) 211 P.2d 350, 94 Cal.App.2d 740; People v. Laborwits (1925) 240 P. 802, 74 Cal.App. 401; People v. Dunlop (1915) 150 P. 389, 27 Cal.App. 460; People v. Bartley (1910) 108 P. 868, 12 Cal.App. 773.

Court has wide discretion in admitting persons to probation. People v. Henry (1937) 72 P.2d 915, 23 Cal.App.2d 155; Ex parte McVeity (1929) 277 P. 745, 98 Cal.App. 723.

Under California law, court has discretion to grant or deny probation to one who is eligible. Arketa v. Wilson, C.A.9 (Cal.)1967, 373 F.2d 582. Sentencing And Punishment 1802

Trial court has broad discretion to determine probation conditions. People v. Kwizera (App. 4 Dist. 2000) 93 Cal.Rptr.2d 522, 78 Cal.App.4th 1238, review denied. Sentencing And Punishment 1962

Imposition of mandatory five-year sentence enhancement for a prior serious felony conviction does not deprive trial court of its discretion to grant probation to a defendant who is otherwise eligible. People v. Aubrey (App. 4 Dist. 1998) 76 Cal.Rptr.2d 378, 65 Cal.App.4th 279. Sentencing And Punishment 1872(2)

Grant or denial of probation is within the trial court's discretion, and the defendant bears a heavy burden when attempting to show an abuse of that discretion. People v. Aubrey (App. 4 Dist. 1998) 76 Cal.Rptr.2d 378, 65 Cal.App.4th 279. Sentencing And Punishment 1802

All defendants are eligible for probation, in the discretion of the sentencing court, unless a statute provides otherwise. People v. Aubrey (App. 4 Dist. 1998) 76 Cal.Rptr.2d 378, 65 Cal.App.4th 279. Sentencing And Punishment 1802

Decision to grant probation which simply ignores statutory requirements is abuse of discretion. People v. Superior Court (Dorsey) (App. 4 Dist. 1996) 58 Cal.Rptr.2d 165, 50 Cal.App.4th 1216, review denied. Sentencing And Punishment 1823

Sentencing court has broad discretion to determine whether eligible defendant is suitable for probation and what conditions should be imposed. People v. Welch (1993) 19 Cal.Rptr.2d 520, 5 Cal.4th 228, 851 P.2d 802. Sentencing And Punishment 1802; Sentencing And Punishment 1962

Legislature has placed in trial judge's broad discretion in sentencing process, including determination as to whether probation is appropriate, and if so, conditions thereof. People v. Warnes (Super. 1992) 12 Cal.Rptr.2d 893. Sentencing And Punishment 1802; Sentencing And Punishment 1962

Probation is not a right but an act of clemency in discretion of trial court. People v. Phillips (App. 2 Dist. 1977) 142 Cal.Rptr. 658, 76 Cal.App.3d 207. Sentencing And Punishment 1812

Trial court has broad discretion in the sentencing process, including the determination as to whether probation is appropriate and, if so, the conditions thereof. People v. Lent (1975) 124 Cal.Rptr. 905, 15 Cal.3d 481, 541 P.2d 545. Sentencing And Punishment 1802; Sentencing And Punishment 1962

Granting and continuance of probation is act of grace and clemency, within sound discretion of trial court. People v. Matranga (App. 4 Dist. 1969) 80 Cal.Rptr. 313, 275 Cal.App.2d 328. Sentencing And Punishment 1801; Sentencing And Punishment 1812

Although court has wide range of discretion in imposing or modifying terms of probation, it may not act arbitrarily or capriciously. People v. Wilson (App. 3 Dist. 1962) 25 Cal.Rptr. 97, 208 Cal.App.2d 256. Sentencing And Punishment 1962; Sentencing And Punishment 1985

Vesting of discretion in him gives trial judge latitude to express his own convictions in declaration of rights and application of remedies. People v. Surplice (App. 2 Dist. 1962) 21 Cal.Rptr. 826, 203 Cal.App.2d 784. Courts 26

Probation is not matter of right, but is act of clemency, granting and revocation of which are within discretion of court. People v. Privitier (App. 2 Dist. 1962) 19 Cal.Rptr. 640, 200 Cal.App.2d 725. Sentencing And Punishment 1812; Sentencing And Punishment 2001

While probation is not a matter of right but an act of grace, grant or denial of which is within a court's discretion, where an individual is eligible for probation, the trial court must determine the matter on its merits, and failure to do so constitutes denial of a substantial right. People v. Walters (App. 1 Dist. 1961) 11 Cal.Rptr. 597, 190 Cal.App.2d 98. Sentencing And Punishment 1890

Question of probation is almost solely within discretion of trial court. People v. Walker (App. 1 Dist. 1960) 5 Cal.Rptr. 283, 181 Cal.App.2d 227. Sentencing And Punishment 1802

Probation is power that may be exercised in discretion of court, but it must be impartial, and guided by fixed legal principles, to be exercised in conformity with spirit of law, and it may not be exercised in arbitrary or capricious manner. People v. Wade (1959) 1 Cal.Rptr. 683, 53 Cal.2d 322, 348 P.2d 116. Sentencing And Punishment 1802

When defendant is eligible, the granting of probation is a matter of discretion with the trial court. People v. Johnson (App. 1958) 164 Cal.App.2d 470, 330 P.2d 894. Sentencing And Punishment 1802

The granting or withholding of probation is a matter that rests in the sound discretion of the trial court. People v. Duke (App. 1958) 164 Cal.App.2d 197, 330 P.2d 239. Sentencing And Punishment 1802

A court has power of its own motion to order a probation investigation. People v. Billingsley (Super. 1943) 59 Cal.App.2d Supp. 845, 139 P.2d 362. Sentencing And Punishment 277

A convicted defendant is not entitled to be placed on probation as a matter of right, but power to grant probation may be exercised in discretion of court. People v. Leach (App. 2 Dist. 1937) 22 Cal.App.2d 525, 71 P.2d 594. Sentencing And Punishment 1802; Sentencing And Punishment 1812

9. ---- Criminal record, discretion of court

Sentencing court's denial of probation and imposition of middle term was proper where defendant had numerous prior convictions and adjudications of commissions of crime, had served a prior prison term, was on parole and summary probation when he committed present offense, and prior performance on probation and parole were unsatisfactory. People v. Martinez (App. 5 Dist. 1985) 221 Cal.Rptr. 258, 175 Cal.App.3d 881, review denied. Sentencing And Punishment 1885; Sentencing And Punishment 1872(1)

Denial of defendant's application for probation was not abuse of discretion, in light of his past criminal record.

People v. Dunaway (App. 1 Dist. 1963) 35 Cal.Rptr. 154, 222 Cal.App.2d 322. Sentencing And Punishment 1872(1)

Action of trial court in denying probation for defendant, who had previously been convicted of two felonies, was within proper discretionary limits. People v. Vanderburg (App. 5 Dist. 1963) 29 Cal.Rptr. 553, 214 Cal.App.2d 455. Sentencing And Punishment 1872(2)

Where it was shown that defendant had previously been convicted of three crimes, and on cross examination he admitted such convictions, denial of probation was not an abuse of discretion. People v. Bartges (App. 1 Dist. 1954) 126 Cal.App.2d 763, 273 P.2d 49, amended 128 Cal.App.2d 496, 275 P.2d 518. Sentencing And Punishment 1872(1)

Trial court did not abuse discretion in denying probation to a defendant who was convicted of grand theft and who had committed two burglaries and had admitted committing other minor offenses. People v. Dandy (App. 1951) 106 Cal.App.2d 19, 234 P.2d 61. Sentencing And Punishment 1856; Sentencing And Punishment 1872(3)

Denial of probation to defendants convicted of grand theft was not abuse of discretion where application was referred to probation officer who reported that defendants had on previous occasions been arrested on charges of disturbing the peace and assault and battery. People v. Hopper (App. 3 Dist. 1937) 20 Cal.App.2d 108, 66 P.2d 459. Sentencing And Punishment 1872(3)

Probation officer's report showing defendant in forgery prosecution had been arrested 13 times justified denial of application for probation. People v. Payne (App. 4 Dist. 1930) 106 Cal.App. 609, 289 P. 909. Sentencing And Punishment 1872(1)

10. ---- Recommendations of probation officer, discretion of court

Trial court has discretion to reject probation report in whole or in part, and to strike report and order new probation report prepared. People v. Municipal Court, Sutter Municipal Court District of County of Sutter (App. 3 Dist. 1981) 172 Cal.Rptr. 140, 116 Cal.App.3d 456. Sentencing And Punishment 300; Sentencing And Punishment 282

In prosecution for child abuse, trial court did not abuse its discretion in failing to follow probation officer's recommendation. People v. Hernandez (App. 2 Dist. 1980) 168 Cal.Rptr. 898, 111 Cal.App.3d 888. Sentencing And Punishment 300

When an abuse of discretion in granting or denying probation is claimed, it is not sufficient to answer that the trial court follow the recommendation made by the probation officer. People v. Warner (1978) 143 Cal.Rptr. 885, 20 Cal.3d 678, 574 P.2d 1237. Sentencing And Punishment 1834

Trial court's discretion to grant probation is to be exercised after motion therefor and filing of probation officer's report. People v. Beasley (App. 1 Dist. 1970) 85 Cal.Rptr. 501, 5 Cal.App.3d 617. Sentencing And Punishment 1893

Trial court's refusal to refer the matter of defendant's conviction for second-degree murder to probation department for presentence investigation report was not an abuse of the court's discretion where defendant was not eligible for probation, and the trial judge was required to impose a statutorily prescribed sentence. People v. Ford (App. 2 Dist. 1967) 61 Cal.Rptr. 329, 253 Cal.App.2d 390. Sentencing And Punishment 277

Trial court's denial of probation officer's recommendation of probation was not an abuse of discretion, where trial court's single allusion to matters outside record concerning defendant's pattern of conduct was merely a brief introduction to his clear statement that order denying probation was based upon weighing of prosecutrix' testimony under oath against defendant's statement to probation officer, both of which were matters in the record. People v. Lichens (1963) 30 Cal.Rptr. 468, 59 Cal.2d 587, 381 P.2d 204. Sentencing And Punishment 1886

Broad discretion is lodged with trial judge in probation matters, and determination of trial judge in revocation proceedings can be made solely on probation officer's report. People v. Cortez (App. 2 Dist. 1962) 19 Cal.Rptr. 50, 199 Cal.App.2d 839. Sentencing And Punishment 1802; Sentencing And Punishment 2021

Denial of probation to defendant convicted of robbery in second degree was not an abuse of discretion although probation officer's report recommended probation. People v. Walker (App. 1 Dist. 1960) 5 Cal.Rptr. 283, 181 Cal.App.2d 227. Sentencing And Punishment 1886

Trial judge did not act arbitrarily or abuse discretion in revoking probation of one pleading guilty of violating Corporate Securities Act for violation of condition that he reimburse investors, in view of probation officer's unfavorable reports. People v. Lippner (1933) 219 Cal. 395, 26 P.2d 457. Sentencing And Punishment 2003

Court has discretion to deny probation as well as grant it, regardless of recommendation of probation officer. People v. Martino (App. 4 Dist. 1931) 113 Cal.App. 661, 299 P. 86. Sentencing And Punishment 1802; Sentencing And Punishment 1887

Refusal of court to follow recommendation of probation officer that application be granted on condition applicant spend first six months in county jail was not arbitrary. People v. Martino (App. 4 Dist. 1931) 113 Cal.App. 661, 299 P. 86. Sentencing And Punishment 1886

11. ---- Specific crimes, discretion of court

In view of court's full consideration of many factors argued by both prosecution and defense, and reasonable assessment of their relative weight, trial court did not abuse its discretion by denying probation and imposing middle term upon plea of guilty to first-degree burglary and inflicting great bodily injury, and, absent circumstances in mitigation of additional punishment, court also did not abuse its discretion by failing to strike three-year term for great bodily injury enhancement. People v. Roe (App. 4 Dist. 1983) 195 Cal.Rptr. 802, 148 Cal.App.3d 112. Sentencing And Punishment 1844; Sentencing And Punishment 85

Record established that trial court did not fail to exercise discretion in denying probation to defendant convicted of driving automobile without consent of owner, with one prior felony conviction. People v. Owens (App. 1 Dist. 1980) 169 Cal.Rptr. 359, 112 Cal.App.3d 441. Sentencing And Punishment 1858

Legislature intended that discretion could be exercised by court in case of crimes falling within this section governing probation, but not within § 1203.06 prohibiting probation, for enumerated crimes. People v. Tanner (1979) 156 Cal.Rptr. 450, 24 Cal.3d 514, 596 P.2d 328. Sentencing And Punishment 1835

Review of record showed that trial court did not abuse discretion in denying probation to defendant convicted of forced oral copulation and kidnapping. People v. Goodson (App. 2 Dist. 1978) 145 Cal.Rptr. 489, 80 Cal.App.3d 290. Sentencing And Punishment 1862; Sentencing And Punishment 1855

In prosecution for first-degree robbery, it was the function of the court to determine the facts relevant to the fixing of probation and, in the exercise of its discretion, to determine whether probation should be granted or denied. People

v. Brewster (App. 3 Dist. 1969) 81 Cal.Rptr. 237, 276 Cal.App.2d 750. Sentencing And Punishment 1802

Trial court, after defendant's entry of plea of guilty of contributing to delinquency of minor, did not abuse discretion in failing to grant defendant straight probation instead of imposing as a condition that he serve 90 days in county jail and register as a sexual offender. People v. Troyn (App. 5 Dist. 1964) 39 Cal.Rptr. 924, 229 Cal.App.2d 181. Sentencing And Punishment 1976(2); Sentencing And Punishment 1983(2)

Grant of probation to defendant convicted of misdemeanor was discretionary. People v. Alotis (1964) 36 Cal.Rptr. 443, 60 Cal.2d 698, 388 P.2d 675. Sentencing And Punishment 1838

Denial of application for probation by defendant convicted of assault with a deadly weapon did not constitute an abuse of discretion even though the defendant had no criminal record and was otherwise eligible for probation. People v. Herd (App. 2 Dist. 1963) 34 Cal.Rptr. 141, 220 Cal.App.2d 847. Sentencing And Punishment 1843; Sentencing And Punishment 1871

There was no abuse of discretion in denying probation to one convicted on 22 narcotics counts. People v. Meyer (App. 1 Dist. 1963) 31 Cal.Rptr. 285, 216 Cal.App.2d 618. Sentencing And Punishment 1848

One convicted of murder cannot be granted probation. People v. Superior Court In and For Los Angeles County (Guerrero) (App. 2 Dist. 1962) 18 Cal.Rptr. 557, 199 Cal.App.2d 303. Sentencing And Punishment 1853

In prosecutions resulting in convictions of violation of § 288a, rape and kidnapping, trial court's determination to deny probation to defendants constituted proper exercise of discretion. People v. Hinton (App. 1959) 166 Cal.App.2d 743, 333 P.2d 822. Sentencing And Punishment 1862; Sentencing And Punishment 1855

Where defendant was convicted of second-degree murder as a result of an abortion, denial of probation was not an abuse of discretion. People v. Navarro (App. 1946) 74 Cal.App.2d 544, 169 P.2d 265. Sentencing And Punishment 1853

Under this section the granting of probation to defendant following his conviction of voluntary manslaughter was discretionary with trial court. People v. Pilgrim (App. 3 Dist. 1946) 73 Cal.App.2d 391, 166 P.2d 636. Sentencing And Punishment 1853

"Involuntary manslaughter," which is the taking of life in certain unlawful ways, without any intention of doing so, must be distinguished from "voluntary manslaughter" in considering application for probation following conviction. People v. Pilgrim (App. 3 Dist. 1946) 73 Cal.App.2d 391, 166 P.2d 636. Sentencing And Punishment 1853

Granting or refusing application for probation by defendant convicted of perjury was within trial court's discretion. People v. Keylon (App. 1932) 122 Cal.App. 408, 10 P.2d 86. Sentencing And Punishment 1860

Refusal of application for probation after conviction for driving automobile while intoxicated and for manslaughter was not abuse of discretion. People v. Martin (App. 2 Dist. 1931) 114 Cal.App. 337, 300 P. 108. Sentencing And Punishment 1858

Denying application of defendant, convicted of murder in second degree committed by attempted abortion, for probation was not error. People v. Darrow (1931) 212 Cal. 167, 298 P. 1. Sentencing And Punishment 1853

12. ---- Specific circumstances of case, discretion of court

Denial of probation for defendant convicted of second-degree murder in stabbing death of drinking companion was not abuse of discretion in view of nature and seriousness of crime and prior criminal record of defendant, even without consideration of contents of incriminating letter written by defendant to wife. People v. Rodriguez (App. 2 Dist. 1981) 173 Cal.Rptr. 82, 117 Cal.App.3d 706. Sentencing And Punishment 1853; Sentencing And Punishment 1872(1)

At sentencing hearing, trial court abused its discretion in expounding at length on fact that defendant had several children, all of whom received welfare support and some of whom were born out of wedlock, and in indicating that he was imposing a prison sentence, rather than probation, to punish defendant's conduct in fathering a second or third child out of wedlock, as well as the crime for which defendant had been convicted. People v. Bolton (1979) 152 Cal.Rptr. 141, 23 Cal.3d 208, 589 P.2d 396. Sentencing And Punishment 94

Denial of probation application filed by defendant who was convicted of possession of sizable quantity of marijuana, and who had given deceitful story to probation officer, was not abuse of trial court's discretion. People v. Podesto (App. 5 Dist. 1976) 133 Cal.Rptr. 409, 62 Cal.App.3d 708. Sentencing And Punishment 1848; Sentencing And Punishment 1884

Denial of probation to defendant, who was convicted of committing lewd and lascivious act on child under age of 14, who had actual contact of sexual intercourse with victim with possible resulting psychiatric damage to victim, and diagnostic study of whom revealed, inter alia, that defendant had severe antisocial personality and was sexually deviate, was not abuse of discretion nor arbitrary determination. People v. Kingston (App. 2 Dist. 1974) 118 Cal.Rptr. 896, 44 Cal.App.3d 629. Sentencing And Punishment 1862; Sentencing And Punishment 1877

Where trial court minutely complied with this section directing reference to probation officer for investigation and report and where defendant admitted 11 prior felony convictions including number of narcotics violations and failed to show why probation should not be denied as matter of law, there was no abuse of discretion in denying probation for drug offense. People v. Pijal (App. 1 Dist. 1973) 109 Cal.Rptr. 230, 33 Cal.App.3d 682. Sentencing And Punishment 1872(3); Sentencing And Punishment 1886

Where triers of fact rejected defense testimony that defendant was acting unconsciously in firing at the victim when they returned a verdict of guilty to voluntary manslaughter, a felony, defendant was ineligible for probation. People v. Furber (App. 1 Dist. 1965) 43 Cal.Rptr. 771, 233 Cal.App.2d 678. Sentencing And Punishment 1853

Refusal to grant probation to defendant whose history included numerous examples of antisocial conduct and whose personality characteristics included borderline schizophrenia was not abuse of discretion. People v. Henderson (App. 3 Dist. 1964) 37 Cal.Rptr. 883, 226 Cal.App.2d 160. Sentencing And Punishment 1888

Denial of probation was not, under the record, an abuse of discretion. People v. Ross (App. 2 Dist. 1962) 24 Cal.Rptr. 1, 206 Cal.App.2d 542. Sentencing And Punishment 1830

There was no abuse of discretion in denying probation to defendant convicted on three counts and in imposing sentence running consecutively as to two counts and sentence running concurrently as to third count, where defendant had admitted two prior felony convictions and was given opportunity to be heard and probation officer and district attorney had made recommendations. People v. Armstrong (App. 2 Dist. 1961) 10 Cal.Rptr. 618, 188 Cal.App.2d 745. Sentencing And Punishment 1872(2); Sentencing And Punishment 601; Sentencing And Punishment 1886

Refusal to grant application for probation made by defendant who stipulated, in open court in criminal proceeding,

that he had received stolen gasoline knowing that it was stolen property and had received it for his own gain and to deprive owner thereof was an exercise of sound judicial discretion. People v. Fenton (App. 1956) 141 Cal.App.2d 357, 296 P.2d 829. Sentencing And Punishment 1856

Where court, in probation hearing of one convicted of attempting to have sexual relations with his ten year old stepdaughter, considered report of superintendent of state hospital, along with other matters presented, denial of application for probation was not abuse of discretion. People v. Willey (App. 1 Dist. 1954) 128 Cal.App.2d 148, 275 P.2d 522. Sentencing And Punishment 1862

Where, under the admitted facts, defendant had committed crime of first degree robbery while being armed with a pistol, which defendant purportedly did not display during the robbery, trial court's refusal to grant defendant probation did not constitute an abuse of its discretion. People v. Rainey (App. 1 Dist. 1954) 125 Cal.App.2d 739, 271 P.2d 144. Sentencing And Punishment 1861

Claim that prisoner convicted of vicious crime should be restored to full liberty because he is diseased has no foundation in the law. People v. Cooper (App. 1954) 123 Cal.App.2d 353, 266 P.2d 566. Sentencing And Punishment 1876

Where party pleaded guilty to crime of robbery and was armed with gun at time of offense, but it was uncertain whether gun was loaded, and court found crime was robbery in first degree and that defendant was in possession of a dangerous rather than a deadly weapon, court's denial of probation was not abuse of discretion. People v. Johnson (App. 1951) 106 Cal.App.2d 815, 236 P.2d 190. Robbery 11

Trial court did not abuse discretion in denying probation to one who pleaded guilty to grand theft, even though most of the money defendant took was recovered, and defendant had never been arrested before and had a wife and five children, where deputy probation officer testified that defendant, when questioned, gave different accounts of what took place and why he left the state. People v. Jackson (App. 1 Dist. 1948) 89 Cal.App.2d 181, 200 P.2d 204. Sentencing And Punishment 1884

In burglary prosecution, trial court did not abuse its discretion in denying defendant's motion for probation, notwithstanding that defendant had not been armed, that there was no showing of any prior conviction and that he and his family had resided in city for several years. People v. Wiley (App. 3 Dist. 1939) 33 Cal.App.2d 424, 91 P.2d 907. Sentencing And Punishment 1871; Sentencing And Punishment 1888; Sentencing And Punishment 1844

The trial court did not abuse its discretion in refusing to grant probation to those who were found guilty of riot, where the sentences were not harsh nor excessive, and the record clearly indicated that defendants were guilty and disclosed no valid reason on which they could base a plea for probation. People v. Yuen (App. 3 Dist. 1939) 32 Cal.App.2d 151, 89 P.2d 438, hearing denied 32 Cal.App.2d 151, 90 P.2d 291, certiorari denied 60 S.Ct. 115, 308 U.S. 555, 84 L.Ed. 466. Sentencing And Punishment 1847

Refusing probation was not abuse of discretion where court considered written report of probation officer and also heard oral testimony in defendant's behalf. People v. Roach (App. 1934) 139 Cal.App. 384, 33 P.2d 895. Sentencing And Punishment 1897

Denying defendant, convicted of manslaughter for causing death with pistol, permission to apply for probation, was not abuse of discretion, under circumstances. People v. Williams (App. 1932) 121 Cal.App. 552, 9 P.2d 313. Sentencing And Punishment 1853

13. Nature of probation

See, also, Notes of Decisions under Penal Code § 1203.1.

Probation is not matter of right, but act of grace and clemency. People v. Cortez (1962) 19 Cal.Rptr. 50, 199 Cal.App.2d 839; People v. Brown (1959) 342 P.2d 410, 172 Cal.App.2d 30; Schaefer v. Superior Court in and for Santa Barbara County (1952) 248 P.2d 450, 113 Cal.App.2d 428; People v. Dandy (1951) 234 P.2d 61, 106 Cal.App.2d 19.

Probation is not a matter of right but is an act of clemency. People v. Jennings (1954) 276 P.2d 124, 129 Cal.App.2d 120; People v. Monge (1952) 240 P.2d 432, 109 Cal.App.2d 141; Ex parte Dearo (1950) 214 P.2d 585, 96 Cal.App.2d 141.

Probation is not an absolute right to which the defendant is entitled but is an act of clemency which may be granted. People v. Wahrmund (1949) 206 P.2d 56, 91 Cal.App.2d 258; People v. Jackson (1949) 200 P.2d 204, 89 Cal.App.2d 181.

Probation is not an absolute right to which a convicted person is entitled, but is an act of grace and clemency on the part of the court; it has no constitutional basis, but exists by reason of statutes creating it. Application of Oxidean (1961) 16 Cal.Rptr. 193, 195 Cal.App.2d 814; People v. Miller (1960) 8 Cal.Rptr. 578, 186 Cal.App.2d 34.

Probationers have only conditional liberty, their freedom is at bottom act of clemency, and revocation of probation should not require full-blown adversarial deployment. People v. Perez (App. 4 Dist. 1994) 36 Cal.Rptr.2d 391, 30 Cal.App.4th 900, as modified. Sentencing And Punishment 1812; Sentencing And Punishment 1961; Sentencing And Punishment 2009

Both probation and the availability of the youth authority commitment are privileges granted by legislature and are not rights. People v. Main (App. 5 Dist. 1984) 199 Cal.Rptr. 683, 152 Cal.App.3d 686. Sentencing And Punishment 1812; Infants 69(3.1)

A properly administered probation program not only serves society in effecting desirable rehabilitative goals, but also insures that important rights are not denied any person convicted of a crime. People v. Edwards (1976) 135 Cal.Rptr. 411, 18 Cal.3d 796, 557 P.2d 995. Sentencing And Punishment 1811

Probation has an advantage as an alternative to confinement in that its terms can be tailored by the court to fit the individual defendant. People v. McDowell (App. 2 Dist. 1976) 130 Cal.Rptr. 839, 59 Cal.App.3d 807. Sentencing And Punishment 1811

Probation is not a right but a privilege, and there is neither constitutional nor statutory right to notice of hearing preceding revocation of probation granted after judgment. People v. Buccheri (App. 2 Dist. 1969) 83 Cal.Rptr. 221, 2 Cal.App.3d 842. Sentencing And Punishment 2013

"Probation" is bargain made by people with malefactor that if he complies with requirements he will be rewarded by not having to go to prison. People v. Atwood (App. 1 Dist. 1963) 34 Cal.Rptr. 361, 221 Cal.App.2d 216. Sentencing And Punishment 1811

"Probation" is granted either after a verdict or plea of guilty and before sentencing, or after sentencing but before commitment to prison term, and is available only to those defendants found eligible by the proper authorities and by court having jurisdiction. People v. Taylor (App. 2 Dist. 1960) 3 Cal.Rptr. 186, 178 Cal.App.2d 472. Sentencing

And Punishment 1811

Defendant has no right to be granted probation, but "probation" is a privilege, an act of grace, or clemency. In re Osslo (1958) 51 Cal.2d 371, 334 P.2d 1. Sentencing And Punishment 1812

Probation is not an absolute right to which a defendant is entitled, but is an act of grace and clemency which may be granted to a seemingly deserving defendant. People v. Duke (App. 1958) 164 Cal.App.2d 197, 330 P.2d 239. Sentencing And Punishment 1812

Granting of probation, aside from being an act of clemency extended to one who has committed a crime, is also in substance and effect a bargain made by people, through legislature and courts, with malefactor. People v. Johnson (App. 3 Dist. 1955) 134 Cal.App.2d 140, 285 P.2d 74. Sentencing And Punishment 1811

Grant of probation is an act of grace and clemency and is properly denied where conduct of convict is such that it indicates a depravity that requires exercise of restraint and discipline as means of improving such offender. People v. Cooper (App. 1954) 123 Cal.App.2d 353, 266 P.2d 566. Sentencing And Punishment 1812; Sentencing And Punishment 1841

Probation is not a right but a privilege. People v. Sweeden (App. 4 Dist. 1953) 116 Cal.App.2d 891, 254 P.2d 899. Sentencing And Punishment 1812

Probation is not a matter of right. People v. Johnson (App. 1951) 106 Cal.App.2d 815, 236 P.2d 190. Sentencing And Punishment 1812

"Probation" is not a judgment, but act of grace and clemency, which court may grant seemingly deserving defendant to enable him to escape extreme rigors of legal penalty for offense of which he stands convicted, while "judgment" imposes such rigors. People v. Williams (App. 1 Dist. 1949) 93 Cal.App.2d 777, 209 P.2d 949. Sentencing And Punishment 1812

Granting of probation is not right given to defendant in criminal proceeding, but is an act of clemency. People v. Blankenship (App. 4 Dist. 1936) 16 Cal.App.2d 606, 61 P.2d 352. Sentencing And Punishment 1812

"Probation" is not right of accused, but is act of grace and clemency which may be granted by court whereby seemingly deserving accused may escape penalty imposed by law for offense of which he is convicted. People v. Hainline (1933) 219 Cal. 532, 28 P.2d 16. Sentencing And Punishment 1812

14. Applications for probation

Overruling defendant's oral application to file written application for probation was not error, where oral application embodied request for new trial which had been denied. People v. Roland (App. 2 Dist. 1933) 134 Cal.App. 675, 26 P.2d 517. Sentencing And Punishment 1891

Refusal to permit defendant to file application for probation after trial and conviction because of his failure to admit guilt was erroneous. People v. Osterhelt (App. 1932) 125 Cal.App. 723, 14 P.2d 140. Sentencing And Punishment 1891

Refusal to permit filing of application for probation solely because defendant had not pleaded guilty was error. People v. Jones (App. 2 Dist. 1927) 87 Cal.App. 482, 262 P. 361. Sentencing And Punishment 1883

15. Suspending sentence or execution--In general

See, also, Notes of Decisions under Penal Code § 1203.1.

Court which suspends imposition of sentence and grants probation is not required to specify the constitutionally permissible maximum term to which defendant could be subjected upon revocation. People v. Landers (App. 4 Dist. 1976) 131 Cal.Rptr. 522, 59 Cal.App.3d 846. Sentencing And Punishment 1913

If an order of suspension of sentence of the defendant in prosecution for assault with intent to commit robbery while armed was void because the defendant had previously been convicted in New York state of third-degree robbery allegedly a felony if committed in California and was therefore not entitled to probation, such, would not infect the sentence itself with invalidity but the judgment would remain valid and must be served. People v. Wissenfeld (App. 1959) 169 Cal.App.2d 59, 336 P.2d 959, certiorari denied 80 S.Ct. 104, 361 U.S. 848, 4 L.Ed.2d 86. Sentencing And Punishment 2032

It is not necessary, in order to have information and finding of guilt set aside upon completion of probationary period, that defendant prove total and permanent reformation or rehabilitation. People v. Johnson (App. 3 Dist. 1955) 134 Cal.App.2d 140, 285 P.2d 74. Sentencing And Punishment 1953

Withholding of privilege, after completion of probation, to have information and finding of guilt set aside, not amounting to a constitutionally guaranteed right, does not constitute punishment in sense that it is a penalty exacted by society for commission of a crime. People v. Johnson (App. 3 Dist. 1955) 134 Cal.App.2d 140, 285 P.2d 74. Sentencing And Punishment 1953

Power of court to grant probation may be exercised in either of two ways: (1) by suspending imposition of sentence, in which case there is no judgment of conviction, or (2) by imposing sentence and thereafter suspending its execution. Jones v. Maloney (App. 1951) 106 Cal.App.2d 80, 234 P.2d 666. Sentencing And Punishment 1931; Sentencing And Punishment 1932

Where trial court in prosecution for selling security without permit denied application for probation, but judgments imposing jail sentence recited that court would consider suspension thereof if restitution was made, and it appeared that court and counsel misapprehended effect of denial of probation and that question of probation was considered separate from suspension of sentence, defendants would be entitled to apply for probation on going down of remittitur. People v. Sidwell (1945) 27 Cal.2d 121, 162 P.2d 913. Criminal Law 1192

Instructions that sentence of prisoner to county jail for 90 days should be served from 7 p.m. Monday to 6 p.m. Wednesday of each week were void as an attempt to grant periods of suspension from sentence imposed. Ex parte Taylor (App. 1934) 140 Cal.App. 102, 34 P.2d 1036. Sentencing And Punishment 1804

After suspending execution of judgment by state court pending imprisonment by federal authorities, accused may be compelled to undergo imprisonment in pursuance of sentence by state court. Ex parte Cohen (1926) 198 Cal. 221, 244 P. 359. Sentencing And Punishment 1175

This section, which authorized the court or judge to suspend the imposing or execution of sentence and to direct that such suspension might continue for a time not exceeding the maximum possible term of such sentence, did not require that the court should enter a formal order declaring the imposition of sentence to be suspended. People v. Sapienzo (App. 1 Dist. 1923) 60 Cal.App. 626, 213 P. 274. Sentencing And Punishment 1913

Under this section, suspension of the execution of a sentence is restricted to sentences to pay a fine with imprisonment as an alternative, while suspension of sentence is the general rule in cases in which the defendant is over 16 years of age. Ex parte Collins (App. 1908) 8 Cal.App. 367, 97 P. 188. Sentencing And Punishment 1806; Sentencing And Punishment 1837; Sentencing And Punishment 1875

Suspended sentence is awarded in sound discretion of court. In re Young (App. 1932) 121 Cal.App. 711, 10 P.2d 154. Sentencing And Punishment 1804

Order suspending execution of sentence in burglary prosecution was void, in view of this section, and hence judgment was not satisfied by expiration of period of suspension, where order stated that application for probation was denied and remanded defendant to custody of sheriff for work on roads. In re Clark (App. 1 Dist. 1925) 70 Cal.App. 643, 234 P. 109. Sentencing And Punishment 1948

16. ---- Powers, suspending sentence or execution

Trial court has no power to suspend execution of sentence except as incident to granting probation. People v. Victor (1965) 42 Cal.Rptr. 199, 398 P.2d 391, 62 Cal.2d 280; People v. Cravens (1953) 251 P.2d 717, 115 Cal.App.2d 201; U.S. Fidelity & Guaranty Co. v. Justice Court of Vista Tp., San Diego County (1950) 222 P.2d 292, 99 Cal.App.2d 683; People v. Sidwell (1945) 162 P.2d 913, 27 Cal.2d 121; Ex parte Clark (1945) 234 P. 109, 70 Cal.App. 643.

Authority to grant probation and to suspend imposition or execution of sentence is wholly statutory. People v. Howard (1997) 68 Cal.Rptr.2d 870, 16 Cal.4th 1081, 946 P.2d 828. Sentencing And Punishment 1801; Sentencing And Punishment 1805; Sentencing And Punishment 1806

Where execution of sentence is suspended during grant of probation, court retains jurisdiction over defendant during probationary period, and at any time during that period court may, subject to statutory restrictions, modify order suspending imposition or execution of sentence. People v. Howard (1997) 68 Cal.Rptr.2d 870, 16 Cal.4th 1081, 946 P.2d 828. Sentencing And Punishment 1923

The authority of a court to grant probation and to suspend execution of a sentence is wholly statutory, and the statute itself furnishes the measure of the power which may thus be exercised. People v. Brown (App. 1959) 172 Cal.App.2d 30, 342 P.2d 410. Sentencing And Punishment 1801; Sentencing And Punishment 1806

The authority of a court to grant probation and to suspend execution of a sentence is wholly statutory, and the statute itself furnishes the measure of the power which may thus be exercised. People v. Brown (App. 1959) 172 Cal.App.2d 30, 342 P.2d 410. Sentencing And Punishment 1801; Sentencing And Punishment 1806

Court has no power to suspend a sentence except as an incident to granting probation. Oster v. Municipal Court of Los Angeles Judicial Dist., Los Angeles County (1955) 45 Cal.2d 134, 287 P.2d 755. Sentencing And Punishment 1810

Power of court to grant probation may be exercised in either of two ways: (1) by suspending imposition of sentence, in which case there is no judgment of conviction, or (2) by imposing sentence and thereafter suspending its execution Jones v. Maloney (App. 1951) 106 Cal.App.2d 80, 234 P.2d 666. Sentencing And Punishment 1931; Sentencing And Punishment 1932

A court not acting under the probation law has no power to suspend execution of any part of sentence imposed under the Vehicle Code, and order purporting to do so is void. Ellis v. Department of Motor Vehicles (App. 2 Dist. 1942) 51 Cal.App.2d 753, 125 P.2d 521. Sentencing And Punishment 1858

Court had no authority to suspend part of sentence where probation was denied. People v. Lopez (Super. 1941) 43 Cal.App.2d Supp. 854, 110 P.2d 140.

Municipal court on conviction for misdemeanor has power to effect suspension of sentence only by following method prescribed in this section. People v. Wallach (App. 1935) 8 Cal.App.2d 129, 47 P.2d 1071. Sentencing And Punishment 1804

Power to deny probation rests exclusively in trial court. People v. Kirwin (App. 2 Dist. 1927) 87 Cal.App. 783, 262 P. 803. Criminal Law 1147

This section conferring on court authority to place defendant on probation, does not authorize suspension of execution of sentence, except as an incident to granting of probation. In re Clark (App. 1 Dist. 1925) 70 Cal.App. 643, 234 P. 109. Sentencing And Punishment 1810

After judgment of conviction has been affirmed on appeal, the trial court has no power, under this section to suspend execution of sentence, since its power to suspend under such section expires in view of § 1191, with pronouncement of judgment followed or accompanied by no order of suspension, and does not attach anew after affirmance on appeal in view of §§ 1263, 1265. Beggs v. Superior Court of Santa Clara County (1918) 179 Cal. 130, 175 P. 642. Criminal Law 1192

The court cannot suspend sentence for burglary and remand the defendant to the custody of the sheriff, for the latter is required by § 1216, to forthwith deliver the defendant to the warden of the penitentiary, but a sentence may be suspended under this section by allowing the defendant to go at large "under the charge and supervision of the probation officer." People v. Mendosa (1918) 178 Cal. 509, 173 P. 998. Sentencing And Punishment 1809

The court in exercising its powers to suspend sentence must do so in conformity with this section as amended. Ex parte Slattery (1912) 163 Cal. 176, 124 P. 856. Sentencing And Punishment 1804

Under this section amended by Act April 6, 1911, Stats.1911, p. 689, the court has an absolute power of suspension of sentence; and a failure to place the person released in charge of a probation officer does not invalidate the suspension. Ex parte Giannini (App. 1912) 18 Cal.App. 166, 122 P. 831. Sentencing And Punishment 1804

Unless otherwise provided by law, the court has inherent power to stay execution in a criminal case, and such power, being exercised for the benefit of the defendant, will be presumed to have been with his consent. Ex parte Collins (App. 1908) 8 Cal.App. 367, 97 P. 188. Sentencing And Punishment 476

17. ---- Construction of orders, suspending sentence or execution

California court's action, following conviction for assault with intent to commit robbery, of suspending sentence on condition that defendant be confined to county jail for one year, had the effect of a grant of probation. U. S. ex rel. Wissenfeld v. Fay, 1963, 214 F.Supp. 360. Sentencing And Punishment 1809

Where court after pronouncing judgment and sentence or imprisonment orders all or part of sentence suspended, such order is considered to be an informal grant of probation equivalent to a formal order, unless order of suspension is made after court has already expressly denied probation and it is clear that a grant of probation was not intended. Oster v. Municipal Court of Los Angeles Judicial Dist., Los Angeles County (1955) 45 Cal.2d 134, 287 P.2d 755. Sentencing And Punishment 1809

If court tries to suspend execution of a sentence otherwise than by granting probation, suspension is void; however it is only the suspension that is void, and the sentence remains valid. People v. Cravens (App. 1 Dist. 1953) 115 Cal.App.2d 201, 251 P.2d 717. Sentencing And Punishment 1810

Where defendant who had been convicted of forgery made application for probation and hearing was held thereon, and there was express denial of probation, suspended sentence as to three of six months sentence could not be construed as constituting a probation order. People v. Rickson (App. 4 Dist. 1952) 112 Cal.App.2d 475, 246 P.2d 700. Sentencing And Punishment 1809

Order suspending sentence is in legal effect the equivalent of an order granting probation. U.S. Fidelity & Guaranty Co. v. Justice Court of Vista Tp., San Diego County (App. 1950) 99 Cal.App.2d 683, 222 P.2d 292.

In absence of a denial of probation, the suspension of a sentence or a part thereof is recognized as the "granting of probation" although not accompanied by any other evidence that that was court's purpose. People v. Lopez (Super. 1941) 43 Cal.App.2d Supp. 854, 110 P.2d 140. Sentencing And Punishment 1815

Where probation was denied and hence court had no authority to suspend part of sentences, suspension, as tested on habeas corpus, would be held a nullity and sentences would be regarded as straight jail sentences. People v. Lopez (Super. 1941) 43 Cal.App.2d Supp. 854, 110 P.2d 140.

Order suspending all but 5 days of 6 months' jail sentence was equivalent to placing defendant on probation, and hence was a nullity under this section where defendant pleaded guilty of assault with deadly weapon. In re Sheffield (App. 2 Dist. 1936) 18 Cal.App.2d 177, 63 P.2d 829. Sentencing And Punishment 1843

The effect of an order granting probation to one who had pleaded guilty of an offense and releasing him from custody was to suspend the order of sentence. People v. Sapienzo (App. 1 Dist. 1923) 60 Cal.App. 626, 213 P. 274. Sentencing And Punishment 1815

In the case of People v. Phillips (App. 1 Dist. 1946) 76 Cal.App.2d 515, 173 P.2d 392, the court said: "In the instant case the appellant was sentenced on the conspiracy charge of the first count of the indictment and on the independent violation of section 337b of the Penal Code charged in the second count to 'imprisonment in the County Jail of the City and County of San Francisco, State of California, for the term of One (1) year, One Day suspended on probation, Count No. Two (2) term to run concurrently with term imposed in count No. One (1). ' Since a motion for probation was denied by the trial court, for appellant admitted that he had been convicted of a prior felony (sec. 1203, Penal Code) and as the court made no reference of the matter to the probation officer for his investigation and report as required by section 1203 of the Penal Code (People v. Lopez, 43 Cal.App.Supp.2d 854, 861, 110 P.2d 140), it cannot be assumed that the court granted probation on the condition that Phillips serve the sentence to the county jail. Therefore, it must be held that a judgment was actually rendered rather than reserved during a probationary period."

Where execution of sentence for 180 days was "suspended for 3 days," and prisoner remained at liberty from May 13th to Feb. 7th following, without any revocation of suspension of sentence, suspension would not be presumed an admission to probation, under this section and judgment was not satisfied, and was still enforceable. In re Howard (App. 2 Dist. 1925) 72 Cal.App. 374, 237 P. 406. Sentencing And Punishment 1815

18. Determination--In general

It is not punishment but circumstances in mitigation of punishment which must be taken into account by court in granting or denying probation. People v. Pijal (App. 1 Dist. 1973) 109 Cal.Rptr. 230, 33 Cal.App.3d 682.

Sentencing And Punishment 1830

To determine whether a convicted defendant is a deserving candidate for clemency, trial court may consider the defendant's record and all the facts as disclosed by the evidence and by the probation officer's report, and in determining such matters the court is not bound by findings of fact necessarily implied in a verdict fixing the degree of the crime. People v. Hollis (App. 2 Dist. 1959) 1 Cal.Rptr. 293, 176 Cal.App.2d 92. Sentencing And Punishment 1838; Sentencing And Punishment 1870

The formal denial of defendant's petition for probation would not preclude the court from thereafter granting probation. People v. Brandon (App. 1958) 166 Cal.App.2d 96, 332 P.2d 708. Sentencing And Punishment 1914

A pronouncement by Superior Court that defendant, pleading guilty of burglary, be confined to county jail for one year, but that sentence be suspended on condition that he be turned over to state authorities as parole violator, was nullified by granting of continuance at same hearing, with direction that probation officer ascertain defendant's exact status at state penitentiary, so that later judgment, denying probation and sentencing defendant to state penitentiary, was only judgment in case and hence not void as placing defendant in double jeopardy. People v. Williams (App. 1 Dist. 1949) 93 Cal.App.2d 777, 209 P.2d 949. Double Jeopardy 31

19. ---- Rights of defendant, determination

All defendants are eligible for probation, in the discretion of the sentencing court, unless a statute provides otherwise. People v. Bruce G. (App. 3 Dist. 2002) 118 Cal.Rptr.2d 890, 97 Cal.App.4th 1233. Sentencing And Punishment 1830

Defendant did not have fundamental right to file for bankruptcy where condition of probation was that he not attempt to discharge restitution order by any bankruptcy proceedings. People v. Warnes (Super. 1992) 12 Cal.Rptr.2d 893. Bankruptcy 2222.1; Sentencing And Punishment 1983(3)

Where individual is eligible for probation the trial court must hear and determine his application therefor on the merits, and failure to do so constitutes denial of substantial right. In re Black (1967) 59 Cal.Rptr. 429, 66 Cal.2d 881, 428 P.2d 293. Sentencing And Punishment 1906

Applicant for probation has right to have his application considered by court. People v. Hutson (App. 3 Dist. 1963) 34 Cal.Rptr. 790, 221 Cal.App.2d 751. Sentencing And Punishment 1891

Failure of trial judge to rule upon defendant's application for probation after conviction amounted to a deprivation of a substantial right, entitling defendant to reversal of order of commitment subsequently entered. People v. Means (App. 2 Dist. 1953) 117 Cal.App.2d 29, 254 P.2d 585. Criminal Law 1186.4(11)

Under this section relating to probation, the granting of probation is within sound discretion of trial court, but it is mandatory that court hear and determine application for probation. People v. Neal (App. 2 Dist. 1951) 108 Cal.App.2d 491, 239 P.2d 38. Sentencing And Punishment 1802

Defendant is not entitled as matter of right to have application for probation considered after denial of previous application presenting same issues. People v. Sidwell (1945) 27 Cal.2d 121, 162 P.2d 913. Sentencing And Punishment 1923

Applicant for probation may require that his petition be considered by trial court, but may not demand clemency as

matter of right. People v. Blankenship (App. 4 Dist. 1936) 16 Cal.App.2d 606, 61 P.2d 352. Sentencing And Punishment 1812

Defendant in matter of probation has only right to have his application considered by court, and probation may not be demanded as matter of right. People v. Roach (App. 1934) 139 Cal.App. 384, 33 P.2d 895. Sentencing And Punishment 1812

Trial court should have permitted defendant convicted of perjury to file formal application for probation and proceeded to final determination of same. People v. Keylon (App. 1932) 122 Cal.App. 408, 10 P.2d 86. Sentencing And Punishment 1891

Only right of defendant in matter of probation is to have trial court exercise judicial discretion in lawful manner in granting or refusing probation. People v. Payne (App. 4 Dist. 1930) 106 Cal.App. 609, 289 P. 909. Sentencing And Punishment 1802

Refusal to consider application for probation, after plea of guilty to involuntary manslaughter, was erroneous. People v. Lovelace (App. 2 Dist. 1929) 97 Cal.App. 228, 275 P. 489. Sentencing And Punishment 1853

20. ---- Form, determination

A trial court is without the power to deny probation or impose sentence until it has expressly and in the language of this section stated on the record or in writing that it has read and considered the probation officer's report. People v. Arredondo (App. 5 Dist. 1975) 125 Cal.Rptr. 419, 52 Cal.App.3d 973. Sentencing And Punishment 300

Trial court was without power to deny probation or to impose sentence unless and until the court had expressly and in the language of this section stated on the record or in writing that he had read and considered the probation report; only the signature of the sentencing judge or his statement in open court that he had read and considered the report could comply with the requirement of this section. People v. Williams (App. 2 Dist. 1963) 35 Cal.Rptr. 805, 223 Cal.App.2d 676. Sentencing And Punishment 300

Statement of court, after hearing considerable argument on defendant's application for probation after pleas of guilty to charges of forgery and burglary, that "Well, probation is denied", amounted to a "determination" of the application as required by this section. People v. Escobar (App. 1 Dist. 1953) 122 Cal.App.2d 15, 264 P.2d 571. Sentencing And Punishment 1913

21. ---- Merits, determination

Where an individual is eligible for probation, the trial court must hear and determine his application for probation on the merits, and where a court erroneously concludes that a defendant is not eligible for probation and pronounces judgment without considering the merits, the judgment must be reversed not for a new trial but with directions to consider the application on its merits. People v. Hollis (App. 2 Dist. 1959) 1 Cal.Rptr. 293, 176 Cal.App.2d 92. Sentencing And Punishment 1906; Criminal Law 1188

Where record discloses that trial court, without considering the merits of application for probation, erroneously determined that defendant was not eligible for probation, judgment would have to be reversed with directions to trial court to consider application for probation on its merits. People v. Southack (1952) 39 Cal.2d 578, 248 P.2d 12. Criminal Law 1189

In prosecution for armed robbery under § 211a, failure of court to give jury opportunity to find that defendant may

have been armed with a dangerous weapon rather than with a deadly weapon did not require reversal on theory that under this section, making a robber armed with a deadly weapon ineligible to parole, defendant was deprived of having his application for parole heard on merits, in view of fact that application was denied without comment and could have been denied in discretion of court without reference to type of weapon. People v. Connolly (App. 1951) 103 Cal.App.2d 245, 229 P.2d 112. Criminal Law 1177

Decision of trial judge, after trial on merits, that he would not permit accused, convicted of statutory rape and another statutory offense, to file application for probation, was not abuse of discretion. People v. Roveano (App. 1933) 130 Cal.App. 222, 19 P.2d 506. Sentencing And Punishment 1862

Denial of probation after conviction for manslaughter because not sought before trial was erroneous, requiring reversal for consideration of application for probation on merits. People v. Miller (App. 2 Dist. 1931) 112 Cal.App. 535, 297 P. 40. Sentencing And Punishment 1891

22. ---- Prior arrests, determination

In considering defendant's application for probation, trial court's consideration of prior charge against defendant, which charge had been dismissed on constitutional grounds, was not a denial of defendant's due process rights, since trial court carefully limited its consideration of prior arrest to fact that it put defendant on notice of seriousness and possible consequences of being involved with marijuana. People v. Podesto (App. 5 Dist. 1976) 133 Cal.Rptr. 409, 62 Cal.App.3d 708. Constitutional Law 4731

Fact that defendant's prior arrest did not result in trial and conviction did not mean that trial court could not consider such arrest in deciding whether to place defendant on probation. People v. Podesto (App. 5 Dist. 1976) 133 Cal.Rptr. 409, 62 Cal.App.3d 708. Sentencing And Punishment 1872(1)

23. ---- Dismissed counts, determination

Exception to general rule of *Harvey*, that facts underlying dismissal of counts should not be considered for the purpose of denying probation, existed for defendant who violated prohibition against lewd or lascivious act with child under 14 because Penal Code § 288.1 specifically required a report on defendant's current mental condition to determine defendant's suitability for probation and this necessarily included facts underlying dismissed counts. People v. Franco (App. 5 Dist. 1986) 226 Cal.Rptr. 280, 181 Cal.App.3d 342, review denied. Sentencing And Punishment 1877

24. ---- Summary grant or denial, determination

Under this section, court in its discretion may summarily deny probation. People v. Navarro (App. 1946) 74 Cal.App.2d 544, 169 P.2d 265. Sentencing And Punishment 1802

Trial court did not abuse its discretion in summarily denying without a hearing defendant's petition for probation, following his conviction of manslaughter based upon attacks made by him with his fists upon a 70-year-old Indian. People v. Pilgrim (App. 3 Dist. 1946) 73 Cal.App.2d 391, 166 P.2d 636. Sentencing And Punishment 1853

Whether application for probation will be summarily denied is within the discretion of trial court. People v. Newman (App. 2 Dist. 1942) 56 Cal.App.2d 394, 132 P.2d 539. Sentencing And Punishment 1802

Justice's and police courts on conviction for misdemeanor may grant probation summarily. Ex parte Goetz (App. 4 Dist. 1941) 46 Cal.App.2d 848, 117 P.2d 47. Sentencing And Punishment 1890

While probation may be summarily denied, it is error summarily to grant it. People v. Lopez (Super. 1941) 43 Cal.App.2d Supp. 854, 110 P.2d 140. Sentencing And Punishment 1890

Where defendant's counsel stated, after motion for new trial was denied, that he wished to make application for probation, trial court summarily denied application stating reasons for denial, and counsel stated prior to pronouncement of judgment that he wished to renew application, trial court did not act arbitrarily in denying application with proviso that denial was without prejudice to renewal thereof upon determination of appeal from judgment, since there was no request for permission to file a formal application for probation, and hence no denial of such request. People v. Henry (App. 4 Dist. 1937) 23 Cal.App.2d 155, 72 P.2d 915. Sentencing And Punishment 1891

Summary denial of defendant's oral application for leave to file written application for probation was within trial court's discretion. People v. Krug (App. 1935) 10 Cal.App.2d 172, 51 P.2d 445. Sentencing And Punishment 1891

Summary denial of application for probation is permissible by this section. People v. Howe (App. 1934) 1 Cal.App.2d 518, 36 P.2d 820. Sentencing And Punishment 1891

Summary denial by trial judge of motion for probation by one conviction of felonious possession of a preparation of cocaine without reference to probation officer for investigation and recommendation was not abuse of discretion. People v. Bill (App. 1934) 140 Cal.App. 389, 35 P.2d 645. Sentencing And Punishment 276; Sentencing And Punishment 1848

25. ---- Time, determination

Trial court has power to entertain application for probation at any time before execution of sentence, before or after judgment is pronounced, and on going down of remittitur. People v. Nevarez (App. 2 Dist. 1962) 27 Cal.Rptr. 287, 211 Cal.App.2d 347. Sentencing And Punishment 1894

Probation may be granted at any time before execution of sentence is begun and mere pronouncement of sentence or denial of application for probation before judgment does not preclude the granting of probation after judgment is pronounced or has been affirmed on appeal. Oster v. Municipal Court of Los Angeles Judicial Dist., Los Angeles County (1955) 45 Cal.2d 134, 287 P.2d 755. Sentencing And Punishment 1894

Application for probation by accused after conviction may be heard and determined at any time prior to execution of sentence. People v. Forbragd (App. 1932) 127 Cal.App. 768, 16 P.2d 755. Sentencing And Punishment 1894

Trial court was without power to hear probation application after remittitur where no stay of execution was ordered pending appeal. In re Bost (1931) 214 Cal. 150, 4 P.2d 534. Criminal Law 1192

Application for probation may be granted after affirmance of judgment of conviction on appeal. People v. Superior Court of Imperial County (1930) 208 Cal. 692, 284 P. 451. Sentencing And Punishment 1893

Trial court has power to hear and determine probation applications at any time prior to execution of sentence, regardless of appeal. Lloyd v. Superior Court of California, in and for Los Angeles County (1929) 208 Cal. 622, 283 P. 931. Criminal Law 1192

Under this section, trial court has power to hear and determine applications for probation at any time prior to execution of sentence, without regard to whether defendant has in the meantime undertaken to prosecute a vain and unsuccessful appeal. Lloyd v. Superior Court of California, in and for Los Angeles County (1929) 208 Cal. 622, 283 P. 931. Criminal Law 1192

Application for probation can be considered only before judgment. People v. Jones (App. 2 Dist. 1927) 87 Cal.App. 482, 262 P. 361. Sentencing And Punishment 1893

Trial court issuing commitment under which there was actual imprisonment was without right, more than year thereafter, to grant probation. In re Bost (App. 1 Dist. 1931) 113 Cal.App. 237, 298 P. 85. Sentencing And Punishment 1894

26. Conditions of probation--In general

See, also, Notes of Decisions under Penal Code § 1203.1.

California law, like federal law, lodges broad discretion in sentencing judges with regard to probation conditions and does not require that the conditions be directly connected to the crime of conviction. Cisneros-Perez v. Gonzales, C.A.9 (Cal.)2006, 465 F.3d 386. Sentencing And Punishment 1962; Sentencing And Punishment 1963

California prisoner who was granted probation, on condition that he serve time in county jail, was not sentenced both under § 489 relating to imprisonment and this section relating to probation, and could be subjected to imprisonment for offense upon revocation of probation. Howard v. Craven, C.D.Cal.1969, 306 F.Supp. 730. Sentencing And Punishment 2038

An unconstitutionally vague or overbroad probation condition does not come within the narrow exception to the forfeiture rule made for a so-called unauthorized sentence or a sentence entered in excess of jurisdiction. In re Sheena K. (2007) 55 Cal.Rptr.3d 716, 40 Cal.4th 875, 153 P.3d 282. Criminal Law 1042

A probation condition is constitutionally overbroad when it substantially limits a person's rights and those limitations are not closely tailored to the purpose of the condition. People v. Harrisson (App. 3 Dist. 2005) 36 Cal.Rptr.3d 264, 134 Cal.App.4th 637, modified on denial of rehearing , review denied. Sentencing And Punishment 1963

A condition of probation which requires or forbids conduct which is not itself criminal is valid if the conduct is reasonably related to the crime of which the defendant was convicted or to future criminality. People v. Harrisson (App. 3 Dist. 2005) 36 Cal.Rptr.3d 264, 134 Cal.App.4th 637, modified on denial of rehearing , review denied. Sentencing And Punishment 1963

A condition of probation will not be held invalid unless it (1) has no relationship to the crime of which the offender was convicted, (2) relates to conduct which is not in itself criminal, and (3) requires or forbids conduct which is not reasonably related to future criminality. People v. Harrisson (App. 3 Dist. 2005) 36 Cal.Rptr.3d 264, 134 Cal.App.4th 637, modified on denial of rehearing , review denied. Sentencing And Punishment 1963

Under statute authorizing conditions of probation and suspension of sentence, trial courts are granted broad discretion to prescribe conditions of probation. People v. Juarez (App. 1 Dist. 2004) 8 Cal.Rptr.3d 238, 114 Cal.App.4th 1095. Sentencing And Punishment 1962

A condition of probation will not be held invalid unless it (1) has no relationship to the crime of which the offender

was convicted, (2) relates to conduct which is not in itself criminal, and (3) requires or forbids conduct which is not reasonably related to future criminality. People v. Tilehkooh (App. 3 Dist. 2003) 7 Cal.Rptr.3d 226, 113 Cal.App.4th 1433. Sentencing And Punishment 1963

An unreasonable condition of probation is one that is unrelated to the crime of which the offender was convicted, relates to conduct which is not itself criminal, requires or forbids conduct which is not reasonably related to future criminality, or does not serve the statutory ends of probation. In re Justin S. (App. 2 Dist. 2001) 113 Cal.Rptr.2d 466, 93 Cal.App.4th 811. Sentencing And Punishment 1963

A condition of probation will not be held invalid unless it (1) has no relationship to the crime of which the defendant was convicted, (2) relates to conduct which is not in itself criminal, (3) requires or forbids conduct which is not reasonably related to future criminality. People v. Kwizera (App. 4 Dist. 2000) 93 Cal.Rptr.2d 522, 78 Cal.App.4th 1238, review denied. Sentencing And Punishment 1963

Condition of probation, requiring that defendant "follow such course of conduct as the probation officer prescribes," was reasonable and necessary to enable probation department to supervise compliance with specific conditions of probation. People v. Kwizera (App. 4 Dist. 2000) 93 Cal.Rptr.2d 522, 78 Cal.App.4th 1238, review denied. Sentencing And Punishment 1969(2)

Probation condition which merely directed defendant to cooperate with the probation officer and the court in determining the amount of attorney fees and his ability to pay was valid. People v. Hart (App. 3 Dist. 1998) 76 Cal.Rptr.2d 837, 65 Cal.App.4th 902, modified on denial of rehearing. Sentencing And Punishment 1969(2)

Reimbursement for services of deputy public defender who represented minor in juvenile court proceeding could not be imposed as a condition of probation. In re Elizabeth Anne S. (App. 4 Dist. 1982) 188 Cal.Rptr. 2, 138 Cal.App.3d 450. Infants 225

Condition of probation requiring juvenile to spend not less than five nor more than ten days in juvenile hall was to be eliminated, not because it was improper when the order was made, but because its intended therapeutic effect had evaporated with passage of time pending appeal, during which period juvenile was on probation. In re Demetrus H. (App. 2 Dist. 1981) 173 Cal.Rptr. 627, 118 Cal.App.3d 805. Infants 230.1

Condition of minor's probation following disposition order sustaining charge of unlawful driving and taking of motor vehicle that he "shall promptly notify the probation officer of each absence from a single class, and for each absence from a class that's unexcused, [he] will spend one day in juvenile hall", was proper provision making regular school attendance a condition of probation, but may have appeared to be self-executing; therefore, the order was modified to delete reference to penalty for nonobservance of the condition. In re Jonathan M. (App. 2 Dist. 1981) 172 Cal.Rptr. 833, 117 Cal.App.3d 530. Infants 225

Trial judge has broad discretion in determining whether statutory conditions under which probation may be granted are satisfied; this discretion, however, is neither arbitrary nor capricious, but is an impartial discretion, guided and controlled by fixed legal principles, to be exercised in conformity with spirit of the law, in any manner to subserve and not to impede or defeat the ends of substantial justice. People v. Warner (1978) 143 Cal.Rptr. 885, 20 Cal.3d 678, 574 P.2d 1237. Sentencing And Punishment 1802

In granting probation, courts have very broad discretion to impose conditions. People v. McDowell (App. 2 Dist. 1976) 130 Cal.Rptr. 839, 59 Cal.App.3d 807. Sentencing And Punishment 1962

If condition of probation that defendant was not to go out of his house unless he was wearing shoes with leather

soles and metal taps on soles and heels meant that defendant was required to wear shoes with taps at all times outside his home, defendant would be precluded from participating in most forms of athletic activity, and if it meant that defendant was only required to wear shoes with taps as he left his house, condition would be virtually ineffective with respect to defendant's budding career as a purse snatcher; accordingly, trial court would be given an opportunity to clarify condition or impose different terms in place of condition. People v. McDowell (App. 2 Dist. 1976) 130 Cal.Rptr. 839, 59 Cal.App.3d 807. Criminal Law 1181.5(8)

Where the jury, upon finding defendant guilty of unlawful sexual intercourse with a female under the age of 18, recommends state prison for the defendant, the trial court must pronounce judgment by sentencing the defendant to state prison, thereby fixing the crime as a felony; but the court may thereafter suspend execution of the judgment and place defendant on probation subject to whatever terms and conditions in its discretion it sees fit to impose. People v. Arredondo (App. 5 Dist. 1975) 125 Cal.Rptr. 419, 52 Cal.App.3d 973. Sentencing And Punishment 1886; Sentencing And Punishment 375

Defendant, who made a plea bargain that contemplated possible probation with some local custody for felony offense of grand theft, was not obliged to accept probation upon onerous terms not expressed in bargain, but could not, absent a request to withdraw his guilty plea, reject probation that imposed no unusual, unreasonable or onerous conditions, with aim of obtaining a misdemeanor sentence, where no specific promise of such a sentence was made. People v. Renzulli (App. 4 Dist. 1974) 114 Cal.Rptr. 321, 39 Cal.App.3d 675. Criminal Law 273.1(2)

Where defendant had been sentenced on prior conviction for possession of marijuana to county jail although Health & S.C. § 11530 (repealed; see, now, Health & S.C. § 11357) required sentence to state prison, and at time of subsequent conviction for possession of marijuana sentence to county jail for a narcotic violation would be authorized and could result in possible benefit to defendant under this section prescribing conditions for probation and would eliminate prior felony conviction which could be used as basis of impeachement, cause would be remanded to trial court for reconsideration of imposition of sentence for prior conviction. People v. Sproul (App. 2 Dist. 1969) 83 Cal.Rptr. 55, 3 Cal.App.3d 154. Criminal Law 1181.5(8)

Probation condition prohibiting defendant from publicly or privately by words or conduct urging others to use or possess any narcotics or psychedelic drugs did not infringe on his freedom of speech, as condition prohibited only advocacy of violation of narcotics laws and it was that advocacy, not political argument, that defendant was found to have made. People v. Wright (App. 2 Dist. 1969) 80 Cal.Rptr. 335, 275 Cal.App.2d 738. Constitutional Law 2104; Sentencing And Punishment 1971(2)

Imposing state penitentiary sentence on defendant and allowing him to serve one year in county jail on that sentence with provision that if he got into further difficulty he would be sent to state penitentiary constituted granting of "probation" and subsequent order revoking probation, reimposing execution of sentence and committing defendant to state prison was final jurisdictional act in execution of outstanding valid judgment. People v. Atwood (App. 1 Dist. 1963) 34 Cal.Rptr. 361, 221 Cal.App.2d 216. Sentencing And Punishment 1935; Sentencing And Punishment 2034

An essential part of probation is a standard of conduct which the probationer is required to follow as a condition of his grant of probation. People v. Rye (Super. 1956) 140 Cal.App.2d Supp. 962, 296 P.2d 126. Sentencing And Punishment 1960

Power to trial court to impose conditions of probation is great. People v. Frank (App. 2 Dist. 1949) 94 Cal.App.2d 740, 211 P.2d 350.

Requirement as prerequisite to probation that 23 year old defendant afflicted with syphilis who had pleaded guilty to rape of 13 year old girl submit to an operation of vasectomy was not invalid as unreasonable. People v. Blankenship

(App. 4 Dist. 1936) 16 Cal.App.2d 606, 61 P.2d 352. Sentencing And Punishment 1978(2)

Prisoner who was sentenced to county jail for two years with six months off for good time earned was not entitled to be released eighteen months after imposition of sentence on ground that reduction of six months on good behavior was condition of probation where prisoner's application for probation filed at time he entered plea of guilty was expressly denied. Ex parte Eyre (App. 1934) 1 Cal.App.2d 451, 36 P.2d 842. Sentencing And Punishment 1960

27. ---- Relationship to offense, conditions of probation

An adult probation condition is unreasonable if it (1) has no relationship to the crime of which the offender was convicted, (2) relates to conduct which is not in itself criminal, and (3) requires or forbids conduct which is not reasonably related to future criminality. In re Byron B. (App. 4 Dist. 2004) 14 Cal.Rptr.3d 805, 119 Cal.App.4th 1013. Sentencing And Punishment 1963

A probation condition is valid as long as it relates to the crime for which the defendant is convicted, relates to other criminal conduct, or requires or forbids conduct which is reasonably related to future criminality. People v. Rugamas (App. 3 Dist. 2001) 113 Cal.Rptr.2d 271, 93 Cal.App.4th 518. Sentencing And Punishment 1963

Condition of probation which requires or forbids conduct which is not itself criminal is valid if that conduct is reasonably related to the crime of which the defendant was convicted or to future criminality. People v. Kwizera (App. 4 Dist. 2000) 93 Cal.Rptr.2d 522, 78 Cal.App.4th 1238, review denied. Sentencing And Punishment 1963

Probation condition must be reasonable in relation to the seriousness of the offense. People v. Kwizera (App. 4 Dist. 2000) 93 Cal.Rptr.2d 522, 78 Cal.App.4th 1238, review denied. Sentencing And Punishment 1963

Standard, that probation conditions which regulate conduct not itself criminal must be reasonably related to crime of which defendant was convicted or to future criminality, is violated by sentencing court when its determination is arbitrary or capricious or exceeds bounds of reason, all circumstances being considered. People v. Welch (1993) 19 Cal.Rptr.2d 520, 5 Cal.4th 228, 851 P.2d 802. Sentencing And Punishment 1963

Condition of probation will not be held invalid unless it has no relationship to crime of which defendant was convicted, relates to conduct which is not in itself criminal, and requires or forbids conduct which is not reasonably related to future criminality. People v. Warnes (Super. 1992) 12 Cal.Rptr.2d 893. Sentencing And Punishment 1963

Condition of probation which requires or forbids conduct which is not itself criminal is valid if that conduct is reasonably related to crime of which defendant was convicted or to future criminality. People v. Warnes (Super. 1992) 12 Cal.Rptr.2d 893. Sentencing And Punishment 1963

Power to impose conditions of probation, while broad, is not boundless; valid condition must either bear relationship to crime of which offender was convicted, or be reasonably related to avoidance of future criminality. In re Bernardino S. (App. 1 Dist. 1992) 5 Cal.Rptr.2d 746, 4 Cal.App.4th 613. Sentencing And Punishment 1963

Conditions of probation imposed upon defendant's conviction of soliciting an act of prostitution, prohibiting defendant from soliciting or accepting a ride from motorists or from approaching male pedestrians or motorists or engaging them in conversation upon a public street or in a public place, were overly broad in the otherwise legal activities proscribed, i.e., accepting a ride from a motorist, and engaging male pedestrians in conversation in a public

place. People v. Norris (Super. 1978) 152 Cal.Rptr. 134, 88 Cal.App.3d Supp. 32. Sentencing And Punishment 1983(2)

Courts will condemn conditions of probation that have no relationship to crime for which a defendant stands convicted, that relate to conduct not itself criminal, and that require or forbid conduct not reasonably related to future criminality. People v. Edwards (1976) 135 Cal.Rptr. 411, 18 Cal.3d 796, 557 P.2d 995. Sentencing And Punishment 1963

A condition of probation will not be held invalid unless it has no relationship to the crime of which the offender was convicted, relates to conduct which is not in itself criminal, and requires or forbids conduct which is not reasonably related to future criminality. People v. Kasinger (App. 1 Dist. 1976) 129 Cal.Rptr. 483, 57 Cal.App.3d 975. Sentencing And Punishment 1963

Condition of probation will not be held invalid unless it has no relationship to the crime of which the offender was convicted and relates to conduct which is not in itself criminal and requires or forbids conduct which is not reasonably related to future criminality; disapproving prior cases which stated the test in the disjunctive rather than the conjunctive. People v. Lent (1975) 124 Cal.Rptr. 905, 15 Cal.3d 481, 541 P.2d 545. Sentencing And Punishment 1963

28. ---- Substance abuse, conditions of probation

Condition of defendant's probation that he abstain from the use of alcohol was not improper on basis that his alleged alcoholic disease made him constitutionally unable to abide by such condition where defendant willingly agreed to condition his opportunity for probation on terms rationally related to his criminal activity, which was allegedly based upon his alcoholism. People v. Mitchell (App. 4 Dist. 1981) 178 Cal.Rptr. 188, 125 Cal.App.3d 715. Sentencing And Punishment 1980(2)

Where defendant found himself in court as a direct result of his drinking at home and then going to the store for more beer, and where he stated that he usually drinks a six-pack of beer a day and sometimes drinks half a case of beer, under such facts the probation condition that he abstain from alcohol and stay out of places where it is the chief item of sale, even if intruding on his constitutional rights, was not invalid. Gilliam v. Los Angeles Municipal Court (App. 2 Dist. 1979) 159 Cal.Rptr. 74, 97 Cal.App.3d 704, certiorari denied 100 S.Ct. 1085, 445 U.S. 907, 63 L.Ed.2d 323. Sentencing And Punishment 1980(2)

29. ---- Searches and seizures, conditions of probation

Probation condition that defendant refrain from use or possession of drugs, even if prohibiting conduct not criminal in itself, related to future criminality and thus was reasonably related to defendant's conviction for possession of illegal weapon. People v. Beagle (App. 5 Dist. 2004) 22 Cal.Rptr.3d 757, 125 Cal.App.4th 415. Sentencing And Punishment 1980(2)

A probation condition allowing searches was related to possession of contraband and thus was reasonably related to defendant's conviction for possession of illegal weapon. People v. Beagle (App. 5 Dist. 2004) 22 Cal.Rptr.3d 757, 125 Cal.App.4th 415. Sentencing And Punishment 1995

Imposition, as condition of probation, of requirement that defendant submit to warrantless searches by law enforcement officers was reasonable as court imposed such condition to help in ascertaining whether defendant was abiding by other conditions of probation that he only engage in deprogramming of "cult" members on a voluntary basis and considering connection between defendant's vocation and crimes of which he was convicted, kidnapping

and false imprisonment based on abduction of suspected "cult" member. People v. Patrick (App. 4 Dist. 1981) 179 Cal.Rptr. 276, 126 Cal.App.3d 952. Sentencing And Punishment 1993

Provision whereby defendant waives right of service of search warrant at any time of day or night may properly be imposed as condition to probation where defendant is narcotics offender. People v. Giminez (1975) 120 Cal.Rptr. 577, 14 Cal.3d 68, 534 P.2d 65. Sentencing And Punishment 1993

A condition of probation requiring defendant to waive his rights under statutes regarding knock and notice procedures by law enforcement officers is not reasonably related to authority of court to grant probation and is not proper. People v. Freund (App. 4 Dist. 1975) 119 Cal.Rptr. 762, 48 Cal.App.3d 49. Sentencing And Punishment 1990

Condition of probation that defendant submit to search and seizure by probation officer or peace officer during night or day with or without search warrant was not unconstitutional. People v. Fitzpatrick (App. 1 Dist. 1970) 84 Cal.Rptr. 78, 3 Cal.App.3d 824. Sentencing And Punishment 1993

30. ---- Restitution, conditions of probation

While equal protection requires court to grant hearing on defendant's ability to pay restitution, it does not require trial judge to make finding of ability to pay before ordering restitution. People v. Warnes (Super. 1992) 12 Cal.Rptr.2d 893. Constitutional Law 3808

Condition of probation that defendant not attempt to discharge restitution order by any bankruptcy proceedings related to crime of which defendant was convicted as it guaranteed that defendant not profit from his wrongdoing; defendant was convicted of making fraudulent and misleading statements to induce auto sales and restitution order was designed to compensate victims for losses suffered as a result of his criminal conduct. People v. Warnes (Super. 1992) 12 Cal.Rptr.2d 893. Sentencing And Punishment 1973(2)

Restitution order, as condition of probation, requiring defendant, convicted of one embezzlement count, to repay embezzled funds, including funds which were basis of five embezzlement counts which were dismissed as result of plea bargain, was valid, where there was overwhelming evidence that dismissed uncharged instances of embezzlement were committed with same state of mind as that present in count of embezzlement to which she pleaded guilty and where defendant expressly agreed to allow court to consider uncharged instances of embezzlement in determining whether to grant probation. People v. Baumann (App. 4 Dist. 1985) 222 Cal.Rptr. 32, 176 Cal.App.3d 67, review denied. Sentencing And Punishment 1973(2)

County probation department was not liable for failing to warn probationer's employer that probationer was convicted embezzler, thus enabling probationer to embezzle funds from employer, where probation department did not place probationer with employer or direct him in his employment activities and had no other special relationship with employer, notwithstanding fact that probationer was to devote some of his earnings to restitution required by probation. J. A. Meyers & Co. v. Los Angeles County Probation Dept. (App. 2 Dist. 1978) 144 Cal.Rptr. 186, 78 Cal.App.3d 309. Counties 141

Where additional circumstances were developed in probation hearing and where court found that total culpability of defendant was not displayed in the setting of the one case in which he was convicted of grand theft but was reflected in further evidence and that defendant had made false statements in connection with what he had done with other funds which he had been accused and acquitted of stealing, trial court did not err in imposing, as condition of probation, requirement that defendant not only make restitution for the funds which he was convicted of stealing, but also make restitution of other funds which he had been acquitted of stealing. People v. Lent (1975) 124 Cal.Rptr.

905, 15 Cal.3d 481, 541 P.2d 545. Sentencing And Punishment 1973(2)

A defendant of whom reparation is required as a condition of probation may urge, at hearing on probation, that he is being deprived of property without due process of law, and may offer evidence in support of contention. People v. Alexander (App. 1 Dist. 1960) 6 Cal.Rptr. 153, 182 Cal.App.2d 281. Sentencing And Punishment 1897

Order admitting one pleading guilty of violating Corporate Securities Act to probation on condition that he reimburse investors was valid, notwithstanding trial court's remark on subsequent revocation that only purpose of granting probation had been to give defendant opportunity to make reimbursement. People v. Lippner (1933) 219 Cal. 395, 26 P.2d 457. Sentencing And Punishment 1973(2)

31. ---- Fines, conditions of probation

Court could impose fine not exceeding $200 as condition of probation of defendant convicted of bookmaking. People v. Labarbera (App. 1 Dist. 1949) 89 Cal.App.2d 639, 201 P.2d 584.

Court may impose fine as condition to probation of one violating Vehicle Act, provided punishment resulting is not greater than that jury recommends. In re McVeity (App. 2 Dist. 1929) 98 Cal.App. 723, 277 P. 745. Automobiles 359.1

32. Reports--In general

A probation report before sentencing is not necessarily required if defendant is statutorily ineligible for probation, for example, because of a prior strike. People v. Dobbins (App. 3 Dist. 2005) 24 Cal.Rptr.3d 882, 127 Cal.App.4th 176. Sentencing And Punishment 276

Only when a defendant is statutorily ineligible for probation on all counts may a court not order the preparation of a probation report. People v. Bohannon (App. 2 Dist. 2000) 98 Cal.Rptr.2d 488, 82 Cal.App.4th 798, review denied. Sentencing And Punishment 276

There was no abuse of discretion in trial court's failure to obtain probation report for defendant where the court did have before it a probation department "1203c report," a face sheet with a police report attached, and where defendant was ineligible for probation. People v. Goldstein (App. 1 Dist. 1990) 272 Cal.Rptr. 881, 223 Cal.App.3d 465, review denied. Sentencing And Punishment 276

Right to current probation report is not dependent on serving time in custody. People v. Mercant (App. 5 Dist. 1989) 265 Cal.Rptr. 315, 216 Cal.App.3d 1192. Sentencing And Punishment 290

Error from trial court's failure to obtain current probation report for sentencing defendant on guilty plea was harmful; plea bargained sentence was merely the maximum that could be imposed, and court could have withdrawn its approval of plea. People v. Mercant (App. 5 Dist. 1989) 265 Cal.Rptr. 315, 216 Cal.App.3d 1192. Criminal Law 1177

A defendant subjected to a probation report prior to sentence is afforded an opportunity to present probation counselors with out-of-court character testimony and explanations of his guilt and is also afforded benefit of counsel at all stages of proceedings if he so desires, including presence of an attorney at probation and sentencing hearing. People v. Edwards (1976) 135 Cal.Rptr. 411, 18 Cal.3d 796, 557 P.2d 995. Sentencing And Punishment 280; Sentencing And Punishment 1895

Court was not required to refer defendant's case to probation department under this section providing for a referral in every case in which a person is convicted of a felony and is eligible for probation, in light of fact that defendant had been previously placed on probation in 1971. People v. Ham (App. 2 Dist. 1975) 118 Cal.Rptr. 591, 44 Cal.App.3d 288. Sentencing And Punishment 276

A state prisoner at a hearing to determine whether certain prior narcotics convictions should be struck was entitled to an up-to-date probation report or current report from the director of corrections, and such report should have been obtained by sentencing court before determining whether or not to strike a prior federal conviction. In re Gomez (App. 3 Dist. 1973) 107 Cal.Rptr. 609, 31 Cal.App.3d 728. Sentencing And Punishment 1311

Fact that court, which adjourned criminal proceedings and initiated addiction hearing after reading report of probation officer as to defendant found guilty of possession of heroin, pronounced no sentence but would have been within its rights to review probation reports and to receive proof of prior convictions had it pronounced sentence refuted defendant's contentions that his sentence was apparently increased by judge's reading of certain records and that defendant had no opportunity to cross-examine concerning them. People v. Garcia (App. 2 Dist. 1970) 91 Cal.Rptr. 671, 13 Cal.App.3d 486. Sentencing And Punishment 300

Because confusion as to admissibility of statements made to probation officers might have caused defendant to refuse to discuss case, justice would be best served by returning case to trial court for preparation of a new probation report and resentencing. People v. Harrington (1970) 88 Cal.Rptr. 161, 2 Cal.3d 991, 471 P.2d 961, certiorari denied 91 S.Ct. 1384, 402 U.S. 923, 28 L.Ed.2d 662. Criminal Law 1181.5(8)

Where probation officer had before him defendant's records disclosing convictions in 1957 and 1964 and knew that defendant was in prison, defendant was not entitled to personal interview with probation officer prior to sentencing to prison. People v. Scott (App. 2 Dist. 1968) 69 Cal.Rptr. 901, 263 Cal.App.2d 581. Sentencing And Punishment 289

Where district court of appeal vacated judgment of conviction of defendant on two counts for selling marijuana for sole purpose of allowing trial court to hear and act on defendant's application for probation, trial court erred in failing to obtain current probation report and to consider behavior of defendant while incarcerated pending disposition of appeal before pronouncing sentence. People v. Keller (App. 1 Dist. 1966) 54 Cal.Rptr. 154, 245 Cal.App.2d 711. Criminal Law 1192

Where reviewing court ordered a reduction of convictions for receiving stolen property to an attempt to receive stolen property and judgment and probation order were reversed and the cases were remanded, trial court erred in refusing to refer the defendants' cases to probation department for current report before imposing sentence of imprisonment against one defendant and imposing terms of probation as to other defendant. People v. Rojas (1962) 21 Cal.Rptr. 564, 57 Cal.2d 676, 371 P.2d 300. Sentencing And Punishment 1890

Where case was referred to special officer for report with respect to probation, and at rehearing original probation report, approximately one year old, was used and trial judge stated that she would assume that defendant's conduct had been good during her incarceration and that any report would be favorable as to her progress during confinement, defendant was not prejudiced by not having another or current report before court. People v. Miller (App. 1 Dist. 1960) 8 Cal.Rptr. 578, 186 Cal.App.2d 34. Criminal Law 1177

Where no copy of probation officer's report was made available to counsel for defendant convicted of sale of heroin until less than 24 hours before hearing on report, but court, after partially hearing the matter, ordered continuance of one week, error in not making copy of report available to defendant's counsel at least two days prior to hearing on such report was cured. People v. Valdivia (App. 1 Dist. 1960) 5 Cal.Rptr. 832, 182 Cal.App.2d 145. Sentencing And Punishment 295

Where defendant was, because of prior felony convictions, ineligible for probation, trial court acted within its rights in refusing to refer his case to probation officer for report and recommendations. People v. Baker (App. 1958) 164 Cal.App.2d 99, 330 P.2d 240, certiorari denied 79 S.Ct. 745, 359 U.S. 956, 3 L.Ed.2d 763, certiorari denied 80 S.Ct. 112, 361 U.S. 851, 4 L.Ed.2d 90. Sentencing And Punishment 276

Defendant whose admitted prior conviction of a felony rendered him ineligible for probation could not complain on petition for coram nobis of trial court's failure to require a report of probation officer before sentencing defendant for subsequent offense. People v. Tell (App. 1 Dist. 1954) 126 Cal.App.2d 208, 271 P.2d 568. Criminal Law 1556

Probation officer could make a sufficiently comprehensive investigation and report to enable court to pass fairly on application of defendant for probation without officer discussing the offense, which defendant had committed, with the defendant. People v. Wilson (App. 1 Dist. 1954) 123 Cal.App.2d 673, 267 P.2d 27. Sentencing And Punishment 282

Trial court before pronouncing sentence upon police officer convicted of battery properly referred the matter to county probation officer for a report. People v. Giles (Super. 1945) 70 Cal.App.2d Supp. 872, 161 P.2d 623. Sentencing And Punishment 275

33. ---- Purpose, reports

Purpose of probation officer's report is to assist court in determining whether defendant should be granted probation, and, if so, the terms thereof. People v. Lockwood (1967) 61 Cal.Rptr. 131, 253 Cal.App.2d 75; People v. Valdivia (1960) 5 Cal.Rptr. 832, 182 Cal.App.2d 145.

Probation report is advisory only. People v. Llamas (App. 4 Dist. 1998) 78 Cal.Rptr.2d 759, 67 Cal.App.4th 35, rehearing denied , review denied. Sentencing And Punishment 300

Primary function served by probation report required by this section is to assist the court in determining an appropriate disposition after conviction. People v. Edwards (1976) 135 Cal.Rptr. 411, 18 Cal.3d 796, 557 P.2d 995. Sentencing And Punishment 275

Primary purpose of a referral under this section providing that in a case in which a person is convicted of a felony and is eligible for probation, court shall refer matter to probation officer to investigate and report to court is to determine a defendant's eligibility for probation. People v. Ham (App. 2 Dist. 1975) 118 Cal.Rptr. 591, 44 Cal.App.3d 288. Sentencing And Punishment 277

34. ---- Contents, reports

That this section, mandating inclusion of certain information in probation report did not authorize inclusion of victim statements did not mean that sentencing judge was precluded from considering letters from crime victim's family and friends by statutory prohibition against accepting certain verbal or written statements in aggravation or mitigation of punishment. People v. Mockel (App. 5 Dist. 1990) 276 Cal.Rptr. 559, 226 Cal.App.3d 581. Sentencing And Punishment 318

Probation report on defendant convicted of burglary and attempted burglary, while not improper by containing data from district attorney's files rather than from official reports, was improper in containing police contacts not leading to arrests or convictions without full supporting information, but harmful effects were partially ameliorated by probation officer's asking defendant about some of these entries. People v. Santana (App. 2 Dist. 1982) 184

Cal.Rptr. 733, 134 Cal.App.3d 773. Sentencing And Punishment 283

Inclusion in probation report of prior police contacts which did not result in convictions was not violative of due process where report did not contain bare "rap sheet" information, but lengthy supporting factual information and on the whole was adequate and was not misleading. People v. Ratcliffe (App. 1 Dist. 1981) 177 Cal.Rptr. 627, 124 Cal.App.3d 808. Constitutional Law 4706

Fact that court did not follow recommendation of probation officer that high term of four years be imposed, but rather imposed middle term of three years for defendant's conviction for assault by means of force likely to produce great bodily injury and that court advanced several specific reasons, none of which related to the alleged violent pattern of defendant, in articulating its reasons for denying probation, supported a conclusion that defendant was not prejudiced by statement within probation report concerning pattern of violent conduct in the past, which report contained basic factual information relating to events consisting of convictions following arrests of defendant. People v. Lutz (App. 2 Dist. 1980) 167 Cal.Rptr. 309, 109 Cal.App.3d 489. Criminal Law 1177

Certain fingerprint identification developed during defendant's trial and which trial court precluded prosecution from offering and using at trial was properly included in probation report and properly considered as a factor in sentencing where exclusion of such evidence was based on avoidance of trial surprise, not illegality. People v. Lassell (App. 1 Dist. 1980) 166 Cal.Rptr. 678, 108 Cal.App.3d 720. Sentencing And Punishment 289

Defendant was not deprived of adequate time to prepare for sentencing hearing as a result of trial court's reliance on probation report, since inclusion of aggravating factors in probation report gave defendant more time to prepare than if they were included in a statement in aggravation. People v. Pinon (App. 2 Dist. 1979) 158 Cal.Rptr. 425, 96 Cal.App.3d 904. Sentencing And Punishment 338

Under § 1538.5, evidence that was suppressed before trial was inadmissible at defendant's subsequent sentencing hearing and should have been stricken from the presentence report. People v. Belleci (1979) 157 Cal.Rptr. 503, 24 Cal.3d 879, 598 P.2d 473. Sentencing And Punishment 321

A denial of probation is a judicial act rendered with full panoply of procedural protections in that sentencing court is provided with a report of probation officer containing information of defendant's background, his prior involvements, if any, with law enforcement agencies, his propensities and dispositions, his future plans if probation is granted, and is required to verify that it has read and considered such report which often contains communications both favorable and unfavorable to defendant. People v. Edwards (1976) 135 Cal.Rptr. 411, 18 Cal.3d 796, 557 P.2d 995. Sentencing And Punishment 1890; Sentencing And Punishment 300

A probation report need not be limited to the facts or circumstances of the immediate offense and may contain extrajudicial material. People v. Chi Ko Wong (1976) 135 Cal.Rptr. 392, 18 Cal.3d 698, 557 P.2d 976. Sentencing And Punishment 282

Where petitioner let probation report statements, the truth or falsity of which he should have known, be considered without objection at probation and sentencing hearing, he could not thereafter, on petition for writ of habeas corpus, claim that statements in the report were never made to the probation officer. In re Beal (App. 2 Dist. 1975) 120 Cal.Rptr. 11, 46 Cal.App.3d 94. Habeas Corpus 506

Use of presentence probation officer's report by trial court in determining sentence to be imposed on defendant was proper and did not infringe on defendant's constitutional rights even though adverse statements therein had been procured from defendant without an affirmative compliance with rules respecting coerced confessions. People v. Smith (App. 2 Dist. 1968) 66 Cal.Rptr. 551, 259 Cal.App.2d 814. Sentencing And Punishment 287

Court has power to reject recommendation of probation officer. People v. Henderson (App. 3 Dist. 1964) 37 Cal.Rptr. 883, 226 Cal.App.2d 160. Sentencing And Punishment 1886

Where defendant objected to consideration of probation reports because alleged letter written by defendant to probation officer did not appear in record, it was error for trial judge to overrule objection and then proceed to sentence defendant without considering probation report. People v. Oppenheimer (App. 2 Dist. 1963) 29 Cal.Rptr. 474, 214 Cal.App.2d 366, certiorari denied 84 S.Ct. 163, 375 U.S. 887, 11 L.Ed.2d 116, rehearing denied 84 S.Ct. 336, 375 U.S. 936, 11 L.Ed.2d 269. Sentencing And Punishment 299

A probation report is not evidence, and may contain extrajudicial material. People v. Overton (App. 2 Dist. 1961) 11 Cal.Rptr. 885, 190 Cal.App.2d 369. Sentencing And Punishment 282

A defendant was not entitled to have any portion of probation officer's report stricken since such report is for information of court and to aid it in determining whether or not probation should be granted, and if report contained information not proper to be considered by court appellate court would assume that trial court was not influenced by irrelevant matters. People v. Warren (App. 1959) 175 Cal.App.2d 233, 346 P.2d 64. Sentencing And Punishment 299; Criminal Law 1144.17

Trial court granting defendant's application for probation was authorized fully to consider probation officer's report reviewing facts and history of case and recommending action taken. People v. Marin (App. 1957) 147 Cal.App.2d 625, 305 P.2d 659. Sentencing And Punishment 1886

Court, which expressed criticism of probation reports in regard to improper statements and arguments contained in the reports, would not be held to have been improperly influenced by such statements and arguments. People v. Fenton (App. 1956) 141 Cal.App.2d 357, 296 P.2d 829. Sentencing And Punishment 275

The fact that an accused has previously been arrested on various criminal charges may be properly included in the probation officer's report, to be considered by the court in its determination of application for probation. People v. Escobar (App. 1 Dist. 1953) 122 Cal.App.2d 15, 264 P.2d 571. Sentencing And Punishment 288

Report of probation officer relative to a defendant convicted of grand theft was not improper as going beyond duty required under this section of probation officer. People v. Dandy (App. 1951) 106 Cal.App.2d 19, 234 P.2d 61.

35. ---- Supplementation, reports

Trial court was not required to obtain supplemental probation report before resentencing defendant on remand, and such a report was instead discretionary, where defendant was ineligible for probation due to prior strike. People v. Johnson (App. 4 Dist. 1999) 83 Cal.Rptr.2d 423, 70 Cal.App.4th 1429. Sentencing And Punishment 2288

Trial court must order and consider supplemental probation report on remand for resentencing. People v. Oseguera (App. 1 Dist. 1993) 24 Cal.Rptr.2d 534, 20 Cal.App.4th 290, review denied. Criminal Law 1192

Trial court should not have sentenced defendant, who had failed to appear for sentencing for three years, without supplemental probation report; although defendant had caused delay, his unlawful action did not deprive him of statutory right to current probation report. People v. Mercant (App. 5 Dist. 1989) 265 Cal.Rptr. 315, 216 Cal.App.3d 1192. Sentencing And Punishment 290

Proceeding on previous probation report, rather than ordering on its own motion supplemental probation report, was

not abuse of trial court discretion in resentencing defendant, who was ineligible for probation, even though six years had passed since imposition of original sentence; defendant had previously received life sentence consecutive to term of years and there was no showing of any matter that could have been subject of further probation officer investigation. People v. Grimble (App. 2 Dist. 1987) 242 Cal.Rptr. 382, 196 Cal.App.3d 1058, review denied. Sentencing And Punishment 290

Probation officer different from officer submitting original probation report, who filed supplemental probation report recommending consecutive rather than concurrent sentencing, did not abandon her objectivity and thus deny defendant due process by assuming status of arm of district attorney's office, notwithstanding her express reference in supplemental report to conversation with deputy district attorney, where, after independent review, probation officer altered original recommendation in open manner by expressly advising court of its change in recommendation dictated by "callousness" of commission of crimes and defendant's "acknowledgement the crime was mostly his idea," and reference to conversation with deputy district attorney was merely additional material in support of recommendation. People v. Server (App. 4 Dist. 1981) 178 Cal.Rptr. 206, 125 Cal.App.3d 721. Constitutional Law 4706

Alleged error in allowing probation officer to make an oral in place of a written supplementary report was waived where no one objected either to form of the report or to failure to observe the two-day notice provision. People v. Girard (App. 2 Dist. 1971) 93 Cal.Rptr. 676, 15 Cal.App.3d 1005. Sentencing And Punishment 282

36. ---- Consideration, reports

Court's failure to read probation report prior to imposing sentence required resentencing. People v. Simon (App. 2 Dist. 1989) 256 Cal.Rptr. 373, 208 Cal.App.3d 841. Sentencing And Punishment 291

Trial court could properly consider probation report in determining amount of restitution required as condition of probation, where defendant had ample opportunity to review probation report and was afforded full, extensive fair hearing on issue of restitution, at which she cross-examined probation officer with respect to basis of officer's conclusions and recommendations, and where business records, checks or copies of those items, which provided informational basis of probation report restitution recommendation, were introduced into evidence. People v. Baumann (App. 4 Dist. 1985) 222 Cal.Rptr. 32, 176 Cal.App.3d 67, review denied. Sentencing And Punishment 300; Sentencing And Punishment 299

Responsibility of sentencing courts to order preparation of probation reports and attest to having read and considered contents of such reports, provided in this section, carries with it responsibility, albeit a discretionary one, to consider thoughtfully and seriously a grant of probation if judge determines that there exist circumstances in mitigation of punishment prescribed by law or that ends of justice would be subserved. People v. Edwards (1976) 135 Cal.Rptr. 411, 18 Cal.3d 796, 557 P.2d 995. Sentencing And Punishment 1830

Although trial judge did not say, in so many words, that he had read and considered the probation report, the record, including reference to remark by the trial judge about what probation officer had to say in the matter, established that the trial judge did in fact take into consideration the contents of the probation report. People v. Fabela (App. 2 Dist. 1969) 77 Cal.Rptr. 183, 272 Cal.App.2d 122. Sentencing And Punishment 300

Fact that, at probation hearing held three weeks after trial, judge stated that he had read, rather than read and considered, report was not prejudicial to defendant in view of other showing that judge had considered contents of report. People v. Valenzuela (App. 2 Dist. 1968) 66 Cal.Rptr. 825, 259 Cal.App.2d 826, rehearing denied 67 Cal.Rptr. 691, 259 Cal.App.2d 826, certiorari denied 89 S.Ct. 311, 393 U.S. 943, 21 L.Ed.2d 280. Criminal Law 1177

Endorsements by trial court on probation reports concerning defendant, convicted of forgery and prior felony conviction, that court had considered reports when sentencing defendant complied with this section requiring court to consider such reports and make statement that reports were, considered, although in pronouncing judgment trial judge did not state orally that reports were considered. People v. Burkett (App. 2 Dist. 1966) 48 Cal.Rptr. 900, 239 Cal.App.2d 456. Sentencing And Punishment 276; Sentencing And Punishment 300

Requirement of this section that an application for probation be considered in light of current probation report is mandatory on trial court. People v. Causey (App. 2 Dist. 1964) 41 Cal.Rptr. 116, 230 Cal.App.2d 576. Sentencing And Punishment 276

Signing by court of statement that report of probation officer had been considered and that such statement was filed with the clerk, was sufficient compliance with requirement of this section that after hearing and determining an application for probation, the court, in connection therewith must consider any report of the probation officer, and must make a statement that it has considered such report which must be filed with the clerk, and it was not required that court orally state that it had considered the probation officer's report. People v. Escobar (App. 1 Dist. 1953) 122 Cal.App.2d 15, 264 P.2d 571. Sentencing And Punishment 1911

In prosecution for assault, trial court's failure to comply with this section providing that at time of hearing on application for probation judge was to consider the probation report and order a statement so showing filed with the clerk of court, was not prejudicial, where defendants were not eligible for probation because in the perpetration of the crime they had inflicted great bodily injury on the prosecuting witness. People v. Young (App. 1 Dist. 1948) 88 Cal.App.2d 129, 198 P.2d 384. Criminal Law 1186.4(11); Assault And Battery 100

37. ---- Binding effect, reports

Courts are not bound to accept recommendations in probation report. People v. Welch (1993) 19 Cal.Rptr.2d 520, 5 Cal.4th 228, 851 P.2d 802. Sentencing And Punishment 300

Trial judge considering defendant's application for probation is not bound by reasons advanced in report of probation officer recommending against probation. People v. Sullivan (App. 4 Dist. 1952) 110 Cal.App.2d 4, 242 P.2d 348, certiorari denied 73 S.Ct. 936, 345 U.S. 955, 97 L.Ed. 1376. Sentencing And Punishment 1886

Report of probation officer is not binding upon court in granting or denying application for probation. People v. Johnson (App. 1951) 106 Cal.App.2d 815, 236 P.2d 190. Sentencing And Punishment 300

The report of probation officer is not evidence and is not binding on the court. People v. Wahrmund (App. 1949) 91 Cal.App.2d 258, 206 P.2d 56. Sentencing And Punishment 300

A denial of motion for probation of an accused who was convicted of lewd conduct with a child, and whose motion for new trial had been denied, was not error, notwithstanding probation officer recommended probation, although solely upon the ground that he entertained doubt as to accused's guilt, since guilt of accused was not for probation officer and, even if his recommendation had been made upon other grounds, it would not have been binding upon trial court. People v. Ralls (App. 1937) 21 Cal.App.2d 674, 70 P.2d 265. Sentencing And Punishment 1862; Sentencing And Punishment 1886

38. ---- Certification, reports

Sentencing court's failure to state on the record that it had considered the supplemental probation report (RPO) did not necessitate remand even though nothing in the record established that court did in fact read the report, where

defense counsel's remarks at sentencing fairly summarized the findings and recommendations of the report, which was quite brief and contained little new information. People v. Gorley (App. 5 Dist. 1988) 250 Cal.Rptr. 15, 203 Cal.App.3d 498. Criminal Law 1181.5(8)

Where the court fails to state on the record that it considered the probation report (RPO), the purpose of certification is sufficiently served and remand is not required if the record otherwise clearly shows that the court has read the report or has considered the information provided in it. People v. Gorley (App. 5 Dist. 1988) 250 Cal.Rptr. 15, 203 Cal.App.3d 498. Criminal Law 1181.5(8)

It was error for the court to fail to state on the record that it had considered the supplemental probation report (RPO) filed in the defendant's case. People v. Gorley (App. 5 Dist. 1988) 250 Cal.Rptr. 15, 203 Cal.App.3d 498. Sentencing And Punishment 300

39. ---- Inspection, reports

Probation report which was submitted to court at time of sentencing was or should have been supplied to defense counsel and to defendant at such time and thus could not be classified as confidential by department of corrections and thus unavailable for inspection by defendant; thus, refusal to conduct in camera hearing requested by department for purposes of ascertaining confidentiality of such report was not an abuse of discretion. In re Muszalski (App. 4 Dist. 1975) 125 Cal.Rptr. 281, 52 Cal.App.3d 475. Records 32

The report of the probation officer under this section, filed with the clerk of court is a record in the case and open to inspection by anyone including defendant and his attorney but while the clerk or probation officer is not required to deliver to defendant or his attorney a copy of the report they are not prohibited from doing so. 3 Op.Atty.Gen. 391.

40. ---- Interpreters, reports

In order for presentence interview of non-English speaking defendant by probation officer to be meaningful, someone must be available to interpret for defendant, but this "someone" is not required to be sworn or certified. People v. Gutierrez (App. 5 Dist. 1986) 222 Cal.Rptr. 699, 177 Cal.App.3d 92, review denied. Courts 56; Criminal Law 642

41. ---- Statements in aggravation, reports

A statement in aggravation submitted by the district attorney at the sentencing phase of a misdemeanor case may contain references to matters outside the record of the case and may contain evidence other than by way of testimony. West's Ann.Cal.Penal Code §§ 1170, 1203, 1204. 74 Op.Atty.Gen. 32 (1991).

At the discretion of the trial court, the district attorney may submit a statement in aggravation at the sentencing phase of a misdemeanor case, provided that the statement consists of information which could have been included in a probation report. West's Ann.Cal.Penal Code §§ 1170, 1203, 1204. 74 Op.Atty.Gen. 32 (1991).

42. ---- Hearsay, reports

Hearsay matter in a probation officer's report is acceptable and consideration thereof is contemplated by this section. People v. Lockwood (1967) 61 Cal.Rptr. 131, 253 Cal.App.2d 75; People v. Ross (1962) 24 Cal.Rptr. 1, 206 Cal.App.2d 542.

This section contemplates inclusion of hearsay matter in probation report; however, if report contains hearsay

information which defendant contends is unfair and untrue, defendant should be given opportunity to refute such information. People v. Barajas (App. 4 Dist. 1972) 103 Cal.Rptr. 405, 26 Cal.App.3d 932. Sentencing And Punishment 284; Sentencing And Punishment 299

Fact that letters from police department and district attorney's office made part of formal report filed by probation department were necessarily founded on hearsay did not render them inadmissible on question of defendant's eligibility for probation and denial of probation to defendant who did not introduce evidence to contradict, explain or mitigate matters set forth in letters from government agencies and who was already on probation at time of offense was not an abuse of discretion. People v. Gelfuso (App. 2 Dist. 1971) 94 Cal.Rptr. 535, 16 Cal.App.3d 966. Sentencing And Punishment 284

Provisions of this section contemplate the inclusion of hearsay matter in the probation officer's report. People v. Lockwood (App. 3 Dist. 1967) 61 Cal.Rptr. 131, 253 Cal.App.2d 75.

Inclusion of hearsay matter in probation report was not improper. People v. Cross (App. 2 Dist. 1963) 28 Cal.Rptr. 918, 213 Cal.App.2d 678. Sentencing And Punishment 284

Provision of this section that probation officer must make investigation of circumstances surrounding and prior history and record of defendant and make written report to court of such facts with his written recommendations, contemplates the inclusion of hearsay matter in the probation officer's report and inclusion of hearsay therein was not error. People v. Valdivia (App. 1 Dist. 1960) 5 Cal.Rptr. 832, 182 Cal.App.2d 145. Sentencing And Punishment 284

In prosecution for violation of § 337a respecting pool selling and bookmaking, record failed to disclose that court's denial of probation to defendant was by reason of any conjectural and hearsay statements in probation report filed by probation officer. People v. Wooten (App. 2 Dist. 1960) 5 Cal.Rptr. 433, 181 Cal.App.2d 462. Sentencing And Punishment 284

43. ---- Objections, reports

Neither Sixth Amendment nor the Penal Code requires that defendant be permitted to cross-examine person who, pursuant to statutory mandate, prepares a probation report. People v. Smith (1985) 216 Cal.Rptr. 98, 38 Cal.3d 945, 702 P.2d 180. Criminal Law 662.40

44. ---- Liability, reports

Any actions taken by probation officer pursuant to his state statutory duty to provide a presentencing report were covered by judicial immunity doctrine. Demoran v. Witt, C.A.9 (Cal.)1985, 781 F.2d 155. Courts 55

Probation officer and adult probation investigator did not abandon their quasi-judicial role in participating in preparation of probation report and thus were immune from liability under Federal Civil Rights Act (42 U.S.C.A. § 1981 et seq). Friedman v. Younger, C.D.Cal.1968, 282 F.Supp. 710. Civil Rights 1376(8)

45. ---- Waiver, reports

Defendant did not waive his right to complain on appeal about the lack of a supplemental probation report before sentencing by not requesting such a report at trial, where the prosecuting and defense attorneys entered no written stipulation of waiver of a written report, and no such stipulation was made orally in open court as required by statute for a valid waiver. People v. Dobbins (App. 3 Dist. 2005) 24 Cal.Rptr.3d 882, 127 Cal.App.4th 176. Criminal Law

1042

Statute which provides that preparation of probation report may be waived only by written stipulation filed with court or oral stipulation entered in minutes applies only to defendants who are eligible for probation. People v. Llamas (App. 4 Dist. 1998) 78 Cal.Rptr.2d 759, 67 Cal.App.4th 35, rehearing denied , review denied. Sentencing And Punishment 278

Defendant waived requirement of supplemental probation report on remand for resentencing, where he made no request for report and no objection to second sentencing proceeding on that ground, and there was no indication from either the defendant or his counsel at hearing that they were unready to proceed. People v. Oseguera (App. 1 Dist. 1993) 24 Cal.Rptr.2d 534, 20 Cal.App.4th 290, review denied. Criminal Law 1192

Trial court's failure to order and consider supplemental probation report on remand for resentencing can be waived by failure to object. People v. Oseguera (App. 1 Dist. 1993) 24 Cal.Rptr.2d 534, 20 Cal.App.4th 290, review denied. Criminal Law 1192

Defendant, who was originally convicted of commercial burglary and assault on a police officer, waived right to probation report before he was resentenced on commercial burglary conviction following reversal of his assault conviction, by failing to request current probation report and failing to object to court's resentencing in absence of report. People v. Begnaud (App. 4 Dist. 1991) 1 Cal.Rptr.2d 507, 235 Cal.App.3d 1548. Sentencing And Punishment 291

Where defendant filed no statement in mitigation, he failed to comply with proper procedure for challenging contents of probation report; in addition, where defendant made no objection at sentencing to probation report when court made record of material it had considered, he expressly waived his right to have probation report filed at least nine days before sentencing. People v. Evans (App. 4 Dist. 1983) 190 Cal.Rptr. 633, 141 Cal.App.3d 1019. Sentencing And Punishment 294; Sentencing And Punishment 299

Record established that both defendant and public defender waived referral to probation department and, hence, that defendant was not entitled to relief on ground that trial court sentenced him without a prior referral to probation officer and without a waiver of such referral. People v. Santos (App. 5 Dist. 1976) 131 Cal.Rptr. 426, 60 Cal.App.3d 372. Sentencing And Punishment 278

Where defendant upon his conviction of burglary in the first degree withdrew his plea of not guilty by reason of insanity, waived a reference to the probation officer and requested immediate sentence, the waiver should not have been accepted since no previous convictions were alleged in the information and, under the circumstances, the requirement of a report by the probation officer was absolutely called for, but error in accepting waiver did not require reversal. People v. Oakley (App. 5 Dist. 1967) 59 Cal.Rptr. 478, 251 Cal.App.2d 520. Sentencing And Punishment 278; Criminal Law 1177

Defendant waived right to have case submitted to probation officer either for report as to probation or report as to sentence where defense counsel admitted that defendant was ineligible for probation, not only did defendant not object to being sentenced without the matters being referred to probation officer but he in effect consented to such sentencing, his counsel on three separate occasions stated there was no legal cause why he should not be then sentenced, and defendant said he was ready for sentence. People v. Tempelis (App. 1 Dist. 1964) 41 Cal.Rptr. 253, 230 Cal.App.2d 596. Sentencing And Punishment 278

Where report of probation officer on application for probation after pleas of guilty to forgery and burglary recommended that matter be continued for further information pending the outcome of a separate and distinct

robbery charge placed against defendant, and defendant proceeded with hearing on the probation application as filed, without objection, or suggestion that a supplementary report be filed, there was a waiver of any right defendant may have had to an express recommendation of probation. People v. Escobar (App. 1 Dist. 1953) 122 Cal.App.2d 15, 264 P.2d 571. Sentencing And Punishment 278

46. Misdemeanors

Trial court's ex parte inspection of defendant's apartment buildings, with respect to which defendant had been ordered to correct deficiencies, did not comply with spirit of subdivision (d) of this section, which envisions that defendant will be given opportunity to controvert in some manner information relied on by court in sentencing. People v. Avol (Super. 1987) 238 Cal.Rptr. 45, 192 Cal.App.3d Supp. 1. Sentencing And Punishment 362

Defendant must have opportunity to challenge information relied upon by court in sentencing defendant in misdemeanor case, and court may not rely on information obtained ex parte, although subdivision (d) of this section provides that if misdemeanor case is not referred to probation officer, court may consider in sentencing any information which could have been included in probation report. People v. Avol (Super. 1987) 238 Cal.Rptr. 45, 192 Cal.App.3d Supp. 1. Sentencing And Punishment 308

47. Deadly weapons--In general

Defendant, as merely an aider and abettor who did not personally use the knife with which victim was wounded, was not presumptively ineligible for probation for his convictions for assault with deadly weapon and battery with serious bodily injury, under statutory provision that "any person" who used, or attempted to use, a deadly weapon upon a human being in connection with the perpetration of the crime of which he has been convicted is eligible for probation only in unusual cases where the interests of justice would best be served by probation. People v. Alvarez (App. 5 Dist. 2002) 115 Cal.Rptr.2d 515, 95 Cal.App.4th 403. Sentencing And Punishment 1843

Personal use of a deadly weapon by the defendant is required, under statute providing that "any person" who used, or attempted to use, a deadly weapon upon a human being in connection with the perpetration of the crime of which he has been convicted is eligible for probation only in unusual cases where the interests of justice would best be served by probation. People v. Alvarez (App. 5 Dist. 2002) 115 Cal.Rptr.2d 515, 95 Cal.App.4th 403. Sentencing And Punishment 1840

Both defendant and state had important incentive to contest designation of defendant's 1966 first-degree robbery conviction as being based on use of "deadly weapon," rather than on alternate basis, and allegation in information of use of deadly weapon would not be considered superfluous, for purposes of determining whether 1966 first-degree robbery conviction would support habitual offender determination; at time of conviction, probation was within discretion of court only where weapon was "dangerous," and was not available when defendant had been convicted of robbery armed with "deadly" weapon. People v. Skeirik (App. 3 Dist. 1991) 280 Cal.Rptr. 175, 229 Cal.App.3d 444, rehearing denied , review denied. Sentencing And Punishment 1259

Defendant's firing of weapon in crowded dance hall, which was intended to scare others, was "use" of weapon for purposes of determining whether unusual circumstances were required for trial court to grant probation. People v. Cazares (App. 5 Dist. 1987) 235 Cal.Rptr. 604, 190 Cal.App.3d 833, review denied. Sentencing And Punishment 1840

Where defendant used deadly weapon in perpetrating manslaughter of which he was convicted, this section expressly proscribed grant of probation unless unusual circumstances militated otherwise; as trial court's statement, when it denied probation, was responsive to grounds urged by probation report, which recommended court to find defendant's case an exceptional one, court's stated reasons for denying probation were adequate. People v. Langevin

(App. 3 Dist. 1984) 202 Cal.Rptr. 234, 155 Cal.App.3d 520. Sentencing And Punishment 1853; Sentencing And Punishment 1840; Sentencing And Punishment 1911

Where, though defendant was charged with armed robbery, there was no separate "armed" allegation as provided by § 969c, §§ 3024, 12022 with respect to minimum and additional terms for armed offenders were inapplicable, but defendant was personally armed within meaning of this section. People v. Hernandez (App. 4 Dist. 1970) 89 Cal.Rptr. 766, 11 Cal.App.3d 481. Sentencing And Punishment 1861; Robbery 30

Judgment of conviction for robbery while armed with deadly weapons would be modified to provide that §§ 3024 (repealed), 12022, providing for minimum sentence for person convicted of offense while armed with deadly weapon and for increased punishment for use of certain weapons in commission of felony were inapplicable, but that defendants were armed within meaning of this section denying probation to defendants previously convicted of felony while armed with deadly weapon he did not have lawful right to carry. People v. Peters (App. 2 Dist. 1970) 86 Cal.Rptr. 521, 7 Cal.App.3d 154. Criminal Law 1184(2)

Judgment reciting that as to robbery counts, defendant "was armed as alleged" would be modified to provide that at time of commission of offense, §§ 3024 (repealed) and 12022 were inapplicable, but that defendant was armed within meaning of this section and to specify nature of weapon involved. People v. Smyers (App. 2 Dist. 1969) 83 Cal.Rptr. 3, 2 Cal.App.3d 666. Criminal Law 1184(2)

It was duty of trial court to make express determination whether defendant who was convicted of first-degree robbery and first-degree burglary was armed with deadly weapon within meaning of this section. People v. Savala (App. 3 Dist. 1969) 82 Cal.Rptr. 647, 2 Cal.App.3d 415. Sentencing And Punishment 1840

Recitals in judgment of conviction of defendant for burglary, robbery, grand theft and automobile theft that defendant was armed with deadly weapon would be modified to provide that at time of commission of offense §§ 3024 (repealed), 12022 providing for minimum terms of sentence and for additional punishment for persons armed with deadly weapons were inapplicable but that defendant was armed within meaning of this section providing that such persons are ineligible for probation. People v. Bauer (1969) 82 Cal.Rptr. 357, 1 Cal.3d 368, 461 P.2d 637, certiorari denied 91 S.Ct. 190, 400 U.S. 927, 27 L.Ed.2d 187. Criminal Law 1184(2)

Where defendant was found guilty of first-degree robbery and there was separate finding that he was armed with deadly weapon, judgment would be modified to provide that §§ 3024 (repealed) and 12022 imposing minimum or increased penalties for carrying a deadly weapon in the commission of offenses generally were not applicable, but that defendant was armed with a deadly weapon within meaning of this section regarding probation. People v. Jarvis (App. 1 Dist. 1969) 80 Cal.Rptr. 832, 276 Cal.App.2d 446. Criminal Law 1184(2)

Where judgment convicting defendant of robbery and assault with deadly weapon improperly contained recitation that he was armed with deadly weapon at time of commission of offense, judgment would be modified to provide that §§ 3024 (repealed) and 12022 fixing minimum and additional terms for commission of offenses while armed would not apply but this section stating effect thereof on probation would apply, and further judgment should specify nature of the weapon. People v. Vessell (App. 2 Dist. 1969) 80 Cal.Rptr. 617, 275 Cal.App.2d 1012. Criminal Law 1184(4.1)

Judgment of conviction for armed robbery should be modified to indicate that defendant, who was not armed when he participated in robbery with codefendant who was armed at time of crime, was not armed within meaning of §§ 3024 (repealed) and 12022.5 establishing minimum and additional sentences for armed felons but was armed within meaning of this section denying probation to armed felons. People v. Lee (App. 2 Dist. 1969) 80 Cal.Rptr. 491, 275 Cal.App.2d 827. Criminal Law 996(1)

Judgment of conviction of first-degree robbery stating that defendant was armed with deadly weapon should be modified to provide that, at time of commission of offense, § 3024 (repealed) providing minimum sentence for persons convicted of committing offenses while armed and § 12022 providing extra punishment for offenses committed with certain weapons were inapplicable but that defendant was armed within this section prohibiting granting probation to persons convicted of offenses while armed and judgment should specify nature of weapon. People v. Hogan (1969) 80 Cal.Rptr. 28, 71 Cal.2d 888, 457 P.2d 868. Criminal Law 1184(2)

Recitals in judgment of conviction of robbery in first degree that defendant was armed with deadly weapon should be modified to provide that, at time of commission of offense § 3024 (repealed) providing for minimum sentence for persons convicted of felony while armed and § 12022 providing for extra sentence for persons committing offenses while armed with certain weapons were inapplicable, but that defendant was armed within this section prohibiting granting probation to person who has previously been convicted of offense while armed. People v. King (1969) 80 Cal.Rptr. 26, 71 Cal.2d 885, 457 P.2d 866. Criminal Law 1184(2)

Gun or knife is not a "deadly weapon", as a matter of law, within this section when used defensively, negligently or accidentally and death results. People v. Jackson (App. 2 Dist. 1964) 41 Cal.Rptr. 113, 230 Cal.App.2d 485.

Surgical instruments and drugs used by defendant in performance of illegal abortion which resulted in death were not "deadly weapons" within this section. People v. Jackson (App. 2 Dist. 1964) 41 Cal.Rptr. 113, 230 Cal.App.2d 485.

In the field of misdemeanors, provision of this section permitting grant of probation to defendant convicted of misdemeanor controls provisions prohibiting grant of probation in cases when deadly weapon is used in connection with the crime. People v. Alotis (1964) 36 Cal.Rptr. 443, 60 Cal.2d 698, 388 P.2d 675. Sentencing And Punishment 1827

Person who has been convicted of murder and who at time of perpetration of crime or at time of arrest was armed with deadly weapon, may not be granted probation. People v. Orrante (App. 1 Dist. 1962) 20 Cal.Rptr. 480, 201 Cal.App.2d 553. Sentencing And Punishment 1853

If weapon found on defendant convicted of armed robbery in the first degree at the time of his arrest is only dangerous and not "deadly," probation is within the discretion of the trial court. People v. Sheeley (App. 1958) 159 Cal.App.2d 578, 324 P.2d 65. Sentencing And Punishment 1861

If weapon which defendant had in pocket during robbery was a "deadly" weapon, trial court did not have power to grant defendant probation, and, if it be assumed that under such circumstances the weapon was not "deadly" but only "dangerous," matter of granting of probation was within trial court's discretion. People v. Rainey (App. 1 Dist. 1954) 125 Cal.App.2d 739, 271 P.2d 144. Sentencing And Punishment 1861

That fatal wound was inflicted by a deadly weapon did not compel conclusion, as a matter of law, that defendant was using the weapon and was therefore ineligible for probation. People v. Southack (1952) 39 Cal.2d 578, 248 P.2d 12. Sentencing And Punishment 1840

Defendant's use or attempt to use a deadly weapon in connection with the perpetration of crime, as bearing on court's power to grant probation, is a question of fact. People v. Harshaw (App. 1 Dist. 1945) 71 Cal.App.2d 146, 161 P.2d 978. Sentencing And Punishment 1903

48. ---- Firearms, deadly weapons

A defendant who used a firearm in the commission of a crime was presumptively ineligible for probation. People v. Superior Court (Du) (App. 2 Dist. 1992) 7 Cal.Rptr.2d 177, 5 Cal.App.4th 822, rehearing denied and modified , review denied. Sentencing And Punishment 1840

Statute providing that person who has been convicted of murder and who was armed with deadly weapon at time he committed crime or at time of his arrest is presumptively ineligible for probation would be construed to require that defendant personally, and not another involved in offense, be armed with weapon. People v. Manriquez (App. 4 Dist. 1991) 1 Cal.Rptr.2d 600, 235 Cal.App.3d 1614. Sentencing And Punishment 1853

Where information charged that assault had been made "with a deadly weapon, to wit: a gun" defendant's plea of guilty to that count constituted an admission of all facts alleged in it and judgment might be modified to provide that defendant was armed within meaning of this section pertaining to probation. People v. Waters (App. 3 Dist. 1973) 106 Cal.Rptr. 293, 30 Cal.App.3d 354. Criminal Law 273.3; Criminal Law 1184(2)

A negligent or involuntary act in discharging a firearm not otherwise being used on a human being does not constitute a use within meaning of this section. People v. Chambers (1972) 102 Cal.Rptr. 776, 7 Cal.3d 666, 498 P.2d 1024.

Where defendant was found by jury to have committed robbery while armed with a dangerous weapon, judgment should have recited that defendant had been found guilty of, and was convicted of, robbery in the first degree and that, at time of commission of such offense, he was armed with a deadly weapon, to-wit, a revolver. People v. Doran (App. 2 Dist. 1972) 100 Cal.Rptr. 886, 24 Cal.App.3d 316, modified 111 Cal.Rptr. 793, 36 Cal.App.3d 592. Criminal Law 995(3)

Where conviction of attempted first-degree robbery was based on commission of offense while armed with gun, court's judgment containing recital that defendant was found to have been armed with "deadly" weapon should be modified to show that §§ 3024 (repealed), 12022 prescribing minimum terms for armed offenders and additional punishment for commission of felony while armed were not applicable, and, where supported by record, recital could be substituted that defendant was armed within meaning of this section that probation would not be granted to a defendant who at time of perpetration of crime or at arrest was armed with deadly weapon. People v. Harrison (App. 3 Dist. 1970) 85 Cal.Rptr. 302, 5 Cal.App.3d 602. Criminal Law 996(1)

Where defendant was convicted of first-degree robbery, it was proper to include in judgment finding that defendant was armed with gun at time of commission of robbery for purpose of this section relating to probation, but judgment should have specified that relating to enhancement of punishment were inapplicable, inasmuch as possession of deadly weapon required by §§ 3024 (repealed), 12022 was prerequisite to conviction. People v. Ortega (App. 2 Dist. 1969) 83 Cal.Rptr. 260, 2 Cal.App.3d 884. Criminal Law 995(2)

Term "deadly weapon" as found in § 3024 (repealed) does not generically control meaning given to term in this section, but since a pistol may be a "deadly weapon" under definition of either section, recitation in abstract of judgment that defendant was armed with a deadly weapon at time of commission of each of robberies within meaning of §§ 969c and 3024 was an immaterial variance. People v. Diaz (App. 5 Dist. 1969) 81 Cal.Rptr. 16, 276 Cal.App.2d 547. Criminal Law 995(8)

Gun with which defendant involuntarily and non-volitionally shot victim five times after victim began to struggle with defendant was not "used as deadly weapon" within this section. People v. Alotis (1964) 36 Cal.Rptr. 443, 60 Cal.2d 698, 388 P.2d 675. Sentencing And Punishment 1840

A 22-caliber rifle which defendant carried when committing a robbery, and which contained cartridges in the magazine which could be chambered and fired almost instantly, was a "deadly weapon" within this section prohibiting granting of probation to a defendant who used or attempted to use a deadly weapon upon a human being in connection with perpetration of robbery. People v. Young (App. 1951) 105 Cal.App.2d 612, 233 P.2d 155. Sentencing And Punishment 1861

Where jury in prosecution of two defendants charged with robbery while armed with a deadly weapon made specific finding that defendants were armed with a deadly weapon, and no appeal was taken, motion in the nature of a petition for writ of error coram nobis alleging that trial court made mistake of fact in that weapon used was in fact a toy pistol was properly denied, and defendants were properly refused probation. People v. Carmody (App. 2 Dist. 1949) 95 Cal.App.2d 368, 212 P.2d 627. Sentencing And Punishment 1861; Criminal Law 1429(2)

Proof that defendants were armed with sawed-off .22-caliber rifle established as matter of law that defendants were armed with a "dangerous weapon" which would support conviction of robbery of first degree, but did not establish that they were armed with a "deadly weapon" within this section. People v. Raner (App. 1 Dist. 1948) 86 Cal.App.2d 107, 194 P.2d 37. Sentencing And Punishment 1861; Robbery 11

Accused, who waited outside tearoom in automobile while accomplice committed robbery with loaded revolver, and who later drove accomplice away pursuant to agreement, was guilty of robbery with deadly weapon in first degree, and hence court lacked jurisdiction to grant him probation. People v. Lewis (App. 1934) 140 Cal.App. 475, 35 P.2d 561. Sentencing And Punishment 1861

Defendants pleading guilty to grand theft of bovine animal were not entitled to probation where they used rifle and shotgun in killing stolen steer. People v. Andrich (App. 1933) 135 Cal.App. 274, 26 P.2d 902. Sentencing And Punishment 1856

Defendants armed with revolver at time of arrest were not entitled to probation, notwithstanding verdict found they were not so armed at time of prior attempted burglary. People v. Costa (App. 1 Dist. 1930) 108 Cal.App. 90, 290 P. 891. Sentencing And Punishment 1844

49. ---- Knives, deadly weapons

Where defendant was convicted of first-degree robbery in connection with robberies committed with a knife, he was armed with a "deadly weapon" at the time of the commission of the offenses for purposes of this section, but § 3024 (repealed) prescribing increased minimum terms where offense is committed while armed was not applicable. People v. Conrad (App. 2 Dist. 1973) 107 Cal.Rptr. 421, 31 Cal.App.3d 308. Sentencing And Punishment 1861; Sentencing And Punishment 78

If defendant voluntarily used a knife thirteen inches long in killing her husband, she was not eligible for probation. People v. Doyle (App. 1958) 162 Cal.App.2d 158, 328 P.2d 7. Sentencing And Punishment 1853

Where no facts surrounding homicide charge against defendant were presented, and trial court made no finding as to whether charge to which defendant pleaded guilty was voluntary or involuntary manslaughter, and court was without knowledge as to whether defendant used a knife in his possession upon the deceased, or, merely held the knife without due caution, it was error for trial court to refuse to permit the filing of or to consider an application for probation. People v. Johnson (App. 1956) 140 Cal.App.2d 613, 295 P.2d 493. Sentencing And Punishment 1891

A knife is not inherently a dangerous or deadly weapon as a matter of law though it may assume such characteristics

depending upon the manner in which it is used. People v. Johnson (App. 1956) 140 Cal.App.2d 613, 295 P.2d 493. Homicide 567

50. ---- Accomplices, deadly weapons

The prohibition against probation for a person who commits a carjacking while armed with a deadly weapon other than a firearm does not apply if it was not the defendant, but an accomplice, who was armed; in short, for purposes of probation ineligibility, one could not be derivatively or vicariously armed. In re Travis W. (App. 1 Dist. 2003) 132 Cal.Rptr.2d 135, 107 Cal.App.4th 368, review denied , certiorari denied 124 S.Ct. 548, 540 U.S. 1010, 157 L.Ed.2d 420. Sentencing And Punishment 1864

Defendant convicted of second-degree murder was not presumptively ineligible for probation by reason of her accomplice's being armed with weapon at time of murder, where defendant was not herself armed. People v. Manriquez (App. 4 Dist. 1991) 1 Cal.Rptr.2d 600, 235 Cal.App.3d 1614. Sentencing And Punishment 1853

Judgment of conviction for robbery erroneously included finding that defendant was armed where, although accomplice was armed, defendant himself was not armed, and judgment would be modified by striking such finding. People v. Snyder (App. 2 Dist. 1969) 80 Cal.Rptr. 822, 276 Cal.App.2d 520. Criminal Law 1184(2)

Although the fact that accused's accomplice was armed with a deadly weapon at the time of the robbery made accused guilty of first-degree robbery, it did not affect his eligibility for probation since he was not "himself" so armed. In re Hernandez (1966) 51 Cal.Rptr. 915, 64 Cal.2d 850, 415 P.2d 803. Sentencing And Punishment 1861

The legislature in amending this section prohibiting probation of one convicted of robbery while armed with deadly weapon by inserting word "himself" before "armed," is presumed to have known of previous judicial construction of this section as forbidding probation of one acting with companion armed with deadly weapon in commission of robbery, though not personally armed with such a weapon, and to have intended to change law so as to forbid probation only of one convicted of robbery while himself armed with deadly weapon. People v. Perkins (1951) 37 Cal.2d 62, 230 P.2d 353. Sentencing And Punishment 1824

Where defendant participated in robbery with another who was armed with deadly weapon, refusing permission to make application for probation was not error. People v. Gillstarr (App. 2 Dist. 1933) 132 Cal.App. 267, 22 P.2d 549. Sentencing And Punishment 1861

51. ---- Time, deadly weapons

In view of this section, finding that defendant was armed at time of commission of robbery or at time of arrest is proper in first-degree robbery cases. People v. Floyd (1969) 80 Cal.Rptr. 22, 71 Cal.2d 879, 457 P.2d 862.

Where defendant was armed at time of commission of rapes, he was not eligible for probation. People v. Curtis (App. 2 Dist. 1965) 47 Cal.Rptr. 123, 237 Cal.App.2d 599. Sentencing And Punishment 1862

52. ---- Evidence, deadly weapons

Since court's remarks indicated that it considered defendant ineligible for probation because of his use of a deadly weapon in a commission of voluntary manslaughter of which he had been convicted, and since conclusion was sustained by evidence, defendant, who claimed that record failed to show denial of probation was predicated on fact of his ineligibility under this section was entitled to no relief. People v. Wynn (App. 1 Dist. 1968) 65 Cal.Rptr. 210,

257 Cal.App.2d 664. Sentencing And Punishment 1922

Conflicting evidence as to whether defendant used or attempted to use loaded gun upon victim of homicide or merely held gun without due caution presented a question of fact as to whether manslaughter of which defendant was convicted involved the use of a deadly weapon upon victim, and hence refusal to consider application for probation on ground that defendant must have been convicted of voluntary manslaughter and hence was not eligible for probation, was error. People v. Southack (1952) 39 Cal.2d 578, 248 P.2d 12. Sentencing And Punishment 1903

Evidence in prosecution for assault with intent to commit rape justified denial of probation on ground that defendant used or attempted to use a deadly weapon in connection with the crime. People v. Harshaw (App. 1 Dist. 1945) 71 Cal.App.2d 146, 161 P.2d 978. Sentencing And Punishment 1862

53. ---- Findings, deadly weapons

Where defendant was found guilty of first-degree robbery on basis of the fact that he was armed, §§ 3024 (repealed), 12022, providing for minimum term of sentence and for additional punishment in certain cases where defendant was armed with a deadly weapon were inapplicable, but defendant was armed for purposes of § 12022.5 generally precluding probation for one who commits robbery while armed. People v. Najera (1972) 105 Cal.Rptr. 345, 8 Cal.3d 504, 503 P.2d 1353. Sentencing And Punishment 1861; Sentencing And Punishment 77; Sentencing And Punishment 139

Finding that defendants claiming they were eligible for probation were armed with dangerous weapons while perpetrating robbery was not equivalent to determination that they used deadly weapon; the finding fixed the degree of the offense of robbery but did not determine eligibility for probation. People v. Fisher (App. 3 Dist. 1965) 44 Cal.Rptr. 302, 234 Cal.App.2d 189. Sentencing And Punishment 1861

Trial court's acceptance of defendant's plea of guilty to robbery in the second degree did not bind the court to find for the purposes of probation that he was not armed with a deadly weapon at the time of the commission of the offense or at the time of his arrest. People v. Hollis (App. 2 Dist. 1959) 1 Cal.Rptr. 293, 176 Cal.App.2d 92. Sentencing And Punishment 1887

Finding of jury in respect to whether defendant was armed during perpetration of offense in prosecution for robbery is only for the purpose of determining degree of offense set forth in § 211a which does not distinguish between "dangerous" and "deadly" weapons, and is not binding on the court for purpose of determining eligibility for probation under this section forbidding probation to any defendant convicted of armed robbery who at time of perpetration thereof was armed with a deadly weapon. People v. Sheeley (App. 1958) 159 Cal.App.2d 578, 324 P.2d 65. Sentencing And Punishment 1861

54. Great bodily injury or torture

Only if trial court finds that defendant convicted of assaulting a child with force likely to produce great bodily injury resulting in death, intended to inflict great bodily injury on child would he be presumptively ineligible for probation under statute precluding granting of probation to those who willfully inflicted great bodily injury or torture in the perpetration of the crime. People v. Lewis (App. 4 Dist. 2004) 15 Cal.Rptr.3d 891, 120 Cal.App.4th 837, rehearing denied, review denied, appeal after new sentencing hearing 2006 WL 401308, unpublished. Sentencing And Punishment 1898

Statute precluding granting of probation to those who willfully inflicted great bodily injury or torture in the

perpetration of the crime, contains no requirement the circumstances causing a restriction on probation be pleaded or decided by the trier of fact; the trial court may make the factual determination necessary for application of the restriction. People v. Lewis (App. 4 Dist. 2004) 15 Cal.Rptr.3d 891, 120 Cal.App.4th 837, rehearing denied, review denied, appeal after new sentencing hearing 2006 WL 401308, unpublished. Sentencing And Punishment 2022

The word "willfully" in statute precluding granting of probation to those who willfully inflicted great bodily injury or torture in the perpetration of the crime refers merely to a result, i.e., the infliction of great bodily injury, and thus requires the defendant's intent to cause great bodily injury or torture, not merely that the crime resulted in great bodily injury or torture. People v. Lewis (App. 4 Dist. 2004) 15 Cal.Rptr.3d 891, 120 Cal.App.4th 837, rehearing denied, review denied, appeal after new sentencing hearing 2006 WL 401308, unpublished. Sentencing And Punishment 1836

Case in which defendant was convicted of "non-statutory" voluntary manslaughter was within provision of this section prohibiting probation to one who, in the perpetration of the crime of which he was convicted, willfully inflicted great bodily injury. People v. Clay (App. 4 Dist. 1971) 96 Cal.Rptr. 213, 18 Cal.App.3d 964. Sentencing And Punishment 1853

Under this section providing that probation shall not be granted to any person convicted of rape with force or violence who in perpetration of crime willfully inflicted great bodily injury or torture, conduct beyond that necessarily required to commit forcible rape must appear before defendant is by law rendered ineligible for probation. People v. Beasley (App. 1 Dist. 1970) 85 Cal.Rptr. 501, 5 Cal.App.3d 617. Sentencing And Punishment 1862

Defendant who pleaded guilty to rape with force and violence was not ineligible for probation where victim was not subjected to great bodily injury other than the rape itself. People v. Beasley (App. 1 Dist. 1970) 85 Cal.Rptr. 501, 5 Cal.App.3d 617. Sentencing And Punishment 1862

Although defendant had intended to procure miscarriage illegally, where there was no showing that defendant intended that death result, defendant did not "willfully inflict great bodily injury," within this section providing that probation shall not be granted to person who in perpetration of crime, willfully inflicted great bodily injury. People v. Jackson (App. 2 Dist. 1964) 41 Cal.Rptr. 113, 230 Cal.App.2d 485. Sentencing And Punishment 1865

Whether one convicted of forcible rape willfully inflicted great bodily injury or torture on prosecutrix in perpetration of crime, so as to preclude granting of probation, was fact question for trial court. People v. Merrill (App. 1951) 104 Cal.App.2d 257, 231 P.2d 573. Criminal Law 1158(1)

In prosecution for rape, prosecutrix' testimony that defendant struck her, placed his thumb in her eye, and threatened to push her eyes out unless she yielded, established sufficient torture to bring case within this section prohibiting probation of one convicted of crime in perpetration of which he willfully inflicted great bodily injury or torture. People v. Merrill (App. 1951) 104 Cal.App.2d 257, 231 P.2d 573. Sentencing And Punishment 1862

In prosecution for assault, where evidence disclosed that in the commission of the crime defendants inflicted great bodily injury on the prosecuting witness, the trial court was without discretion to grant probation and properly denied defendant's application. People v. Young (App. 1 Dist. 1948) 88 Cal.App.2d 129, 198 P.2d 384. Sentencing And Punishment 1843; Assault And Battery 100

55. Prior convictions--In general

California prisoner whose adjudication as habitual criminal resulted in his ineligibility criminal resulted in his

ineligibility for probation was entitled, on federal habeas corpus, to attack validity of prior conviction on federal constitutional grounds, even though prior conviction did not operate to extend term of sentence. Arketa v. Wilson, C.A.9 (Cal.)1967, 373 F.2d 582. Habeas Corpus 509(2)

Drug offender who had been previously convicted of three felonies was presumptively ineligible for probation on sentencing following violation of non-drug-related condition of probation. People v. Dixon (App. 3 Dist. 2003) 5 Cal.Rptr.3d 917, 113 Cal.App.4th 146. Sentencing And Punishment 2039

Neither due process nor statutory construction requires implied pleading and proof requirement for application of statute precluding probation for defendant who had twice been convicted of felony. People v. Dorsch (App. 1 Dist. 1992) 5 Cal.Rptr.2d 327, 3 Cal.App.4th 1346, review denied. Constitutional Law 4731; Sentencing And Punishment 1891

In context of discretionary decision to grant or deny probation, prior felony convictions are sentencing facts for the court to assess, regardless of whether the convictions were pleaded. People v. Dorsch (App. 1 Dist. 1992) 5 Cal.Rptr.2d 327, 3 Cal.App.4th 1346, review denied. Sentencing And Punishment 1872(1)

Sentencing court can consider unpleaded prior felony convictions when determining eligibility for probation under statute precluding probation for defendant who has twice been convicted of felony. People v. Dorsch (App. 1 Dist. 1992) 5 Cal.Rptr.2d 327, 3 Cal.App.4th 1346, review denied. Sentencing And Punishment 1872(1)

Under subd. (d) of this section denying probation to any person "who has been previously convicted twice in this state of a felony," legislature did not intend to restrict ineligibility only to those persons whose convictions arose out of separate transactions as distinguished from a single transaction, and thus, even if a single transaction were involved, defendant, in view of record disclosing at least three prior convictions, was properly denied probation following conviction of second-degree burglary. People v. Collier (App. 1 Dist. 1979) 153 Cal.Rptr. 664, 90 Cal.App.3d 658. Sentencing And Punishment 1872(2)

Where it was defendant's prior conviction of a felony which made his possession of a concealable firearm criminal, whereas such possession would not have been criminal had it been by one who was not a felon, minimum sentence imposed upon defendant could not be increased on basis of the prior conviction which was indispensable to the possession conviction, but the single prior felony conviction could be considered by the trial court as to the grant or denial of probation. People v. Perry (App. 4 Dist. 1974) 116 Cal.Rptr. 853, 42 Cal.App.3d 451. Sentencing And Punishment 1872(1); Weapons 17(8)

Trial court did not abuse its discretion in denying probation on consideration of defendant's prior felony record, although some prior convictions were found constitutionally infirm. People v. Bryan (App. 2 Dist. 1970) 83 Cal.Rptr. 291, 3 Cal.App.3d 327. Sentencing And Punishment 1872(2)

Where at time of petitioner's conviction this section absolutely precluded granting probation if a defendant suffered two prior felony convictions, upon later finding that one of petitioner's two prior convictions was invalid, petitioner was entitled to have case transferred to sentencing court for completely new and unbiased evaluation of his application for probation based upon all of facts in case, including fact of single prior felony conviction. In re Huddleston (1969) 80 Cal.Rptr. 595, 71 Cal.2d 1031, 458 P.2d 507. Sentencing And Punishment 1923

On question of probation, court has authority to consider prior record of defendant. People v. Plummer (App. 4 Dist. 1963) 35 Cal.Rptr. 53, 222 Cal.App.2d 280. Sentencing And Punishment 1872(1)

Refusal to grant request for probation officer's report by defendant who had been convicted of four prior felonies

was not an abuse of discretion, where judge indicated that reason for denial was the number of prior convictions. People v. Barboza (App. 2 Dist. 1963) 28 Cal.Rptr. 805, 213 Cal.App.2d 441. Sentencing And Punishment 277

Conviction, for which defendant was under commitment to state prison when he escaped, was a "previous conviction" within this section providing that probation shall not be granted to any defendant who has been convicted of escape from a state prison, unless court shall be satisfied that defendant has not been previously convicted of a felony. People v. Brown (App. 1959) 172 Cal.App.2d 30, 342 P.2d 410. Sentencing And Punishment 1872(2)

Where defendant had a prior felony conviction and the probate report disclosed a record of other offenses, probation was properly denied on his conviction of forgery. People v. Duke (App. 1958) 164 Cal.App.2d 197, 330 P.2d 239. Sentencing And Punishment 1872(2)

Where defendant convicted of grand larceny had two prior felony convictions so that court could not grant probation, and state prison term was called for and once having determined upon the state prison sentence, trial court had no voice in fixing the term, precise sentence being fixed by adult authority under § 3020 (repealed), trial court did not abuse its discretion in making state prison sentence commence at termination of county jail sentence for vagrancy notwithstanding court's statement that in passing sentence, court would take into consideration fact that in court's opinion defendant committed willful perjury on the stand. People v. Mims (App. 1958) 160 Cal.App.2d 589, 325 P.2d 234. Sentencing And Punishment 630

It is not necessary that prior convictions be charged in indictment or information in order that court may consider them in applying provisions of this section rendering defendant ineligible for probation if he has been previously convicted of a felony. People v. Tell (App. 1 Dist. 1954) 126 Cal.App.2d 208, 271 P.2d 568. Sentencing And Punishment 1872(2)

Under this section, defendant pleading guilty to charge of escape from a prison forestry camp was erroneously placed on probation. People v. Superior Court in and for Marin County (App. 1 Dist. 1953) 118 Cal.App.2d 700, 258 P.2d 1087.

Judgment of municipal court sentencing defendant for 90 days for a misdemeanor followed by order suspending sentence and placing defendant on probation upon condition that she spend first 30 days in county jail did not constitute a judgment and sentence, nor the serving of 30 days thereunder constitute the serving of term in a penal institution so as to justify imposition of increased penalty on subsequent conviction for misdemeanor on ground that defendant had suffered a prior conviction. People v. Wallach (App. 1935) 8 Cal.App.2d 129, 47 P.2d 1071. Sentencing And Punishment 1251; Sentencing And Punishment 1324

Accused, who pleaded guilty to petit larceny and to charge that prior to date on which petit larceny was committed he had been convicted of a felony and served term therefor in penal institution was ineligible for probation. People v. Superior Court in and for Los Angeles County (App. 2 Dist. 1934) 136 Cal.App. 541, 28 P.2d 1076. Sentencing And Punishment 1856; Sentencing And Punishment 1872(2)

"Conviction" of felony which prevents granting of probation in subsequent case is legal proceeding of record which ascertains guilt of party upon which sentence or judgment is founded and includes plea of guilty. People v. Acosta (App. 1931) 115 Cal.App. 103, 1 P.2d 43. Sentencing And Punishment 1872(2)

56. ---- Admissions of accused, prior convictions

Use of defendant's statements to his probation officer which were contained in probation department report to

establish that defendant had been convicted of prior residential burglary for purpose of sentence enhancement did not violate defendant's privilege against self-incrimination and did not violate due process, absent evidence that probation officer threatened defendant with unfavorable recommendation if he refused to discuss facts of offense or that defendant's attached handwritten note was demanded by probation officer, and in light of opportunities to dispute statements. People v. Goodner (App. 6 Dist. 1992) 9 Cal.Rptr.2d 543, 7 Cal.App.4th 1324, review denied. Constitutional Law 4706; Criminal Law 393(1); Sentencing And Punishment 1379(1)

Before accepting admission of prior convictions, court is not required to advise defendant as to the effect of the priors upon eligibility for probation. People v. James (App. 3 Dist. 1978) 151 Cal.Rptr. 354, 88 Cal.App.3d 150. Sentencing And Punishment 1372

Defendant who pled guilty to assault with deadly weapon and admitted three prior felony convictions and who was unconditionally denied probation by trial judge was not entitled to probation under any construction of this section which requires concurrence of district attorney in decision to grant probation and was not entitled to challenge constitutionality of this section. People v. Williams (App. 4 Dist. 1966) 55 Cal.Rptr. 434, 247 Cal.App.2d 169. Constitutional Law 700

Two prior felony convictions admitted by defendant rendered him ineligible for probation thereby excluding him from operation of mentally disordered sex offended law, even though trial court ordered a probation report. People v. Failla (1966) 51 Cal.Rptr. 103, 64 Cal.2d 560, 414 P.2d 39. Sentencing And Punishment 1872(2); Mental Health 454

In view of fact that defendant had continuous record of violation of law dating back 20 years, and court found to be true by defendant's own admission the four prior convictions which had been alleged against him, refusal to grant probation was not improper. People v. Johnson (App. 2 Dist. 1965) 45 Cal.Rptr. 619, 236 Cal.App.2d 62, certiorari denied 87 S.Ct. 147, 385 U.S. 873, 17 L.Ed.2d 101. Sentencing And Punishment 1872(1)

Failure of trial court to rule on motion for probation of defendant who had admitted two prior felony convictions did not deprive defendant of a substantial right, where defendant's admission of two prior felony convictions established his ineligibility for parole. People v. Perry (App. 1 Dist. 1964) 40 Cal.Rptr. 829, 230 Cal.App.2d 258. Sentencing And Punishment 1872(1)

Admissions of defendant of truth of allegations of prior convictions will support judgment that he is a habitual criminal, and necessarily establish truth of facts alleged which are relevant to eligibility for probation. People v. Suggs (App. 1956) 142 Cal.App.2d 142, 297 P.2d 1039. Sentencing And Punishment 1873

Where defendant was convicted of issuing a check with intent to defraud, and admitted three prior convictions, probation was properly denied. People v. Middleworth (App. 1951) 104 Cal.App.2d 782, 232 P.2d 549. Sentencing And Punishment 1851; Sentencing And Punishment 1872(2)

57. ---- Armed offenses, prior convictions

Under this section prohibiting probation for defendant previously convicted of felony, if at time of prior offense or at time of arrest for prior offense he was armed with deadly weapon, unless at time he had lawful right to carry it, judgment of conviction for robbery in first degree would be modified to provide that defendant was armed within meaning of this section, and to specify nature of weapon. People v. Morrow (App. 2 Dist. 1969) 81 Cal.Rptr. 201, 276 Cal.App.2d 700. Criminal Law 1184(2)

Finding contained in judgment for robbery and assault with intent to murder that defendant was armed as alleged

should be modified to provide that, at time of commission of crimes, §§ 3024 (repealed) and 12022 providing for minimum sentence for person armed with deadly weapon and for additional punishment for person armed with firearm capable of being concealed were inapplicable, but judgment should recite that defendant was armed within this section prohibiting probation if defendant previously convicted of felony was armed at time of prior offense. People v. Levine (App. 2 Dist. 1969) 80 Cal.Rptr. 731, 276 Cal.App.2d 206. Criminal Law 1184(2)

Court could not grant probation to defendant, who pleaded guilty to charge of grand theft, when defendant had previously been convicted of robbery in the first degree while armed with a deadly weapon. People v. Alberts (App. 4 Dist. 1961) 17 Cal.Rptr. 48, 197 Cal.App.2d 108. Sentencing And Punishment 1872(3)

Defendant who had been found guilty by jury of having been armed at the time he committed a robbery was not entitled to a probation hearing. People v. Branch (App. 1954) 127 Cal.App.2d 438, 274 P.2d 31. Sentencing And Punishment 1861

58. ---- Foreign jurisdictions, prior convictions

Prior Texas conviction of theft of property having value of $50 and over could not be considered as prior felony under this section foreclosing probation except on finding of unusual circumstances and consent of district attorney. People v. Fry (App. 4 Dist. 1969) 76 Cal.Rptr. 718, 271 Cal.App.2d 350. Sentencing And Punishment 1872(3)

Provision of this section prohibiting probation where defendant has been twice convicted of a felony is not to be extended to include conviction of offenses in other jurisdictions which do not include all the elements of some felony known to California law. People v. Christenbery (App. 1959) 167 Cal.App.2d 751, 334 P.2d 978. Sentencing And Punishment 1872(2)

Where defendant had been convicted of grand theft and at trial thereof had admitted previous conviction of felony in California and had testified that he had been convicted in a federal court of interstate transportation of stolen securities, crime of interstate transportation of stolen securities would not have been a felony if committed in California and was not an offense similar to crime of receiving property knowing it to be stolen and transporting it into California and therefore defendant had not been convicted of two previous felonies and was entitled to probation. People v. Christenbery (App. 1959) 167 Cal.App.2d 751, 334 P.2d 978. Sentencing And Punishment 1872(3)

Where no evidence showed that defendant was offered any inducement to plead guilty of issuing a check without sufficient funds, trial court did not abuse its discretion in refusing to set aside plea although defendant mistakenly believed he would be eligible for probation where he had been pardoned after prior conviction in Wisconsin. People v. Dutton (App. 2 Dist. 1938) 27 Cal.App.2d 364, 80 P.2d 1003. Criminal Law 274(4)

A defendant who had been pardoned after conviction of a felony in Wisconsin, had sustained a "prior conviction" within statutes requiring the imposition on a defendant who has sustained a prior conviction of a punishment heavier than that prescribed for a first offender and rendering such defendant ineligible for probation. People v. Dutton (1937) 9 Cal.2d 505, 71 P.2d 218, appeal dismissed 58 S.Ct. 365, 302 U.S. 656, 82 L.Ed. 508. Sentencing And Punishment 1342

A defendant whose punishment was increased because of a prior conviction of a felony in Wisconsin notwithstanding defendant had been pardoned for Wisconsin offense was not denied equal protection of the laws. People v. Dutton (1937) 9 Cal.2d 505, 71 P.2d 218, appeal dismissed 58 S.Ct. 365, 302 U.S. 656, 82 L.Ed. 508. Constitutional Law 3820; Constitutional Law 3808

59. ---- Time, prior convictions

Under this section which relates to probation and which requires that persons seeking probation have not "been previously convicted of a felony", quoted phrase refers to time of commission of offense on which probation is sought, not time when court is passing upon application for probation. In re Pfeiffer (App. 1 Dist. 1968) 70 Cal.Rptr. 831, 264 Cal.App.2d 470. Sentencing And Punishment 1872(2)

Court could grant probation on manslaughter charge, although after commission thereof defendant was convicted of another offense committed prior to manslaughter. People v. Superior Court of Imperial County (1930) 208 Cal. 688, 284 P. 449. Sentencing And Punishment 1872(1)

60. ---- Correction of record, prior convictions

The erroneous finding of prior felony conviction of accused whom trial court found guilty of robbery in first degree because an accomplice was armed with deadly weapon brought accused within limitation of this section on granting of probation and might have influenced trial court to deny his application for probation, and habeas corpus was a proper remedy to secure reconsideration of application for probation upon a corrected record. In re Hernandez (1966) 51 Cal.Rptr. 915, 64 Cal.2d 850, 415 P.2d 803. Habeas Corpus 506

Where case case was sent back for reconsideration of probation and sentence, a new probation report would be required, and if the new report disclosed that any error had been made in the finding relative to the allegation of prior convictions, the trial court would have the power, on proper application, to correct it at the new hearing. People v. Williams (App. 2 Dist. 1963) 35 Cal.Rptr. 805, 223 Cal.App.2d 676. Criminal Law 1181.5(9)

61. ---- Dismissal, prior convictions

Prior convictions, if proved, would render defendant ineligible for probation, though they had been dismissed from information. People v. Tempelis (App. 1 Dist. 1964) 41 Cal.Rptr. 253, 230 Cal.App.2d 596. Sentencing And Punishment 1872(1)

Defendant's conviction for a violation of § 288, punished by two months in county jail, and subsequently set aside with the information dismissed and defendant released from all penalties and disabilities, was nevertheless a prior felony within this section prohibiting probation to anyone guilty of violation of § 288 who has previously been convicted of a felony, and § 17 defining felonies and misdemeanors was not applicable. People v. Walters (App. 1 Dist. 1961) 11 Cal.Rptr. 597, 190 Cal.App.2d 98. Sentencing And Punishment 1872(3)

The vacation of an order admitting a defendant to probation was proper where, although defendant was not charged with a prior conviction of a felony, trial court, in passing on application for probation, had before it the record of defendant's prior conviction for burglary showing that defendant had been placed on probation, probation had terminated, and proceedings had been dismissed. People v. Leach (App. 2 Dist. 1937) 22 Cal.App.2d 525, 71 P.2d 594. Sentencing And Punishment 2005

Where defendant pleaded guilty to violation of vehicle act and was granted probation, and later action was dismissed, he could not be granted probation after subsequent conviction for possession still. People v. Acosta (App. 1931) 115 Cal.App. 103, 1 P.2d 43. Sentencing And Punishment 1872(3)

Withdrawal of defendant's plea of guilty and dismissal of charge after conviction of felony, if shown by defendant's probation, did not prevent consideration of conviction in subsequent prosecution. People v. Rosencrantz (App. 1 Dist. 1928) 95 Cal.App. 92, 272 P. 786. Sentencing And Punishment 1344

62. ---- Pardons, prior convictions

That a defendant who had been pardoned for commission of a felony had urged his innocence of the crime charged as ground for pardon in his application therefor did not establish his innocence as to prior conviction. People v. Dutton (1937) 9 Cal.2d 505, 71 P.2d 218, appeal dismissed 58 S.Ct. 365, 302 U.S. 656, 82 L.Ed. 508. Sentencing And Punishment 1342

63. Character of crime

Shocking character of defendant's crime is factor which court may consider in either considering probation or youth authority reference. People v. Hutson (App. 3 Dist. 1963) 34 Cal.Rptr. 790, 221 Cal.App.2d 751. Sentencing And Punishment 1938; Infants 69(7)

64. Minors

A juvenile court enjoys broad discretion to fashion conditions of probation for the purpose of rehabilitation and may even impose a condition of probation that would be unconstitutional or otherwise improper so long as it is tailored to specifically meet the needs of the juvenile. In re Pedro M. (App. 2 Dist. 2000) 96 Cal.Rptr.2d 839, 81 Cal.App.4th 550, rehearing denied , review denied. Infants 225

Even though court struck juvenile references from probation officer's report it was not required to do so and its action in striking references could only rebound to benefit of defendant, who in talking to probation officer confirmed that he had been placed on probation for juvenile arrest and also gave circumstances of the incident, and such could not be used to predicate error in sentencing, i.e., that probation report referred to a juvenile arrest for which disposition was unknown. People v. Jourdain (App. 2 Dist. 1980) 168 Cal.Rptr. 702, 111 Cal.App.3d 396. Sentencing And Punishment 298

Superior Court, acting as juvenile court, had no jurisdiction to grant probation in case where minor made assault on another. In re Hulbert (App. 3 Dist. 1932) 123 Cal.App. 362, 11 P.2d 50. Infants 225

No authority is invested in juvenile court to place minor on probation. In re Hulbert (App. 3 Dist. 1932) 123 Cal.App. 362, 11 P.2d 50. Infants 225

Where prisoner on application for probation stated for first time that he was 17 years old, superior court had jurisdiction to deny probation and enter the judgment of imprisonment in state prison, and St.1911, p. 658, providing for the certifying of cases against parties under the age of 18 years to the juvenile court, did not require any other course than that pursued. Ex parte Tom (App. 1911) 17 Cal.App. 678, 121 P. 294.

65. Public officials

Defendant's respected career in law enforcement could not be used as basis to avoid presumptive ineligibility for probation. People v. Superior Court (Dorsey) (App. 4 Dist. 1996) 58 Cal.Rptr.2d 165, 50 Cal.App.4th 1216, review denied. Sentencing And Punishment 1888

Defendant could not claim statutory ambiguity in his use of public funds as sheriff to overcome limitation on probation for embezzlement offense, where jury rejected his claims of proper use or confusion. People v. Superior Court (Dorsey) (App. 4 Dist. 1996) 58 Cal.Rptr.2d 165, 50 Cal.App.4th 1216, review denied. Sentencing And Punishment 1856

In prosecution for embezzlement by public officer, trial court's instruction that it was authorized to mitigate punishment in its discretion if defendant had voluntarily and actually restored or tendered restoration of the property embezzled even though such fact was not a ground of defense, was error but the giving of such instruction did not result in a miscarriage of justice in view of conclusive evidence against defendant. People v. Marquis (App. 1957) 153 Cal.App.2d 553, 315 P.2d 57. Criminal Law 796; Criminal Law 1172.1(2)

Clerk of the Roseville Judicial District Court was a "public official" within this section. Bennett v. Superior Court of Placer County (App. 1955) 131 Cal.App.2d 841, 281 P.2d 285.

Even though public official had been charged only with crime of falsification of public records, if it appeared in fact that she had also embezzled public funds, she was thereby precluded from obtaining probation, in view of this section. Bennett v. Superior Court of Placer County (App. 1955) 131 Cal.App.2d 841, 281 P.2d 285. Sentencing And Punishment 1856

Auditor in charge of district audit office of department of employment, whose position was created by director of department under general power delegated to him by legislature and was subordinate to four other positions in department and whose duties were limited to routine investigations, audits and clerical matters, except as to filing criminal complaints against employers, which must first be approved by central office, was not required or authorized to exercise a part of sovereign power of the state and he was an "employee" and not a "public official" within meaning of this section. Schaefer v. Superior Court in and for Santa Barbara County (App. 1952) 113 Cal.App.2d 428, 248 P.2d 450. Sentencing And Punishment 1856

Auditor in charge of district audit office of department of employment, being an employee and not a public official, was eligible for probation, though he had pleaded guilty to charge of embezzlement of public money, and he was entitled to have his application for probation determined upon its merits. Schaefer v. Superior Court in and for Santa Barbara County (App. 1952) 113 Cal.App.2d 428, 248 P.2d 450. Sentencing And Punishment 1856

In absence of controlling statutory or other adequate definition of the term "public official" as used in this section providing that probation should not be granted to any such official who embezzles public money, an interpretation should be adopted in doubtful cases, which will accord defendant the right to apply for probation. Schaefer v. Superior Court in and for Santa Barbara County (App. 1952) 113 Cal.App.2d 428, 248 P.2d 450. Sentencing And Punishment 1827

Whether a defendant is a public official within meaning of this section depends upon the circumstances of each particular case, particularly the circumstances with reference to the manner in which the position was created, the power granted and exercised, and the duties and functions performed. Schaefer v. Superior Court in and for Santa Barbara County (App. 1952) 113 Cal.App.2d 428, 248 P.2d 450. Sentencing And Punishment 1856

Where trial judge denied defendant state employees' probation after their convictions on charge of conspiracy to embezzle public monies because of their conviction of the substantive offense of embezzlement of public funds and not because of conspiracy conviction, whether this section prohibited granting of probation to governmental employees convicted of a conspiracy charge was immaterial. People v. Hess (App. 1951) 104 Cal.App.2d 642, 234 P.2d 65, appeal dismissed 72 S.Ct. 177, 342 U.S. 880, 96 L.Ed. 661. Sentencing And Punishment 1845

66. Sex offenders

In sentencing hearing following defendant's return from state hospital where he spent approximately 20 months under commitment as mentally disordered sex offender, trial court did not abuse its discretion in finding that it was

not an unusual case in which interests of justice would best have been served by granting probation. People v. Cruz (App. 4 Dist. 1985) 211 Cal.Rptr. 512, 165 Cal.App.3d 648, review denied. Sentencing And Punishment 1877

In order for court to make finding that defendant is "ineligible" rather than "unsuitable" for treatment as mentally disordered sex offender, prior felony must be pled and proved; defendant's commitment to state prison was therefore required to be set aside where his prior felony offense, relied on by trial court in its conclusion that defendant was ineligible for MDSO treatment, was never alleged by prosecution but came out in defendant's own testimony. People v. Huffman (App. 4 Dist. 1977) 139 Cal.Rptr. 264, 71 Cal.App.3d 63. Mental Health 457

Where commitment hearing on question of whether defendant was probable mentally disordered sex offender was fatally defective, order granting probation would be reversed, and cause would be remanded with directions to reconsider matter of probation and, as to term of any probation granted, to allow defendant full credit for time served by him under invalid commitment orders, and thereafter to issue an order in conformity with its determination. People v. Harvath (App. 2 Dist. 1969) 82 Cal.Rptr. 48, 1 Cal.App.3d 521. Criminal Law 1181.5(8); Sentencing And Punishment 1163

Where defendant charged with having committed lewd and lascivious acts upon a child admitted to three prior convictions and was, therefore, ineligible for probation unless trial judge and District Attorney took affirmative action to grant probation and no such action was taken, trial court did not commit error by not instituting proceedings under Mentally Disordered Sex Offender Act (Welfare & Institutions Code former § 6300 et seq). People v. Cox (App. 2 Dist. 1968) 66 Cal.Rptr. 576, 259 Cal.App.2d 653. Mental Health 455

When trial court must decide whether to invoke special exception to this section providing that Mentally Disordered Sex Offender Act is not applicable to one ineligible for probation, trial court may invoke § 288.1 providing for psychiatric examination of any person convicted of committing any lewd or lascivious act upon a child under age of 14 years. People v. Cox (App. 2 Dist. 1968) 66 Cal.Rptr. 576, 259 Cal.App.2d 653. Mental Health 434

Though probation officer had already made report for proceeding to determine whether defendant, on trial for violations of §§ 288, 288a was mentally disordered sex offender who would not respond to care and treatment in hospital and declined at proceeding for probation to make any additions to report, the officer in his report for probation proceeding was required to make recommendation as to whether probation should be granted or denied, trial judge had duty to read it, and the former report was not sufficient on defendant's application for probation if defendant was not ineligible for probation. People v. McGill (App. 4 Dist. 1968) 65 Cal.Rptr. 482, 257 Cal.App.2d 759. Sentencing And Punishment 290

Court lacked authority to conduct mentally disordered sex offender proceedings for defendant charged with having committed lewd and lascivious acts upon a child where defendant admitted on cross-examination that he had previously been convicted of the felony of assault with a deadly weapon, and probation report also stated that he was convicted of that offense and was committed to prison. People v. Foster (1967) 63 Cal.Rptr. 288, 67 Cal.2d 604, 432 P.2d 976. Mental Health 455

Where there was issue of whether defendant who had been convicted of lewd and lascivious acts was subject to mental examination under Welf. & Inst.C. § 5500 et seq. (repealed) because of prior conviction in which defendant was not represented by counsel, judgment of conviction would be vacated and cause remanded for determination of whether defendant had intelligently waived counsel in trial that resulted in prior conviction. People v. Garn (App. 2 Dist. 1966) 54 Cal.Rptr. 867, 246 Cal.App.2d 482. Criminal Law 1181.5(9)

In prosecution for committing lewd and lascivious acts on bodies of two females under age of fourteen years wherein two doctors were appointed to examine defendant and one of doctors reported that defendant was not only a sexual psychopath but a menace to health and safety of others, trial court did not abuse its discretion in denying

defendant's application for probation. People v. Roberson (App. 1959) 167 Cal.App.2d 542, 334 P.2d 578. Sentencing And Punishment 1877

Where defendant, who pleaded guilty to misconduct with a five-year-old girl, was adjudged a sexual psychopath and was committed to state hospital, and after a year and a half in the hospital, he was returned to court and was granted probation, and thereafter defendant again misconducted himself with children, court had right to terminate probation and to pronounce judgment, and was not required to commit defendant again to a mental hospital under the sexual psychopathy law. People v. Wells (App. 2 Dist. 1952) 112 Cal.App.2d 672, 246 P.2d 1023. Mental Health 466

67. Moral turpitude

The trial court's action in setting aside verdict of conviction and dismissing prosecution after discharging convict from probation mitigates his punishment by restoring certain rights and removing certain disabilities, but does not obliterate the fact that he was finally adjudged guilty of crime, so that state board of medical examiners is not precluded from suspending license of physician convicted of crime involving moral turpitude and discharged from probation, with such accompanying statutory relief, whether before or after such disciplinary order. Meyer v. Board of Medical Examiners (1949) 34 Cal.2d 62, 206 P.2d 1085. Criminal Law 1664; Health 207

Attorney, convicted of felony involving moral turpitude, but placed on probation, should be suspended pending further action in criminal case. In re Jacobsen (1927) 202 Cal. 289, 260 P. 294. Attorney And Client 39

68. Narcotics, generally

In considering defendant's application for probation, trial court's reliance on statements in probation report concerning street value of marijuana found in defendant's possession which statements were not supported by any testimony or other evidence, did not constitute abuse of trial court's discretion, in absence of challenge to such statement by defendant. People v. Podesto (App. 5 Dist. 1976) 133 Cal.Rptr. 409, 62 Cal.App.3d 708. Sentencing And Punishment 283

In exercising its discretion with respect to probation of defendant convicted of narcotics violation, court should consider all attendant facts and circumstances as disclosed by evidence and probation officer's report; this includes defendant's prior record, his attitude toward narcotics, and whether he has been deceitful with probation officer. People v. Podesto (App. 5 Dist. 1976) 133 Cal.Rptr. 409, 62 Cal.App.3d 708. Sentencing And Punishment 1870

Where defendant's conviction for possession of heroin for sale could not be sustained and was required to be modified to conviction for simple possession and court, in denying probation, had relied significantly upon fact that defendant stood before bench convicted of possession "for sale," defendant was entitled to a new probation hearing wherein court could make new judgment relative to his fitness for probation in light of crime for which he stood convicted. People v. Ruiz (1975) 120 Cal.Rptr. 872, 14 Cal.3d 163, 534 P.2d 712. Sentencing And Punishment 1923

Unauthorized imposition of county jail sentence for possession of marijuana where sentence to state prison was required did not have effect of reducing offense to that of misdemeanor and conviction was a "felony offense" rendering defendant ineligible for probation upon subsequent conviction for possession of marijuana. People v. Sproul (App. 2 Dist. 1969) 83 Cal.Rptr. 55, 3 Cal.App.3d 154. Sentencing And Punishment 1872(3)

Record showing defendant's police record, her attitude towards narcotics and narcotic users and her general attitude justified, even compelled, that she neither be given probation nor be committed under narcotics addict rehabilitation

program. People v. Lockwood (App. 3 Dist. 1967) 61 Cal.Rptr. 131, 253 Cal.App.2d 75. Chemical Dependents 12

Persons previously convicted of any narcotics offense are not entitled to probation upon subsequent conviction but granting of probation on first narcotics offense is discretionary with court. People v. Atwood (App. 1 Dist. 1963) 34 Cal.Rptr. 361, 221 Cal.App.2d 216. Sentencing And Punishment 1871; Sentencing And Punishment 1872(3)

Simultaneous conviction of sale of narcotics in two proceedings did not constitute "previous conviction" within Health & S.C. § 11715.6 (repealed; see, now, Health & S.C. § 11370) denying probation to persons previously convicted of any narcotics offense, and where offenses of which defendant was convicted were his first narcotic offenses, court had authority to grant probation. People v. Atwood (App. 1 Dist. 1963) 34 Cal.Rptr. 361, 221 Cal.App.2d 216. Sentencing And Punishment 1872(3); Sentencing And Punishment 1871

Defendant who had pleaded guilty to charge of possession of marijuana was not entitled to probation report limited to facts of particular offense to which plea had been entered, and report properly brought out narcotic activities of codefendant in whose house defendant had lived for some months. People v. Overton (App. 2 Dist. 1961) 11 Cal.Rptr. 885, 190 Cal.App.2d 369. Sentencing And Punishment 288

Where probation officer's report reflected that defendant had been unemployed for 11 years and had been receiving state aid during that time, and that defendant had no other source of income, fact that trial court advised counsel for defendant that "he didn't have much regard for people who used state money to buy narcotics" did not support defendant's contention that in deciding to deny probation upon conviction of sale of heroin, court considered and was influenced by information concerning defendant obtained from sources other than probation officer's report. People v. Valdivia (App. 1 Dist. 1960) 5 Cal.Rptr. 832, 182 Cal.App.2d 145. Sentencing And Punishment 1897

Under this section prohibiting the granting of probation by trial court to any person convicted of violating certain named sections of the narcotic laws or committing any offense referred to in those sections on a second or subsequent conviction of section enlarging punishment for prior offenders, phrase in this section prohibiting the granting of probation under the named section "or on a second or subsequent conviction of [Health & S.C.] section 11712 [repealed; see, now, Health & S.C. §§ 11350, 11357]" was intended to read "or on a second or subsequent conviction of any crimes mentioned in section 11712 [repealed] or of committing any offense referred to in such section" and under such construction court is authorized to deny probation to person convicted for first time of having had possession of a narcotic. People v. Villegas (App. 2 Dist. 1952) 110 Cal.App.2d 354, 242 P.2d 657. Sentencing And Punishment 1827

69. Petit theft

Petit theft is offense conferring discretion on trial court as to extent of punishment within probation statute. In re Herron (1933) 217 Cal. 400, 19 P.2d 4. Sentencing And Punishment 1856

70. Unusual cases

Previous course of good conduct and good standing in community is not reasonably related to decision of whether offense is unusual case where interests of justice would be best served by granting probation. People v. Superior Court (Dorsey) (App. 4 Dist. 1996) 58 Cal.Rptr.2d 165, 50 Cal.App.4th 1216, review denied. Sentencing And Punishment 1888

Trial court's express finding that defendant's case was not unusual and that he was, for that reason, not entitled to probation was only finding required before trial court could deny probation to defendant, who had been found guilty of involuntary manslaughter as result of firing weapon in crowded dance hall. People v. Cazares (App. 5 Dist. 1987) 235 Cal.Rptr. 604, 190 Cal.App.3d 833, review denied. Sentencing And Punishment 1911

Trial court was not required to set forth reasons for complying with this section requiring that defendant, who used deadly weapon in perpetrating crime and inflicted great bodily injury on his victim, be incarcerated, rather than be granted probation, where court was unable to find unusual circumstances which would militate court's grant of probation. People v. Lesnick (App. 1 Dist. 1987) 234 Cal.Rptr. 491, 189 Cal.App.3d 637, review denied. Sentencing And Punishment 372

Where sentencing court, after considering all of circumstances, statutory requirements and probation criteria detailed by court rules, could reasonably conclude that granting probation to defendant would unduly deprecate seriousness of offenses as to seven victims held hostage for four and one-quarter hours, that confinement was necessary to protect public, and that defendant could best be rehabilitated through imprisonment, defendant had not met his burden of showing abuse of discretion in denial of his request for probation on kidnapping for robbery conviction as an "unusual" case under subd. (e) of this section, notwithstanding that defendant's parents, friends and neighbors, in person and by numerous letters, asked sentencing court to grant probation and defense psychiatrist opined that it was "very unlikely" that defendant would ever repeat serious criminal behavior. People v. Axtell (App. 1 Dist. 1981) 173 Cal.Rptr. 360, 118 Cal.App.3d 246. Sentencing And Punishment 1855

Where discretion to grant probation was limited in case by provisions of this section then in effect that except in unusual cases, probation was not to be granted to any person who had been previously convicted of a felony, and where defendant had not only suffered a previous conviction for a felony, but had failed to challenge accuracy of any of the factual matters contained in his criminal record, interests of justice did not require that trial court depart from mandates of this section nor warrant conclusion that trial court abused its discretion in denying application for probation. People v. Edwards (1976) 135 Cal.Rptr. 411, 18 Cal.3d 796, 557 P.2d 995. Sentencing And Punishment 1872(2)

Defendant, who was convicted of murder in the first degree, with finding that he was armed during commission thereof, and who made no showing or argument that his case was "unusual," was not eligible for probation. People v. Chi Ko Wong (1976) 135 Cal.Rptr. 392, 18 Cal.3d 698, 557 P.2d 976. Sentencing And Punishment 1853

Ruling that case of defendant was not an unusual one which in the interests of justice required that probation be granted did not constitute an abuse of discretion, where marriage of defendant, who pleaded guilty to child molesting, had failed to modify his previous criminal behavior since he committed the instant offense after he was married, and where defendant had previously been committed to state hospital and had not cooperated with physicians there. People v. Wilson (App. 2 Dist. 1973) 110 Cal.Rptr. 104, 34 Cal.App.3d 524. Sentencing And Punishment 1885; Sentencing And Punishment 1888

Where deputy district attorney advised court that his office would not consent to probation even if referral for diagnostic study would result in favorable recommendation and court stated that under the circumstances such a referral was useless but those proceedings took place prior to Supreme Court decision [People v. Tenorio (1971) 89 Cal.Rptr. 249, 473 P.2d 993, 3 Cal.3d 89] which was interpreted as nullifying necessity of district attorney's concurrence in "unusual" cases and that rule was fully retroactive case would be remanded for court to exercise its independent judicial discretion as to defendant's eligibility for probation. People v. Traylor (App. 2 Dist. 1972) 100 Cal.Rptr. 116, 23 Cal.App.3d 323. Criminal Law 1181.5(8)

Record showing that trial court was made aware by defense counsel, before court pronounced judgment, of this section allowing court, in unusual cases, to grant probation with concurrence of district attorney in matters in which

probation would otherwise be unavailable refuted contention that trial court's remarks prior to sentencing demonstrated that trial court erroneously believed he was without power to grant probation and therefore failed to exercise judicial discretion in sentencing defendant. People v. Nero (App. 4 Dist. 1971) 97 Cal.Rptr. 145, 19 Cal.App.3d 904. Sentencing And Punishment 1890

Defendant convicted of robbery with deadly weapon was not eligible for probation, absent showing that case was of such unusual character that interests of justice demanded departure from declared policy of legislature. People v. Bryan (App. 2 Dist. 1970) 83 Cal.Rptr. 291, 3 Cal.App.3d 327. Sentencing And Punishment 1861

Where trial judge's refusal to grant probation to defendant convicted of robbery was based on his determination that case was not an "unusual one," within this section requiring that robbery case be found to be unusual to grant probation and was not based on judge's erroneous view that concurrence of district attorney was necessary to grant probation, error was harmless. People v. Hogan (1969) 80 Cal.Rptr. 28, 71 Cal.2d 888, 457 P.2d 868. Criminal Law 1177

Defendant who had twice previously been convicted of felony was ineligible for probation unless judge affirmatively found that defendant's case was unusual one in which interests of justice would best be served by probation, and unless district attorney concurred. People v. Brown (App. 2 Dist. 1968) 67 Cal.Rptr. 238, 260 Cal.App.2d 434. Sentencing And Punishment 1872(2); Sentencing And Punishment 1886

Paragraph of this section which specifies criminal offenders to whom probation cannot be granted under any circumstances is not affected by subsequently enacted paragraph which permits granting of probation to specified offenders in unusual cases. People v. Perry (App. 1 Dist. 1964) 40 Cal.Rptr. 829, 230 Cal.App.2d 258. Sentencing And Punishment 1827

Court had no discretion to award probation to defendant convicted of robbery while armed, where after having considered probation report, transcript of testimony of the preliminary hearing, and having considered defendant's past record, court determined that defendant's case was not unusual, and fact that after court impliedly found defendant's case was not "unusual" within meaning of this section, pertaining to probation, judge stated he had not read where defendant could be sent to county jail, did not establish that court based denial of probation on an erroneous view of the probation law. People v. Jones (App. 2 Dist. 1962) 21 Cal.Rptr. 290, 203 Cal.App.2d 228. Sentencing And Punishment 1861

Under provision of this section, expressing legislative policy that judge shall not grant probation to persons convicted of enumerated crimes except in unusual cases, court is permitted to grant probation in exercise of its discretion. People v. Orrante (App. 1 Dist. 1962) 20 Cal.Rptr. 480, 201 Cal.App.2d 553. Sentencing And Punishment 1823

Where trial court erroneously believed that denial of probation was mandatory to defendant pleading guilty to second degree robbery on ground that defendant was armed with a deadly weapon, but if it were an "unusual" case in which the interest of justice demanded departure from general policy, court had duty to entertain the defendant's application and discretionary power to grant probation, the judgment would be reversed with directions to rearraign the defendant for judgment and sentence him in accordance with law, and to determine on its merits the defendant's application for probation. People v. Hollis (App. 2 Dist. 1959) 1 Cal.Rptr. 293, 176 Cal.App.2d 92. Criminal Law 1188

71. Multiple counts

On conviction under information charging only single offense of conspiracy, though in two counts, court could not grant probation and at same time sentence defendant to imprisonment. People v. Marks (1927) 257 P. 92, 83

Cal.App. 370; Ex parte Nichols (1927) 255 P. 244, 82 Cal.App. 73.

Where court, after conviction under two counts charging only single offense, granted probation, and at same time sentenced defendant, result was as though no judgment had been rendered. People v. Marks (1927) 257 P. 92, 83 Cal.App. 370; Ex parte Nichols (1927) 255 P. 244, 82 Cal.App. 73.

Where defendant charged with three counts of robbery pled guilty to first count, which alleged only robbery, as result of plea bargain, both People and defendant stipulated that offense pled guilty to was second-degree robbery, and counts two and three, alleging defendant was armed with deadly weapon at time he committed robberies, were dismissed upon motion of the People pursuant to the plea bargain, express finding in judgment of conviction that defendant was armed with a firearm at time of offense was improper and should have been stricken from judgment. People v. Rebeles (App. 4 Dist. 1971) 94 Cal.Rptr. 463, 16 Cal.App.3d 952. Criminal Law 995(2)

Where court, on conviction of what was single charge of conspiracy in two counts, granted probation to defendant and at same time sentenced her to term of imprisonment in state prison, defendant was not entitled to be released because of error. In re Nichols (App. 2 Dist. 1927) 82 Cal.App. 73, 255 P. 244.

72. Different judges

Where different judge presides at sentencing following acceptance of plea bargain, motion to disqualify judge for bias or prejudice may be timely since, although ordinarily sentencing is not a separate proceeding but is merely continuation of original action, there may be conflict of fact possibilities. Lyons v. Superior Court of Fresno County (App. 5 Dist. 1977) 140 Cal.Rptr. 826, 73 Cal.App.3d 625. Judges 51(2)

The fact that the same judge who presided at trial did not hear defendant's application for probation is not ground for reversal. People v. Connolly (App. 1951) 103 Cal.App.2d 245, 229 P.2d 112. Criminal Law 1177

Application for probation was not necessarily required to be heard by same judge presiding in department at time plea of guilty was entered. People v. Martino (App. 4 Dist. 1931) 113 Cal.App. 661, 299 P. 86. Sentencing And Punishment 1905

73. Concurrence of district attorney

Concurrence of district attorney was not required before granting probation to defendant. People v. McManis (App. 4 Dist. 1972) 102 Cal.Rptr. 889, 26 Cal.App.3d 608. Sentencing And Punishment 1886

Where record left no doubt that court felt that concurrence of district attorney was necessary to granting of probation following conviction for rape, sentence must be reversed for purpose of resentencing, as defendant was entitled to have application for probation considered by court aware of fact that if it granted probation district attorney had no veto power. People v. Armenta (App. 2 Dist. 1972) 99 Cal.Rptr. 736, 22 Cal.App.3d 823. Criminal Law 1181.5(8)

Consent of district attorney to granting probation is only required where case falls within this section reciting numerous crimes other than robbery for commission of which no probation shall be granted and does not apply to robbery. People v. Hogan (1969) 80 Cal.Rptr. 28, 71 Cal.2d 888, 457 P.2d 868. Sentencing And Punishment 1886

Where this section permitted granting of probation to defendant convicted of violating §§ 288, 288a only in unusual cases with concurrence of district attorney, judge could not base his finding of defendant's ineligibility for probation

on fact that district attorney expressed opposition but rather had to make independent determination that the case was not an unusual one within meaning of this section. People v. McGill (App. 4 Dist. 1968) 65 Cal.Rptr. 482, 257 Cal.App.2d 759. Sentencing And Punishment 1886

Trial judge was justified in refusing to consider probation and in refusing to order report from probation department in second-degree murder conviction where district attorney was strongly opposed to probation for defendant and trial judge, who was familiar with evidence of case and details of the crime, felt that no probation should be granted. People v. Ford (App. 2 Dist. 1967) 61 Cal.Rptr. 329, 253 Cal.App.2d 390. Sentencing And Punishment 1886; Sentencing And Punishment 1853

74. Time of judgment or sentence--In general

See, also, Notes of Decisions under Penal Code §§ 1191, 1202.

A probationary proceeding is not "disposed of" within meaning of § 1191 extending time for pronouncement of judgment and sentence until probationary proceeding has been disposed of until defendant has satisfied conditions of probation and been discharged or has had his probation revoked and sentence pronounced against him. Ex parte Martin (1947) 185 P.2d 645, 82 Cal.App.2d 16; People v. Williams (1944) 151 P.2d 244, 24 Cal.2d 848.

Where, at time of pronouncement of judgment, defendant was placed on probation but the order granting probation was stayed pending appeal, upon affirmance on appeal on action of the trial court is necessary to carry the probation order into execution; the probation order automatically goes into effect as of the date the remittitur is filed. Application of Stallings (App. 2 Dist. 1970) 85 Cal.Rptr. 96, 5 Cal.App.3d 322. Criminal Law 1182

Where a convicted defendant was subject to imprisonment for not less than one year nor more than 20 years, and imposition of sentence was suspended and defendant was placed on probation for ten years, and probation was revoked and bench warrant issued because defendant violated condition of probation, trial court did not lose jurisdiction to sentence defendant upon expiration of term of probation and court could sentence defendant 14 years and five months after revocation of probation. People v. Brown (App. 1952) 111 Cal.App.2d 406, 244 P.2d 702. Sentencing And Punishment 2010

One who pleaded guilty to charge of driving a vehicle while under influence of intoxicating liquor and admitted prior conviction of receiving stolen goods was ineligible to probation, but consequent invalidity of order of probation did not render void for lack of jurisdiction subsequent sentence to prison upon revocation of probation for violation of terms thereof. Ex parte Martin (App. 3 Dist. 1947) 82 Cal.App.2d 16, 185 P.2d 645. Sentencing And Punishment 1872(3); Sentencing And Punishment 2003

Judgment pronounced during probationary period revoking probation for violation of terms thereof and sentencing probationer to imprisonment in county jail was pronounced in proper time, though period of time during which she could originally have been imprisoned for the offense had expired. People v. Schwartz (App. 2 Dist. 1947) 80 Cal.App.2d 801, 183 P.2d 59. Sentencing And Punishment 2010

Where probation is revoked there can be no final disposition of the case within § 1191 extending time for pronouncement of sentence until any probationary proceeding has been disposed of until judgment is pronounced or probationer is relieved from all penalties and disabilities under provisions of probation law. People v. Williams (1944) 24 Cal.2d 848, 151 P.2d 244. Sentencing And Punishment 377

Where court inquired after verdict of guilty whether accused desired to make application for probation, and, at time of hearing, probation was refused and sentence imposed, accused was not entitled to new trial because of delay in

imposing sentence. People v. Tufano (App. 2 Dist. 1935) 7 Cal.App.2d 561, 46 P.2d 192. Criminal Law 913(1)

Suspension of pronouncement of sentence from time to time until information could be obtained regarding prior conviction, not having been made under law providing for probation, was nullity, and subsequent imposition of sentence was not erroneous. People v. Harvey (App. 1934) 137 Cal.App. 22, 29 P.2d 787. Sentencing And Punishment 1355

Superior court had jurisdiction to sentence one pleading guilty of violating Corporate Securities Act to two years in jail after revoking his probation within five-year term thereof. People v. Lippner (1933) 219 Cal. 395, 26 P.2d 457. Sentencing And Punishment 2032

Pronouncement of sentence within 20 days of verdict allowed for considering question of probation was timely, although court was considering such question of its own motion. People v. Wilson (App. 2 Dist. 1929) 101 Cal.App. 376, 281 P. 700. Sentencing And Punishment 377

Defendant cannot complain because court pronounced judgment after defendant's application for probation and then stayed execution pending hearing on application. People v. Anderson (App. 2 Dist. 1929) 98 Cal.App. 40, 276 P. 401. Sentencing And Punishment 478

75. ---- Waiver, time of judgment or sentence

See, also, Notes of Decisions under Penal Code §§ 1191, 1202.

Accused waived pronouncement of judgment by making application for probation. People v. Neel (1933) 24 P.2d 230, 133 Cal.App. 332; People v. Von Eckartsberg (1933) 23 P.2d 819, 133 Cal.App. 1; People v. Noone (1933) 22 P.2d 284, 132 Cal.App. 89.

Defendant, whose attorney stated that they would waive time for sentence on conviction by court, which set date five days later for judgment and sentence and, on such date, ordered continuance at such attorney's request, until one week later, for argument on defendant's motion for new trial and application for probation, which were then denied and judgment pronounced, expressly waived benefits of § 1202 entitling defendant to new trial if judgment is not pronounced within thirty days after conviction. People v. Tenedor (App. 2 Dist. 1951) 107 Cal.App.2d 581, 237 P.2d 679. Criminal Law 913(1)

Accused by applying for probation waived right to have judgment pronounced before probation order. In re De Voe (App. 2 Dist. 1931) 114 Cal.App. 730, 300 P. 874. Sentencing And Punishment 1891

76. Orders--In general

When court grants probation and thereafter grants a stay of execution of the probation order, the court has the authority, upon the filing of remittitur, to vacate its previous order granting probation upon a showing that defendant's conduct while the matter was on appeal demonstrates that he is not a suitable candidate for probation supervision. Application of Stallings (App. 2 Dist. 1970) 85 Cal.Rptr. 96, 5 Cal.App.3d 322. Criminal Law 1192

It is implicit in every order granting probation that defendant refrain from associating with improper persons or engaging in criminal practices. People v. Cortez (App. 2 Dist. 1962) 19 Cal.Rptr. 50, 199 Cal.App.2d 839. Sentencing And Punishment 1966(1); Sentencing And Punishment 1971(1)

An order granting probation without imposing incarceration as a term thereof frees from jail a defendant who has been unable to post bail. People v. Doe (Super. 1959) 172 Cal.App.2d Supp. 812, 342 P.2d 533. Sentencing And Punishment 1930

An order placing defendant on probation is not a judgment and sentence, even though it includes period of detention, in county jail as a condition of probation. Ex parte Hays (App. 1 Dist. 1953) 120 Cal.App.2d 308, 260 P.2d 1030. Sentencing And Punishment 1913

An order for probation is not final and imposes no penalties, but is an act of clemency. Ex parte Hays (App. 1 Dist. 1953) 120 Cal.App.2d 308, 260 P.2d 1030. Sentencing And Punishment 1811

Order granting probation is not a judgment. In re Marquez (1935) 3 Cal.2d 625, 45 P.2d 342. Sentencing And Punishment 1914

77. ---- Propriety, orders

Bench warrants noting that they were to be effective in California only and following order revoking probation did not constitute a subterfuge to impose sentence of banishment and to extend period of probation beyond maximum provided by law, where one of the conditions of the defendant's probation had been that he not cross the international border and apparently court did not feel that case, at time warrants were issued, was of such nature as to require extradition in event defendant was outside state. People v. Gish (App. 4 Dist. 1964) 41 Cal.Rptr. 155, 230 Cal.App.2d 544. Sentencing And Punishment 2012

Where alien was placed on probation, pending deportation hearing, on condition that he serve one year sentence, and if not deported, that he leave United States never to return, subsequent arrest of alien for violation of probation following deportation and subsequent illegal entry, and order placing prior sentence into effect, were valid, even though the banishment was void. People v. Cortez (App. 2 Dist. 1962) 19 Cal.Rptr. 50, 199 Cal.App.2d 839. Sentencing And Punishment 2034

Provisions of § 1203 et seq. regarding probation and conditions or terms of the probation do not render an order of probation omitting conditions or terms provided for by such sections invalid or illegal because of such omission. People v. Rye (Super. 1956) 140 Cal.App.2d Supp. 962, 296 P.2d 126. Sentencing And Punishment 1920; Sentencing And Punishment 1918

Where defendant on hearing on his application for probation on burglary charge admitted two prior convictions but court nevertheless granted probation, neither the order granting nor the order revoking on violation nor subsequent judgment of conviction was void. People v. Scranton (App. 1 Dist. 1942) 50 Cal.App.2d 492, 123 P.2d 132.

Alleged "orders of probation" which consisted merely in suspension of only two days of each 180 days sentence, which were made in attempt to deprive county board of parole commissioners of authority vested to grant parole, and which were made without reference to and report from probation officer, were required to be set aside. People v. Lopez (Super. 1941) 43 Cal.App.2d Supp. 854, 110 P.2d 140. Sentencing And Punishment 1913

Order of municipal court granting probation of sentence was not invalid because it was inartificial in form, since no formal order was required for granting of probation. People v. Wallach (App. 1935) 8 Cal.App.2d 129, 47 P.2d 1071. Sentencing And Punishment 1913

Where order erroneously discharging petitioner from county road camp was sought for and procured on theory that petitioner's detention was unlawful, order could not be sustained on theory that it was a modification of terms of

petitioner's probation. In re Tantlinger (App. 2 Dist. 1935) 8 Cal.App.2d 157, 47 P.2d 301. Habeas Corpus 791

Court's failure to direct that one whose sentence is suspended be placed under probation officer's control and supervision does not invalidate order suspending sentence. In re Herron (1933) 217 Cal. 400, 19 P.2d 4. Sentencing And Punishment 1804

Order relating to defendant's application for probation after conviction, though not made before passing of judgment or sentence, was not improper. People v. Forbragd (App. 1932) 127 Cal.App. 768, 16 P.2d 755. Sentencing And Punishment 1891

Where probation order was combined with void order directing defendant to remain in sheriff's custody, such order was severable, making probation order valid. People v. Ramos (App. 2 Dist. 1926) 80 Cal.App. 528, 251 P. 941. Sentencing And Punishment 1913

Neither judgment of commitment nor order suspending sentence are void for failure to direct formally that prisoner be placed under supervision of probation officer. In re Young (App. 1932) 121 Cal.App. 711, 10 P.2d 154. Sentencing And Punishment 1804

78. ---- Construction, orders

An order which prohibits a probationer from carrying weapons does not subject him to patdown search for weapons by police officer at any time, and where probationer was not subject to search as condition of his probation, and officer had no basis to believe that he was, but conducted patdown because probationer told him that his probation order prohibited him from carrying weapons, patdown was illegal. People v. Grace (App. 4 Dist. 1973) 108 Cal.Rptr. 66, 32 Cal.App.3d 447. Sentencing And Punishment 1995

Probation orders are to be construed favorably to the defendants. In re Osslo (1958) 51 Cal.2d 371, 334 P.2d 1. Sentencing And Punishment 1913

Order of justice court suspending five months of petitioner's six months sentence for battery subject to good behavior had effect of placing petitioner on probation. Ex parte Torres (App. 1 Dist. 1948) 86 Cal.App.2d 178, 194 P.2d 593. Sentencing And Punishment 1809

Where, after verdict, judgment was pronounced that he "pay a fine in the sum of $100.00 and 90 days in the county jail and the jail sentence be suspended" and if fine was not timely paid he was to be imprisoned in county jail until fine was satisfied at two dollars per day, fine and imprisonment, notwithstanding language of order, were conditions of probation and were not judgment that defendant be imprisoned and that he pay fine and if unpaid that he serve equivalent of fine in jail, and petitioner was not entitled to release on habeas corpus. Ex parte Goetz (App. 4 Dist. 1941) 46 Cal.App.2d 848, 117 P.2d 47.

An order placing a defendant, who was convicted of a misdemeanor in police court, on probation, even though it included as a condition a period of detention in the county jail, was not a judgment and sentence, nor was the imposition of a fine as a condition of probation a judgment imposing a fine. Ex parte Goetz (App. 4 Dist. 1941) 46 Cal.App.2d 848, 117 P.2d 47. Sentencing And Punishment 1931

A sentence providing for suspension thereof and placing of defendant under supervision of probation department on payment of specified sum to clerk of court had the legal effect of granting probation. Los Angeles County v. Emmie (App. 2 Dist. 1940) 42 Cal.App.2d 239, 108 P.2d 695. Sentencing And Punishment 1809

Municipal court order, suspending sentence for petit theft without time limitation, was equivalent of order granting probation for maximum period of punishment. In re Herron (1933) 217 Cal. 400, 19 P.2d 4. Sentencing And Punishment 1809

79. ---- Modification or extension, orders

See, also, Notes of Decisions under Penal Code § 1203.1.

Where defendant was serving his probation, proper remedy to correct any misunderstanding on part of trial court as to defendant's conduct at time of arrest and on which trial court relied in imposing more severe conditions of probation than for a codefendant was by motion to modify probation; trial court was under no duty to act favorably on such motion even if trial court was mistaken. People v. Carnesi (App. 2 Dist. 1971) 94 Cal.Rptr. 555, 16 Cal.App.3d 863. Sentencing And Punishment 1923

Modification of probation order entered on condition that defendant not engage in any bookmaking activities was proper where defendant, during probationary period, engaged in bookmaking activities for which he was charged and convicted. People v. Tereno (App. 2 Dist. 1962) 25 Cal.Rptr. 44, 208 Cal.App.2d 246. Sentencing And Punishment 1987

Trial court, during time of probation, upon proper showing, is authorized to modify original probation order. People v. Marin (App. 1957) 147 Cal.App.2d 625, 305 P.2d 659. Sentencing And Punishment 1923

Where court had placed persons convicted of grand theft and forgery on probation which required that they give persons defrauded "value received", later order of court requiring persons convicted to pay off civil judgments to persons they defrauded was not the imposition of additional condition of probation, but was a modification of the original conditions. People v. McClean (App. 2 Dist. 1955) 130 Cal.App.2d 439, 279 P.2d 87. Sentencing And Punishment 1987

A court, during the term of probation, may modify its original probation order. People v. McClean (App. 2 Dist. 1955) 130 Cal.App.2d 439, 279 P.2d 87. Sentencing And Punishment 1923

When probation is granted, there is no finality to the proceedings, and the judgment may be modified or set aside by court under statute. Ex parte Goetz (App. 4 Dist. 1941) 46 Cal.App.2d 848, 117 P.2d 47. Sentencing And Punishment 1923

Power of court under this section to revoke or modify order of suspension of imposition or execution of sentence at any time during term of probation applies generally to order granting probation, and is not limited to term thereof. Ex parte Marcus (App. 4 Dist. 1936) 11 Cal.App.2d 359, 53 P.2d 1021. Sentencing And Punishment 2010

Order requiring defendant to spend one of three years of probation in county jail in lieu of and before expiration of jail term of 60 days imposed in original probation order was "modification" of original order within this section authorizing court to modify probation order, and hence within jurisdiction of court in absence of showing that change exceeded reasonable limits or was not warranted by circumstances. Ex parte Marcus (App. 4 Dist. 1936) 11 Cal.App.2d 359, 53 P.2d 1021. Sentencing And Punishment 1985

Under power of court to revoke or modify order of suspension of imposition or execution of sentence, conditions other than length of term of probation may be enlarged before such conditions have been fully complied with. Ex parte Marcus (App. 4 Dist. 1936) 11 Cal.App.2d 359, 53 P.2d 1021. Sentencing And Punishment 1985

Modification of probation order rests entirely within discretion of court. In re Tantlinger (App. 2 Dist. 1935) 8 Cal.App.2d 157, 47 P.2d 301. Sentencing And Punishment 1923

Where, as condition to granting probation, trial court imposed imprisonment in county jail for one and a half years, order made subsequent to expiration of original term imposing new term of imprisonment for additional five years was void. Ex parte Hazlett (App. 1934) 137 Cal.App. 734, 31 P.2d 448. Sentencing And Punishment 1987

Trial court has jurisdiction to extend term of probation during probation term. Ex parte Hazlett (App. 1934) 137 Cal.App. 734, 31 P.2d 448. Sentencing And Punishment 1950

Superior court's modified probation order requiring probationer, detained in girls' home for about 3 months under original order, to serve year in county jail, was not invalid as imposing additional punishment. People v. Roberts (App. 1934) 136 Cal.App. 709, 29 P.2d 432. Sentencing And Punishment 1987

Modification of probation order under which accused, who pleaded guilty of issuing checks without sufficient funds, had been placed in sanitarium, so as to serve year of probationary period at county road camp, was authorized. In re Glick (App. 1932) 126 Cal.App. 649, 14 P.2d 796. Sentencing And Punishment 1987

Trial court could modify terms of probation, within limits. In re Glick (App. 1932) 126 Cal.App. 649, 14 P.2d 796. Sentencing And Punishment 1985

Court has power to enlarge the probationary term at any time before it expires. Ex parte Sizelove (1910) 158 Cal. 493, 111 P. 527.

80. Confinement

One sentenced to pay fine of $2,500 or in default thereof to serve 500 days in county jail for violation of automobile code was entitled to discharge after one year's service, since § 19a providing that in no case shall any person sentenced to county jail for misdemeanor or as a condition of probation or for any reason be committed for more than a year, included sentences to jail for felonies. Ex parte Marquez (1935) 45 P.2d 342, 3 Cal.2d 625; Ex parte Rasmussen (1935) 41 P.2d 181, 4 Cal.App.2d 263.

Where court suspended sentence and granted probation subject to 60-day jail term, subsequent orders continuing probation on condition prisoner serve year in county jail were void. Wilson v. Carr, 1930, 41 F.2d 704. Sentencing And Punishment 1950

Alien was not subject to deportation, where sentence for petit larceny was suspended and probation granted subject to 60 days' confinement, notwithstanding subsequent orders continuing probation on condition of year jail sentence. Wilson v. Carr, 1930, 41 F.2d 704. Aliens, Immigration, And Citizenship 282(3)

Consent of prisoner to 60-day jail term did not confer jurisdiction on court to require additional confinement during probation. Wilson v. Carr, 1930, 41 F.2d 704. Sentencing And Punishment 1935

Section 19a limiting to one year the period of commitment to county jail on conviction of misdemeanor or as a condition of probation did not preclude commitment to county jail for one year upon revocation of probation, though defendant had previously been confined in county jail for more than six months as a condition of probation. Ex parte Hays (App. 1 Dist. 1953) 120 Cal.App.2d 308, 260 P.2d 1030. Sentencing And Punishment 2038

Section 19a, limiting to one year the period of commitment to county jail on conviction of misdemeanor or as a

condition of probation, must be interpreted in connection with this section and § 1203.1, authorizing the granting of probation and, as a condition thereof, imprisoning defendant in county jail. Ex parte Hays (App. 1 Dist. 1953) 120 Cal.App.2d 308, 260 P.2d 1030. Sentencing And Punishment 2038

Section 19a which prohibits commitment in county jail for more than one year, of a person sentenced to confinement in county jail on conviction of misdemeanor, or as a condition of probation, or for any reason, did not preclude placing a defendant convicted of felony of rape on probation on condition that defendant serve two years in county jail. Ex parte Webber (1949) Ex parte Webber (App. 1 Dist. 1949) 95 Cal.App.2d 183, 212 P.2d 540. Sentencing And Punishment 1976(2)

Superior court, granting probation to one pleading guilty of rape, a felony, had power to impose condition that he serve any portion of probationary period up to maximum possible term of sentence in county road camp. In re Marquez (1935) 3 Cal.2d 625, 45 P.2d 342. Sentencing And Punishment 1976(2)

Section 19a prohibiting commitment of person, sentenced to confinement in jail on conviction of misdemeanor or as condition of probation, for period exceeding one year, but providing for commitment to county penal farm for such period as court may order within statutory limits for offense, must be read and construed as whole in harmony with other statutes relating to same general subject. In re Marquez (1935) 3 Cal.2d 625, 45 P.2d 342. Prisons 13.3

Order of superior court admitting defendant to probation for three years after plea of guilty to statute penalizing driving while intoxicated, and providing as condition of such probation that defendant serve at county road camp during first two years of period, was authorized. In re Brown (App. 2 Dist. 1935) 5 Cal.App.2d 218, 42 P.2d 680. Sentencing And Punishment 1976(2)

Under California Vehicle Act, § 112 (Stats.1923, p. 553, as amended by Stats.1927, p. 1436), providing that court shall have no authority to impose sentence greater than that recommended by jury, court is without authority to imprison defendant for longer time than period fixed by jury, either by direct judgment of sentence, or under guise of a probation order, under this section. In re Montague (App. 2 Dist. 1929) 99 Cal.App. 576, 278 P. 1061.

Under this section, defendant, while on probation and conforming to terms thereof, shall be at large and not in confinement. Ex parte Fink (App. 2 Dist. 1926) 79 Cal.App. 659, 250 P. 714. Sentencing And Punishment 1934

On suspension of sentence for felony under subd. (a) of this section, defendant was entitled to be at large, and court had no authority to remand him to sheriff's custody to work at county road camp and imprisonment was unlawful. People v. Clark (App. 2 Dist. 1924) 69 Cal.App. 520, 231 P. 590. Sentencing And Punishment 1809

Accused, having waived right to pronouncement of judgment before order granting probation, could not assert she was deprived of liberty without due process by probation order, conditioned that first eighteen months of probationary period be spent in jail. In re De Voe (App. 2 Dist. 1931) 114 Cal.App. 730, 300 P. 874. Constitutional Law 947

81. Term of probation

See, also, Notes of Decisions under Penal Code § 1203.1.

There is no "window" during probation term which allows probationer to be free from terms and conditions originally imposed or later modified, nor during period between hearing on probation violation and sentencing for that violation; trial court has power over defendant at all times during term of probation until defendant is

discharged from probation or court loses jurisdiction upon defendant being sentenced to prison. People v. Lewis (App. 4 Dist. 1992) 10 Cal.Rptr.2d 376, 7 Cal.App.4th 1949. Sentencing And Punishment 1961; Sentencing And Punishment 1960

Terms and conditions imposed upon defendant placed on probation may be enforced at any time during term of probation, and procedures utilized to enforce terms and conditions of probation do not toll or suspend for any period of time terms and conditions of probation grant; defendant is not free of those restrictions until probation period has terminated or he or she has been discharged by law from probationary term. People v. Lewis (App. 4 Dist. 1992) 10 Cal.Rptr.2d 376, 7 Cal.App.4th 1949. Sentencing And Punishment 1960

Termination of probation or discharge from probation following completion of probation term formally ends conditions of probation; when probation is terminated for violation of probation conditions, judgment must be pronounced if no sentence was imposed at time probation was granted. People v. Lewis (App. 4 Dist. 1992) 10 Cal.Rptr.2d 376, 7 Cal.App.4th 1949. Sentencing And Punishment 1948; Sentencing And Punishment 2032; Sentencing And Punishment 1953

Terms and conditions of defendant's probation continued in full effect during period between hearing on probation violation and sentencing for that violation, and thus state prison commitment could be imposed for criminal offense committed by defendant during that period in violation of terms and conditions of probation. People v. Lewis (App. 4 Dist. 1992) 10 Cal.Rptr.2d 376, 7 Cal.App.4th 1949. Sentencing And Punishment 1960; Sentencing And Punishment 2006; Sentencing And Punishment 2004

Probation is not form of punishment but is act of clemency in discretion of trial court, and thus defendant, who was convicted on charges reinstated following vacation of plea bargain at defendant's behest, was properly sentenced to new three-year period of probation, and trial court was not limited to setting of probationary period equivalent to balance of original three-year period of probation. People v. Morrison (App. 2 Dist. 1980) 167 Cal.Rptr. 276, 109 Cal.App.3d 378. Sentencing And Punishment 1811; Sentencing And Punishment 1945

Court had power to grant probation for five years to one who pleaded guilty to first degree burglary, since punishment for burglary in the first degree is imprisonment in the penitentiary for not less than five years and a trial court has power to grant probation for any term not longer than maximum time for which defendant could have been sentenced. People v. Petitt (App. 1946) 76 Cal.App.2d 243, 172 P.2d 713. Sentencing And Punishment 1945

Where accused was convicted of converting employee's cash bond, and amount in information on which conviction was had exceeded $200, placing accused on probation for two years was not abuse of discretion. People v. Bentson (App. 2 Dist. 1933) 132 Cal.App. 295, 22 P.2d 734. Sentencing And Punishment 1856

82. Rejection of probation

See, also, Notes of Decisions under Penal Code § 1203.1.

A defendant has the right to refuse probation. Ex parte Hays (1953) 260 P.2d 1030, 120 Cal.App.2d 308; People v. Walker (1950) 208 P.2d 724, 93 Cal.App.2d 54.

Where upon trial court's finding defendant guilty of second-degree burglary and two prior felony convictions trial court set date for hearing of defendant's application for probation, and defendant's counsel stated defendant did not wish to apply for probation, defendant had waived right to be considered for probation. People v. Jones (App. 4 Dist. 1966) 52 Cal.Rptr. 924, 244 Cal.App.2d 378. Sentencing And Punishment 1891

Defendant has right to refuse probation. People v. Fisherman (App. 2 Dist. 1965) 47 Cal.Rptr. 33, 237 Cal.App.2d 356. Sentencing And Punishment 1821

Even when granted probation, a defendant may not be compelled to accept it, and may elect to refuse it. Application of Oxidean (App. 2 Dist. 1961) 16 Cal.Rptr. 193, 195 Cal.App.2d 814. Sentencing And Punishment 1821

Petitioners' right to reject probation after conviction was not defeated on the ground that their failure to request a stay of execution of the probation orders evidenced an irrevocable acceptance of conditions of such orders, where such failure was based on petitioners' mistaken belief that their appeal and release on bail affected a stay. In re Osslo (1958) 51 Cal.2d 371, 334 P.2d 1. Sentencing And Punishment 1922

Where under terms of probation order the first installment of fines did not become due until 60 days after the defendants' release from custody and the defendants had been free on bail during most of the time since the entry of the probation orders, so that installments of their probationary fines had not become due, failure of defendants to file the affidavits referred to in the probation orders that payment on the fines should come from their own funds and not the union moneys did not evidence a rejection of probation. In re Osslo (1958) 51 Cal.2d 371, 334 P.2d 1. Sentencing And Punishment 1974(3)

The defendant has a right to refuse probation where its conditions may appear to defendant more onerous than the sentence which might be imposed. In re Osslo (1958) 51 Cal.2d 371, 334 P.2d 1. Sentencing And Punishment 1821

Where union officials were placed on probation after conviction of an offense and one of conditions of probation was that the defendants should not hold any position or receive any remuneration from any union, defendants did not manifest an acceptance of conditions of probation where they immediately appealed from probation orders and obtained release on bail by order of Supreme Court and attacked terms of the probation as unreasonable and beyond the power of trial court and promptly after denial of certiorari asserted in the trial court their rights to reject probation notwithstanding they did not comply with the trial court's direction when it announced the conditions that the defendants tell the court whether they wanted to accept probation. In re Osslo (1958) 51 Cal.2d 371, 334 P.2d 1. Sentencing And Punishment 1922

The right of a defendant to refuse probation is a necessary safeguard against the possibility that the conditions of probation may be more onerous than the sentence. People v. Frank (App. 2 Dist. 1949) 94 Cal.App.2d 740, 211 P.2d 350. Sentencing And Punishment 1821

An applicant for probation, pardon, or parole can decline the offer when he deems the terms in excess of the court's jurisdiction or too onerous. Lee v. Superior Court in and for Contra Costa County (App. 1 Dist. 1949) 89 Cal.App.2d 716, 201 P.2d 882. Sentencing And Punishment 1821; Pardon And Parole 65

Trial court did not abuse discretion in denying request of accused, found guilty of grand theft, to withdraw application for probation. People v. De Voe (App. 2 Dist. 1932) 123 Cal.App. 233, 11 P.2d 26. Sentencing And Punishment 1891

Where leave to withdraw accused's application for probation was denied, probation subsequently granted must be considered to have been granted on accused's application. People v. De Voe (App. 2 Dist. 1932) 123 Cal.App. 233, 11 P.2d 26. Sentencing And Punishment 1891

Whether accused should be permitted to withdraw application for probation eight days after leave to apply therefor was granted was within trial court's sound discretion. In re De Voe (App. 2 Dist. 1931) 114 Cal.App. 730, 300 P.

874. Sentencing And Punishment 1891

83. Indictment and information

Drug defendant's ineligibility for mandatory probation and treatment by reason of his prior criminal record was not required to be alleged in charging document, where defendant's prior conviction did not absolutely deny him any opportunity for probation, but merely rendered him unfit for probation under particular provision; ineligibility for mandatory probation and treatment was not equivalent of increase in penalty. In re Varnell (2003) 135 Cal.Rptr.2d 619, 30 Cal.4th 1132, 70 P.3d 1037. Indictment And Information 113

84. Jurisdiction

Trial court generally loses jurisdiction to reconsider denial of probation once it has relinquished control of defendant and execution of sentence has begun. People v. Calhoun (App. 2 Dist. 1977) 140 Cal.Rptr. 225, 72 Cal.App.3d 494. Sentencing And Punishment 1923

Probationer's delay in filing habeas corpus petition asserting that proceedings leading to prior probation revocation proceedings violated procedural guarantees did not estop him from asserting that court lacked jurisdiction to revoke probation due to expiration of term of probation. People v. Amsbary (App. 2 Dist. 1975) 125 Cal.Rptr. 546, 51 Cal.App.3d 75. Sentencing And Punishment 2010

Where civil commitment proceedings were instituted by district attorney on court's order, and physicians filed report stating that defendant was addict and, due to physicians' further recommendation against commitment because of lack of defendant's motivation, no hearing was held in civil commitment proceedings and such proceedings were never properly terminated, court was without jurisdiction to issue probation order in connection with defendant's conviction on burglary charged. People v. Leonard (App. 4 Dist. 1972) 102 Cal.Rptr. 435, 25 Cal.App.3d 1131. Sentencing And Punishment 1906

Trial court has jurisdiction over the person of defendant to grant an application for probation upon the filing of remittitur, if the judgment of the court that the defendant be imprisoned in the state prison, after a denial of probation, has not been carried into effect because of a stay of execution pending determination of the appeal. Application of Stallings (App. 2 Dist. 1970) 85 Cal.Rptr. 96, 5 Cal.App.3d 322. Criminal Law 1192

Trial court has power to entertain application for probation at any time prior to execution of sentence, and as long as trial court retains in itself actual or constructive custody of defendant and execution of sentence has not begun it retains jurisdiction over defendant and rest of action and possesses power to entertain and act on application for probation even after affirmance of judgment of conviction on appeal and going down of remittitur. In re Black (1967) 59 Cal.Rptr. 429, 66 Cal.2d 881, 428 P.2d 293. Sentencing And Punishment 1890; Sentencing And Punishment 1894

If court lacked jurisdiction there could be no valid order of probation. People v. Carter (App. 4 Dist. 1965) 43 Cal.Rptr. 440, 233 Cal.App.2d 260. Sentencing And Punishment 1913

As long as execution of sentence has not begun, trial court retains jurisdiction over defendant and has power to receive and act on application for probation, even after affirmance on appeal. People v. Causey (App. 2 Dist. 1964) 41 Cal.Rptr. 116, 230 Cal.App.2d 576. Criminal Law 1083

Order granting probation to one convicted of first degree murder on guilty plea was in excess of superior court's jurisdiction and was void. People v. Superior Court In and For Los Angeles County (Guerrero) (App. 2 Dist. 1962)

18 Cal.Rptr. 557, 199 Cal.App.2d 303. Sentencing And Punishment 1853

A defendant who is put on probation is within the jurisdiction of the court. People v. Banks (1959) 1 Cal.Rptr. 669, 53 Cal.2d 370, 348 P.2d 102. Sentencing And Punishment 1961

Question as to whether justice court exceeded its jurisdiction in modifying probation order was one of law, and superior court, determining such question in prohibition proceeding, was not required to make findings of fact. Wadler v. Justice's Court of Merced Judicial Dist. (App. 1956) 144 Cal.App.2d 739, 301 P.2d 907. Prohibition 29

When there is an appeal from a judgment of conviction, the whole matter properly leaves the jurisdiction of the trial court and rests in the hands of the appellate court until it has seen fit to remit it once again to the trial court, and during such period the trial court has and should have no power to act with respect to such pending matters, but when the matter has once again been sent back to the jurisdiction of the trial court, then even if the appellate court affirms the judgment of conviction, the trial court has power to rehear the defendant's request for probation. People v. Hall (App. 2 Dist. 1952) 115 Cal.App.2d 144, 251 P.2d 979. Criminal Law 1083; Criminal Law 1192

The legislature being clothed with power to prescribe penalties for violations of criminal statutes, legislative branch of government has power to declare that in certain cases probation may not be granted and exercise of such power in no way impinges on jurisdiction of judicial branch of government and does not impair, restrict or enlarge on jurisdiction of courts. People v. Hess (App. 1951) 104 Cal.App.2d 642, 234 P.2d 65, appeal dismissed 72 S.Ct. 177, 342 U.S. 880, 96 L.Ed. 661. Constitutional Law 2371

Where probation was revoked during probationary period, court had jurisdiction even after expiration of such period to pronounce judgment. People v. Williams (1944) 24 Cal.2d 848, 151 P.2d 244. Criminal Law 977(3)

The court's power regarding probation is strictly statutory. Ex parte Acosta (App. 2 Dist. 1944) 65 Cal.App.2d 63, 149 P.2d 757. Sentencing And Punishment 1801

Defendant having pleaded guilty of assault with deadly weapon, superior court was without jurisdiction under this section to grant probation. In re Sheffield (App. 2 Dist. 1936) 18 Cal.App.2d 177, 63 P.2d 829. Sentencing And Punishment 1843

Court's jurisdiction over probationer is not exhausted by its original probation order, but it may exercise control over him throughout probationary period. People v. Roberts (App. 1934) 136 Cal.App. 709, 29 P.2d 432. Sentencing And Punishment 1930

Circumstances of crime and defendant's character do not affect court's jurisdiction to hear and determine application for probation on its merits. People v. Freithofer (App. 2 Dist. 1930) 103 Cal.App. 165, 284 P. 484. Sentencing And Punishment 1836; Sentencing And Punishment 1870

85. Plea bargains

Even if plea agreement conditioned on defendant's banishment from state in lieu of sentencing was permissible, agreement at issue was ambiguous as to when defendant would be allowed to return to California without threat of sentencing hanging over him, and such uncertainty as to length of the banishment rendered plea invalid. Alhusainy v. Superior Court (App. 4 Dist. 2006) 48 Cal.Rptr.3d 914, 143 Cal.App.4th 385. Criminal Law 273.1(2)

Defendant's acquiescence in improper plea agreement, which banished defendant from state in lieu of sentencing as

condition of agreement, could not render such agreement valid. Alhusainy v. Superior Court (App. 4 Dist. 2006) 48 Cal.Rptr.3d 914, 143 Cal.App.4th 385. Criminal Law 273.1(2)

Banishment from state in lieu of sentencing, as condition of plea agreement by which defendant pled guilty to making a criminal threat and felony child abuse, was impermissible, invalidating defendant's guilty plea; condition was constitutionally improper and against public policy, and required defendant to commit another felony, i.e., flee the jurisdiction to avoid sentencing. Alhusainy v. Superior Court (App. 4 Dist. 2006) 48 Cal.Rptr.3d 914, 143 Cal.App.4th 385. Criminal Law 273.1(2)

Harvey rule, prohibiting consideration of dismissed count when sentencing pursuant to plea bargain, applies to conditions of probation, since condition adding restriction on defendant's conduct is an "adverse sentencing consequence." People v. Beagle (App. 5 Dist. 2004) 22 Cal.Rptr.3d 757, 125 Cal.App.4th 415. Sentencing And Punishment 1916

Plea agreement by defendant, which included a "*Harvey* waiver," to allow sentencing court to consider prior convictions did not avoid mandate of this section that the people both plead and prove a defendant's prior felony convictions beyond a reasonable doubt when establishing probation ineligibility, that defendant be advised that such direct penal consequence would follow, and that there be a clear waiver of applicable rights. People v. Myers (App. 4 Dist. 1984) 204 Cal.Rptr. 91, 157 Cal.App.3d 1162. Sentencing And Punishment 1887; Sentencing And Punishment 1901

Where record showed that plea bargain climate was one of real anticipation on part of defendants and counsel that probation was likely, but, in fact, nature of defendant's offenses was such that probation was disfavored option, and defendants were not so advised, trial court abused its discretion in not allowing defendants to withdraw their pleas of guilty. People v. Spears (App. 5 Dist. 1984) 199 Cal.Rptr. 922, 153 Cal.App.3d 79. Criminal Law 274(4)

Deputy district attorney's remarks at probation hearing indicating that defendant who had been found guilty of possession of narcotics had been dealing in heroin and had firearms in his home at time of his arrest violated deputy district attorney's agreement to remain silent at time of sentencing in return for plea of guilty; however, defendant was not entitled to relief because of violation of agreement absent motion to set aside plea of guilty in trial court. People v. Barajas (App. 4 Dist. 1972) 103 Cal.Rptr. 405, 26 Cal.App.3d 932. Criminal Law 1044.1(2)

86. Withdrawal of plea

A defendant who admitted his guilt of felony upon hearing of motion to vacate conviction was not entitled to withdraw his pleas of guilt, so as to be in a position to receive probation, on ground of alleged fraud practiced upon him in obtaining the plea, since fact that defendant would be in position to receive probation if his guilty plea to certain offense was set aside and that he entered his plea solely on the advice of his counsel did not indicate fraud. People v. Gottlieb (App. 2 Dist. 1938) 25 Cal.App.2d 411, 77 P.2d 489. Criminal Law 274(4)

87. Evidence--In general

Where evidence presents a question of fact as to whether manslaughter of which defendant has been convicted involved use of a gun upon victim, trial court, in passing on application for probation, must first determine such question of fact, and if it is determined in the affirmative, probation must be denied, but if it is determined that defendant did not use gun upon victim, probation may be granted or denied as may appear proper under all the circumstances. People v. Southack (1952) 39 Cal.2d 578, 248 P.2d 12. Sentencing And Punishment 1853; Sentencing And Punishment 1903

In prosecution for attempted burglary, where defendant testifying in his own defense had denied a prior conviction for a felony, asking him whether he had been convicted of automobile theft in 1925 was not error. People v. O'Brand (App. 1949) 92 Cal.App.2d 752, 207 P.2d 1083. Witnesses 350

Report of probation officer is not evidence. People v. Wahrmund (App. 1949) 91 Cal.App.2d 258, 206 P.2d 56. Sentencing And Punishment 300

This section providing for taking of evidence by probation officer and its inclusion in his report to court creates a statutory exception to accused's fundamental right to be confronted by witnesses against him, but trial court is not authorized in disregard of such right to listen out of court to witnesses whispering against accused. People v. Giles (Super. 1945) 70 Cal.App.2d Supp. 872, 161 P.2d 623. Criminal Law 662.8

Where judge in determining sentence to be imposed upon one convicted of battery permitted himself to be influenced by accusations made out of court which accused had no opportunity to refute, sentence to six months' imprisonment in county jail would be reversed with directions to rearraign accused for sentence after proper proceedings to ascertain circumstances in aggravation and mitigation of punishment. People v. Giles (Super. 1945) 70 Cal.App.2d Supp. 872, 161 P.2d 623. Criminal Law 1188

In determining sentence to be imposed on one convicted of battery, such facts as were not supplied by probation officer's report and by record of trial should have been obtained from witnesses called in open court in the presence of accused. People v. Giles (Super. 1945) 70 Cal.App.2d Supp. 872, 161 P.2d 623. Criminal Law 662.8

88. ---- Admissibility, evidence

Evidence in addition to probation officer's report and recommendation may be introduced at hearing on suitability of probation. People v. Welch (1993) 19 Cal.Rptr.2d 520, 5 Cal.4th 228, 851 P.2d 802. Sentencing And Punishment 1897

Evidence previously suppressed on grounds of illegal search or seizure may not be used to modify probation. People v. Zimmerman (App. 1 Dist. 1979) 161 Cal.Rptr. 188, 100 Cal.App.3d 673. Sentencing And Punishment 1900

Upon conviction, evidence which would be inadmissible on the issue of guilt may be received for the purpose of determining whether and upon what conditions to grant probation, provided the proceedings remain fundamentally fair; and for this purpose, the court may properly consider not only current arrests of the defendant giving rise to charges still pending, but also prior arrests which did not result in conviction. Loder v. Municipal Court for San Diego Judicial Dist. of San Diego County (1976) 132 Cal.Rptr. 464, 17 Cal.3d 859, 553 P.2d 624, certiorari denied 97 S.Ct. 1143, 429 U.S. 1109, 51 L.Ed.2d 562. Sentencing And Punishment 1872(1); Sentencing And Punishment 1900

Admissions made to probation officer in hope that such candor will persuade probation officer to make favorable report to court are not admissible either as substantive evidence or for impeachment purposes in any retrial on the same issues. People v. Harrington (1970) 88 Cal.Rptr. 161, 2 Cal.3d 991, 471 P.2d 961, certiorari denied 91 S.Ct. 1384, 402 U.S. 923, 28 L.Ed.2d 662. Criminal Law 406(2); Witnesses 390.1

Accused was not denied due process of law by reason of admission of evidence of his prior conviction which was not proved, where accused waived jury trial and was tried before a judge, who was presumably able to weigh the evidence without being prejudiced by a charge of prior felony conviction. In re Hernandez (1966) 51 Cal.Rptr. 915, 64 Cal.2d 850, 415 P.2d 803. Constitutional Law 4669; Constitutional Law 4693

Testimony of probation officer concerning statements relating to possession of marijuana made to him by defendant at hearing following plea of guilty to charge was admissible, at trial following change of plea, as defendant was required to look to counsel who represented him at hearing and not probation officer for advice as to what his legal rights were and what he should say upon being interrogated. People v. Brooks (App. 1 Dist. 1965) 44 Cal.Rptr. 661, 234 Cal.App.2d 662. Criminal Law 412.1(2)

Even if admission of defendant regarding possession of weapon at time of his arrest should not have been received, defendant, who was not eligible for probation in view of prior conviction and nature and manner of commission of the charged crime, was not entitled to have plea of guilty to first degree robbery while armed with deadly weapon set aside. People v. Mullane (App. 2 Dist. 1963) 34 Cal.Rptr. 33, 220 Cal.App.2d 637. Criminal Law 1177

A defendant has the right to present evidence in mitigation of his punishment or to assist the court in determination of his application for probation, and if he believes probation officer's report to be insufficient or inadequate he can present witnesses to counteract or correct any portion of the report. People v. Valdivia (App. 1 Dist. 1960) 5 Cal.Rptr. 832, 182 Cal.App.2d 145. Sentencing And Punishment 299; Sentencing And Punishment 1897

That court subsequent to trial was guided by unsworn and hearsay evidence of defendant's fraud in determining degree of guilt and punishment was not ground for reversal. People v. Claggett (App. 2 Dist. 1933) 130 Cal.App. 141, 19 P.2d 805. Sentencing And Punishment 1900

In the case of People v. McKay (1898) 122 Cal. 628, 55 P. 594, the court said: "It is discretionary with the court whether it will hear evidence in mitigation of the punishment."

89. ---- Weight and sufficiency, evidence

Reliability of information related by police officer at probation hearing, to effect that four days before probation hearing he had arrested man leaving defendant's residence and that man stated he had made regular purchases of heroin from defendant, was sufficiently demonstrated, and defendant was not denied due process by denial of order for removal of such man from the county jail to appear as a witness and for a continuance sufficient to allow such appearance, where court received verbatim statements of such man through reading of transcript of interview between such man and defense counsel, and heard other extensive testimony contradicting that given by the police officer. People v. Peterson (1973) 108 Cal.Rptr. 835, 9 Cal.3d 717, 511 P.2d 1187. Constitutional Law 4733(2); Sentencing And Punishment 1902

The trial judge in passing on motion to reduce conviction of voluntary manslaughter to involuntary manslaughter and for probation had power to reweigh the evidence. People v. Doyle (App. 1958) 162 Cal.App.2d 158, 328 P.2d 7. Sentencing And Punishment 1902; Criminal Law 996(3)

In proceeding wherein defendant was charged with presenting false claims to county welfare department and pleaded guilty under § 532a making it misdemeanor to obtain money under false pretenses, evidence before trial court on defendant's application for probation warranted imposing order of restitution of $544 or in such amount as probation officer would determine. People v. Marin (App. 1957) 147 Cal.App.2d 625, 305 P.2d 659. Sentencing And Punishment 1973(2)

90. Presumptions, generally

Denial of probation would be reversed and case remanded for resentencing, where probation officer who recommended denial of probation was under erroneous impression that defendant was presumptively ineligible for probation because her accomplice had been armed with weapon at time of murder and no unusual circumstances

were present, and trial court relied exclusively on that report in denying probation, so it appeared that trial court was under same erroneous impression regarding defendant's legal status. People v. Manriquez (App. 4 Dist. 1991) 1 Cal.Rptr.2d 600, 235 Cal.App.3d 1614. Criminal Law 1177; Criminal Law 1181.5(8)

Person who has been convicted of murder and who was armed with deadly weapon at time he committed crime or at time of his arrest is presumptively ineligible for probation except when deadly weapon is not firearm and person had lawful right to carry it. People v. Manriquez (App. 4 Dist. 1991) 1 Cal.Rptr.2d 600, 235 Cal.App.3d 1614. Sentencing And Punishment 1853

Where report was filed by probation officer in connection with the revocation of defendant's probation, and was read and considered by the court, the report carried with it the presumption that it was made in accordance with this section, and that the officer made an investigation of the circumstances surrounding the crime and of the prior record of the defendant. People v. Yarter (App. 2 Dist. 1956) 138 Cal.App.2d 803, 292 P.2d 649. Sentencing And Punishment 2017

Record in criminal case was not required affirmatively to show that trial court had read and considered report of probation officer to whom matter had been referred, and, in absence of information, it was presumed that trial court had discharged its duty. People v. Montgomery (App. 1955) 135 Cal.App.2d 507, 287 P.2d 520. Criminal Law 1144.17

Probation report filed by probation officer was presumably made in accordance with provisions of this section, and therefore officer would be deemed to have made an investigation of circumstances surrounding crime and prior record and history of defendant as required by this section, since it is presumed that the law has been obeyed and that official duty has been performed. People v. Wilson (App. 1 Dist. 1954) 123 Cal.App.2d 673, 267 P.2d 27. Criminal Law 322

Where defendant saw probation officer but refused to discuss offense, which defendant had committed, and thereafter defendant's attorney instructed defendant to tell probation officer everything, but defendant was unable to contact probation officer, and there as no evidence to overcome presumption that probation officer made an investigation of circumstances surrounding the offense and prior record of history of defendant, court did not abuse its discretion in denying defendant a continuance so that he might see probation officer. People v. Wilson (App. 1 Dist. 1954) 123 Cal.App.2d 673, 267 P.2d 27. Sentencing And Punishment 293

Under §§ 1191, 1202 and this section, where a court pronounced judgment seven days after a verdict of guilty, on a defendant who had applied for probation, it will be presumed, in support of the regularity of the judgment, that the matter was referred to the probation officer for report, if such report were necessary. People v. Polich (App. 2 Dist. 1914) 25 Cal.App. 464, 143 P. 1065. Criminal Law 1144.17

91. Continuance

Even though defendant was presumptively ineligible for probation on most of the counts of which he was convicted, his counsel was entitled by statute to the five-day continuance to read, consider and respond to probation report, which he unequivocally requested, however unlikely it was that he would be able to convince the court that probation should be granted. People v. Bohannon (App. 2 Dist. 2000) 98 Cal.Rptr.2d 488, 82 Cal.App.4th 798, review denied. Sentencing And Punishment 339

Trial court's refusal to continue sentencing hearing on ground that defense counsel did not receive probation report until day of hearing did deny due process to defendant, who was convicted of first-degree murder for hire and therefore was ineligible for probation; since defendant was ineligible for probation, judge had discretion to order report and defendant did not establish prejudice. People v. Middleton (App. 1 Dist. 1997) 60 Cal.Rptr.2d 366, 52

Cal.App.4th 19, as modified , review denied. Constitutional Law 4718; Sentencing And Punishment 339

Once probation report is ordered, better practice would be for judge to grant requested continuance when it is based on untimely receipt of probation report; in event judge refuses to continue sentencing hearing, no error exists unless defendant can establish prejudice. People v. Middleton (App. 1 Dist. 1997) 60 Cal.Rptr.2d 366, 52 Cal.App.4th 19, as modified , review denied. Sentencing And Punishment 339

Trial court's failure to grant request for continuance due to defense counsel's receipt of probation report only one day before sentencing hearing rendered that hearing fundamentally unfair. People v. Leffel (App. 5 Dist. 1987) 242 Cal.Rptr. 456, 196 Cal.App.3d 1310. Sentencing And Punishment 339

Failure of defense counsel to seek continuance even though probation report had not been delivered to him two days prior to sentencing hearing was not improper where defense counsel had been informed more than two days prior to the hearing of what probation officer's recommendation would be and concluded that continuance would not be in best interest of accused and defense counsel's argument at hearing demonstrated a thorough understanding of probation report and of other material which was before the court for consideration. People v. Kraus (App. 2 Dist. 1975) 121 Cal.Rptr. 11, 47 Cal.App.3d 568. Criminal Law 641.13(2.1)

Where date on which verdict was returned, court referred case to probation officer and on date of hearing defendant's counsel requested court for a continuance in order to file an application for probation and defendant personally joined therein, defendant could not claim that there was an improper delay in his sentencing after conviction. People v. Gillette (App. 1959) 171 Cal.App.2d 497, 341 P.2d 398, certiorari denied 80 S.Ct. 1619, 363 U.S. 846, 4 L.Ed.2d 1729. Criminal Law 1137(2)

The trial court's failure to pronounce judgment on conviction of crime within period of 30 days because of continuance of hearing on defendant's motion for new trial and application for probation until week after date set for judgment and sentence, as requested by defendant's attorney, was not reversible error, as defendant suffered no prejudice by extension of time and no miscarriage of justice resulted from delay in pronouncing judgment. People v. Tenedor (App. 2 Dist. 1951) 107 Cal.App.2d 581, 237 P.2d 679. Criminal Law 1177

The trial court did not lose jurisdiction to sentence defendant on his plea of guilty of crimes charged, including prior felony convictions, by granting his requests for continuances of hearing on his application for probation and of pronouncement of judgment and sentence, and surety on defendant's bail bound was obligated to produce defendant at time ordered by court, though defendant was not entitled to probation. People v. Kersten (App. 2 Dist. 1943) 60 Cal.App.2d 624, 141 P.2d 512. Bail 75

Where continuances of hearing on defendant's application for probation and of pronouncement of judgment and sentence on his plea of guilty of crimes charged, including prior felony convictions, were granted at his request, and his bail bond was filed long after expiration of five days following such plea, arguments that court lost jurisdiction to sentence defendant and that surety on bond was not obligated to guarantee defendant's presence in court thereafter were not available to defendant and surety on appeal from order denying their motions to set aside order forfeiting bond. People v. Kersten (App. 2 Dist. 1943) 60 Cal.App.2d 624, 141 P.2d 512. Bail 79(1)

Proceeding, in which trial court denied defendant's request for continuance to secure another attorney and pronounced sentence on date set for hearing of probation application two weeks after verdict of conviction was returned, was not too late. People v. Mangus (App. 2 Dist. 1935) 5 Cal.App.2d 353, 42 P.2d 681. Sentencing And Punishment 381

92. Sentence and punishment

The standard practice of requiring a defendant to waive custody time credit in order to obtain certain conditions of probation is not allowed where the trial court fails to exercise any sentencing discretion regarding such a waiver. People v. Juarez (App. 1 Dist. 2004) 8 Cal.Rptr.3d 238, 114 Cal.App.4th 1095. Sentencing And Punishment 1157

Factors and reasons expressed by sentencing judge in support of a midterm sentence with an additional year for defendant's conviction of robbery involving a knife and imposition of an additional consecutive year as a result of defendant's conviction for a second robbery involving a knife supported the sentencing decision, where the court specifically found that circumstances in mitigation did not outweigh circumstances in aggravation and there was no dual use of facts to support the consecutive sentence. People v. Hernandez (App. 5 Dist. 1984) 206 Cal.Rptr. 843, 160 Cal.App.3d 725. Sentencing And Punishment 373

93. Sentencing hearing

A prisoner is entitled to a new sentencing hearing only where he shows that (1) material false information was (2) relied upon by the sentencing judge and (3) defendant had no opportunity at the time of sentencing to correct such false information. In re Beal (App. 2 Dist. 1975) 120 Cal.Rptr. 11, 46 Cal.App.3d 94. Sentencing And Punishment 2305

94. Resentencing--In general

Trial court in sentencing defendant following revocation of his probation did not act arbitrarily in determining that several aggravating factors outweighed single mitigating factor and in selecting upper term of imprisonment. People v. Griffith (App. 5 Dist. 1984) 200 Cal.Rptr. 647, 153 Cal.App.3d 796. Sentencing And Punishment 2033

Effect of court of appeal's reversal of defendant's sentence was to restore him to his original position as if he had never been sentenced, and thus, upon resentencing, defendant was entitled to all normal procedures and rights available at time judgment is pronounced, including right to current probation report and any other information, including evidence of defendant's care and treatment in prison since the time of the original sentence. Van Velzer v. Superior Court, San Diego County. (App. 4 Dist. 1984) 199 Cal.Rptr. 695, 152 Cal.App.3d 742. Criminal Law 1192

95. ---- Remand, resentencing

Trial court has discretion to decide whether probation report should be provided for probation-ineligible defendant, and, since report is not required for such defendants upon original sentencing, report is also not required for resentencing after remand, assuming defendant remains ineligible for probation; abrogating *People v. Brady*, 162 Cal.App.3d 1, 208 Cal.Rptr. 21. West's Ann.Cal.Penal Code § 1203(g). People v. Bullock (App. 5 Dist. 1994) 31 Cal.Rptr.2d 850, 26 Cal.App.4th 985, rehearing denied. Sentencing And Punishment 276; Criminal Law 1192; Sentencing And Punishment 291

Although probation report is not required for resentencing of probation-ineligible defendant after remand, there should be sound reason for departing from preferred practice of making referral to probation officer, and trial court is in best position to evaluate need for updated report, with input of counsel. People v. Bullock (App. 5 Dist. 1994) 31 Cal.Rptr.2d 850, 26 Cal.App.4th 985, rehearing denied. Criminal Law 1192

Trial court was within its discretion in not ordering updated probation report when resentencing probation-ineligible defendant on remand from Court of Appeal, where defendant did not request updated report, and there was no

evidence that trial court acted on incomplete information or that there was information which defendant wished to have considered that was not, nor any indication that trial court incorrectly believed it could not order probation report had it wanted to do so. People v. Bullock (App. 5 Dist. 1994) 31 Cal.Rptr.2d 850, 26 Cal.App.4th 985, rehearing denied. Criminal Law 1192

Appropriate remedy after Court of Appeal determined that trial court improperly struck gun use enhancement when sentencing defendant who pled guilty to robbery was to allow defendant to withdraw his plea and proceed to trial on original charges; however, if defendant has already served his prison term, trial court would have to consider principle set forth in Supreme Court's *Tanner* decision regarding defendant's possible return to prison. People v. Lopez (App. 4 Dist. 1993) 27 Cal.Rptr.2d 25, 21 Cal.App.4th 225, as modified, modified on denial of rehearing , review denied. Criminal Law 274(3.1); Criminal Law 1192

After defendant's conviction for commercial burglary was affirmed and his conviction for assaulting a police officer was reversed on appeal, trial court that resentenced defendant on commercial burglary was required to obtain current probation report, where defendant was statutorily ineligible for probation at original sentencing hearing because of assault conviction. People v. Begnaud (App. 4 Dist. 1991) 1 Cal.Rptr.2d 507, 235 Cal.App.3d 1548. Sentencing And Punishment 291

Defendant should not be allowed to stand silent when court proceeds to resentence defendant without supplemental probation report, gamble that trial court will impose lesser term of imprisonment and then urge reversal for failure to obtain report without being required to make some showing that he or she was prejudiced thereby. People v. Begnaud (App. 4 Dist. 1991) 1 Cal.Rptr.2d 507, 235 Cal.App.3d 1548. Criminal Law 1137(1)

Defendant is deprived of his due process right to have trial court exercise informed sentencing discretion if trial court denies defendant's request for current probation report on remand for resentencing based only on trial court's subjective desire to avoid information which might require consideration of something other than maximum sentence. People v. Tatlis (App. 2 Dist. 1991) 282 Cal.Rptr. 55, 230 Cal.App.3d 1266, denial of habeas corpus affirmed in part , reversed in part 21 F.3d 1116. Constitutional Law 4725; Sentencing And Punishment 291; Criminal Law 1192

Sentencing court abused its discretion in denying defendant's request for current probation report on remand for resentencing, where sole reason given for denying request was that defendant was ineligible for probation, and sentencing judge's statement, that she did not intend to change her mind and sentence any differently than she had originally, suggested that judge was not open to possibility that there might be new mitigating factors to be weighed in the balance. People v. Tatlis (App. 2 Dist. 1991) 282 Cal.Rptr. 55, 230 Cal.App.3d 1266, denial of habeas corpus affirmed in part , reversed in part 21 F.3d 1116. Sentencing And Punishment 291; Criminal Law 1192

Trial court must have some substantial basis for denying defendant's request for current probation report on remand for resentencing; there must be far more than subjective desire to avoid information which might require consideration of something other than maximum sentence. People v. Tatlis (App. 2 Dist. 1991) 282 Cal.Rptr. 55, 230 Cal.App.3d 1266, denial of habeas corpus affirmed in part , reversed in part 21 F.3d 1116. Sentencing And Punishment 291; Criminal Law 1192

When defendant has requested current probation report on remand for resentencing, and trial court originally had ordered and considered probation report, good countervailing reason will be required for denying request. People v. Tatlis (App. 2 Dist. 1991) 282 Cal.Rptr. 55, 230 Cal.App.3d 1266, denial of habeas corpus affirmed in part , reversed in part 21 F.3d 1116. Sentencing And Punishment 291; Criminal Law 1192

Whether trial court should order current probation report on remand for resentencing clearly is discretionary rather than mandatory matter. People v. Tatlis (App. 2 Dist. 1991) 282 Cal.Rptr. 55, 230 Cal.App.3d 1266, denial of

habeas corpus affirmed in part , reversed in part 21 F.3d 1116. Sentencing And Punishment 291; Criminal Law 1192

While trial court has discretion to deviate from preferred practice of ordering current probation report on remand for resentencing, it must have sound reason for doing so. People v. Tatlis (App. 2 Dist. 1991) 282 Cal.Rptr. 55, 230 Cal.App.3d 1266, denial of habeas corpus affirmed in part , reversed in part 21 F.3d 1116. Sentencing And Punishment 291; Criminal Law 1192

On remand for resentencing, trial court had no duty to obtain current or supplemental probation report where defendant was ineligible; disavowing *People v. Brady*, 162 Cal.App.3d 1, 208 Cal.Rptr. 21 (5 Dist.); *People v. Smith*, 166 Cal.App.3d 1003, 212 Cal.Rptr. 737 (5 Dist.); *People v. Foley*, 170 Cal.App.3d 1039, 216 Cal.Rptr. 865 (3 Dist.). People v. McClure (App. 1 Dist. 1987) 237 Cal.Rptr. 90, 191 Cal.App.3d 1303. Criminal Law 1192

Referral to probation officer and preparation of supplemental probation report on defendant who was ineligible for probation after remand from Court of Appeals were not mandatory, but were committed to sound discretion of sentencing court; disagreeing with *People v. Brady*, 162 Cal.App.3d 1, 208 Cal.Rptr. 21 (5 Dist.). People v. Webb (App. 3 Dist. 1986) 230 Cal.Rptr. 755, 186 Cal.App.3d 401, review denied.

Determination of whether a case is an unusual one where the interests of justice would best be served if the person is granted probation is a matter in which the trial court exercises its discretion and a decision will not be disturbed on appeal unless a clear abuse of discretion is shown; however, when the trial court is either misinformed or misunderstands its discretionary powers, the appellate court must remand the matter to the trial court for resentencing, with trial court directed to consider the applicable rule of court. People v. McClintock (Super. 1984) 205 Cal.Rptr. 639, 159 Cal.App.3d Supp. 1. Sentencing And Punishment 1802; Criminal Law 1147

Where defendant in prosecution for burglary had lengthy juvenile and adult criminal record, latter of which included two prior burglary convictions and three misdemeanor convictions since 1978, and it was thus not reasonably probable that different result would have occurred had court articulated reasons for its choice of imprisonment, trial court's failure to satisfy requirement of statement of reasons for imprisonment as its sentencing choice did not require remand for resentencing. People v. Mobley (App. 1 Dist. 1983) 188 Cal.Rptr. 583, 139 Cal.App.3d 320. Criminal Law 1181.5(8)

96. Enforcing judgment

Trial court was not required to state reasons for electing middle term of imprisonment after it revoked probation in case in which imposition of sentence had originally been suspended; trial court's giving of reason for not extending probation was sufficient, since reasons for denying probation were reasons for selecting state prison sentence; court was not required to state those reasons twice. People v. Jones (App. 6 Dist. 1990) 274 Cal.Rptr. 527, 224 Cal.App.3d 1309, modified. Sentencing And Punishment 2030

Trial court's implicit determination that defendant, who had previously received stay of imposition of sentence, was no longer suitable candidate for probation because of her failure to satisfactorily complete probation, constituted sufficient reason for refusing to reinstate probation after probation was revoked. People v. Jones (App. 6 Dist. 1990) 274 Cal.Rptr. 527, 224 Cal.App.3d 1309, modified. Sentencing And Punishment 2039

Where the court suspended sentence as authorized by this section, it could not after the expiration of the maximum possible term of sentence enforce the original judgment against accused who had complied with the conditions of his probation. Ex parte Slattery (1912) 163 Cal. 176, 124 P. 856. Sentencing And Punishment 2010

Defendant having been placed on probation before execution of judgment and not having violated terms thereof was not subject to arrest under same judgment. In re Maguth (App. 2 Dist. 1930) 103 Cal.App. 572, 284 P. 940. Sentencing And Punishment 1914

97. Contempt

The publication of a newspaper editorial denouncing two members of a labor union who had been found guilty of assaulting nonunion truck drivers, published about a month before day which judge had set for passing on members' application for probation and for pronouncing sentence, and closing with observation that judge would make a serious mistake if he granted probation, did not warrant the Superior Court of Los Angeles County in adjudging publisher and its managing editor guilty of "contempt" on ground that editorial had an inherent tendency to interfere with the orderly administration of justice in a pending action, in view of newspaper's long-continued militancy in the field of labor controversies, since editorial only threatened future adverse criticism reasonably to be expected in event of a lenient disposition of the case. Bridges v. State of Cal., U.S.Cal.1941, 62 S.Ct. 190, 314 U.S. 252, 86 L.Ed. 192. Contempt 9

98. Final judgment

Where court adjudged that attorney be imprisoned in city jail for term of 180 days, that execution be suspended for two years and that defendant be placed on probation on condition he serve 175 days in city jail, court rendered its judgment of conviction and then suspended its execution, and where defendant thereafter appealed and judgment was affirmed, judgment was "final judgment of conviction" sufficient to sustain an order of disbarment. In re Phillips (1941) 17 Cal.2d 55, 109 P.2d 344. Attorney And Client 39

99. Judicial immunity

Judge's decision to place accused on probation was immune from civil liability. J. A. Meyers & Co. v. Los Angeles County Probation Dept. (App. 2 Dist. 1978) 144 Cal.Rptr. 186, 78 Cal.App.3d 309. Judges 36

100. Adequacy of counsel

Defense counsel's failure to request dismissal of defendant's prior strike in the interest of justice so as to make defendant eligible for "regular" probation did not constitute ineffective assistance; trial court had found defendant's prior performance on probation was unsatisfactory, trial court had found defendant's prior strike indicated that she posed a serious danger to society, and defendant had expressed willingness to stipulate to prison term imposed. People v. Johnson (App. 4 Dist. 2003) 7 Cal.Rptr.3d 492, 114 Cal.App.4th 284, modified on denial of rehearing , review denied. Criminal Law 641.13(7)

Because counsel in effect argued against his client, client was not required to point to any evidence or argument which could or should have been made on his behalf in order to establish inadequacy of counsel. People v. Cropper (App. 2 Dist. 1979) 152 Cal.Rptr. 555, 89 Cal.App.3d 716. Criminal Law 641.13(2.1)

Defendant was deprived of his constitutional rights to effective assistance of counsel at probation and sentence hearing, where defense counsel declined to make any argument in favor of defendant, in effect, counsel argued against defendant by stating that he agreed with probation report and counsel did not effectively induce court to sentence defendant to minimum sentence. People v. Cropper (App. 2 Dist. 1979) 152 Cal.Rptr. 555, 89 Cal.App.3d 716. Criminal Law 641.13(7)

Where defendant who was charged with unlawful sexual intercourse and assault by means of force likely to produce

great bodily injury had been previously convicted of felony of interstate transportation of stolen vehicles and had wilfully inflicted great bodily injury upon assault victim, defendant was ineligible for probation and ineligible for commitment as mentally disordered sex offender; thus, defense counsel's failure to urge that defendant be committed as sex offender could not serve as basis for reversing conviction on ground of incompetency of counsel. People v. Chapman (App. 3 Dist. 1975) 121 Cal.Rptr. 315, 47 Cal.App.3d 597. Sentencing And Punishment 1872(3); Criminal Law 1166.10(1); Mental Health 454; Sentencing And Punishment 1862

Notwithstanding defendant's claims that public defender provided at sentencing was totally unfamiliar with many of facts of case because he was not trial counsel and that public defender permitted inflammatory statements to be made by deputy district attorney at sentencing proceeding, defendant was not denied effective assistance of counsel, where there was no showing that defense counsel was guilty of any acts or omissions resulting in a deprivation of a crucial right to sentencing process or sentencing decision, the court, counsel and defendant were clearly aware of sentencing alternatives, and district attorney's statement that defendant had stated that it was his practice to make knives appeared to have been made in good faith and not with deliberate intent to bring in evidence outside the record. People v. Vatelli (App. 1 Dist. 1971) 92 Cal.Rptr. 763, 15 Cal.App.3d 54. Criminal Law 641.13(7)

101. New trial

In absence of facts warranting present denial of probation, defendant who was granted probation on conviction which was set aside could not be denied probation on conviction pursuant to retrial. People v. Thornton (App. 1 Dist. 1971) 92 Cal.Rptr. 327, 14 Cal.App.3d 324. Sentencing And Punishment 1888

Where order granting probation has been made but subsequently set aside, court may entertain and grant a motion for new trial as though no order granting probation had been made. People v. McGill (App. 4 Dist. 1970) 86 Cal.Rptr. 283, 6 Cal.App.3d 953. Criminal Law 905

102. Review--In general

See also, Notes of Decisions under Penal Code § 1203.1.

A reviewing court may not invalidate any condition of probation, including restitution, unless the condition (1) has no relationship to the crime of which the offender was convicted, (2) relates to conduct which is not in itself criminal, and (3) requires or forbids conduct which is not reasonably related to future criminality. People v. Rugamas (App. 3 Dist. 2001) 113 Cal.Rptr.2d 271, 93 Cal.App.4th 518. Criminal Law 1177

Judgment of sentencing court on matter of probation is appealable and a complete record of proceedings is provided for appellate review. People v. Edwards (1976) 135 Cal.Rptr. 411, 18 Cal.3d 796, 557 P.2d 995. Criminal Law 1023(16)

Revocation of probation on evidence reasonably showing that probationer was unworthy of probation will not be disturbed on appeal. People v. Fields (App. 2 Dist. 1933) 131 Cal.App. 56, 20 P.2d 988. Criminal Law 1158(1)

That application for probation was denied defendant affords no ground for reversal of conviction of grand theft. People v. Anderson (App. 2 Dist. 1929) 98 Cal.App. 40, 276 P. 401. Criminal Law 1177

103. ---- Appealable orders, review

Even though, upon defendant's conviction of dispensing dangerous drugs without good faith prior examination and medical indication therefor, no express terms of probation were stated by court and where defendant had been found

guilty by jury and had not been acquitted of charges but docket simply read "Imposition of sentence is suspended," order could only be regarded as informal grant of summary probation whose maximum term was three years, so that suspension of sentence was an implied order granting probation and was thus appealable. People v. Berkowitz (Super. 1977) 137 Cal.Rptr. 313, 68 Cal.App.3d Supp. 9. Sentencing And Punishment 1914; Criminal Law 1023(16)

There is no appeal from order denying probation, but where denial is for lack of jurisdiction, or because court failed to follow statutory requirements pertaining to probation or there is clear showing of abuse of discretion, such denial may be reviewed on appeal from judgment. People v. Ingram (App. 2 Dist. 1969) 77 Cal.Rptr. 423, 272 Cal.App.2d 435, certiorari denied 90 S.Ct. 399, 396 U.S. 116, 24 L.Ed.2d 311. Criminal Law 1023(16); Criminal Law 1134(10)

An order denying probation is not an order from which an appeal may be taken, but is an order before judgment reviewable on appeal from the judgment, and attempted appeal from such order would be dismissed. People v. Walters (App. 1 Dist. 1961) 11 Cal.Rptr. 597, 190 Cal.App.2d 98. Criminal Law 1023(16)

Generally an order denying probation on the merits is not reviewable on appeal. People v. Hollis (App. 2 Dist. 1959) 1 Cal.Rptr. 293, 176 Cal.App.2d 92. Criminal Law 1147

Where denial of probation is based upon an erroneous view of the probation law upon the court's opinion that it is without power or jurisdiction in the matter, the order of denial, though not appealable, may be reviewed on appeal from judgment. People v. Hollis (App. 2 Dist. 1959) 1 Cal.Rptr. 293, 176 Cal.App.2d 92. Criminal Law 1134(10)

Attempted appeal from order denying probation would be dismissed. People v. Bass (App. 1959) 175 Cal.App.2d 383, 346 P.2d 216. Criminal Law 1023(16)

An order denying probation is not an appealable order, although such an order may be reviewed on appeal from a judgment of conviction. People v. Newlan (App. 1959) 173 Cal.App.2d 579, 343 P.2d 618. Criminal Law 1023(16)

As to offenders who are ineligible for probation, court has no discretion but to sentence them to an appropriate institution for punishment or treatment provided by law, and such judgment is appealable, and its finality must await results of the appeal. Stephens v. Toomey (1959) 51 Cal.2d 864, 338 P.2d 182. Sentencing And Punishment 1870; Criminal Law 1023(1)

Where defendant was found guilty and probation was granted, and defendant's motion for new trial was denied, even though no judgment was entered, order granting probation was an appealable order and appeal was proper both as to order granting probation and an order denying motion for new trial. People v. D'Allesandro (App. 1958) 163 Cal.App.2d 559, 329 P.2d 616. Criminal Law 1023(13); Criminal Law 1023(16)

Where trial court found defendant guilty and summarily granted probation, among the terms of which were a fine and requirement that defendant serve first ten days of probationary period in jail, there was no sentence imposed upon verdict and no judgment from which to appeal. People v. McShane (Super. 1954) 126 Cal.App.2d Supp. 845, 272 P.2d 571. Criminal Law 1023(10)

An order denying probation is not appealable, but where such denial is for lack of jurisdiction, the order will be reviewed on appeal from judgment. Schaefer v. Superior Court in and for Santa Barbara County (App. 1952) 113 Cal.App.2d 428, 248 P.2d 450. Criminal Law 1023(10); Criminal Law 1134(10)

Where judgment requiring defendant to be imprisoned became final, and defendant applied for probation and was subsequently adjudged a sexual psychopath, and trial judge failed to rule upon application for probation made after defendant's return from hospital to which he was committed, a second judgment sentencing defendant to prison was an order made after judgment affecting substantial rights of defendant and was an appealable order. People v. Neal (App. 2 Dist. 1951) 108 Cal.App.2d 491, 239 P.2d 38.

An order granting probation is not a judgment and no appeal lies therefrom. People v. D'Elia (App. 1946) 73 Cal.App.2d 764, 167 P.2d 253. Criminal Law 1023(16)

Where defendant on hearing on his application for probation on burglary charge admitted two prior convictions but court nevertheless entered order granting probation and thereafter revoked the order for violation of probation and entered judgment of conviction, defendant should have sought his remedy by appeal from the judgment and could not appeal from order denying motion to vacate the judgment. People v. Scranton (App. 1 Dist. 1942) 50 Cal.App.2d 492, 123 P.2d 132. Criminal Law 1023(12)

Order denying probation is not appealable. People v. Bartley (App. 1910) 12 Cal.App. 773, 108 P. 868.

104. ---- Scope, review

For purposes of appeal, defendant who was convicted of possession of child pornography did not waive his objection to the constitutionality of probation condition precluding Internet access, where defendant argued at a previous hearing that his profession as a digital technician required him to have access to the Internet. People v. Harrisson (App. 3 Dist. 2005) 36 Cal.Rptr.3d 264, 134 Cal.App.4th 637, modified on denial of rehearing , review denied. Criminal Law 1042

Where superior court's order following habeas corpus that judgment and sentence be set aside and petitioner be resentenced to ten years' probation referred to judgment imposing imprisonment, not to actual judgment of conviction, scope of appeal from such order was limited to questions in habeas corpus and resentencing proceeding and petitioner's claims of inadequate representation of counsel on initial appeal from conviction and prejudice due to the mention of invalid prior conviction at trial could not be considered. People v. Dyer (App. 1 Dist. 1969) 74 Cal.Rptr. 764, 269 Cal.App.2d 209. Criminal Law 1134(8)

Where defendant, in forgery prosecution, admitted prior federal court felony convictions upon advice of court-appointed counsel, and such federal judgments were examined in court by counsel but were not offered in evidence, defendant was precluded by admissions from claiming on appeal that federal judgments were for misdemeanor, rather than felony, offenses. People v. Suggs (App. 1956) 142 Cal.App.2d 142, 297 P.2d 1039. Criminal Law 1137(5)

Where assistant district attorney denied under oath on motion by defendant to set aside judgment of conviction, the making of alleged promise of probation if defendant would plead guilty, the district court of appeal could not on appeal from order denying the motion interfere with determination of trial court that such promise was not made. People v. O'Brien (App. 1 Dist. 1950) 97 Cal.App.2d 391, 217 P.2d 678. Criminal Law 1158(1)

If trial court desired to avoid referring matter to probation officer and thereafter having to consider his report before granting probation, there was an error of procedure in disregarding mandatory provisions of this section which error occurred before judgment and hence was reviewable on appeal from the judgment. People v. Lopez (Super. 1941) 43 Cal.App.2d Supp. 854, 110 P.2d 140. Criminal Law 1134(10)

The trial court's granting or denying of probation is not ordinarily reviewable on appeal. People v. Ralls (App. 1937) 21 Cal.App.2d 674, 70 P.2d 265. Criminal Law 1147

Exercise of power to deny probation is not reviewable by district court of appeal. People v. Kirwin (App. 2 Dist. 1927) 87 Cal.App. 783, 262 P. 803. Criminal Law 1147

Order refusing leave to apply for probation after conviction solely for failing to plead guilty was reviewable on appeal from judgment. People v. Jones (App. 2 Dist. 1927) 87 Cal.App. 482, 262 P. 361. Criminal Law 1134(10)

Denial of leave to file application for probation cannot be reviewed by appellate court. People v. Laborwits (App. 2 Dist. 1925) 74 Cal.App. 401, 240 P. 802.

The refusal of probation under this section can never be reviewed. People v. Dunlop (App. 1915) 27 Cal.App. 460, 150 P. 389. Criminal Law 1147

105. ---- Discretion, review

Probation is not a right but an act of clemency to be exercised in court's discretion, and its order in that regard will not be disturbed on appeal in the absence of showing of abuse of discretion. People v. Paul (1978) 144 Cal.Rptr. 431, 78 Cal.App.3d 22; People v. Ozene (1972) 104 Cal.Rptr. 170, 27 Cal.App.3d 905; People v. Keller (1966) 54 Cal.Rptr. 154, 245 Cal.App.2d 711; People v. Henderson (1964) 37 Cal.Rptr. 883, 226 Cal.App.2d 160.

Record on appeal affords a reviewing court an adequate basis for determining the merits of a claim that an order denying a recommendation of probation constitutes a prejudicial abuse of judicial discretion. People v. Prater (1977) 139 Cal.Rptr. 566, 71 Cal.App.3d 695; People v. Edwards (1976) 135 Cal.Rptr. 411, 557 P.2d 995, 18 Cal.3d 796.

Probation is not a right but a matter of judicial clemency within sentencing judge's sole discretion; thus, order denying probation will not be reversed in absence of clear abuse of that discretion. People v. Podesto (1976) 133 Cal.Rptr. 409, 62 Cal.App.3d 708; People v. Ingram (1969) 77 Cal.Rptr. 423, 272 Cal.App.2d 435, certiorari denied , 90 S.Ct. 399, 396 U.S. 116, 24 L.Ed.2d 311; People v. Herd (1963) 34 Cal.Rptr. 141, 220 Cal.App.2d 847; People v. Hollis (1960) 1 Cal.Rptr. 293, 176 Cal.App.2d 92.

Order denying probation will not be reviewed on appeal unless it be shown that there was an abuse of that discretion. People v. Cooper (1954) 266 P.2d 566, 123 Cal.App.2d 353; People v. Adams (1951) 224 P.2d 873, 100 Cal.App.2d 841; People v. Jackson (1949) 200 P.2d 204, 89 Cal.App.2d 181; People v. Wiley (1939) 91 P.2d 907, 33 Cal.App.2d 424.

A ruling prescribing conditions of probation that was otherwise within trial court's power will be set aside where it appears from record that court actually failed to exercise the discretion vested in it by law. People v. Juarez (App. 1 Dist. 2004) 8 Cal.Rptr.3d 238, 114 Cal.App.4th 1095. Criminal Law 1147

A sentencing determination predicated on the judicial repudiation of legislative policy constitutes an abuse of discretion. People v. Juarez (App. 1 Dist. 2004) 8 Cal.Rptr.3d 238, 114 Cal.App.4th 1095. Sentencing And Punishment 31

A ruling otherwise within the trial court's power will nonetheless be set aside where it appears from the record that in issuing the ruling the court failed to exercise the discretion vested in it by law. Fletcher v. Superior Court (App. 1 Dist. 2002) 123 Cal.Rptr.2d 99, 100 Cal.App.4th 386, review denied. Criminal Law 1147

Failure to exercise a discretion conferred and compelled by law constitutes a denial of a fair hearing and a deprivation of fundamental procedural rights, and thus requires reversal. Fletcher v. Superior Court (App. 1 Dist. 2002) 123 Cal.Rptr.2d 99, 100 Cal.App.4th 386, review denied. Criminal Law 1147

A denial or a grant of probation generally rests within the broad discretion of the trial court and will not be disturbed on appeal except on a showing that the court exercised its discretion in an arbitrary or capricious manner. People v. Downey (App. 2 Dist. 2000) 98 Cal.Rptr.2d 627, 82 Cal.App.4th 899, rehearing denied , review denied. Criminal Law 1147; Sentencing And Punishment 1802

Court of Appeal will not interfere with the trial court's exercise of discretion when trial court has considered all facts bearing on the offense and the defendant to be sentenced. People v. Downey (App. 2 Dist. 2000) 98 Cal.Rptr.2d 627, 82 Cal.App.4th 899, rehearing denied , review denied. Criminal Law 1147

In reviewing grant of probation, Court of Appeal generally applies abuse of discretion standard. People v. Superior Court (Dorsey) (App. 4 Dist. 1996) 58 Cal.Rptr.2d 165, 50 Cal.App.4th 1216, review denied. Criminal Law 1147

Standard for reviewing trial court's finding that case is or is not unusual, for purposes of determination of whether to grant probation when defendant has used a firearm, is abuse of discretion. People v. Superior Court (Du) (App. 2 Dist. 1992) 7 Cal.Rptr.2d 177, 5 Cal.App.4th 822, rehearing denied and modified , review denied. Criminal Law 1147

Where it appeared that trial court exercised its discretion when it revoked defendant's probation after defendant was convicted of robbery, reversal of order revoking probation was not required when robbery conviction was set aside on appeal. People v. McNeal (App. 1 Dist. 1979) 153 Cal.Rptr. 706, 90 Cal.App.3d 830. Criminal Law 1186.1

Probation rests in discretion of trial judge, and heavy burden is imposed upon a defendant to show abuse of discretion in denial of his request for probation. People v. Brown (App. 2 Dist. 1969) 76 Cal.Rptr. 568, 271 Cal.App.2d 391. Sentencing And Punishment 1802

Judge's discretion in granting or denying probation is not disturbed on appeal unless there is a clear showing of abuse. People v. Troyn (App. 5 Dist. 1964) 39 Cal.Rptr. 924, 229 Cal.App.2d 181. Criminal Law 1147

Granting or denying probation is committed to sound discretion of trial court and will not be disturbed on appeal, in absence of showing of abuse of discretion. People v. Privitier (App. 2 Dist. 1962) 19 Cal.Rptr. 640, 200 Cal.App.2d 725. Sentencing And Punishment 1802; Criminal Law 1147

An order denying probation will not be disturbed upon appeal unless it be shown that there was a manifest abuse of discretion. People v. Bartges (App. 1 Dist. 1954) 126 Cal.App.2d 763, 273 P.2d 49, amended 128 Cal.App.2d 496, 275 P.2d 518. Criminal Law 1147

The granting or withholding of probation is discretionary with trial court and exercise of that discretion will not be interfered with on appeal in absence of a clear showing of an abuse thereof. People v. Connolly (App. 1951) 103 Cal.App.2d 245, 229 P.2d 112.

Refusal of trial court to follow recommendation of probation officer that application for probation be granted under certain conditions was not an abuse of discretion where application was fully considered in open court, as against contention that trial judge acted under mistaken impression that he could not grant probation under the law. People

v. Miranda (App. 1939) 31 Cal.App.2d 370, 88 P.2d 181. Sentencing And Punishment 1886

Very strong showing of abuse of discretion on part of trial court is required to warrant interference in trial court's order denying an application for probation. People v. Hopper (App. 3 Dist. 1937) 20 Cal.App.2d 108, 66 P.2d 459. Criminal Law 1147

Denial of application for probation would not be disturbed on appeal, where probation officer to whom application was referred reported adversely thereon, in absence of strong showing of abuse of discretion. People v. Wooley (App. 3 Dist. 1936) 15 Cal.App.2d 669, 59 P.2d 1065. Criminal Law 1147

Very strong showing is required to justify reviewing court in setting aside trial court's order denying or revoking probation for abuse of discretion. People v. Lippner (1933) 219 Cal. 395, 26 P.2d 457. Criminal Law 1147

Refusal to entertain application for probation after conviction could not be reviewed on appeal, as such matter rests entirely in trial court's discretion. People v. Judson (App. 2 Dist. 1933) 128 Cal.App. 768, 18 P.2d 379. Criminal Law 1147

Action of trial court as to application for probation will not be disturbed unless capricious or arbitrary. People v. Bryant (App. 2 Dist. 1929) 101 Cal.App. 84, 281 P. 404. Criminal Law 1147

Trial court's action on question of probation will not be disturbed on appeal in absence of abuse of discretion. People v. Brahm (App. 2 Dist. 1929) 98 Cal.App. 733, 277 P. 896. Criminal Law 1147

Decision as to whether particular case or defendant is within probation law, if departing from correct rule, is abuse of discretion and reviewable. People v. Jones (App. 2 Dist. 1927) 87 Cal.App. 482, 262 P. 361. Sentencing And Punishment 1823; Criminal Law 1147

Question of entertaining proceedings to end that one convicted of crime may be admitted to probation rests entirely within discretion of trial court and his refusal of probation can never be reviewed. People v. Dunlop (App. 1915) 27 Cal.App. 460, 150 P. 389.

106. ---- Presumptions, review

In reviewing the record it was to be presumed that probation officer fully and fairly performed duty imposed upon him by this section. People v. Rosenberg (App. 2 Dist. 1963) 28 Cal.Rptr. 214, 212 Cal.App.2d 773. Criminal Law 322

District court of appeal must assume in favor of verdict existence of every fact which trier of fact could have reasonably deduced from evidence and then determine whether or not guilt of defendant is deducible therefrom, and question for appellate court to pass upon is whether there was evidence in record justifying inference of guilt. People v. Privitier (App. 2 Dist. 1962) 19 Cal.Rptr. 640, 200 Cal.App.2d 725. Criminal Law 1144.13(5); Criminal Law 1159.2(1)

On appeal by defendant from judgment denying request of defendant for continuance of hearing on his application for probation, district court of appeal was required to presume that trial judge believed that probation officer had made a report sufficient to enable trial judge to pass fairly on application of defendant for probation. People v. Wilson (App. 1 Dist. 1954) 123 Cal.App.2d 673, 267 P.2d 27. Criminal Law 1144.17

Where court, when making determination on application of defendant for probation after pleas of guilty to burglary and forgery, was informed of another pending charge against defendant in another and separate information to which plea of not guilty had been entered, and court stated that it would assume that defendant was innocent until proven guilty of such charge, even if court was not entitled to consider the pending robbery charge in making its determination on the application, circumstances disclosed no consideration by court of the robbery accusation to the prejudice of defendant. People v. Escobar (App. 1 Dist. 1953) 122 Cal.App.2d 15, 264 P.2d 571. Sentencing And Punishment 1872(1)

Appellate court could not presume that trial court, when considering defendant's application for probation, accepted the finding of jury that defendant was armed with a deadly weapon rather than with a dangerous one within meaning of this section making one guilty of robbery while armed with a deadly weapon ineligible for probation where denial of probation was made without comment. People v. Connolly (App. 1951) 103 Cal.App.2d 245, 229 P.2d 112. Criminal Law 1144.17

The appellate court must assume that accused was guilty of offense charged in determining whether trial court committed error in denying a motion for probation. People v. Ralls (App. 1937) 21 Cal.App.2d 674, 70 P.2d 265. Criminal Law 1144.17

Record on appeal being silent as to grounds for denying probation application, presumption is that denial was founded upon consideration of merits. People v. Jones (App. 2 Dist. 1927) 87 Cal.App. 482, 262 P. 361. Criminal Law 1144.17

107. ---- Harmless error, review

Trial court's failure to prepare a supplemental probation report before sentencing defendant was harmless error; the original probation report apprised the trial court of defendant's background and other relevant information, and his record was such, including numerous parole violations and periods of incarceration, that there was little justification for a further grant of probation. People v. Dobbins (App. 3 Dist. 2005) 24 Cal.Rptr.3d 882, 127 Cal.App.4th 176. Criminal Law 1177

Trial court's failure to prepare a supplemental probation report before sentencing defendant did not require automatic reversal; there is no federal constitutional right to a supplemental probation report, and because the alleged error implicated only California statutory law, review is governed by the harmless-error standard, under which court will not reverse unless there is a reasonable probability of a result more favorable to defendant if not for the error. People v. Dobbins (App. 3 Dist. 2005) 24 Cal.Rptr.3d 882, 127 Cal.App.4th 176. Criminal Law 1177

Defendants could not obtain review of probation requirement that they pay marijuana eradication expenses, which requirement they did not object to at trial court, under unauthorized sentence exception to waiver doctrine; though prosecution failed to comply with statutory procedure for recovery of such expenses, trial court had authority to impose condition, error was only procedural, error was not easily correctable as matter would have to be remanded for further proceedings if defendants' claim was sustained, defendants' due process rights were satisfied as they had notice and opportunity to contest expenses, and right to jury trial on issue of expenses was statutory rather than constitutional. People v. Brach (App. 3 Dist. 2002) 115 Cal.Rptr.2d 753, 95 Cal.App.4th 571, as modified. Criminal Law 1042

Court's citation of reasons for imposing upper base term cured any harm flowing from its omission to state reasons for denying probation. People v. Kellett (App. 5 Dist. 1982) 185 Cal.Rptr. 1, 134 Cal.App.3d 949. Sentencing And Punishment 373

Where defendant was ineligible for probation in that he had used and attempted to use a gun upon a human being in

perpetration of a robbery and in that case was not unusual one with interest of justice demanding departure from general policy, trial court which was familiar with probation report prepared immediately after trial did not commit prejudicial error in failing to obtain prior to pronouncing sentence a current probation report prepared after defendant's appeal. People v. Ware (App. 2 Dist. 1966) 50 Cal.Rptr. 252, 241 Cal.App.2d 143. Criminal Law 1177

Classification of defendants who had struck robbery victim three or four times with tire irons, once across nose and another time across the eye, so that he suffered cut eye, cut nose, and fractured skull as ineligible for probation was free of prejudicial error notwithstanding lack of express finding of deadly weapon use. People v. Fisher (App. 3 Dist. 1965) 44 Cal.Rptr. 302, 234 Cal.App.2d 189. Criminal Law 1186.4(1)

Where no motion was made at hearing on application of defendant for probation, to strike statement made by deputy district attorney referring to proof on another and separate pending charge of robbery by defendant, and defendant's counsel had previously commented on the inadequacy of proof on such charge, it would be assumed that the remarks of the deputy district attorney were invited by remarks of defendant's counsel, and that they did not, under the circumstances, prejudice defendant. People v. Escobar (App. 1 Dist. 1953) 122 Cal.App.2d 15, 264 P.2d 571. Criminal Law 1144.17

Trial court's announced conclusion that defendant was not eligible for probation because of provision of this section did not entitle defendant to a reversal even if shown that such provision was not applicable, where trial court also relied on other reasons in concluding that defendant was not eligible for probation. People v. Brigham (App. 1 Dist. 1945) 72 Cal.App.2d 1, 163 P.2d 891. Sentencing And Punishment 1870

Where defendant who had pleaded guilty to second-degree burglary on application for probation admitted two prior convictions of burglary and of attempt to commit burglary and court entered order granting probation which order was revoked for violation of the probation and thereafter court entered a judgment of conviction, alleged error in granting probation did not prejudice defendant though he served year in county jail as condition of probation. People v. Scranton (App. 1 Dist. 1942) 50 Cal.App.2d 492, 123 P.2d 132. Criminal Law 1177

108. ---- Prejudicial error, review

Failure of court to consider a defendant's application for probation deprives him of a substantial right, and requires a reversal of a judgment against him. People v. Blackman (App. 4 Dist. 1963) 35 Cal.Rptr. 761, 223 Cal.App.2d 303, certiorari denied 84 S.Ct. 1655, 377 U.S. 973, 12 L.Ed.2d 741. Sentencing And Punishment 1891; Criminal Law 1177

Where defendants pleaded guilty to joint charge of robbery and, upon being informed that if either was armed with deadly weapon at time of robbery, both were guilty of being armed, each admitted that he was armed although only one of them had expressly so stated to court, and they were thereupon found guilty of first-degree robbery, and sentenced accordingly, without being advised of their right to apply for probation and without presentence investigation, judgments were reversed with instructions to determine eligibility for probation and, if ineligible, to exercise discretion with respect to presentence investigation. People v. Gotto (App. 1955) 138 Cal.App.2d 165, 291 P.2d 41. Criminal Law 1192; Criminal Law 1177

Where trial court because of denial of applications for probation was unauthorized to suspend a part of the sentences but it appeared that court did not intend to require defendants to serve 180 days in jail, defendants were entitled to relief on appeal from effects of trial court's misapprehension as to its power. People v. Lopez (Super. 1941) 43 Cal.App.2d Supp. 854, 110 P.2d 140. Criminal Law 1134(10)

In prosecution for murder by use of knife, trial court's advice to jury that granting of probation, recommended by jury, would be discretionary with court and that jury's recommendation would be given great weight, was reversible error, where jury thereafter returned verdict for manslaughter with recommendation of probation. People v. Covey (App. 3 Dist. 1934) 137 Cal.App. 517, 30 P.2d 1010. Criminal Law 864

Instruction that restoration of property embezzled authorized mitigation of punishment was reversible error, where court, under circumstances, could not grant probation. People v. Smith (1929) 206 Cal. 235, 273 P. 789. Criminal Law 1172.9; Embezzlement 48(1)

109. ---- Waiver of objections, review

Legal error that resulted in an unauthorized sentence may be asserted in the first instance on appeal, even absent an objection in the trial court. People v. Corban (App. 1 Dist. 2006) 42 Cal.Rptr.3d 184, 138 Cal.App.4th 1111. Criminal Law 1042

Defendant waived any procedural irregularities in trial court's order that defendant pay preparation costs of presentence probation report, where defendant did not object to imposition of costs at trial. People v. Robinson (App. 3 Dist. 2002) 128 Cal.Rptr.2d 619, 104 Cal.App.4th 902. Criminal Law 1042

While a discretionary sentencing decision may not be challenged on appeal in the absence of objection below, an appeal from an "unauthorized sentence" is not subject to the same limitation. People v. Andrade (App. 1 Dist. 2002) 121 Cal.Rptr.2d 923, 100 Cal.App.4th 351, review denied. Criminal Law 1042

Defendant did not waive for review his claim that the trial court imposed an unauthorized parole revocation fine, even though defendant failed to object to the imposition of the fine at the time of sentencing; the defendant's claim involved an allegedly unauthorized sentence, and such a claim could be raised at any time. People v. Andrade (App. 1 Dist. 2002) 121 Cal.Rptr.2d 923, 100 Cal.App.4th 351, review denied. Criminal Law 1042

The waiver doctrine precludes appellate review in cases where a defendant fails to object to the reasonableness of a probation condition. People v. Brach (App. 3 Dist. 2002) 115 Cal.Rptr.2d 753, 95 Cal.App.4th 571, as modified. Criminal Law 1042

Unauthorized sentence exception is a narrow exception to the waiver doctrine, which otherwise precludes appellate review of errors relating to a sentence when defendant fails raise the errors in the trial court, and exception normally applies where the sentence could not lawfully be imposed under any circumstance in the particular case, for example, where the court violates mandatory provisions governing the length of confinement. People v. Brach (App. 3 Dist. 2002) 115 Cal.Rptr.2d 753, 95 Cal.App.4th 571, as modified. Criminal Law 1042

The class of nonwaivable claims under unauthorized sentence exception to the waiver doctrine, which otherwise precludes appellate review of errors relating to a sentence when defendant fails raise the errors in trial court, includes obvious legal errors at sentencing that are correctable without referring to factual findings in the record or remanding for further findings. People v. Brach (App. 3 Dist. 2002) 115 Cal.Rptr.2d 753, 95 Cal.App.4th 571, as modified. Criminal Law 1042

To preserve for appeal the issue of the reasonableness of a condition of probation, a juvenile offender must object to it in the juvenile court, unless some exception applies to excuse the failure to object; overruling *In re Tanya B.*, 50 Cal.Rptr.2d 576. In re Justin S. (App. 2 Dist. 2001) 113 Cal.Rptr.2d 466, 93 Cal.App.4th 811. Infants 243

Rule, that failure to timely challenge probation condition in trial court waives claim on appeal, would not be applied

to defendant or any other litigant whose probation conditions were considered at sentencing hearing held before instant decision would become final; existing law overwhelmingly said no such objection was required for preservation of claim on appeal. People v. Welch (1993) 19 Cal.Rptr.2d 520, 5 Cal.4th 228, 851 P.2d 802. Courts 100(1); Criminal Law 1042

Failure to object and make offer of proof at sentencing hearing concerning alleged errors or omissions in probation report waives claim on appeal. People v. Welch (1993) 19 Cal.Rptr.2d 520, 5 Cal.4th 228, 851 P.2d 802. Criminal Law 1042

Failure to timely challenge probation condition in trial court, on grounds that it is condition which regulates conduct not itself criminal and is not reasonably related to crime of which defendant was convicted or to future criminality, waives claim on appeal. People v. Welch (1993) 19 Cal.Rptr.2d 520, 5 Cal.4th 228, 851 P.2d 802. Criminal Law 1042

Absent an objection at trial level to contents of probation report, defendant was deemed to have waived that issue. People v. Wagoner (App. 5 Dist. 1979) 152 Cal.Rptr. 639, 89 Cal.App.3d 605. Criminal Law 1042

Unless record of probation and sentencing hearing shows objection to allegedly improper entries in probation report and an erroneous ruling thereon, such issue is not available on appeal; a trial court objection is a necessary predicate to appellate consideration of such issue. People v. Medina (App. 2 Dist. 1978) 144 Cal.Rptr. 581, 78 Cal.App.3d 1000. Criminal Law 1042

Defendant who failed to exercise right to reject terms of probation which were granted in accordance with his request and to demand that judgment be entered and sentence imposed, waived his objections thereto and was foreclosed from raising them on appeal. People v. Walker (App. 3 Dist. 1949) 93 Cal.App.2d 54, 208 P.2d 724. Criminal Law 1042

Defendant, having applied from, consented to and taken advantage of favorable terms of probation, though ineligible therefor due to prior conviction of felony, could not, after probation had been revoked for violation thereof, challenge for the first time on habeas corpus court's jurisdiction to pronounce sentence. Ex parte Martin (App. 3 Dist. 1947) 82 Cal.App.2d 16, 185 P.2d 645. Habeas Corpus 506

110. ---- Mandamus, review

Where superior court erroneously concluded that defendant, who had pleaded guilty to charge of embezzling public money, was a public official and therefore refused to entertain his application for probation on ground that he was not eligible therefor, petition for writ of prohibition to restrain superior court from pronouncing sentence until it had considered and acted upon application for probation would be regarded as a petition for writ of mandate and a peremptory writ of mandate would be issued commanding superior court to hear and determine application for probation upon its merits. Schaefer v. Superior Court in and for Santa Barbara County (App. 1952) 113 Cal.App.2d 428, 248 P.2d 450. Mandamus 1; Mandamus 31

Application for writ of mandate was proper remedy to require trial court to hear and determine probation application. Lloyd v. Superior Court of California, in and for Los Angeles County (1929) 208 Cal. 622, 283 P. 931. Mandamus 61

Where one guilty of robbery in second degree, who was possessed of loaded revolver at time of crime, moved for order placing him on probation, court then had power to hear application, but whether he would do so was entirely in discretion of court, which could not be controlled or reviewed by mandamus. Svoboda v. Purkitt (App. 1 Dist.

1925) 75 Cal.App. 148, 242 P. 81.

111. ---- Modification of judgment, review

Judgment in prosecution for assault with a deadly weapon on police officer would be modified by striking the "armed clause language," and would be modified to state that defendant was armed with a deadly weapon at time of the commission of the offense within meaning of this section but that § 3024 (repealed) relating to minimum terms for armed or prior offenders, and § 12022 relating to commission of a felony or attempt while armed, and providing for additional punishment, were not applicable. People v. Whalen (App. 5 Dist. 1973) 109 Cal.Rptr. 282, 33 Cal.App.3d 710. Criminal Law 1184(1)

Judgment upon conviction of attempted robbery and robbery would be modified by deleting the words "and that defendant was armed as alleged" and substituting therefor the words "and that, at the time of commission of each of said two offenses, defendant was armed with a pistol within the meaning of section 1203 of the Penal Code--sections 3024 and 12022 of the Penal Code not being applicable." People v. Lyons (App. 2 Dist. 1970) 84 Cal.Rptr. 535, 4 Cal.App.3d 662. Criminal Law 1184(2)

112. ---- Time, review

Where judgment of conviction was pronounced on December 18, 1951, but execution of sentence was suspended and defendant was granted conditional probation for a period of three years, and order granting probation was revoked on March 19, 1953, defendant's appeal, notice of which was signed March 30, 1953, if regarded as having been taken from the original judgment, came too late. People v. Foley (App. 1 Dist. 1953) 118 Cal.App.2d 291, 257 P.2d 452. Criminal Law 1069(1)

113. ---- Remand, review

Under this section, trial court, when resentencing defendant following remand by appellate court, must obtain current probation report before imposing sentence. People v. Cooper (App. 1 Dist. 1984) 200 Cal.Rptr. 317, 153 Cal.App.3d 480. Criminal Law 1192

Where trial judge's comments did not make it clear as to whether he entertained belief that he was required to sentence defendant to state prison because of finding that he possessed more than one-half ounce of heroin or whether he was entitled to strike the one-half ounce allegation and grant probation matter was to be remanded for resentencing. People v. Watkins (App. 2 Dist. 1979) 152 Cal.Rptr. 465, 89 Cal.App.3d 264, hearing granted , transferred to court of appeal, opinion on retransfer not for publication.

Ex parte statements by prosecution to supervising judge, after defendant had entered plea of guilty to one count of burglary and his case had been assigned to a new judge for sentencing, to effect that case was sensitive or very controversial one involving police officer were adverse to defendant, whose case was thereafter reassigned to supervising judge's department for sentencing, raising grave ethical issues and required that defendant, sentenced to imprisonment, be resentenced by a judge who had not been involved in proceedings. In re Hancock (App. 4 Dist. 1977) 136 Cal.Rptr. 901, 67 Cal.App.3d 943. Sentencing And Punishment 400

Where defendant, who was convicted of first-degree murder, was not personally armed with rifle used to fire fatal bullet either at time of offense or time of his arrest, and baseball bat used by him to smash automobile window through which codefendant fired fatal shot was not used to inflict physical injury on victim, defendant was not ineligible for probation as matter of law, but case would be remanded for determination of whether the bat was deadly weapon because of manner in which it was used by defendant. People v. McCullin (App. 2 Dist. 1971) 97

Cal.Rptr. 107, 19 Cal.App.3d 795. Sentencing And Punishment 1853; Criminal Law 1181.5(8)

Where determination of whether defendant was armed at time of robbery and attempted robbery was essential to determine crime committed and would serve a useful purpose in event of subsequent conviction, in view of this section prohibiting probation to defendant previously convicted of felony while armed with deadly weapon, efficient administration of justice required remand for express determination of whether defendant had been armed with deadly weapon within this section. People v. Floyd (1969) 80 Cal.Rptr. 22, 71 Cal.2d 879, 457 P.2d 862. Criminal Law 1189

Where defendant pleaded guilty to receiving stolen property, and probation officer's report indicated that defendant had four previous felony convictions in foreign state, and trial court stated its opinion that case did not call for imprisonment in state prison, but trial court did not consider whether offense was a misdemeanor and did not determine whether there was an unusual situation within meaning of this section judgment denying probation would be reversed and cause would be remanded. People v. Whelchel (App. 4 Dist. 1969) 74 Cal.Rptr. 858, 269 Cal.App.2d 379. Criminal Law 1189

Although striking of incorrect recitals which found defendant had been armed with deadly weapon in committing the first-degree robberies of which he had been convicted would mitigate severity of judgment, court was unable to say whether the special verdicts had influenced imposition of consecutive sentences on the three counts or the denial of probation, and under circumstances judgment would be reversed for the limited purpose of remanding case to trial court for rearraignment for judgment after first obtaining an updated supplemental probation report. People v. Smith (App. 2 Dist. 1968) 66 Cal.Rptr. 551, 259 Cal.App.2d 814. Criminal Law 1181.5(8)

Where supreme court remanded cause with specific directions to trial court to entertain application for probation of defendant who pleaded guilty to attempted robbery in first degree and murder in first degree, trial court did not abuse its discretion in reviewing probation without first determining whether requirements of this section for probation were present, that is, whether defendant had been armed with deadly weapon at time of commission of felony. People v. Miller (App. 1 Dist. 1960) 8 Cal.Rptr. 578, 186 Cal.App.2d 34. Criminal Law 1192

Where defendant was convicted of robbery in the first degree, reviewing court could not direct trial court to permit defendant to file an application for probation and to entertain and pass on the same. People v. Taylor (App. 1955) 135 Cal.App.2d 201, 286 P.2d 952. Criminal Law 1188

Where district court of appeal, on appeal from judgment of conviction of one count of grand theft and one count of forgery, which recited three previous convictions, modified judgment to recite only one previous conviction, right of petitioner to have trial court determine upon corrected record whether probation should be granted or denied and whether sentence should run cumulatively or concurrently was a substantial one and district court of appeal should have remanded cause to trial court to make such determination rather than affirming judgment as modified. Application of Bartges (1955) 44 Cal.2d 241, 282 P.2d 47. Criminal Law 1188

114. ---- Record, review

Where defendant contended that silence of district attorney at time of order granting probation constituted waiver and consent of people to probation, order allowing augmentation of record on appeal to include proceedings taken at time of order granting probation did not prejudice defendant and defendant's motion to strike order allowing augmentation would be denied. People v. Thatcher (App. 1 Dist. 1967) 63 Cal.Rptr. 492, 255 Cal.App.2d 830. Criminal Law 1110(1)

Examination of record did not disclose any injury to legal rights of defendant who was convicted of assault with deadly weapon and whose request for probation was denied. People v. Williams (App. 4 Dist. 1966) 55 Cal.Rptr.

434, 247 Cal.App.2d 169. Sentencing And Punishment 1843

Record failed to support contention that denial of probation after conviction of manslaughter was improperly based on this section prohibiting probation where great bodily injury is inflicted in the perpetration of a crime, and judgment sentencing defendant to prison for the term prescribed by law would be affirmed. People v. Shipman (App. 1 Dist. 1952) 110 Cal.App.2d 279, 242 P.2d 349. Sentencing And Punishment 1853

115. Res judicata

Matter of probation became res judicata by order denying defendant in forgery prosecution probation, so there was nothing for court's consideration on second application. People v. Payne (App. 4 Dist. 1930) 106 Cal.App. 609, 289 P. 909. Sentencing And Punishment 1914

West's Ann. Cal. Penal Code § 1203, CA PENAL § 1203

Current with urgency legislation through Ch. 266 of 2008 Reg.Sess. and Ch. 7 of 2007-2008 Third Ex.Sess., and Prop. 99

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C

Effective: [See Text Amendments]

West's Annotated California Codes Currentness
Penal Code (Refs & Annos)
Part 2. Of Criminal Procedure (Refs & Annos)
Title 8. Of Judgment and Execution
Chapter 1. The Judgment (Refs & Annos)
➡ **§ 1203a. Probation; misdemeanor cases; maximum term**

In all counties and cities and counties the courts therein, having jurisdiction to impose punishment in misdemeanor cases, shall have the power to refer cases, demand reports and to do and require all things necessary to carry out the purposes of Section 1203 of this code insofar as they are in their nature applicable to misdemeanors. Any such court shall have power to suspend the imposing or the execution of the sentence, and to make and enforce the terms of probation for a period not to exceed three years; provided, that when the maximum sentence provided by law exceeds three years imprisonment, the period during which sentence may be suspended and terms of probation enforced may be for a longer period than three years, but in such instance, not to exceed the maximum time for which sentence of imprisonment might be pronounced.

CREDIT(S)

(Added by Stats.1933, c. 518, p. 1340, § 1. Amended by Stats.1949, c. 504, p. 863, § 2.)

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The 1949 amendment, in the second sentence, in three places, substituted "three years" for "two years".

CROSS REFERENCES

Jurisdiction, misdemeanors, see Cal. Const. Art. VI, § 10.
Misdemeanors defined, see Penal Code § 17.
Offenses to be punished as misdemeanor when no punishment prescribed, see Penal Code § 19.4.
Punishment for misdemeanor, see Penal Code § 19.

LAW REVIEW AND JOURNAL COMMENTARIES

Conditions of probation. Thomas F. McBride and George W. McClure (1954) 29 Cal.St.B.J. 44.

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Sentencing and Punishment 1801 to 1806, 1945.
Westlaw Topic No. 350H.
C.J.S. Criminal Law §§ 1549 to 1550, 1552, 1555.
Sentencing standards for granting probation and/or committing to local correctional facilities, see Proceedings for the First Sentencing Institute of Superior Court Judges, 45 Cal.Rptr. Appendix 13 et seq.

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107 ALR 634, Are Sentences on Different Counts to be Regarded as for a Single Term or for Separate Terms as Regards Pardon, Parole, Probation, Suspension, or Commutation?

Encyclopedias

CA Jur. 3d Criminal Law: Post-Trial Proceedings § 341, Authority of Court in Misdemeanor and Infraction Cases.

CA Jur. 3d Criminal Law: Post-Trial Proceedings § 344, Duration of Probation.

CA Jur. 3d Criminal Law: Post-Trial Proceedings § 450, Setting Aside Order Revoking Probation.

Treatises and Practice Aids

3 Witkin Cal. Crim. L. 3d Punishment § 530, Election to Refer.

3 Witkin Cal. Crim. L. 3d Punishment § 543, (S 543) Misdemeanor Cases.

NOTES OF DECISIONS

1. In general

Under this section, multiple misdemeanor sentences ordered in one judgment to run consecutively must be regarded as a single sentence of imprisonment. Fayad v. Superior Court In and For Los Angeles County (App. 1957) 153

Cal.App.2d 79, 313 P.2d 669. Sentencing And Punishment 1129

2. Construction with other laws

Section 1203.2 which provides that "if an order setting aside judgment, the revocation of probation, or both is made after the expiration of the probationary period, the court may again place the person on probation for such period and with such terms and conditions as it could have done immediately following conviction" was inapplicable to action in which court initially placed misdemeanant on probation for period in excess of the statutory maximum and this section did not authorize such action. People v. Ottovich (App. 1 Dist. 1974) 116 Cal.Rptr. 120, 41 Cal.App.3d 532. Sentencing And Punishment 1946

This section should be construed consistently with the provisions of § 1203.1. Fayad v. Superior Court In and For Los Angeles County (App. 1957) 153 Cal.App.2d 79, 313 P.2d 669.

Provision of this section that any court having jurisdiction to impose punishment in misdemeanor cases shall have power to suspend the imposing or execution of sentence has not been repealed and remains as an exception to § 1203.1 generally providing for probation. People v. Rye (Super. 1956) 140 Cal.App.2d Supp. 962, 296 P.2d 126. Sentencing And Punishment 1826

This section was neither expressly nor impliedly repealed by enactment of § 1203.1. In re Clausen (App. 1 Dist. 1936) 14 Cal.App.2d 246, 57 P.2d 1353.

This section is one of the exceptions "hereinafter set forth" as provided in § 1203.1. In re Clausen (App. 1 Dist. 1936) 14 Cal.App.2d 246, 57 P.2d 1353.

3. Authority of courts

Justice's and police courts on conviction for misdemeanor may grant probation summarily. Ex parte Goetz (App. 4 Dist. 1941) 46 Cal.App.2d 848, 117 P.2d 47. Sentencing And Punishment 1890

Municipal court on conviction for misdemeanor has power to effect suspension of sentence only by following method prescribed in this section and § 1203. People v. Wallach (App. 1935) 8 Cal.App.2d 129, 47 P.2d 1071. Sentencing And Punishment 1804

4. Probation conditions

Rather than impose sentence of one year in the county jail with one day suspended, trial court should have granted probation upon condition that defendant serve one year in the county jail if that was its intention. In re Dupper (App. 1 Dist. 1976) 128 Cal.Rptr. 898, 57 Cal.App.3d 118. Sentencing And Punishment 1976(2)

Granting of summary probation in misdemeanor cases does not dispense with the reporting and supervision of probationer. People v. Municipal Court of Oxnard-Port Hueneme Judicial Dist., Ventura County (App. 1956) 145 Cal.App.2d 767, 303 P.2d 375. Sentencing And Punishment 1988

Justice court had power to fine $100.00 and give 30-day jail sentence on each count and to suspend execution of jail sentence if accused paid within 48 hours the sums which it was charged accused had wilfully refused to pay as wages due and payable. Ex parte Trombley (1948) 31 Cal.2d 801, 193 P.2d 734.

Police court order placing a defendant, who was convicted of a misdemeanor in police court, on probation, even

though it included as a condition a period of detention in the county jail, was not a judgment and sentence, nor was the imposition of a fine as a condition of probation a judgment imposing a fine. Ex parte Goetz (App. 4 Dist. 1941) 46 Cal.App.2d 848, 117 P.2d 47. Sentencing And Punishment 1931

Section 19a, providing that no person sentenced to confinement in jail on conviction of misdemeanor or as condition of probation shall be committed for more than one year, relates solely to misdemeanor cases and cannot be invoked by one on probation under conviction of felony. In re Marquez (1935) 3 Cal.2d 625, 45 P.2d 342. Prisons 13.3

Section 19a, prohibiting commitment of person, sentenced to confinement in jail on conviction of misdemeanor or as condition of probation, for period exceeding one year, but providing for commitment to county penal farm for such period as court may order within statutory limits for offense, must be read and construed as whole in harmony with other statutes relating to same general subject. In re Marquez (1935) 3 Cal.2d 625, 45 P.2d 342. Prisons 13.3

5. Period of probation

Municipal court had jurisdiction to impose sentence in misdemeanor cases some four and one-half years after original imposition of probationary sentence in one case and more than five years after such imposition in another case, following final revocation of probation after various revocations and reinstatements, even though the maximum period for which probation could initially have been imposed was three years. In re Hamm (App. 2 Dist. 1982) 183 Cal.Rptr. 626, 133 Cal.App.3d 60. Sentencing And Punishment 2032

Any failure of court to extend probation period constituted judicial rather than clerical error in absence of the order being incorrectly recorded. In re Daoud (1976) 129 Cal.Rptr. 673, 16 Cal.3d 879, 549 P.2d 145. Sentencing And Punishment 1913

Although court's order attempted to extend probation for as much as an additional 28 years, where court would clearly have preferred an extension of term to limit of three years under this section rather than no extension at all and probationer could not have objected had court extended term to this section's limits, limited effect would be granted to the order by extending the probation to this section's three-year limit; thus revocation within that period was effective. In re Daoud (1976) 129 Cal.Rptr. 673, 16 Cal.3d 879, 549 P.2d 145. Sentencing And Punishment 1953

Where prisoner who pleaded guilty to failure to support a child was sentenced on January 4, 1972 to one year in the county jail with one day suspended, period of probation commenced with confinement in jail as a condition of probation and under this section providing that court shall have power to suspend the imposing or the execution of sentence for period not to exceed three years, probationary period could not extend beyond January 4, 1975. In re Dupper (App. 1 Dist. 1976) 128 Cal.Rptr. 898, 57 Cal.App.3d 118. Sentencing And Punishment 1940

Trial court has authority only to make and enforce a term of probation not to exceed three years upon misdemeanant. People v. Ottovich (App. 1 Dist. 1974) 116 Cal.Rptr. 120, 41 Cal.App.3d 532. Sentencing And Punishment 1943

Imposition of sentence of probation for period in excess of three years upon misdemeanant was error. People v. Ottovich (App. 1 Dist. 1974) 116 Cal.Rptr. 120, 41 Cal.App.3d 532. Sentencing And Punishment 1943

Where portion of nonsupport statute (Pen.C. § 270) raising offense to a felony if nonsupporting father subject to court order remains absent from state for 10 days was ruled unconstitutional, and felony conviction was modified to conviction of a misdemeanor, 12-year period of probation was excessive. People v. Temple (App. 2 Dist. 1971) 97

Cal.Rptr. 794, 20 Cal.App.3d 540. Sentencing And Punishment 1943

Although it was possible to place defendant, after revocation of probation and imposition of suspended one-year county jail sentence, on probation up to three years, it was for a one-year period only since trial judge omitted expressly setting it for longer than one year. People v. Morga (App. 2 Dist. 1969) 78 Cal.Rptr. 120, 273 Cal.App.2d 200. Sentencing And Punishment 2034

Provision for three years' probation when maximum term of sentence was 90 days was not improper. People v. Heath (App. 2 Dist. 1968) 72 Cal.Rptr. 457, 266 Cal.App.2d 754. Sentencing And Punishment 1945

Where 60-day sentence was suspended and defendant was placed on probation for 2 years, commitment after expiration of maximum possible term for defendant's offense, which was 6 months, was within jurisdiction of justice's court as against contention that reenactment of § 1203.1, authorizing suspension of sentence for period not to exceed maximum possible term and providing exceptions, repealed this section under which commitment was had. In re Clausen (App. 1 Dist. 1936) 14 Cal.App.2d 246, 57 P.2d 1353. Sentencing And Punishment 1826

6. Sentence--In general

Where defendant pleaded guilty to four counts of contributing to delinquency of minor, a misdemeanor, and defendant was sentenced to imprisonment in county jail for one year on each count, the sentences to run consecutively, and probation was granted for period of two years on each count but not to exceed a total of five years, the judgment imposing county jail sentence of four years, i.e., one year on each of four counts to run consecutively, was proper, and the judgment, for probation purposes, must be interpreted as imposing upon the defendant a sentence of four years and a probationary term for at least a like period of time, and the attempt of the court to divide the probationary term into several periods was ineffective, and an order of revocation made within the four-year period was valid. People v. Blume (App. 4 Dist. 1960) 7 Cal.Rptr. 16, 183 Cal.App.2d 474. Sentencing And Punishment 2005; Sentencing And Punishment 1946

A judgment ordering misdemeanor sentences on several counts to run consecutively is a single "sentence of imprisonment" within this section. People v. Blume (App. 4 Dist. 1960) 7 Cal.Rptr. 16, 183 Cal.App.2d 474. Sentencing And Punishment 1946

7. ---- Suspension, sentence

Where court ordered that defendant be imprisoned in county jail for 180 days and ordered one day suspended and credit for time served, court in effect sentenced defendant and then summarily granted him probation and as condition thereof ordered him confined in county jail for 179 days, less time already spent in custody. People v. Victor (1965) 42 Cal.Rptr. 199, 62 Cal.2d 280, 398 P.2d 391. Sentencing And Punishment 1976(1)

Where defendant was sentenced to county jail for six months on each of seven counts of petty theft, a misdemeanor, and the sentences were directed to run consecutively, under this section suspension of execution of sentence was limited to maximum period for which the accused could be imprisoned, which was three and one-half years, and court's attempt to extend probation after expiration of three and a half years was a nullity. Fayad v. Superior Court In and For Los Angeles County (App. 1957) 153 Cal.App.2d 79, 313 P.2d 669. Sentencing And Punishment 1946

Where municipal court entered judgment of conviction against defendant for failure to grant a pedestrian the right of way at a cross-walk, which offense was a misdemeanor, and then ordered the sentence suspended, the effect of such order was to place the defendant on summary probation. People v. Rye (Super. 1956) 140 Cal.App.2d Supp. 962, 296 P.2d 126. Sentencing And Punishment 1809

Granting of probation by suspending sentence was valid and free from fatal uncertainty even though judgment suspending sentence failed to set the term of the probationary period or impose conditions of the probation. People v. Rye (Super. 1956) 140 Cal.App.2d Supp. 962, 296 P.2d 126.

In an order granting probation, court may suspend execution of sentence, and may also direct that such suspension continue for not more than three years where maximum sentence fixed by law is three years or less, and in connection with granting probation, court may impose imprisonment in county jail. Oster v. Municipal Court of Los Angeles Judicial Dist., Los Angeles County (1955) 45 Cal.2d 134, 287 P.2d 755. Sentencing And Punishment 1945

Judgment of municipal court sentencing defendant for 90 days for a misdemeanor followed by order suspending sentence and placing defendant on probation upon condition that she spend first 30 days in county jail did not constitute a judgment and sentence, nor the serving of 30 days thereunder constitute the serving of term in a penal institution so as to justify imposition of increased penalty on subsequent conviction for misdemeanor on ground that defendant had suffered a prior conviction. People v. Wallach (App. 1935) 8 Cal.App.2d 129, 47 P.2d 1071. Sentencing And Punishment 1251; Sentencing And Punishment 1324

8. ---- Stay of execution, sentence

Inasmuch as the municipal court could not stay a sentence that had been suspended, when municipal court stated that it proposed to give prisoner who was on probation with confinement in jail as a condition of probation another stay of execution, the court was, in effect, modifying the terms of probation from condition of confinement to a condition of nonconfinement and the three-year limitation on the period of probation did not cease to run at time of the "stay." In re Dupper (App. 1 Dist. 1976) 128 Cal.Rptr. 898, 57 Cal.App.3d 118. Sentencing And Punishment 1976(3)

9. Orders

Order of municipal court granting probation of sentence was not invalid because it was inartificial in form, since no formal order was required for granting of probation. People v. Wallach (App. 1935) 8 Cal.App.2d 129, 47 P.2d 1071. Sentencing And Punishment 1913

10. Estoppel

Fact that prisoner who had pleaded guilty to failure to support a child and who had been placed on probation accepted a "stay" beyond the three-year limitation on probationary period and did not seek mandamus to require the court to execute the sentence did not estop prisoner from relying on this section limiting period of probation to three years inasmuch as prisoner was apparently not aware of the consequence of his consent. In re Dupper (App. 1 Dist. 1976) 128 Cal.Rptr. 898, 57 Cal.App.3d 118. Sentencing And Punishment 1944

West's Ann. Cal. Penal Code § 1203a, CA PENAL § 1203a

Current with urgency legislation through Ch. 266 of 2008 Reg.Sess. and Ch. 7 of 2007-2008 Third Ex.Sess., and Prop. 99

END OF DOCUMENT

C

Effective:[See Text Amendments]

West's Annotated California Codes Currentness
Penal Code (Refs & Annos)
Part 2. Of Criminal Procedure (Refs & Annos)
Title 8. Of Judgment and Execution
Chapter 1. The Judgment (Refs & Annos)
➡ § 1203b. Suspension of imposition or execution of sentence and grant of conditional sentence in misdemeanor or infraction cases; report to court; responsibility of probation officer

All courts shall have power to suspend the imposition or execution of a sentence and grant a conditional sentence in misdemeanor and infraction cases without referring such cases to the probation officer. Unless otherwise ordered by the court, persons granted a conditional sentence in the community shall report only to the court and the probation officer shall not be responsible in any way for supervising or accounting for such persons.

CREDIT(S)

(Added by Stats.1941, c. 24, p. 445, § 1. Amended by Stats.1951, c. 502, p. 1655, § 1, eff. Sept. 22, 1951; Stats.1971, c. 70, p. 97, § 2; Stats.1972, c. 618, p. 1143, § 119; Stats.1981, c. 1142, § 7; Stats.1982, c. 247, § 2, eff. June 9, 1982.)

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As added in 1941, the section read:

"All courts having jurisdiction to impose punishment in misdemeanor cases shall have the power to grant probation summarily in misdemeanor cases without referring such cases to the probation officer."

Section 2 of the 1941 act, which added this section, declared the urgency of the addition, although no mention of urgency was made in the title. The 1941 enactment was effective Feb. 4, 1941.

The 1951 amendment rewrote the section to read substantially as it now appears.

This section was enacted as "section 1203b" in 1941. However, the 1951 amendment amended "section 1203(b)".

The 1971 amendment made the section applicable to infraction cases.

The 1972 amendment renumbered the section to be 1203b rather than 1203(b) and made no other changes.

The 1981 amendment substituted "to suspend sentence and grant conditional and revocable release in the

community" for "to grant probation summarily" following "shall have power"; and, in the proviso, following "persons granted" substituted "conditional and revocable release in the community" for "probation summarily".

The 1982 amendment rewrote the section which had read:

"All courts shall have power to suspend sentence and grant conditional and revocable release in the community in misdemeanor and infraction cases without referring such cases to the probation officer; provided, however, that unless otherwise ordered by the court, persons granted conditional and revocable release in the community shall report only to the court and the probation officer shall not be responsible in any way for supervising or accounting for such persons."

Section 3 of Stats.1982, c. 247, provided:

"It is the intent of the Legislature in creating the conditional sentence to clarify supervisory responsibilities over persons convicted of infractions and misdemeanors. It is not the intent of the Legislature to diminish in any way current powers of or sentencing options available to the courts. Statute and case law relating to probation summarily granted by the court without referral to the probation officer shall be construed to apply in the same manner to conditional sentences".

CROSS REFERENCES

"Conditional sentence" defined for purposes of this Code, see Penal Code § 1203.
Misdemeanors, definition and penalties, see Penal Code §§ 17, 19 and 19.2.
"Probation" defined for purposes of this Code, see Penal Code § 1203.

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Sentencing standards for granting probation and/or committing to local correctional facilities, see Proceedings for the First Sentencing Institute of Superior Court Judges, 45 Cal.Rptr.Appendix 13 et seq.

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CA Jur. 3d Criminal Law: Post-Trial Proceedings § 341, Authority of Court in Misdemeanor and Infraction Cases.

Treatises and Practice Aids

3 Witkin Cal. Crim. L. 3d Punishment § 504, (S 504) Supervision of Probationer.

3 Witkin Cal. Crim. L. 3d Punishment § 531, Conditional Sentence.

NOTES OF DECISIONS

1. In general

Where probation is summarily granted to person convicted of misdemeanor without other directions, probation papers including a written statement of terms and conditions of probation should be furnished by the judge. People v. Municipal Court of Oxnard-Port Hueneme Judicial Dist., Ventura County (App. 1956) 145 Cal.App.2d 767, 303 P.2d 375. Sentencing And Punishment 1919

2. Amendment

Amendment adding clause "not amounting to a felony", without expressly omitting clause "if probation is not denied", from § 1203, providing that court may summarily deny probation or hear and determine in defendant's presence the matter of probation of defendant on conditions, if granted, and providing that court must immediately refer matter to probation officer for investigation if probation is not denied, did not repeal power granted to the court to summarily grant probation in misdemeanor cases without reference to probation officer. 16 Op.Atty.Gen. 72.

3. Reporting and supervision

"Conditional sentence" imposed on defendant for reckless driving in California state court constituted "criminal justice sentence" under federal sentencing guidelines, warranting addition of two points to criminal history computation upon conviction for tax evasion, even though probation office did not supervise defendant under state sentence, since defendant was supervised by being required to report directly to state court. U.S. v. Collins, N.D.Cal.1998, 28 F.Supp.2d 1114. Sentencing And Punishment 790

Where court in a misdemeanor case summarily granted probation without referring case to probation officer and without indicating place to report, court was place to which probationer should report, and such court had responsibility of supervision of probationer. People v. Municipal Court of Oxnard-Port Hueneme Judicial Dist., Ventura County (App. 1956) 145 Cal.App.2d 767, 303 P.2d 375. Sentencing And Punishment 1988

Granting of summary probation in misdemeanor cases does not dispense with the reporting and supervision of probationer. People v. Municipal Court of Oxnard-Port Hueneme Judicial Dist., Ventura County (App. 1956) 145 Cal.App.2d 767, 303 P.2d 375. Sentencing And Punishment 1988

4. Term of probation

Where judge granted person convicted of a misdemeanor summary probation with no statement as to the term, the term of probation must, of necessity be implied. People v. Municipal Court of Oxnard-Port Hueneme Judicial Dist., Ventura County (App. 1956) 145 Cal.App.2d 767, 303 P.2d 375. Sentencing And Punishment 1943

5. Revocation of probation

Where petitioner, after having been found guilty of manslaughter without gross negligence, a misdemeanor, was granted probation and released upon condition that he violate no laws, that he refrain from use of intoxicating liquors, and that he refrain from operating a motor vehicle during two-year term of probation, written notice to probation officer pursuant to § 1203.3 was not essential before court could revoke prior order granting probation and proceed to pronounce judgment. Ex parte Walden (App. 4 Dist. 1949) 92 Cal.App.2d 861, 208 P.2d 441. Sentencing And Punishment 2013

West's Ann. Cal. Penal Code § 1203b, CA PENAL § 1203b

Current with urgency legislation through Ch. 266 of 2008 Reg.Sess. and Ch. 7 of 2007-2008 Third Ex.Sess., and Prop. 99

END OF DOCUMENT

C

Effective: September 20, 2006

West's Annotated California Codes Currentness
Penal Code (Refs & Annos)
Part 2. Of Criminal Procedure (Refs & Annos)
Title 8. Of Judgment and Execution
Chapter 1. The Judgment (Refs & Annos)
➡ **§ 1203c. Probation officer; reports to department**

(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 Corrections and Rehabilitation a report of the circumstances surrounding the offense and the prior record and history of the defendant, as may be required by the Secretary of the Department of Corrections and Rehabilitation.

(2) If the person is being committed to the jurisdiction of the department for a conviction of an offense that requires him or her to register as a sex offender pursuant to Section 290, the probation officer shall include in the report the results of the State-Authorized Risk Assessment Tool for Sex Offenders (SARATSO) administered pursuant to Sections 290.04 to 290.06, inclusive, if applicable.

(b) These reports shall accompany the commitment papers. The reports shall be prepared in the form prescribed by the administrator following consultation with the Corrections Standards Authority, except that if the defendant is ineligible for probation, a report of the circumstances surrounding the offense and the prior record and history of the defendant, prepared by the probation officer on request of the court and filed with the court before sentence, shall be deemed to meet the requirements of paragraph (1) of subdivision (a).

(c) In order to allow the probation officer an opportunity to interview, for the purpose of preparation of these reports, the defendant shall be held in the county jail for 48 hours, excluding Saturdays, Sundays and holidays, subsequent to imposition of sentence and prior to delivery to the custody of the Secretary of the Department of Corrections and Rehabilitation, unless the probation officer has indicated the need for a different period of time.

CREDIT(S)

(Added by Stats.1935, c. 491, p. 1564, § 1. Amended by Stats.1963, c. 1785, p. 3566, § 1; Stats.2006, c. 337 (S.B.1128), § 39, eff. Sept. 20, 2006.)

HISTORICAL AND STATUTORY NOTES

2008 Electronic Update

2006 Legislation

Stats.2006, c. 337, rewrote this section, which had read:

"Notwithstanding any other provisions of law, whenever a person is committed to an institution under the jurisdiction of the Department of Corrections, 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 Corrections a report upon the circumstances surrounding the offense and the prior record and history of the defendant as may be required by the Administrator of the Youth and Adult Corrections Agency. These reports shall accompany the commitment papers. The reports shall be prepared in the form prescribed by the administrator following consultation with the Board of Corrections, except that in a case in which defendant is ineligible for probation, a report upon the circumstances surrounding the offense and the prior record and history of defendant, prepared by the probation officer on request of the court and filed with the court before sentence, shall be deemed to meet any such requirements of form. In order to allow the probation officer opportunity to interview, for the purpose of preparation of these reports, the prisoner shall be held in the county jail for 48 hours, excluding Saturdays, Sundays and holidays, subsequent to imposition of sentence and prior to delivery to the custody of the Director of Corrections, unless the probation officer shall have indicated need for a lesser period of time."

For short title of act, legislative findings and declarations, and appropriations, severability, cost reimbursement, and urgency effective provisions relating to Stats.2006, c. 337 (S.B.1128), see Historical and Statutory Notes under Government Code § 68152.

2004 Main Volume

The 1963 amendment conformed the terminology to present offices, officers, and institutions, specified the details governing reports, and added the last sentence.

CROSS REFERENCES

Department of corrections, generally, see Penal Code § 5000 et seq.
Narcotic addicts, commitment, mailing copies of probation officer's report to department of corrections, see Welfare and Institutions Code § 3008.
Presentence investigation reports, sentencing, rules for criminal cases in the Superior Court, see California Rules of Court, Rule 4.411.
"Probation" defined for purposes of this Code, see Penal Code § 1203.

LAW REVIEW AND JOURNAL COMMENTARIES

Juvenile court dispositional alternatives: Imposing a defense duty. John L. Roche, 27 Santa Clara L.Rev. 279 (1987).

LIBRARY REFERENCES

2004 Main Volume

Sentencing and Punishment 1886.
Westlaw Topic No. 350H.
C.J.S. Criminal Law §§ 1552, 1554.
Sentencing standards for granting probation and/or committing to local correctional facilities, see Proceedings for the First Sentencing Institute of Superior Court Judges, 45 Cal.Rptr.Appendix 13 et seq.

RESEARCH REFERENCES

ALR Library

138 ALR 1230, Recommendation of Mercy in Criminal Case.

Encyclopedias

CA Jur. 3d Criminal Law: Post-Trial Proceedings § 342, Referral to Probation Officer in Felony Cases.

CA Jur. 3d Criminal Law: Post-Trial Proceedings § 352, Reports to the Department of Corrections.

Treatises and Practice Aids

3 Witkin Cal. Crim. L. 3d Punishment § 503, (S 503) Probation Officers and Agencies.

West's Ann. Cal. Penal Code § 1203c, CA PENAL § 1203c

Current with urgency legislation through Ch. 266 of 2008 Reg.Sess. and Ch. 7 of 2007-2008 Third Ex.Sess., and Prop. 99

END OF DOCUMENT

C

Effective:[See Text Amendments]

West's Annotated California Codes Currentness
Penal Code (Refs & Annos)
Part 2. Of Criminal Procedure (Refs & Annos)
Title 8. Of Judgment and Execution
Chapter 1. The Judgment (Refs & Annos)
→ § 1203d. Probation report; availability and consideration; filing; waiver; sentence recommendation

No court shall pronounce judgment upon any defendant, as to whom the court has requested a probation report pursuant to Section 1203.10, unless a copy of the probation report has been made available to the court, the prosecuting attorney, and the defendant or his or her attorney, at least two days or, upon the request of the defendant, five days prior to the time fixed by the court for consideration of the report with respect to pronouncement of judgment. The report shall be filed with the clerk of the court as a record in the case at the time the court considers the report.

If the defendant is not represented by an attorney, the court, upon ordering the probation report, shall also order the probation officer who prepares the report to discuss its contents with the defendant. Any waiver of the preparation of the report or the consideration of the report by the court shall be as provided in subdivision (b) of Section 1203, with respect to cases to which that subdivision applies.

The sentence recommendations of the report shall also be made available to the victim of the crime, or the victim's next of kin if the victim has died, through the district attorney's office. The victim or the victim's next of kin shall be informed of the availability of this information through the notice provided pursuant to Section 1191.1.

CREDIT(S)

(Added by Stats.1969, c. 522, p. 1137, § 3. Amended by Stats.1985, c. 984, § 1; Stats.1996, c. 123 (A.B.2376), § 2.)

HISTORICAL AND STATUTORY NOTES

2004 Main Volume

The 1985 amendment inserted "or her" in "his or her attorney" in the first sentence, and substituted "The report" for "Such report" in the second sentence of the first paragraph; and added the last paragraph.

The 1996 amendment, in the second paragraph, added the second sentence relating to waiver of preparation or consideration of the probation report.

Legislative intent respecting 1969 addition, see Historical and Statutory Notes under Penal Code § 1203.

LIBRARY REFERENCES

2004 Main Volume

Sentencing and Punishment 1902, 1912.
Westlaw Topic No. 350H.

RESEARCH REFERENCES

Encyclopedias

CA Jur. 3d Criminal Law: Post-Trial Proceedings § 355, Availability Before Hearing.

Treatises and Practice Aids

3 Witkin Cal. Crim. L. 3d Punishment § 528, (S 528) Availability of Report.

3 Witkin Cal. Crim. L. 3d Punishment § 530, Election to Refer.

3 Witkin Cal. Crim. L. 3d Punishment § 553, (S 553) Defendant's Ability to Pay.

West's Ann. Cal. Penal Code § 1203d, CA PENAL § 1203d

Current with urgency legislation through Ch. 266 of 2008 Reg.Sess. and Ch. 7 of 2007-2008 Third Ex.Sess., and Prop. 99

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Effective: September 20, 2006

West's Annotated California Codes Currentness
Penal Code (Refs & Annos)
Part 2. Of Criminal Procedure (Refs & Annos)
Title 8. Of Judgment and Execution
Chapter 1. The Judgment (Refs & Annos)
§ 1203e. Facts of Offense Sheet for sex offenders required to register; contents; corrections; actions required of probation officer; transmission of sheet to specified parties

(a) Commencing June 1, 2010, the probation department shall compile a Facts of Offense Sheet for every person convicted of an offense that requires him or her to register as a sex offender pursuant to Section 290 who is referred to the department pursuant to Section 1203. The Facts of Offense Sheet shall contain the following information concerning the offender: name; CII number; criminal history, including all arrests and convictions for any registerable sex offenses or any violent offense; circumstances of the offense for which registration is required, including, but not limited to, weapons used and victim pattern; and results of the State-Authorized Risk Assessment Tool for Sex Offenders (SARATSO), as set forth in Section 290.04, if required. The Facts of Offense Sheet shall be included in the probation officer's report.

(b) The defendant may move the court to correct the Facts of Offense Sheet. Any corrections to that sheet shall be made consistent with procedures set forth in Section 1204.

(c) The probation officer shall send a copy of the Facts of Offense Sheet to the Department of Justice Sex Offender Tracking Program within 30 days of the person's sex offense conviction, and it shall be made part of the registered sex offender's file maintained by the Sex Offender Tracking Program. The Facts of Offense Sheet shall thereafter be made available to law enforcement by the Department of Justice, which shall post it with the offender's record on the Department of Justice Internet Web site maintained pursuant to Section 290.46, and shall be accessible only to law enforcement.

(d) If the registered sex offender is sentenced to a period of incarceration, at either the state prison or a county jail, the Facts of Offense Sheet shall be sent by the Department of Corrections and Rehabilitation or the county sheriff to the registering law enforcement agency in the jurisdiction where the registered sex offender will be paroled or will live on release, within three days of the person's release. If the registered sex offender is committed to the Department of Mental Health, the Facts of Offense Sheet shall be sent by the Department of Mental Health to the registering law enforcement agency in the jurisdiction where the person will live on release, within three days of release.

CREDIT(S)

(Added by Stats.2006, c. 337 (S.B.1128), § 40, eff. Sept. 20, 2006.)

HISTORICAL AND STATUTORY NOTES

2008 Electronic Update

2006 Legislation

For short title of act, legislative findings and declarations, and appropriations, severability, cost reimbursement, and urgency effective provisions relating to Stats.2006, c. 337 (S.B.1128), see Historical and Statutory Notes under Government Code § 68152.

RESEARCH REFERENCES

Treatises and Practice Aids

3 Witkin Cal. Crim. L. 3d Punishment § 503, (S 503) Probation Officers and Agencies.

West's Ann. Cal. Penal Code § 1203e, CA PENAL § 1203e

Current with urgency legislation through Ch. 266 of 2008 Reg.Sess. and Ch. 7 of 2007-2008 Third Ex.Sess., and Prop. 99

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Effective: September 20, 2006

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Penal Code (Refs & Annos)
Part 2. Of Criminal Procedure (Refs & Annos)
Title 8. Of Judgment and Execution
Chapter 1. The Judgment (Refs & Annos)
➡ § 1203f. Probationers at high risk of committing sexual offenses; placement on intensive and specialized probation supervision

Every probation department shall ensure that all probationers under active supervision who are deemed to pose a high risk to the public of committing sex crimes, as determined by the State-Authorized Risk Assessment Tool for Sex Offenders, as set forth in Sections 290.04 to 290.06, inclusive, are placed on intensive and specialized probation supervision and are required to report frequently to designated probation officers. The probation department may place any other probationer convicted of an offense that requires him or her to register as a sex offender who is on active supervision to be placed on intensive and specialized supervision and require him or her to report frequently to designated probation officers.

CREDIT(S)

(Added by Stats.2006, c. 337 (S.B.1128), § 41, eff. Sept. 20, 2006.)

HISTORICAL AND STATUTORY NOTES

2008 Electronic Update

2006 Legislation

For short title of act, legislative findings and declarations, and appropriations, severability, cost reimbursement, and urgency effective provisions relating to Stats.2006, c. 337 (S.B.1128), see Historical and Statutory Notes under Government Code § 68152.

RESEARCH REFERENCES

Treatises and Practice Aids

3 Witkin Cal. Crim. L. 3d Punishment § 504, (S 504) Supervision of Probationer.

West's Ann. Cal. Penal Code § 1203f, CA PENAL § 1203f

Current with urgency legislation through Ch. 266 of 2008 Reg.Sess. and Ch. 7 of 2007-2008 Third Ex.Sess., and Prop. 99

END OF DOCUMENT

CALIFORNIA DEPARTMENT OF
Mental Health

State Authorized Risk Assessment Tool for Sex Offenders

(SARATSO)

Static-99
Train the Trainer

Amy Phenix, Ph.D.

STATIC-99

TRAIN THE TRAINER

Static-99 Power Point Presentation (Green)

Static-99 Coding Rules (Red)

Static-99 Coding Rules Quick Reference Guide (Blue)

Static-99 Coding Examples (Yellow)

Static-99 Coding Worksheets (Orange)

Static-99 Coding Examples w/answers (Pink)

Static-99 Examination (Purple)

Static-99 Journal Article (Goldenrod)

THE STATIC-99
Train the Trainer

Amy Phenix, Ph.D.

Sex Offender Risk Assessment

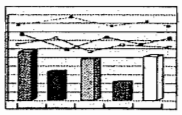
- Risk at Release from Institutions
- Level of Community Supervision
  - Probation and Parole
- Community Notification
- Civil Commitment

Approaches to Risk Assessment

- Unstructured clinical judgment
- Research guided clinical opinion (the list)
- Pure actuarial
- Clinically adjusted actuarial

Risk Factors for Sexual Offenders

- Compared to other sexual offenders, which individual characteristics increase or decrease their chances of recidivism over the long term?



Types of Risk Factors

- Static, historical
  - Prior sex offenses
  - Extrafamilial victims
  - Prior sentencing dates

Types of Risk Factors (cont.)

- Dynamic Risk factors
  - Stable
    - Intimacy Deficits
    - Sexual Self-regulation
    - Lack of Cooperation with Supervision
  - Acute
    - Anger
    - Intoxication

Predicting Relapse: A meta-analysis of sexual offender recidivism studies

(R. Karl Hanson & Monique Bussiere, 1998)

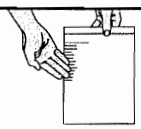
- Identified risk factors for sexual recidivism from 61 samples
- Examined
  - Demographic factors
  - General criminality
  - Sexual criminal history
  - Sexual deviancy
  - Clinical presentation and treatment history

Demographics

- 28,972 sex offenders
- 4-5 Year follow-up
- Countries:

U.S.	2 Australia
16 Canada	2 Denmark
10 England	1 Norway

Outcome Variables



- Sexual recidivism
- Nonsexual violent recidivism
- General (any) recidivism

Actuarial Risk Assessment

- Considers a number of variables
- Provides a specific statistical weight for each variable
- Gives a total risk score
- Gives an associated risk probability

Use of an Actuarial Risk Scale

- Levels of community notification
- Level of supervision
- Assigning GPS monitoring (and removal)
- More intensive mandated sex offender treatment
- Public notification on the Internet
- Duration of registration requirements.

Actuarial Instruments for Sexual Offender Recidivism

- **RRASOR** (Hanson)
- **SAC-J MIN** (Thorton)
- **Static-99** (Hanson & Thorton, 2000)

Development of RRASOR

Examined 7 risk factors from meta-analysis that could be easily scored by the records

Initial Pool of 7 Risk Factors (r = .11)

- Prior sex offenses
- Any prior non-sex offenses
- Male victims
- Stranger victims
- Unrelated victims
- Never married
- Age less than 25 years

RRASOR Sample

- 7 data sets from Canada and the USA
  - N=2592
  - Correctional and mental health hospitals
  - Follow-up 2-23 years

RRASOR Sample

■ Millbrook, Ontario (CM)	N=191	FU=23 yr
■ Institute Philippe Pinel	N=382	FU=4 yr
■ Oak Ridge (Penetang)	N=288	FU=10yr
■ Canadian Federal Releases 1983/84	N=316	FU=10 yrs

RRASOR Sample

■ Alberta Hospital Edmonton	■ N=363	FU=5 yrs
■ SOTEP (CA)	■ N=1138	FU=5 yrs
■ Canadian Federal releases 1991/94	■ N=241	Fu=2 yrs
■ Validation Sample: Her Majesty Prison Service (UK)	■ 303	FU=16

Definition of Recidivism on RRASOR

■ Millbrook, Ontario (CM)	Conv
■ Institute Philippe Pinel	Conv
■ Oak Ridge (Penetang)	Chg/readmissions
■ Canadian Federal Releases 1983/84	Conv
■ Alberta Hospital Edmonton	Chg
■ SOTEP (CA)	Chg
■ Canadian Federal releases 1991/94	Chg
■ HM Prison System	Conv

RRASOR

ITEMS		SCORE
1. Prior sex offenses		
Charges	Conv.	
None	none	0
1-2	1	1
3-5	2-3	2
6+	4+	3

RRASOR

ITEMS	SCORE
2. Any unrelated victims	0-1
3. Any male victims	0-1
4. Age less than 25	0-1

RRASOR

- **Estimated Recidivism Rates for Each Risk Scale Score**

RRASOR score	Sample size	5 YR	10 YR
0	527	4.4 %	6.5%
1	806	7.6%	11.2%
2	742	14.2%	21.1%
3	326	24.8%	36.9%
4	139	32.7%	48.6%
5	52	49.8%	73.1%
TOTAL	2592	13.2%	19.5%

Strengths of RRASOR

- Each factors strong empirical support link to sexual recidivism
- Rules are provided for translating the scores on various risk factors into probability estimates.
- Large cross validation
- Easy

Weaknesses of RRASOR

- Does not cover all relevant factors.
- Recidivism probabilities generated by the RRASOR are estimates.
- Because of only 4 items inconsequential changes may result in noticeable change in overall scores.
- Overall predictive accuracy moderate.

SACJ-Min

(Thorton, HM Prison Service)

- Predicts violent and sexual offending
- UK data sets
- Cross-validated on new sample (n=500) released 1979 followed for 16 years

SACJ-Min Stage Approach

Stage 1

- Any current sex offenses
- Prior sex offenses
- Any current nonsexual violent offenses
- Prior nonsexual violent offenses
- 4 or more sentencing occasions

Stage 2

Set A

- Stranger victim
- Any male victims
- Never married
- Conv. for non-contact sex offenses

Static-99 (Hanson & Thorton, 2000)

- RRASOR and SACJ-Min assessed related, but not identical constructs
- Only static items
- Work in progress

Static-99

- Setting secure psychiatric and prison
- 677 Canadian sex offenders
- Follow- up ranged 4-23 years
- Recidivism criteria-convictions

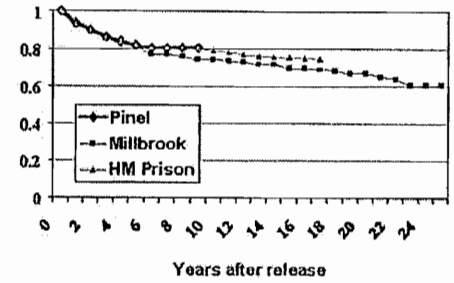
Static-99 Sample

Millbrook, Ontario (CM)	**N=191**	**FU=23 yr**
Institute Philippe Pinel	**N=344**	**FU=4 yr**
Oak Ridge (Penetang)	**N=142**	**FU=10yr**
Validation Sample: Her Majesty Prison Service (UK)	**N=531**	**FU=16yr**

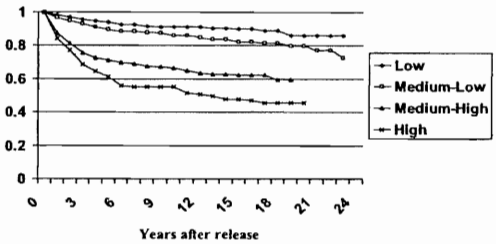
Definition of Recidivism on Static-99

Millbrook, Ontario (CM)	**Conv**
Institute Philippe Pinel	**Conv**
Oak Ridge (Penetang)	**Chg/readmissions**
HM Prison System	**Conv**

Sexual Reconviction Rates



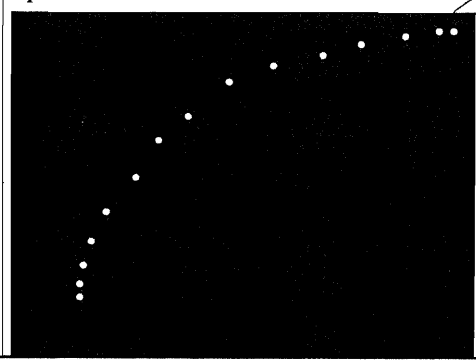
STATIC-99 Sexual Reconviction



95% C.I. for STATIC-99 15 year reconviction rates

Score	n	P	Low C.I.	Hi C.I
0	107	.13	.07	.19
1	150	.07	.03	.11
2	204	.16	.11	.21
3	206	.19	.14	.24
4	190	.36	.29	.45
5	100	.40	.30	.50
6+	129	.52	.43	.61

Measuring Predictive Accuracy: Receiver Operator Characteristic Curve



Static-99 Items

1. Young	0-1
2 Ever lived with a lover for two years	0-1
3. Index non-sexual violence-any convictions	0-1
4. Prior non-sexual violence-any convictions	0-1

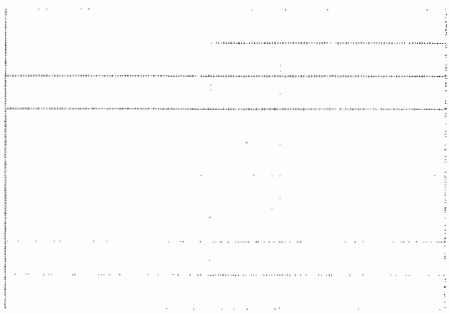
Static-99

ITEMS		SCORE
5. Prior sex offenses		
Charges	Conv.	
None	none	0
1-2	1	1
3-5	2-3	2
6+	4+	3

Static-99 Items (cont.)

8. Any Unrelated victims	0-1
9. Any Stranger victims	0-1
10. Male victims	0-1

Translating Static-99 Scores - Risk Categories



Strengths of the Static-99

- Published and peer reviewed
- Includes additional items
- Repeatedly cross validated on many samples
- More stable long term predictions than the RRASOR
- Widely used and accepted
- Usually easy to score from records

Weaknesses of the Static-99

- Modest predictive accuracy
- Still does not include all risk factors for sexual recidivism
- Few minorities

Predictive accuracy of Static-99

(n=1,208)

Instrument	r	ROC
Static-99	.33	.71
RRASOR	.28	.68
SACJ-Min	.23	.67

Similar predictive accuracy for CM and rapists

Predictive accuracy of Static-99

- Over 60 cross-validations of the Static-99 have been conducted
- 17 are listed in Appendix Nine of the Coding Rules
- N=4514 Mean ROC=72.4

Summary

- Combination of RRASOR and SACJ-Min more accurate then either alone.
- Does not include dynamic factors
- Accurate to the extent it considers all relevant risk factors

The Use of Static Risk Scales in the Community Management of Sex Offenders

- Provides initial base rate of risk once released to the community
- Provides a way to divide sex offenders into risk level
- Provides a scientific rational for management plans for sex offenders
- Is defensible in court

Is the Static-99 useful in predicting sexual recidivism?

- Static-99 **moderate** predictive accuracy for sexual recidivism (r=.33, ROC area=.71)

Static-99 Publication

- Hanson, R.K. & Thorton, D. (2000). Improving risk assessments for sex offenders: A comparison of three actuarial scales. Law and Human Behavior, 24, 119-136.

Coding Instructions

- Harris, A., Phenix, A., Hanson, R.K., & Thornton, D. (2000). Coding rules for the Static-99 [On-line]:

http://ww2.ps-sp.gc.ca/publications/corrections/pdf/Static-99-coding-Rules_e.pdf

CODING THE STATIC-99

Coding the STATIC-99-What You Need

- **Demographic**
  - Age at assessment/release; relationship history
- **Official criminal history**
  - Prior sex offences; index non-sexual violence; prior non-sexual violence; prior sentencing occasions; convictions for non-contact sex offences
- **Victim Information**
  - Use all credible information (except polygraph)
  - Any unrelated victims; any stranger victims; any male victims

Special Issues

- Missing Items-Ever Lived With a Lover for 2 Years
  - No Info score 0
  - As if offender HAS lived with Lover
- Recidivism Criteria-Reconviction
- Non-Contact Sex Offenses-the Static-99 sample contained both contact and non-contact offenders

Static-99 Sample

- Consider sample "untreated"
  - Treatment provided at the time was dated
  - Her Majesty's Prison Service was untreated

Static 99 sample was untreated
t_x didn't work
- untreated group of offenders
- so we consider them untreated

Who can you use the Static-99 on?

- Adult Males
- Must have committed a sex offense
- Not for determining guilt
- Not for consenting sex with a similar age peer (stat. rape)
- For Not Guilty by Reason of Insanity

•any mental health

The Static-99 and Juvenile Offenders

- Some offenders in sample offended as juvenile and released after 18
- The older the juvenile offender the more applicable
- Type of crime
- Developmental, family and social issues impact juvenile offenders.
- Most juvenile offenders are antisocial and victimize peer mid teens
- If juvenile offender incarcerated many years not applicable

16 yrs old at age of offense. — age 18 at time assessment

only 15% of juvenile offend re-offend

J SORAT - to be used on 15 or less

Static-99 Sample

- Developmentally Delayed Offenders In Static-99 sample
- Minority Offenders
- Mental Health Issues

can be used but should be cautious

cognitive behavioral change.

Coding the Static-99

- 1 = Yes, problem
- 0 = No, O.K.
- except Prior Sex Offences (0, 1, 2, 3)
- Remember - 10 Questions Only !!!!!!!

Coding the Static-99

- Use with adult males convicted of at least one sex offense against child or non-consenting adult.
- Not for female offenders
- Not for offenders only convicted of the 4 P's.

4 P's

- Prostitution
- Pimping/pandering
- Public toileting
- Possession indecent materials (Child Porn)

Category B
- not valid offences to be scored
- use paragraph 8 if not eligible

Scoring Victim Item (Male) and Relationship items (Unrelated & Stranger)

- Official Records
- Collateral Sources (CPS Reports)
- Offender Self-Report
- Victims Reports
  - No polygraph information unless corroborated by additional sources

1. Young

- Offenders age at time of risk assessment
- Age (18 - 24.99 = 1) (25 or older = 0)
  - age when placed at risk
    - (current age/age at release)
  - when risk to be assessed-can project to future
- 1 point for being under the age of 25

2. Ever lived with a lover for at least two years

- Only item can omit or score both ways if no information
- Try to find collateral source
- Male or female for at least two years.
- Must be continuous
- Do not count legal marriages less than 2 years

2. Ever lived with a lover for at least two years

- Do not count male lovers in prison
- Do not count prison marriages without cohabitation
- Young offenders without opportunity to have relationship
- Relationships with adult victims do not count
- Extended absences not count (exceptions)
- One point for not having lived with lover for 2 years

Coding Non-Sexual Violence Convictions Items 3 & 4

- Convictions only
- Predicts behavior in next offense
- English data non-sexual violence predicted rape
- Other English data predicted any sex offense

Coding Non-Sexual Violence Convictions Items 3 & 4

- Juvenile and adult convictions (Juv. moved to secure residential placement)
- The same victims as the sex offense or different
- Must have intent to harm others
- Do not count convictions overturned on appeal

Included Offenses (p. 27 coding)

- Aggravated Assault
- Arson
- Assault (causing bodily harm)
- Assault Police Officer
- Attempted Abduction
- Attempted Robbery
- False Imprisonment
- Felonious Assault
- Forcible Confinement
- Give Noxious Substance (to impair victim)

Included Offenses (p. 27 coding)

- Grand Theft Person
- Juvenile Non-sexual Violence convictions count
- Kidnapping
- Murder
- Robbery
- Threatening
- Using/pointing a weapon/firearm during offense
- Violation Domestic Violence Order
- Wounding

Excluded Offenses (p. 28 coding)

- Arrests and Charges
- Convictions overturned on appeal
- Non-sexual violence after the index offense
- Institutional rules violations
- Driving accidents or convictions for negligence causing death or injury
- Resisting arrest
- Sexual offenses (sexual in name)

Military/ Murder Offenses for Nonsexual Violence

- Military
  - If "undesirable discharge" then is nonsexual violence offense and sentencing occasion. Must have received undesirable discharge and left military because of that offense.
- Murder
  - Sexual murder who gets convicted of murder gets point for non-sexual violence and a sex offense

Code as Non-Sexual Violence Convictions

- Murder / Manslaughter
- Kidnapping
- Forcible confinement
- Wounding
- Assault
- Arson
- Threatening with weapon
- Robbery

Non-Sexual Violence Convictions "Double Dipping Rule"

- If the behavior was sexual but the offender was convicted of non-sexual violence, the same conviction counts as both a sexual offense and non-sexual violence offense.

3. Index Non-Sexual Violence-Any Convictions

- Convictions for non-sexual violence at the same sentencing occasion as the index sex offense.
- Scoring No convictions=0, Any convictions=1,

4. Prior Non-Sexual Violence-Any Convictions

- Convictions for non-sexual violence prior to the index sex offense.
- Scoring No convictions=0, Any convictions=1

5. Prior Sex Offenses

- Definitions

Prior Sexual Offenses

As long ago as 1911 Thorndyke stated that the "best predictor of future behavior is past behavior."

Sexual Offense

- Officially recorded sexual behavior or intent
- Resulted in some form of criminal justice intervention or official sanction (Conviction, charge, arrest, supervision violation or institutional rules violation).
- If in custody must be serious enough they could be charged with new sex offense if not under legal sanction

Sexual Offense

- Criminal Justice Interventions / Official Sanction Include
  - Arrests
  - Charges
  - Convictions
  - Parole & Probation Violations
  - Institutional rules violations for sex offense
  - Community-based Justice Committee Agreements

Sexual Offense

- Official Sanctions Include
  - Imprisonment
  - Fines
  - Community supervision
  - Loss institutional time for sex offense
  - Alternative resolution agreements
  - Acquittals count

Sexual Offense (cont.)

- Count both juvenile and adult offenses
  - **Sexual offenses are scored only from official records-NO SELF REPORT**
    - **Exception: Immigrants and refuges**

Code Some Charges / Convictions-Not Sexual

- Rape and false imprisonment
- Rape and kidnap
- Rape and battery
- Murder
- Kidnap only
- Assault
- Theft (of underwear)

Category A Offenses
(children and non-consenting victims)

- Incest and non-incest child molest
- Annoy and molest children
- Rape
- Penetration foreign object
- Sodomy
- Oral Copulation

Category A Offenses (cont.)

- Sexual assault
- Sexual battery
- Sex with animals
- Sexual homicide
- Indecent exposure, exhibitionism

Category A Offenses (cont.)

- Voyeurism
- Invitation to sexual touching
- Unlawful sexual intercourse with minor
- Contributing to delinquency of minor **
- Sex with dead bodies
- Attempted sexual offenses

Category B Offenses

- Sexual behavior is illegal
- Parties are consenting
- No specific victim is involved

Category B Offenses (cont.)

- Child Pornography
- Pimping / pandering
- Offering, seeking, hiring Prostitutes
- Consenting sex in public places (gross indecency)
- Nudity associated with mental impairment
- Indecent behavior with a sexual motive (Urinating in public)

Prostitution

- Only count sexual behaviors if illegal in jurisdiction where the behavior takes place and the risk assessment takes place

Offenses that are NOT Coded

- Annoy children
- Consensual sexual activity in prison
- Failure to register as a sex offender
- Presence of children, loitering schools

Offenses that are NOT Coded (cont.)

- Possession of child lures, clothing
- Stalking (imminence)
- Reports to Child Protective Services without criminal charges
- Questioning by police not enough

Rules Violations

- Code if could be grounds for arrest or conviction for sex offense if not under legal sanction (See prior list.)
- Targeted vs. non-targeted activity (targets female officer)
- Code if reoffense imminent

Special Coding Cases

- Major mental illness
  - Informal hearings and sanctions – placement treatment facility, residential moves count as charge and conviction

Special Coding Cases

- Clergy and Military
  - Defrocking or transfer to treatment facility vs. new placement
- Juveniles
  - Never code sexual misbehavior of children 11 or under unless official charges
  - Sent to residential care counts as charge and conviction

5. Index Sex Offense

- Most recent sexual offense
  - Arrest, charge, conviction, rule violation
- INDEX CLUSTER
  - (spree of offending)
  - Multiple sentencing dates

5. Index Sex Offense (cont.)

- PSEUDO-RECIDIVISM
  - Historical offenses detected after conviction for more recent offense
  - Offenses overturned on appeal
  - Offense AFTER index offense

Historical Sex Offense

- Sexual or non-sexual institutional rules violation
- Probation, parole or conditional release violation(s)
- Arrest charges
- Convictions

Historical Sex Offense (cont.)

- Based on sexual misbehavior occurring PRIOR to the index offense.
- Includes juvenile and adult offenses

REMEMBER...

- To be a new offense the offender must have been detected, sanctioned and released AND then commit a NEW offense

Scoring Procedure

- Do not count index offense
- Count historical offenses
- Convert rules violations to 1 charge
- Tally total number of charges and convictions
- Final score based on total charges or convictions

REMEMBER...

- Use most recent charging document: Charges "pled out" or dropped
- Sex offense pled out to non-sex charge or conviction
- Acquittals count
- Number of victims irrelevant
- Charges or convictions may be on a single victim
- Arrest with no formal charges=1 charge

Sample Coding Historical Offense

CHARGES

- Count 1 PC 288(a) Lewd and Lascivious Acts W/Child
- Count 2 PC 288(a) Lewd and Lascivious Acts W/Child
- Count 3 PC 288(a) Lewd and Lascivious Acts W/Child
- Count 4 PC 286 Sodomy
- Count 5 PC 288a Oral Copulation
- Count 6 PC 459 Burglary

= 5 CHARGES

Sample Coding Historical Offense

CONVICTIONS

- Count 1 PC 288(A) Lewd and Lascivious Acts W/Child
- Count 4 PC 286 Sodomy
- Count 5 PC 288a Oral Copulation
- Count 6 PC 459 Burglary

= 3 CONVICTIONS

Determine Score for Prior Sex Offense

- Convert the total number of arrest charges and convictions (use the highest) to a score of 0,1, 2 or 3 according to the following guidelines for prior sex offenses.

None		0
1 Conviction	1-2 Charges	1
2-3 Convictions	3-5 Charges	2
4 or more Convictions	6 or more Charges	3

6. Prior Sentencing Dates (Excluding Index)

- No. distinct occasions sentenced for criminal offenses before index sex offense
- Exclude index sex offense
- Do not count charges, acquittals
- Do not count court appearances overturned on appeal
- Driving offenses not count unless serious penalties (DUI, reckless driving with injury)

6. Prior Sentencing Dates (cont.)

- Count if under supervised release and returned to prison for a new offense he could be charged with if not under legal sanction
- Do not count prison misconducts or parole violations
- Not criminally responsible (NGI) does count
- Juvenile offenses count

6. Prior Sentencing Dates (cont.)

- Minimum level of seriousness
- Do not count
  - Most driving offenses
  - Historical offenses that occurred after offender was in custody for a more recent offense
  - Scoring 3 or less=0, 4 or more=1

7. Any Convictions for Non-Contact Sex Offenses

- **Behavior-Not the name of the offense**
- **Convictions only**
  - Exhibitionism
  - Possessing child porn
  - Obscene telephone calls (Sexual harassment)
  - Voyeurism
  - Illicit sexual use on Internet (Similar to obscene phone call-even if attempt to meet is non-contact sex offense.)

7. Any Convictions for Non-Contact Sex Offenses

- Do not count attempts to contact (save for the internet)
- Do not count soliciting/prostitution
- Scoring No convictions =0, Any convictions=1

Items 8 -10

- 6. Unrelated victim
- 7. Stranger victim
- 8. Male victim

Victim characteristics

- Based on all available information
  - Acquitted or Found Not Guilty-likely standard
- Only apply if victims were children or non-consenting adults
- Accidental victims
- Do not score victim information for:
  - prostitution / pandering obscenity
  - possession of child pornography (exception real child)
  - public sex with consenting adults
  - animals

8. **Any** Unrelated Victims

- Relationship too close for marriage
- Step-relationships lasting less than two years are unrelated
- Wives are related
- Common-law more than 2 years related
- No Category "B" victims
- No accidental victims
- Scoring 1 point for unrelated victim

8. **Any** Unrelated Victims

- These are unrelated
  - Step-relations lasting less 2 years
  - Daughter or son of live-in girlfriend
  - Nephew's wife
  - Second cousins
  - Wife's aunt

9. Any Stranger Victims

- Victim knew the offender less than 24 hours
- No accidental victims
- Two for one rule
- Victims contacted on Internet are only strangers if less than 24 hours of contact
- Scoring 1 point for having a stranger victim

10. Any Male Victims

- Do not count
  - Possession of male child pornography
  - Exhibitionism to mixed group of children
  - Accidental victims
- Count attempt to contact male victims over Internet
- Scoring 1 point for having a male victim

STATIC-99
CASE EXAMPLES

Translating Static-99 Scores - Risk Categories

The use of the Static-99 in Risk Assessment

Overrides to the Static-99

- Are there exceptional circumstances that support an override of the STATIC-99?
  - Age (60 years or older move down a risk level
  - Health
  - Time free in the community with no sex offense
  - Sex offender treatment completion
- You will not need to use this very often

Override for time free

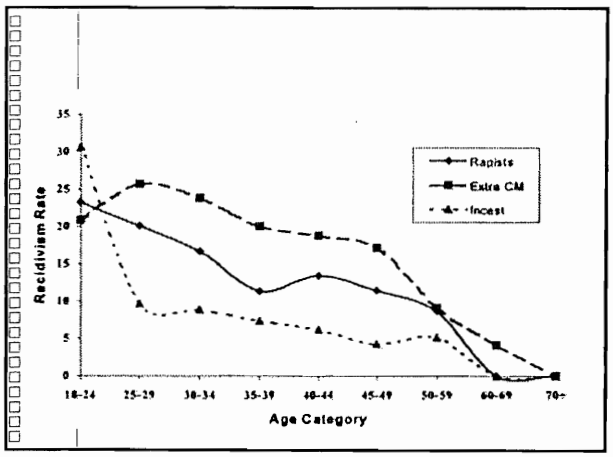
- See Appendix One – Pages 59 & 60
  - No new sexual or violent offence
  - Risk of sexual re-offence declines over time

Override for advanced age

- Hanson, R.K. (2001). Recidivism and Age: Follow-up data from 4,673 sexual offenders. Journal of Interpersonal Violence, Vol. 17, No. 10, October 2002

Hanson (2001)

- N=4,673
- 9 year follow-up
- 10 samples
  - Canada=7
  - US=2 (SOTEP, WA SSOSA)
  - UK=1 (Same as Static-99 cross-valid)



Hanson (2001)

- Results
  - Recid rate for rapists steadily decreased with age
  - Rapists younger than other sex offenders (45% <30 years)
  - Highest risk EF CM's between age 25-35
  - Recidivism rate for EF CM little decline until after age 50

Hanson (2001)

- Very few recidivists among sexual offenders released after 60 (5/131 or 3.8%)
- Age decline in recidivism attributed to
  - Deviant sexual interests
  - Opportunity
  - Low self-control
    - Impulsivity, high risk behaviors

The Validity of the Static-99 with Older Offenders (User Report 2005-01)

- N = 3,425
- 5 year follow-up
- 8 samples
  - Canada (6)
  - US 3 (WA SSOSA, Dynamic Supv Project)
  - UK 1 (same as Static-99 cross-valid1)

HANSON (User Report 2005-01)

Table III. Five year sexual recidivism rates divided by age and Static-99 risk categories.

Static-99 Category	AGE AT RELEASE									
	18 - 39.9		40 - 49.9		50 - 59.9		60 and older		All ages	
	n	recid.±95%CI	n	recid.±95%CI	n	recid.±95%CI	n	recid.±95%CI	n	recid.±95%CI
Low	503	6.7 ± 2.6	321	5.5 ± 2.9	159	2.5 ± 2.8	112	0.0 ± 0.0	1095	5.2 ± 1.6
Moderate-Low	865	10.3 ± 2.5	260	6.7 ± 4.3	126	4.3 ± 4.4	56	3.0 ± 5.7	1307	8.7 ± 1.9
Moderate-High	520	24.5 ± 4.6	124	13.8 ± 8.0	63	19.4 ± 16.1	25	4.8 ± 9.1	732	21.4 ± 3.8
High	177	37.0 ± 9.1	71	25.7 ± 13.2	32	24.3 ± 22.6	11	9.1 ± 17.0	291	31.6 ± 6.9
All Levels	2065	14.8 ± 1.9	776	8.8 ± 2.5	380	7.5 ± 3.8	204	2.0 ± 2.3	3425	12.0 ± 1.4
ROC AUC (95% CI)	.68	(.65 - .72)	.66	(.58 - .73)	.76	(.66 - .85)	.81	(.68 - .95)	.70	(.67 - .72)

Note : "recid.±95%CI" is the sexual recidivism rate calculated through survival analysis with its 95% confidence interval, "n" is the sample size starting the interval. ROC AUC is the area under the receiver operating characteristic curve.

Hanson (User Report 2005-01)

- Results
  - Static-99 was equally effective at ranking relative risk of both younger and older offenders
    - 40-49 years ROC=.66
    - 60 and older ROC=.81

Hanson (User Report 2005-01)

- Advanced age contributed information to the prediction of sex recidivism after controlling for Static-99.
- Static-99 equally good at ranking relative risk for offenders all age groups.
- Age related declines should occur for low, moderate and high risk offenders
- Steady decline in recidivism for offender >40 years
- 5 year recidivism rate of >60 2% versus <40 14.8%

Hanson (User Report 2005-01)

- Evaluators should consider advanced age in risk assessment
- Do not adjust risk for age for offender under 40
- Offenders over 60 appeared at "substantially lower risk""

Application of age research to risk assessment

- There is a reduction in risk for sexual reoffense for all types of sexual offenders after age 60
- If an older offender is typical of other high Static-99 scorers in every other dimension but age, age may be a mitigating factor and actuarial probabilities may overestimate risk.

Application of age research to risk assessment

- Age may mitigate risk on the Static-99 in considering the following:
  - Opportunity
  - Sex drive/motivation
  - Impulsivity/self control
  - Health issues
  - Mobility

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STATIC-99 Coding Rules
Revised - 2003

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STATIQUE-99 Règles de codage révisées – 2003

Table of Contents

Table of Contents – Continued

How To Use This Manual

In most cases, scoring a STATIC-99 is fairly straightforward for an experienced evaluator. If you are unfamiliar with this instrument we suggest that you turn to the back pages of this manual and find the one-page STATIC-99 Coding Form. You may want to keep a copy of this to one side as you review the manual.

We strongly recommend that you read pages 3 to 21 and the section "Scoring the STATIC-99 and Computing the Risk Estimates" before you score the STATIC-99. These pages explain the nature of the STATIC-99 as a risk assessment instrument; to whom this risk assessment instrument may be applied; the role of self-report; exceptions for juvenile, developmentally delayed, and institutionalized offenders; changes from the last version of the STATIC-99 coding rules; the information required to score the STATIC-99; and important definitions such as "Index Offence", Category "A" offences versus Category "B" offences, "Index Cluster", and "Pseudo-recidivism".

Individual item coding instructions begin at the section entitled "Scoring the Ten Items". For each of the ten items, the coding instructions begin with three pieces of information: **The Basic Principle, Information Required to Score this Item,** and **The Basic Rule.** In most cases, just reading these three small sections will allow you to score that item on the STATIC-99. Should you be unsure of how to score the item you may read further and consider whether any of the special circumstances or exclusions apply to your case. This manual contains much information that is related to specific uses of the STATIC-99 in unusual circumstances and many sections of this manual need only be referred to in exceptional circumstances.

We also suggest that you briefly review the ten appendices as they contain valuable information on adjusting STATIC-99 predictions for time free in the community, a self-test of basic concepts, references, surgical castration, a table for converting raw STATIC-99 scores to risk estimates, the coding forms, a suggested report format for communicating STATIC-99-based risk information, a list of replication studies for the STATIC-99, information on inter-rater reliability and, how to interpret Static-99 scores greater than 6.

We appreciate all feedback on the scoring and implementation of the STATIC-99. Please feel free to contact any of the authours. Should you find any errors in this publication or have questions/concerns regarding the application of this risk assessment instrument or the contents of this manual, please address these concerns to:

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Introduction

The Nature of the STATIC-99

The STATIC-99 utilizes only static (unchangeable) factors that have been seen in the literature to correlate with sexual reconviction in adult males. The estimates of sexual and violent recidivism produced by the STATIC-99 can be thought of as a baseline of risk for violent and sexual reconviction. From this baseline of long-term risk assessment, treatment and supervision strategies can be put in place to reduce the risk of sexual recidivism.

The STATIC-99 was developed by R. Karl Hanson, Ph.D. of the Solicitor General Canada and David Thornton, Ph.D., at that time, of Her Majesty's Prison Service, England. The STATIC-99 was created by amalgamating two risk assessment instruments. The RRASOR (Rapid Risk Assessment of Sex Offender Recidivism), developed by Dr. Hanson, consists of four items: 1) having prior sex offences, 2) having a male victim, 3) having an unrelated victim, and 4) being between the ages of 18 and 25 years old. The items of the RRASOR were then combined with the items of the Structured Anchored Clinical Judgement – Minimum (SACJ-Min), an independently created risk assessment instrument written by Dr. Thornton (Grubin, 1998). The SACJ-Min consists of nine items: 1) having a current sex offence, 2) prior sex offences, 3) a current conviction for non-sexual violence, 4) a prior conviction for non-sexual violence, 5) having 4 or more previous sentencing dates on the criminal record, 6) being single, 7) having non-contact sexual offences, 8) having stranger victims, and 9) having male victims. These two instruments were merged to create the STATIC-99, a ten-item prediction scale.

The strengths of the STATIC-99 are that it uses risk factors that have been empirically shown to be associated with sexual recidivism and the STATIC-99 gives explicit rules for combining these factors into a total risk score. This instrument provides explicit probability estimates of sexual reconviction, is easily scored, and has been shown to be robustly predictive across several settings using a variety of samples. The weaknesses of the STATIC-99 are that it demonstrates only moderate predictive accuracy (ROC = .71) and that it does not include all the factors that might be included in a wide-ranging risk assessment (Doren, 2002).

While potentially useful, an interview with the offender is not necessary to score the STATIC-99.

The authors of this manual strongly recommend training in the use of the STATIC-99 before attempting risk assessments that may affect human lives. Researchers, parole and probation officers, psychologists, sex offender treatment providers, and police personnel involved in threat and risk assessment activities typically use this instrument. Researchers are invited to make use of this instrument for research purposes and this manual and the instrument itself may be downloaded from www.sgc.gc.ca.

It is possible to score more than six points on the STATIC-99 yet the top risk score is 6 (High-Risk). In analyzing the original samples it was found that there was no significant increase in recidivism rates for scores between 6 and 12. One of the reasons for this finding may be diminishing sample size. However, in general, the more risk factors, the more risk. There may be some saturation point after which additional factors do not appear to make a difference in risk. It is useful to keep in mind that all measurement activities contain some degree of error. If the offender's score is substantially above 6 (High-Risk), there is greater confidence the offender's "true" score is greater than 6 (High-Risk) than if the offender had only scored a 6.

The STATIC-99 does not address all relevant risk factors for sexual offenders. Consequently a prudent evaluator will always consider other external factors that may influence risk in either direction. An obvious example is where an offender states intentions to further harm or "get" his victims (higher risk).

Or, an offender may be somewhat restricted from further offending either by health concerns or where he has structured his environment such that his victim group is either unavailable or he is always in the company of someone who will support non-offending (lower risk). These additional risk factors should be stated in any report as "additional factors that were taken into consideration" and not "added" to the STATIC-99 Score. Adding additional factors to the STATIC-99, or adding "over-rides" distances STATIC-99 estimates from their empirical base and substantially reduces their predictive accuracy.

- **Missing Items** – The only item that may be omitted on the STATIC-99 is "Ever Lived With ..." (Item #2). If no information is available, this item should be scored as a "0" (zero) – as if the offender **has lived** with an intimate partner for two years.

- **Recidivism Criteria** – In the original STATIC-99 samples the recidivism criteria was a new conviction for a sexual offence.

- **Non-Contact Sexual Offences** – The original STATIC-99 samples included a small number of offenders who had been convicted of non-contact sexual offences. STATIC-99 predictions of risk are relevant for non-contact sexual offenders, such as Break-&-Enter Fetishists who enter a dwelling to steal underwear or similar fetish objects.

- **RRASOR or STATIC-99?** On the whole, if the information is available to score the STATIC-99 it is preferable to use the STATIC-99 over the RRASOR as estimates based on the STATIC-99 utilize more information than those based upon RRASOR scores. The average predictiveness of the STATIC-99 is higher than the average predictiveness of the RRASOR (Hanson, Morton, & Harris, in press).

Recidivism Estimates and Treatment

The original samples and the recidivism estimates should be considered primarily as "untreated". The treatment provided in the Millbrook Recidivism Study and the Oak Ridge Division of the Penetanguishene Mental Health Centre samples were dated and appeared ineffective in the outcome evaluations. Most of the offenders in the Pinel sample did not complete the treatment program. Except for the occasional case, the offenders in the Her Majesty's Prison Service (UK) sample would not have received treatment.

Self-report and the STATIC-99

Ten items comprise the STATIC-99. The amount of self-report that is acceptable in the scoring of these questions differs across questions and across the three basic divisions within the instrument.

Demographic Questions: For Item #1 – Young, while it is always best to consult official written records, self-report of age is generally acceptable for offenders who are obviously older than 25 years of age. For Item #2 – Ever Lived With..., to complete this item the evaluator should make an attempt to confirm the offender's relationship history through collateral sources and official records. There may, however, be certain cases (immigrants, refugees from third world countries) where confirmation is not possible. In the absence of these sources self-report information may be utilized, assuming of course, that the self-report seems credible and reasonable to the evaluator. For further guidance on the use of self-report and the STATIC-99 please see section "Item #2 – Ever Lived with an Intimate Partner – 2 Years".

Criminal History Questions: For the five (5) items that assess criminal history (Items 3, 4, 5, 6, & 7) an official criminal history is required to score these items and self-report is not acceptable. This being said, there may be certain cases (immigrants, refugees from third world countries) where self-report of crimes may be accepted if it is reasonable to assume that no records exist or that existing records are truly un-retrievable. In addition, to the evaluator, the self-report must seem credible and reasonable.

Victim Questions: For the three (3) victim items self-report is generally acceptable assuming the self-report meets the basic criteria of appearing reasonable and credible. Confirmation from official records or collateral contacts is always preferable.

Who can you use the STATIC-99 on?

The STATIC-99 is an actuarial risk prediction instrument designed to estimate the probability of sexual and violent reconviction for adult males who have already been charged with or convicted of at least one sexual offence against a child or a non-consenting adult. This instrument may be used with first-time sexual offenders.

This instrument is not recommended for females, young offenders (those having an age of less than 18 years at time of release) or for offenders who have only been convicted of prostitution related offences, pimping, public toileting (sex in public locations with consenting adults) or possession of pornography/indecent materials. The STATIC-99 is not recommended for use with those who have never committed a sexual offence, nor is it recommended for making recommendations regarding the determination of guilt or innocence in those accused of a sexual offence. The STATIC-99 is not appropriate for individuals whose only sexual "crime" involves consenting sexual activity with a similar age peer (e.g., Statutory Rape {a U.S. charge} where the ages of the perpetrator and the victim are close and the sexual activity was consensual).

The STATIC-99 applies where there is reason to believe an actual sex offence has occurred with an identifiable victim. The offender need not have been convicted of the offence. The original samples used to create this instrument contained a number of individuals who had been found Not Guilty by Reason of Insanity and others who were convicted of non-sexual crimes, but in all cases these offenders had committed real sex crimes with identifiable victims. The STATIC-99 may be used with offenders who have committed sexual offences against animals.

In some cases, an evaluator may be faced with an offender who has had a substantial period at liberty in the community with opportunity to re-offend, but has not done so. In cases such as these, the risk of sexual re-offence probabilities produced by the STATIC-99 may not be reliable and adjustment should be considered (Please see Appendix #1).

STATIC-99 with Juvenile Offenders

It should be noted that there were people in the original STATIC-99 samples who had committed sexual offences as juveniles (under the age of 18 years) and who were released as adults. In some cases an assessment of STATIC-99 risk potential may be useful on an offender of this nature. If the juvenile offences occurred when the offender was 16 or 17 and the offences appear "adult" in nature (preferential sexual assault of a child, preferential rape type activities) – the STATIC-99 score is most likely of some utility in assessing overall risk.

Evaluations of juveniles based on the STATIC-99 must be interpreted with caution as there is a very real theoretical question about whether juvenile sex offending is the same phenomena as adult sex offending in terms of its underlying dynamics and our ability to affect change in the individual. In addition, the younger the juvenile offender is, the more important these questions become. In general, the research literature leads us to believe that adolescent sexual offenders are not necessarily younger versions of adult sexual offenders. Developmental, family, and social factors would be expected to impact on recidivism potential. We have reason to believe that people who commit sex offences only as children/young people are a different profile than adults who commit sexual offences. In cases such as these, we recommend that STATIC-99 scores be used with caution and only as part of a more wide-ranging assessment of sexual and criminal behaviour. A template for a standard, wide-ranging assessment can be found in the

Solicitor General Canada publication, Harris, A. J. R., (2001), High-Risk Offenders: A Handbook for Criminal Justice Professionals, Appendix "d" (Please see the references section).

At this time we are aware of a small study that looked at the predictiveness of the STATIC-99 with juveniles. This study suggested that the scale worked with juveniles; at least in the sense that there was an overall positive correlation between their score on the STATIC-99 and their recidivism rate. This Texas study (Poole et al., 2000) focused on older juveniles who were 19 when released but younger when they offended.

In certain cases, the STATIC-99 may be useful with juvenile sexual offenders, if used cautiously. There would be reasonable confidence in the instrument where the convictions are related to offenses committed at the age of 17. In general, the younger the child, the more caution should be exercised in basing decisions upon STATIC-99 estimates. For example, if a 17-year-old offender committed a rape, alone, on a stranger female, you would have reasonable confidence in the STATIC-99 estimates. On the other hand, if the offender is now an adult (18+ years old) and the last sexual offence occurred when that individual was 14 or 15, STATIC-99 estimates would not apply. If the sexual offences occurred at a younger age and they look "juvenile" (participant in anti-social behaviour towards peers that had a sexual component) we would recommend that the evaluator revert to risk scales specifically designed for adolescent sexual offenders, such as the ERASOR (Worling, 2001).

The largest category of juvenile sexual offenders is generally antisocial youth who sexually victimize a peer when they are 13 or 14 years of age. These juvenile sexual offenders are most likely sufficiently different from adult sexual offenders that we do not recommend the use of the STATIC-99 nor any other actuarial instruments developed on samples of adult sexual offenders. We would once again refer evaluators to the ERASOR (Worling, 2001).

When scoring the STATIC-99, Juvenile offences when they are known from official sources, count as charges and convictions on "Prior Sexual Offences" regardless of the present age of the offender. Self-reported juvenile offences in the absence of official records do not count.

STATIC-99 with Juvenile Offenders who have been in prison for a long time

In this section we consider juvenile offenders who have been in prison for extended periods (20 years plus) and who are now being considered for release. In one recent case a male juvenile offender had committed all of his offences prior to the age of 15. This individual is now 36 years old and has spent more than 20 years incarcerated for these offences. The original STATIC-99 samples contained some offenders who committed their sexual offences as juveniles and were released as adults. However, most of these offenders were in the 18 – 20 age group upon release. Very few, if any, would have served long sentences for offences committed as juveniles. Although cases such as these do not technically violate the sampling frame of the STATIC-99, such cases would have been sufficiently rare that it is reasonable for evaluators to use more caution than usual in the interpretation of STATIC-99 reconviction probabilities.

STATIC-99 with Offenders who are Developmentally Delayed

The original STATIC-99 samples contained a number of Developmentally Delayed offenders. Presently, research is ongoing to validate the STATIC-99 on samples of Developmentally Delayed offenders. Available evidence to date supports the utility of actuarial approaches with Developmentally Delayed offenders. There is no current basis for rejecting actuarials with this population.

STATIC-99 with Institutionalized Offenders

The STATIC-99 is intended for use with individuals who have been charged with, or convicted of, at least one sexual offence. Occasionally, however, there are cases where an offender is institutionalized for a non-sex offence but, once incarcerated, engages in sexual assault or sexually aggressive behaviour that is sufficiently intrusive to come to official notice. In certain of these cases charges are unlikely, e.g., the offender is a "lifer". If no sanction is applied to the offender, these offences are not counted. If the behaviour is sufficiently intrusive that it would most likely attract a criminal charge had the behaviour occurred in the community and the offender received some form of "in-house" sanction, (administrative segregation, punitive solitary confinement, moved between prisons or units, etc.), these offences would count as offences on the STATIC-99. If that behaviour were a sexual crime, this would create a new Index sexual offence. However, if no sanction is noted for these behaviours they cannot be used in scoring the STATIC-99.

The STATIC-99 may be appropriate for offenders with a history of sexual offences but currently serving a sentence for a non-sexual offence. The STATIC-99 should be scored with the most recent sexual offence as the Index offence. The STATIC-99 is not applicable to offenders who have had more than 10 years at liberty in the community without a sexual offence before they were arrested for their current offence. STATIC-99 risk estimates would generally apply to offenders that had between two (2) and ten (10) years at liberty in the community without a new sexual offence but are currently serving a new sentence for a new technical (fail to comply) or other minor non-violent offence (shoplifting, Break and Enter). Where an offender did have a prolonged (two to ten years) sex-offence-free period in the community prior to their current non-sexual offence, the STATIC-99 estimates would be adjusted for time free using the chart in Appendix One – "Adjustments in risk based on time free".

Adjusted crime-free rates only apply to offenders who have been without a new sexual or violent offence. Criminal misbehaviour such as threats, robberies, and assaults void any credit the offender may have for remaining free of additional sexual offences.

STATIC-99 with Black, Aboriginal, and members of other Ethnic/Social Groups

Most members of the original samples from which recidivism estimates were obtained were white. However, race has not been found to be a significant predictor of sexual offence recidivism. It is possible that race interacts with STATIC-99 scores, but such interactions between race and actuarial rates are rare. It has been shown that the SIR Scale works as well for Aboriginal offenders as it does for non-aboriginal offenders (Hann et al., 1993). The LSI-R has been shown to work as well for non-white offenders as it does for white offenders (Lowenkamp et al., 2001) and as well for aboriginal offenders as it does for non-aboriginal offenders (Bonta, 1989). In Canada there is some evidence that STATIC-99 works as well for Aboriginal sexual offenders as it does for whites (Nicholaichuk, 2001). At this time, there is no reason to believe that the STATIC-99 is culturally specific.

STATIC-99 and Offenders with Mental Health Issues

The original STATIC-99 samples contained significant numbers of individual offenders with mental health concerns. It is appropriate to use the STATIC-99 to assess individuals with mental health issues such as schizophrenia and mood disorders.

STATIC-99 and Gender Transformation

Use of the STATIC-99 is only recommended, at this time, for use with adult males. In the case of an offender in gender transformation the evaluator would score that person based upon their anatomical sex at the time their first sexual offence was committed.

What's New? What's Changed?

Since the last version of the Coding Rules

The most obvious change in the layout of the STATIC-99 is the slight modification of three of the items to make them more understandable. In addition, the order in which the items appear on the Coding Form has been changed. It is important to remember that no item definitions have been changed and no items have been added or subtracted. Present changes reflect the need for a clearer statement of the intent of the items as the use of the instrument moves primarily from the hands of researchers and academics into the hands of primary service providers such as, parole and probation officers, psychologists, psychometrists and others who use the instrument in applied settings. The revised order of questions more closely resembles the order in which relevant information comes across the desk of these individuals.

The first item name that has been changed is the old item #10, Single. The name of this item has been changed to "Ever lived with an intimate partner – 2 years" and this item becomes item number 2 in the revised scale. The reason for this change is that the new item name more closely reflects the intent of the item, whether the offender has ever been capable of living in an intimate relationship with another adult for two years.

The two Non-sexual violence items, "Index Non-sexual violence" and "Prior non-sexual violence" have been changed slightly to make it easier to remember that a conviction is necessary in order to score these items. These two items become "Index Non-sexual violence – Any convictions?" and "Prior Non-sexual violence – Any convictions?" in the new scheme.

Over time, there have been some changes to the rules from the previous version of the coding rules. Some rules were originally written to apply to a specific jurisdiction. In consultation with other jurisdictions, the rules have been generalized to make them applicable across jurisdictions in a way that preserves the original intent of the item. These minor changes are most evident in Item #6 – Prior Sentencing Dates.

Over the past two years, a large number of direct service providers have been trained in the administration of the STATIC-99. The training of direct service providers has revealed to us that two related concepts must be clearly defined for the evaluator. These concepts are "Pseudo-recidivism" and "Index cluster". Pseudo-recidivism results when an offender who is currently engaged in the criminal justice process has additional charges laid against them for crimes they committed before they were apprehended for the current offence. Since these earlier crimes have never been detected or dealt with by the justice system they are "brought forward" and grouped with the Index offence. When, for the purposes of scoring the STATIC-99, these offences join the "Index Offence" this means there are crimes from two, or more, distinct time periods included as the "Index". This grouping of offences is known as an "Index Cluster". These offences are not counted as "priors" because, even though the behaviour occurred a long time ago, these offences have never been subject to a legal consequence.

Finally, there is a new section on adjusting the score of the STATIC-99 to account for offenders who have not re-offended for several years. There is reason to downgrade risk status for the offender who has not re-offended in the community over a protracted period (See Appendix One).

Information Required to Score the STATIC-99

Three basic types of information are required to score the STATIC-99, Demographic information, an official Criminal Record, and Victim information.

Demographic Information

Two of the STATIC-99 items require demographic information. The first item is "Young?". The offender's date of birth is required in order to determine whether the offender is between 18 and 25 years of age at the time of release or at time of exposure to risk in the community. The second item that requires knowledge of demographic information is "Ever lived with an intimate partner – 2 years?". To answer this question the evaluator must know if the offender has ever lived in an intimate (sexual) relationship with another adult, continuously, for at least two years.

Official Criminal Record

In order to score the STATIC-99, the evaluator must have access to an official criminal record as recorded by police, court, or correctional officials. From this official criminal record you score five of the STATIC-99's items: "Index non-sexual violence – Any convictions", "Prior non-sexual violence – Any convictions", "Prior sex offences", "Prior sentencing dates", and "Non-contact sex offences – Any convictions". Self-report is generally not acceptable to score these five items – in the Introduction section, see sub-section – "Self-report and the STATIC-99".

Victim Information

The STATIC-99 contains three victim information items" "Any unrelated victims", "Any stranger victims" and, "Any male victims". To score these items the evaluator may use any credible information at their disposal except polygraph examination. For each of the offender's sexual offences the evaluator must know the pre-offence degree of relationship between the victim and the offender.

Definitions

Sexual Offence

For the purposes of a STATIC-99 assessment a sexual offence is an officially recorded sexual misbehaviour or criminal behaviour with sexual intent. To be considered a sexual offence the sexual misbehaviour must result in some form of criminal justice intervention or official sanction. For people already engaged in the criminal justice system the sexual misbehaviour must be serious enough that individuals could be charged with a sexual offence if they were not already under legal sanction. **Do not count offences such as failure to register as a sexual offender or consenting sex in prison.**

Criminal justice interventions may include the following:

- Alternative resolutions agreements (Restorative Justice)
- Arrests
- Charges
- Community-based Justice Committee Agreements
- Criminal convictions
- Institutional rule violations for sexual offences (Do not count consenting sexual activity in prison)
- Parole and probation violations

Sanctions may include the following:

- Alternative resolution agreements
- Community supervision
- Conditional discharges
- Fines
- Imprisonment
- Loss of institutional time credits due to sexual offending ("worktime credits")

Generally, "worktime credit" or "institutional time credits" means credit towards (time off) a prisoner's sentence for satisfactory performance in work, training or education programs. Any prisoner who accumulates "worktime credit" may be denied or may forfeit the credit for failure or refusal to perform assigned, ordered, or directed work or for receiving a serious disciplinary offense.

Sexual offences are scored only from official records and both juvenile and adult offences count. You may not count self-reported offences except under certain limited circumstances, please refer to the Introduction section – sub-section "Self-report and the STATIC-99".

An offence need not be called "sexual" in its legal title or definition for a charge or conviction to be considered a sexual offence. Charges or convictions that are explicitly for sexual assaults, or for the sexual abuse of children, are counted as sexual offenses on the STATIC-99, regardless of the offender's motive. Offenses that directly involve illegal sexual behaviour are counted as sex offenses even when the legal process has led to a "non-sexual" charge or conviction. An example of this would be where an offender is charged with or pleads guilty to a Break and Enter when he was really going in to steal dirty underwear to use for fetishistic purposes.

In addition, offenses that involve non-sexual behavior are counted as sexual offenses if they had a sexual motive. For example, consider the case of a man who strangles a woman to death as part of a sexual act but only gets charged with manslaughter. In this case the manslaughter charge would still be considered a sexual offence. Similarly, a man who strangles a woman to gain sexual compliance but only gets charged

with Assault; this Assault charge would still be considered a sexual offence. Further examples of this kind include convictions for murder where there was a sexual component to the crime (perhaps a rape preceding the killing), kidnapping where the kidnapping took place but the planned sexual assault was interrupted before it could occur, and assaults "pled down" from sexual assaults.

Physical assaults, threats, and stalking motivated by sexual jealousy do not count as sexual offenses when scoring the STATIC-99.

Additional Charges

Offences that may not be specifically sexual in nature, occurring at the same time as the sexual offence, and under certain conditions, may be considered part of the sexual misbehaviour. Examples of this would include an offender being charged with/convicted of:

- Sexual assault (rape) and false imprisonment
- Sexual assault (rape) and kidnapping
- Sexual assault (rape) and battery

In instances such as these, depending upon when in the court process the risk assessment was completed, the offender would be coded as having been convicted of two sexual offences plus scoring in another item (Index or Prior Non-sexual Violence). For example if an offender were convicted of any of the three examples above prior to the current "Index" offence, the offender would score 2 "prior" sex offence charges and 2 "prior" sex offence convictions (On Item #5 – Prior Sexual Offences) and a point for Prior Non-sexual Violence (Please see "Prior Non-sexual Violence" or "Index Non-sexual Violence" for a further explanation).

Category "A" and Category "B" Offences

For the purposes of the STATIC-99, sexual misbehaviours are divided into two categories. Category "A" involves most criminal charges that we generally consider "sexual offences" and that involve an identifiable child or non-consenting adult victim. This category includes all contact offences, exhibitionism, voyeurism, sex with animals and dead bodies.

Category "B" offences include sexual behaviour that is illegal but the parties are consenting or no specific victim is involved. Category "B" offences include prostitution related offences, consenting sex in public places, and possession of pornography. Behaviours such as urinating in public or public nudity associated with mental impairment are also considered Category "B" offences.

Rule: if the offender has **any** category "A" offences on their record - all category "B" offences should be counted as sex offences for the purpose of scoring sexual priors or identifying the Index offense. They do not count for the purpose of scoring victim type items. The STATIC-99 is not recommended for use with offenders who have only category "B" offences.

Offence names and legalities differ from jurisdiction to jurisdiction and a given sexual behaviour may be associated with a different charge in a different jurisdiction. The following is a list of offences that would typically be considered sexual. Other offence names may qualify when they denote sexual intent or sexual misbehaviour.

Category "A" Offences

- Aggravated Sexual Assault
- Attempted sexual offences (Attempted Rape, Attempted Sexual Assault)
- Contributing to the delinquency of a minor (where the offence had a sexual element)
- Exhibitionism

- Incest
- Indecent exposure
- Invitation to sexual touching
- Lewd or lascivious acts with a child under 14
- Manufacturing/Creating child pornography where an identifiable child victim was used in the process (The offender had to be present or participate in the creation of the child pornography with a human child present)
- Molest children
- Oral copulation
- Penetration with a foreign object
- Rape (includes in concert) (Rape in concert is rape with one or more co-offenders. The co-offender can actually perpetrate a sexual crime or be involved to hold the victim down)
- Sexual Assault
- Sexual Assault Causing Bodily Harm
- Sexual battery
- Sexual homicide
- Sexual offences against animals (Bestiality)
- Sexual offences involving dead bodies (Offering an indignity to a dead body)
- Sodomy (includes in concert and with a person under 14 years of age)
- Unlawful sexual intercourse with a minor
- Voyeuristic activity (Trespass by night)

Category "B" Offences

- Consenting sex with other adults in public places
- Crimes relating to child pornography (possession, selling, transporting, creating where only pre-existing images are used, digital creation of)
- Indecent behaviour without a sexual motive (e.g., urinating in public)
- Offering prostitution services
- Pimping/Pandering
- Seeking/hiring prostitutes
- Solicitation of a prostitute

Certain sexual behaviours may be illegal in some jurisdictions and legal in others (e.g., prostitution). Count only those sexual misbehaviours that are illegal in the jurisdiction in which the risk assessment takes place and in the jurisdiction where the acts took place.

Exclusions

The following offences would not normally be considered sexual offences

- Annoying children
- Consensual sexual activity in prison (except if sufficiently indiscreet to meet criteria for gross indecency).
- Failure to register as a sex offender
- Being in the presence of children, loitering at schools
- Possession of children's clothing, pictures, toys
- Stalking (unless sexual offence appears imminent, please see definition of "Truly Imminent" below)
- Reports to child protection services (without charges)

Rule: Simple questioning by police not leading to an arrest or charge is insufficient to count as a sexual offence.

Probation, Parole or Conditional Release Violations as Sexual Offences

Rule: Probation, parole or conditional release violations resulting in arrest or revocation/breach are considered sexual offences when the behaviour could have resulted in a charge/conviction for a sexual offence if the offender were not already under legal sanction.

Sometimes the violations are not clearly defined as a sexual arrest or conviction. The determination of whether to count probation, parole, or conditional release violations as sexual offences is dependent upon the nature of the sexual misbehaviour. Some probation, parole and conditional release violations are clearly of a sexual nature, such as when a rape or a child molestation has taken place or when behaviours such as exhibitionism or possession of child pornography have occurred. These violations would count as the Index offence if they were the offender's most recent criminal justice intervention.

Generally, violations due to "high-risk" behaviour would not be considered sex offences. The most common of these occurs when the offender has a condition not to be in the presence of children but is nevertheless charged with a breach - being in the presence of children. A breach of this nature would not be considered a sexual offence. This is a technical violation. The issue that determines if a violation of conditional release is a new sex offence or not is whether a person who has never been convicted of a sex offence could be charged and convicted of the breach behaviour. A person who has never faced criminal sanction could not be charged with being in the presence of minors; hence, because a non-criminal could not be charged with this offence, it is a technical violation. Non-sexual probation, parole and conditional release violations, and charges and convictions such as property offences or drug offences are not counted as sexual offences, even when they occur at the same time as sexual offences.

Taking the above into consideration, some high-risk behaviour may count as a sexual offence if the risk for sexual offence recidivism was truly imminent and an offence failed to occur only due to chance factors, such as detection by the supervision officer or resistance of the victim.

Definition of "Truly Imminent"

Examples of this nature would include an individual with a history of child molesting being discovered alone with a child and about to engage in a "wrestling game." Another example would be an individual with a long history of abducting teenage girls for sexual assault being apprehended while attempting to lure teenage girls into his car.

Institutional Rule Violations

Institutional rule violations resulting in institutional punishment can be counted as sex offences if certain conditions exist. The first condition is that the sexual behaviour would have to be sufficiently intrusive that a charge for a sexual offence would be possible were the offender not already under legal sanction. In other words, "if he did it on the outside would he get charged for it?" Institutional Disciplinary Reports for sexual misbehaviours that would likely result in a charge were the offender not already in custody count as charges. Poorly timed or insensitive homosexual advances would not count even though this type of behaviour might attract institutional sanctions. The second condition is that the evaluator must be sure that the sexual assaults actually occurred and the institutional punishment was for the sexual behaviour.

In a prison environment it is important to distinguish between targeted activity and non-targeted activity. Institutional disciplinary reports that result from an offender who specifically chooses a female officer and masturbates in front of her, where she is the obvious and intended target of the act, would count as a

"charge" and hence, could stand as an Index offence. The alternative situation is where an offender who is masturbating in his cell is discovered by a female officer and she is not an obvious and intended target. In some jurisdictions this would lead to a Disciplinary Report. Violations of this "non-targeted" nature do not count as a "charge' and could not stand as an Index offence. If the evaluator has insufficient information to distinguish between these two types of occurrences the offender gets the benefit of the doubt and the evaluator would not score these occurrences. A further important distinction is whether the masturbation takes place covered or uncovered. Masturbating under a sheet would not be regarded as an attempt at indecent exposure.

Consider these two examples:

(1) A prisoner is masturbating under a sheet at a time when staff would not normally look in his cell. Unexpectedly a female member of staff opens the observation window, looks through the door, and observes him masturbating. This would not count as a sex offence for the purposes of STATIC-99, even if a disciplinary charge resulted.

(2) In the alternate example, a prisoner masturbates uncovered so that his erect penis is visible to anyone who looks in his cell. Prison staff have reason to believe that he listens for the lighter footsteps of a female guard approaching his cell. He times himself so that he is exposed in this fashion at the point that a female guard is looking into the cell. This would count as a sexual offence for the purposes of scoring STATIC-99 if it resulted in an institutional punishment.

Rule: Prison Misconducts and Institutional Rule Violations for Sexual Misbehaviours count as one charge per sentence

Prison misconducts for sexual misbehaviours count as one charge per sentence, even when there are multiple incidents. The reason for this is that in some jurisdictions the threshold for misconducts is very low. Often, as previously described, misconduct will involve a female guard simply looking into a cell and observing an inmate masturbating. Even in prison, serious sexual offences, rape and attempted rape will generally attract official criminal charges.

Mentally Disordered and Developmentally Delayed Offenders

Some offenders suffer from sufficient mental impairment (major mental illness, developmental delays) that criminal justice intervention is unlikely. For these offenders, informal hearings and sanctions such as placement in treatment facilities and residential moves would be counted as both a charge and a conviction for a sexual offence.

Clergy and the Military

For members of the military or religious groups (clergy) (and similar professions) some movements within their own organizations can count as charges and convictions and hence, Index offences. The offender has to receive some form of official sanction in order for it to count as a conviction. An example of this would be the "de-frocking" of a priest or minister or being publicly denounced. Another example would be where an offender is transferred within the organization and the receiving institution knows they are receiving a sex offender. If this institution considers it part of their mandate to address the offender's problem or attempt to help him with his problem then this would function as equivalent to being sent to a correctional institution, and would count as a conviction and could be used as an Index Offence.

For members of the military, a religious group (clergy) or teachers (and similar professions) being transferred to a new parish/school/post or being sent to graduate school for re-training does not count as a conviction and cannot be used as an Index Offence.

Juveniles

Instances in which juveniles (ages 12–15) are placed into residential care for sexual aggression would count as a charge and conviction for a sexual offence. In jurisdictions where 16 and 17 year old sexual offenders remain in a juvenile justice system (not charged, tried, and sent to jail as adults are), where it is possible to be sent to a "home" or "placement", this would count as a charge and a conviction for a sexual offence. In jurisdictions where juveniles aged 16 and 17 are charged, convicted, sentenced, and jailed much like adults, juvenile charges and convictions (between ages 16 & 17) would be counted the same as adult charges and convictions.

Sexual misbehaviour of children 11 or under would not count as a sex offence unless it resulted in official charges.

Official Cautions – United Kingdom

In the United Kingdom, an official caution should be treated as equivalent to a charge and a conviction.

Similar Fact Crimes

An Offender assaults three different women on three different occasions. On the first two occasions he grabs the woman as she is walking past a wooded area, drags her into the bushes and rapes her. For this he is convicted twice of Sexual Assault (rape). In the third case he grabs the woman, starts to drag her into the bushes but she is so resistant that he beats her severely and leaves her. In this case he is convicted of Aggravated Assault. In order for the conviction to be counted as a sexual offence, it must have a sexual motivation. In a case like this it is reasonable to assume that the Aggravated Assault had a sexual motivation because it resembles the other sexual offences so closely. In the absence of any other indication to the contrary this Aggravated Assault would also be counted as a sexual offence. Note: This crime could also count as Non-sexual Violence.

Please also read subsection "Coding Crime Sprees" in section "Item #5 – Prior Sex Offences".

Index offence

The Index offence is generally the most recent sexual offence. It could be a charge, arrest, conviction, or rule violation (see definition of a sexual offence, earlier in this section). Sometimes Index offences include multiple counts, multiple victims, and numerous crimes perpetrated at different times because the offender may not have been detected and apprehended. Some offenders are apprehended after a spree of offending. If this results in a single conviction regardless of the number of counts, all counts are considered part of the Index offence. Convictions for sexual offences that are subsequently overturned on appeal can count as the Index offence. Charges for sexual offences can count as the Index Offence, even if the offender is later acquitted.

Most of the STATIC-99 sample (about 70%) had no prior sexual offences on their record; their Index offence was their first recorded sexual misbehaviour. As a result, the STATIC-99 is valid with offenders facing their first sexual charges.

Acquittals

Acquittals count as charges and can be used as the Index Offence.

Convictions Overturned on Appeal

Convictions that are subsequently overturned on appeal can count as an Index Offence.

"Detected" by Child Protection Services

Being "detected" by the Children's Aid Society or other Child Protection Services does not count as an official sanction; it may not stand as a charge or a conviction. This is insufficient to create a new Index Offence.

Revocation of Conditional Release for "Lifers", Dangerous Offenders, and Others with Indeterminate Sentences – As an Index Offence

Occasionally, offenders on conditional release in the community who have a life sentence, who have been designated as Dangerous Offenders (Canada C.C.C. Sec. 753) or other offenders with indeterminate sentences either commit a new offence or breach their release conditions while in the community. Sometimes, when this happens the offenders have their conditional releases revoked and are simply returned to prison rather than being charged with a new offence or violation. Generally, this is done to save time and court resources as these offenders are already under sentence.

> If a "lifer", Dangerous Offender, or other offender with an already imposed indeterminate sentence is simply revoked (returned to prison from conditional release in the community without trial) for a sexual behaviour this can serve as the Index Sexual Offence if the behaviour is of such gravity that a person not already involved with the criminal justice system would most likely be charged with a sexual criminal offence given the same behaviour. Note: the evaluator should be sure that were this offender not already under sanction that it is highly likely that a sexual offence charge would be laid by police.

Historical Offences

The evaluator may face a situation where an offender is brought before the court on a series of sexual offences, all of which happened several years in the past. This most often occurs when an offender has offended against children in the past and as these children mature they come forward and charge the perpetrator. After the first charge is laid it is not unusual for other victims to appear and lay subsequent charges. The evaluator may be faced with an offender with multiple charges, multiple court dates, and possibly multiple convictions who has never before been to court – or who has never before been sanctioned for sexual misbehaviour. In a case like this, where the offender is before the court for the first time, all of the charges, court appearances and convictions become what is known as an "Index Cluster" and they are all counted as part of the Index Offence.

Index Cluster

An offender may commit a number of sexual offences in different jurisdictions, over a protracted period, in a spree of offending prior to being detected or arrested. Even though the offender may have a number of sentencing dates in different jurisdictions, the subsequent charges and convictions would constitute an "Index Cluster". These "spree" offences would group together – the early ones would not be considered "priors" and the last, the "Index", they all become the "Index Cluster". This is because the offender has not been "caught" and sanctioned for the earlier offences and then "chosen" to re-offend in spite of the sanction. Furthermore, historical offences that are detected after the offender is convicted of a more recent sexual offence would be considered part of the Index offence (pseudo-recidivism) and become part of the Index Cluster (See subsequent section).

For two offences to be considered separate offences, the second offence must have been committed after the offender was detected and detained and/or sanctioned for the previous offence. For example, an offence committed while an offender was released on bail for a previous sexual offence would supersede

the previous charge and become the Index offence. This is because the offender knew he/she had been detected for their previous crimes but chose to re-offend anyway.

An Index cluster can occur in three ways.

The first occurs when an offender commits multiple offences at the same time and these offences are then subsequently dealt with as a group by the police and the courts.

The second occurs when an Index offence has been identified for an offender and following this the evaluator becomes aware of previous historical offences for which the offender has never previously been charged or convicted. These previous offences come forward and become part of the "Index Cluster". This is also known as "Pseudo-recidivism". It is important to remember, these historical charges do not count as "priors" because the offending behaviour was not consequenced before the offender committed the Index offence. The issue being, the offender has not been previously sanctioned for his behaviour and then made the choice to re-offend.

The third situation arises when an offender is charged with several offences that come to trial within a short period of time (a month or so). When the criminal record is reviewed it appears that a cluster of charges were laid at the end of an investigation and that the court could not attend to all of these charges in one sitting day. When the evaluator sees groups of charges where it appears that a lot of offending has finally "caught up" with an offender – these can be considered a "cluster". If these charges happen to be the last charges they become an Index Cluster. The evaluator would not count the last court day as the "Index" and the earlier ones as "priors". A second example of this occurs when an offender goes on a crime "spree" – the offender repeatedly offends over time, but is not detected or caught. Eventually, after two or more crimes, the offender is detected, charged, and goes to court. But he has not been independently sanctioned between the multiple offences.

> **For Example:** An offender commits a rape, is apprehended, charged, and released on bail. Very shortly after his release, he commits another rape, is apprehended and charged. Because the offender was apprehended and charged between crimes this does not qualify as a crime "spree" – these charges and possible eventual convictions would be considered separate crimes. If these charges were the last sexual offences on the offender's record – the second charge would become the Index and the first charge would become a "Prior".
>
> However, if an offender commits a rape in January, another in March, another in May, and another in July and is finally caught and charged for all four in August this constitutes a crime "spree" because he was not detected or consequenced between these crimes. As such, this spree of sexual offences, were they the most recent sexual offences on the offenders record, would be considered an "Index Cluster" and all four rape offences would count as "Index" not just the last one.

Pseudo-recidivism

Pseudo-recidivism occurs when an offender currently involved in the criminal justice process is charged with old offences for which they have never before been charged. This occurs most commonly with sexual offenders when public notoriety or media publicity surrounding their trial or release leads other victims of past offences to come forward and lay new charges. Because the offender has not been charged or consequenced for these misbehaviours previously, they have not experienced a legal consequence and then chosen to re-offend.

> **For Example:** Mr. Jones was convicted in 1998 of three sexual assaults of children. These sexual assaults took place in the 1970's. As a result of the publicity surrounding Mr. Jones' possible release in 2002, two more victims, now adults, come forward and lay new charges in 2002. These offences also took place in the 1970's but these victims did not come forward until 2002. Because Mr. Jones

had never been sanctioned for these offences they were not on his record when he was convicted in 1998. Offences for which the offender has never been sanctioned that come to light once the offender is in the judicial process are considered "pseudo-recidivism" and are counted as part of the "Index Cluster". Historical charges of this nature are not counted as "priors".

The basic concept is that the offender has to be sanctioned for previous mis-behaviours and then "chose" to ignore that sanction and re-offend anyway. If he chooses to re-offend after a sanction then he creates a new offence and this offence is considered part of the record, usually a new Index offence. If historical offences come to light, for which the offender has never been sanctioned, once the offender is in the system for another sexual offence, these offences "come forward' and join the Index Offence to form an "Index Cluster".

Post-Index Offences

Offences that occur after the Index offence do not count for STATIC-99 purposes. Post-Index sexual offences create a new Index offence. Post-Index violent offences should be considered "external" risk factors and would be included separately in any report about the offender's behaviour.

For Example, Post-Index Sexual Offences: Consider a case where an offender commits a sexual offence, is apprehended, charged, and released on bail. You are assigned to evaluate this offender but before you can complete your evaluation he commits another sexual offence, is apprehended and charged. Because the offender was apprehended, charged, and released this does not qualify as a crime "spree". He chose to re-offend in spite of knowing that he was under legal sanction. These new charges and possible eventual convictions would be considered a separate crime. In a situation of this nature the new charges would create a new sexual offence and become the new Index offence. If these charges happened to be the last sexual offences on the offender's record – the most recent charges would become the Index and the charge on which he was first released on bail would become a "Prior" Sexual Offence.

For Example, Post-Index Violent Offences: Consider a case where an offender in prison on a sexual offence commits and is convicted of a serious violent offence. This violent offence would not be scored on either Item #3 (Index Non-sexual Violence convictions) or Item #4 (Prior Non-sexual Violence convictions) but would be referred to separately, as an "external risk factor", outside the context of the STATIC-99 assessment, in any subsequent report on the offender.

Prior Offence(s)

A prior offence is any sexual or non-sexual crime, institutional rule violation, probation, parole or conditional release violation(s) and/or arrest charge(s) or, conviction(s), that was legally dealt with PRIOR to the Index offence. This includes both juvenile and adult offences. In general, to count as a prior, the sanction imposed for the prior offense must have occurred before the Index offense was committed. However, if the offender was aware that they were under some form of legal restraint and then goes out and re-offends in spite of this restriction, the new offence(s) would create a new Index offence. An example of this could be where an offender is charged with "Sexual Communication with a Person Under the Age of 14 Years" and is then released on his own recognizance with a promise to appear or where they are charged and released on bail. In both of these cases if the offender then committed an "Invitation to Sexual Touching" after being charged and released the "Invitation to Sexual Touching" would become the new Index offence and the "Sexual Communication with a Person Under the Age of 14 Years" would automatically become a "Prior" sexual offence.

In order to count violations of conditional release as "Priors" they must be "real crimes", something that someone not already engaged in the criminal justice system could be charged with. Technical violations such as Being in the Presence of Minors or Drinking Prohibitions do not count.

Scoring the 10 Items

Item # 1 - Young

The Basic Principle: Research (Hanson, 2001) shows that sexual recidivism is more likely in an offender's early adult years than in an offender's later adult years. See Figure 1, next page.

Information Required to Score this Item: To complete this item the evaluator has to confirm the offender's birth date or have other knowledge of the offender's age.

The Basic Rule: If the offender is between his 18th and 25th birthday at exposure to risk you score the offender a "1" on this item. If the offender is past his 25th birthday at exposure to risk you score the offender a "0" on this item.

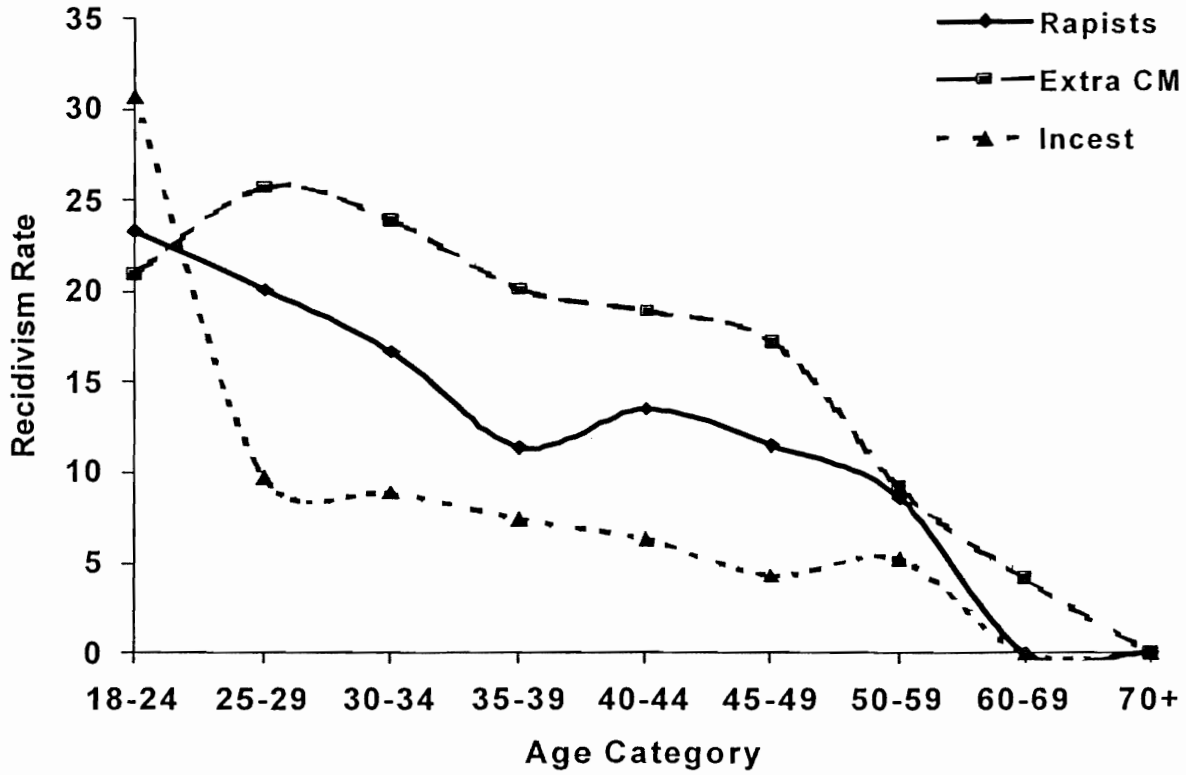
STATIC-99 is not intended for those who are less than 18 years old at the time of exposure to risk.

Under certain conditions, such as anticipated release from custody, the evaluator may be interested in an estimate of the offender's risk at some specific point in the future. This may occur if the offender is presently incarcerated (January) and you are interested in his risk when he is eligible for release in September. However, you know that the offender's 25th birthday will occur in May. If you were assessing the offender's estimated risk of re-offence for his possible release in September – because at time of exposure to risk he is past his 25th birthday - you would not give the risk point for being less-than-25 even though he is only 24 today. You calculate risk based upon age at exposure to risk.

Sometimes the point at which an offender will be exposed to risk may be uncertain, for example, if he is eligible for parole but may not get it. In these cases it may be appropriate to use some form of conditional wording indicating how his risk assessment would change according to when he is released.

Figure 1

Age Distribution of Sexual Recidivism in Sexual Offenders



Rapists (n = 1,133)
Extra-familial Child Molesters [Extra CM] (n = 1,411)
Incest Offenders (n = 1,207)

Hanson, R. K. (2002). Recidivism and age: Follow-up data on 4,673 sexual offenders. Journal of Interpersonal Violence, 17, 1046-1062.

Hanson, R. K. (2001). *Age and sexual recidivism: A comparison of rapists and child molesters.* User Report 2001-01. Ottawa: Department of the Solicitor General of Canada. Department of the Solicitor General of Canada website, www.sgc.gc.ca

Item # 2 – Ever Lived with an Intimate Partner – 2 Years

The Basic Principle: Research suggests that having a prolonged intimate connection to someone may be a protective factor against sexual re-offending. See Hanson and Bussière (1998), Table 1 – Items "Single (never married) and Married (currently)". On the whole, we know that the relative risk to sexually re-offend is lower in men who have been able to form intimate partnerships.

Information Required to score this Item: To complete this item it is highly desirable that the evaluator confirm the offender's relationship history through collateral sources or official records.

The Basic Rule: If the offender has never had an intimate adult relationship of two years duration you score the offender a "1" on this item. If the offender has had an intimate adult relationship of two years duration you score the offender a "0" on this item.

The intent of this item is to reflect whether the offender has the personality/psychological resources, as an adult, to establish a relatively stable "marriage-like" relationship with another person. It does not matter whether the intimate relationship was/is homosexual or heterosexual.

- **Missing Items** – The only item that may be omitted on the STATIC-99 is this one (Ever Lived With – Item #2). If no information is available this item should be scored a "0" (zero) – as if the offender has lived with an intimate partner for two years.

- To complete this item the evaluator should make an attempt to confirm the offender's relationship history through collateral sources and official records. In the absence of these sources self-report information may be utilized, assuming of course, that the self-report seems credible and reasonable to the evaluator. There may be certain cases (immigrants, refugees from third world countries) where it is not possible to access collaterals or official records. Where the evaluator, based upon the balance of probabilities, is convinced this person has lived with an intimate partner for two years the evaluator may score this item a "0". It is greatly preferred that you confirm the existence of this relationship through collateral contacts or official records. This should certainly be done if the assessment is being carried out in an adversarial context where the offender would have a real motive to pretend to a non-existent relationship.

- In cases where confirmation of relationship history is not possible or feasible the evaluator may chose to score this item both ways and report the difference in risk estimate in their final report.

If a person has been incarcerated most of their life or is still quite young and has not had the opportunity to establish an intimate relationship of two years duration, they are still scored as never having lived with an intimate partner for two years. They score a "1". There are two reasons for this. The first being, this was the way this item was scored in the original samples and to change this definition now would distance the resulting recidivism estimates from those validated on the STATIC-99. Secondly, having been part of, or experienced, a sustained relationship may well be a protective factor for sexual offending. As a result, the reason why this protective factor is absent is immaterial to the issue of risk itself.

The offender is given a point for this item if he has never lived with an adult lover (male or female) for at least two years. An adult is an individual who is over the age of consent to marriage. The period of co-habitation must be continuous with the same person.

Generally, relationships with adult victims do not count. However, if the offender and the victim had two years of intimate relationship before the sexual offences occurred then this relationship would count, and the offender would score a "0" on this item. However, if the sexual abuse started before the offender and the victim had been living together in an intimate relationship for two years then the relationship would not count regardless of it's length.

Cases where the offender has lived over two years with a child victim in a "lover" relationship do not count as living with an intimate partner and the offender would be scored a "1" on this item. Illegal relationships (Incestuous relationship with his Mother) and live-in relationships with "once child" victims do not count as "living together" for the purposes of this item and once again the offender would score a "1" on this item. A "once child" victim is the situation where the offender abused a child but that victim is either still living, as an adult, in an intimate relationship with the offender or who has lived, as an adult, in an intimate relationship with the offender.

Exclusions

- Legal marriages involving less than two years of co-habitation do not count
- Male lovers in prison would not count
- Prison marriages (of any duration) where the offender is incarcerated during the term of the relationship do not count
- Illegal relationships, such as when the offender has had an incestuous relationship with his mother do not count
- Intimate relationships with non-human species do not count
- Relationships with victims do not count (see above for exception)
- Priests and others who for whatever reason have chosen, as a lifestyle, not to marry/co-habitate are still scored as having never lived with an intimate partner

Extended Absences

In some jurisdictions it is common for an offender to be away from the marital/family home for extended periods. The offender is generally working on oilrigs, fishing boats, bush camps, military assignment, or other venues of this nature. While the risk assessment instrument requires the intimate co-habitation to be continuous there is room for discretion. If the offender has an identifiable "home" that he/she shares with a lover and the intimate relationship is longer than two years, the evaluator should look at the nature and consistency of the relationship. The evaluator should attempt to determine, in spite of these prolonged absences, whether this relationship looks like an honest attempt at a long-term committed relationship and not just a relationship of convenience.

If this relationship looks like an honest attempt at a long-term committed relationship then the evaluator would score the offender a "0" on this item as this would be seen as an intimate relationship of greater than two years duration. If the evaluator thinks that the relationship is a relationship of convenience, the offender would score a "1". If the living together relationship is of long duration (three plus years) then the periods of absence can be fairly substantial (four months in a logging camp/oil rig, or six months or more on military assignment).

Item # 3 – Index Non-sexual Violence (NSV) – Any Convictions

The Basic Principle: A meta-analytic review of the literature indicates that having a history of violence is a predictive factor for future violence. See Hanson and Bussière (1998), Table 2 – Item "Prior Violent Offences". The presence of non-sexual violence predicts the seriousness of damage were a re-offence to occur and is strongly indicative of whether overt violence will occur (Hanson & Bussière, 1998). This item was included in the STATIC-99 because in the original samples this item demonstrated a small positive relationship with sexual recidivism (Hanson & Thornton, unpublished data).

In English data, convictions for non-sexual violence were specifically predictive of rape (forced sexual penetration) rather than all kinds of sexual offenses (Thornton & Travers, 1991). In some English data sets this item has also been predictive of reconviction for any sex offense.

Information Required to Score this Item: To score this item the evaluator must have access to an official criminal record as compiled by police, court, or correctional authorities. Self-report of criminal convictions may not be used to score this item except in specific rare situations, please see sub-section "Self-report and the STATIC-99" in the Introduction section.

The Basic Rule: If the offender's criminal record shows a separate conviction for a non-sexual violent offence at the same time they were convicted of their Index Offence, you score the offender a "1" on this item. If the offender's criminal record does not show a separate conviction for a non-sexual violent offence at the same time they were convicted of their Index Offence, you score the offender a "0" on this item.

This item refers to convictions for non-sexual violence that are dealt with on the same sentencing occasion as the Index sex offence. A separate Non-sexual violence conviction is required to score this item. These convictions can involve the same victim as the Index sex offence or they can involve a different victim. All non-sexual violence convictions are included, providing they were dealt with on the same sentencing occasion as the Index sex offence(s).

Both adult and juvenile convictions count in this section. In cases where a juvenile is not charged with a violent offence but is moved to a secure or more secure residential placement as the result of a non-sexually violent incident, this counts as a conviction for Non-sexual Violence.

Included are:

- Aggravated Assault
- Arson
- Assault
- Assault causing bodily harm
- Assault Peace/Police Officer
- Attempted Abduction
- Attempted Robbery
- False Imprisonment
- Felonious Assault
- Forcible Confinement
- Give Noxious Substance (alcohol, narcotics, or other stupefacient in order to impair a victim)
- Grand Theft Person ("Grand Theft Person" is a variation on Robbery and may be counted as Non-sexual violence)
- Juvenile Non-sexual Violence convictions count on this item
- Kidnapping
- Murder

- "PINS" Petition (Person in need of supervision) There have been cases where a juvenile has been removed from his home by judicial action under a "PINS" petition due to violent actions. This would count as a conviction for Non-sexual violence.
- Robbery
- Threatening
- Using/pointing a weapon/firearm in the commission of an offence
- Violation of a Domestic Violence Order (Restraining Order) (a conviction for)
- Wounding

Note: If the conviction was "Battery" or "Assault" and the evaluator knew that there was a sexual component, this would count as a sexual offence and as a Non-sexual Violence offence.

Excluded are:

- Arrest/charges do not count
- Convictions overturned on appeal do not count
- Non-sexual violence that occurs after the Index offence does not count
- Institutional rules violations cannot count as Non-sexual Violence convictions
- Do not count driving accidents or convictions for Negligence causing Death or Injury

Weapons offences

Weapons offences do not count unless the weapon was used in the commission of a violent or a sexual offence. For example, an offender might be charged with a sexual offence and then in a search of the offenders home the police discover a loaded firearm. As a result, the offender is convicted, in addition to the sexual offence, of unsafe weapons storage. This would not count as a conviction for non-sexual violence as the weapons were not used in the commission of a violent or sexual offence.

A conviction for Possession of a firearm or Possession of a firearm without a licence would generally not count as a non-sexual violent offence. A conviction for Pointing a firearm would generally count as non-sexual violence as long as the weapon was used to threaten or gain victim compliance. Intent to harm or menace the victim with the weapon must be present in order to score a point on this item.

Resisting arrest

"Resisting Arrest" does not count as non-sexual violence. In Canadian law this charge could apply to individuals who run from an officer or who hold onto a lamppost to delay arrest. If an offender fights back he will generally be charged with "Assault a Peace/Police Officer" which would count as non-sexual violence.

Convictions that are coded as only "sexual"

- Sexual Assault, Sexual Assault with a Weapon, Aggravated Sexual Assault, and Sexual Assault Causing Bodily Harm are not coded separately as Non-sexual Violence – these convictions are simply coded as sexual
- Assault with Intent to Commit Rape (U.S. Charge) – A conviction under this charge is scored as only a sex offence – Do not code as Non-sexual Violence
- Convictions for "Sexual Battery" (U.S. Charge) – A conviction under this charge is scored as only a sex offence – Do not code as Non-sexual Violence

Situations where points are scored both for a "Sexual Offence" and a Non-sexual Violence offence

An offender may initially be charged with one count of sexual assault of a child but plea-bargains this down to one Forcible Confinement and one Physical Assault of a Child. In this instance, both offences

would be considered sexual offences (they could be used as an "Index" offence or could be used as "priors" if appropriate) as well; a risk point would be given for non-sexual violence.

If you have an individual convicted of Kidnapping/Forcible Confinement (or a similar offence) and it is known, based on the balance of probabilities, this was a sexual offence - this offence may count as the "Index" sexual offence or you may score this conviction as a sexual offence under Prior Sexual Offences, whichever is appropriate given the circumstances.

For Example

Criminal Record for Joe Smith			
Date	**Charge**	**Conviction**	**Sentence**
July 2000	Forcible Confinement	Forcible Confinement	20 Months incarceration and 3 years probation
If the evaluator knows that the behaviour was sexual this conviction for Forcible Confinement would count as One Sexual Offence (either for "priors" or an "Index") and One Non-sexual Violence (either "prior" or "Index")			

However, were you to see the following:

Criminal Record for Joe Smith			
Date	**Charge**	**Conviction**	**Sentence**
July 2000	1) Forcible Confinement 2) Sexual Assault	1) Forcible Confinement 2) Sexual Assault	20 Months incarceration and 3 years probation
If the evaluator knows that the Forcible Confinement was part of the sexual offence this situation would count as Two Sexual Offences (either for "priors" or an "Index") and One Non-sexual Violence (either "prior" or "Index")			

Military

If an "undesirable discharge" is given to a member of the military as the direct result of a violent offence (striking an officer, or the like) this would count as a Non-sexual Violence conviction and as a sentencing date (Item #6). However, if the member left the military when he normally would have and the "undesirable discharge" is equivalent to a bad job reference, this offence would not count as Non-sexual Violence or as a Sentencing Date.

Murder – With a sexual component

A sexual murderer who only gets convicted of murder would get one risk point for Non-sexual violence, but this murder would also count as a sexual offence.

Revocation of Conditional Release for "Lifers", Dangerous Offenders, and Others with Indeterminate Sentences

If a "lifer", Dangerous Offender, or other offender with an already imposed indeterminate sentence is simply revoked (returned to prison from conditional release in the community without trial) for a sexual behaviour that would generally attract a sexual charge if the offender were not already under sanction and at the same time this same offender committed a violent act sufficient that it would generally attract a

separate criminal charge for a violent offence, this offender can be scored for Index Non-sexual Violence when the accompanying sexual behaviour stands as the Index offence. Note: the evaluator should be sure that were this offender not already under sanction that it is highly likely that both a sexual offence charge and a violent offence charge would be laid by police.

Item # 4 – Prior Non-sexual Violence – Any Convictions

The Basic Principle: A meta-analytic review of the literature indicates that having a history of violence is a predictive factor for future violence. See Hanson and Bussière (1998), Table 2 – Item "Prior Violent Offences". The presence of non-sexual violence predicts the seriousness of damage were a re-offence to occur and is strongly indicative of whether overt violence will occur (Hanson & Bussière, 1998). This item was included in the STATIC-99 because in the original samples this item demonstrated a small positive relationship with sexual recidivism (Hanson & Thornton, unpublished data).

In English data, convictions for prior non-sexual violence were specifically predictive of rape (forced sexual penetration) rather than all kinds of sexual offenses (Thornton & Travers, 1991). In some English data sets this item has also been predictive of reconviction for any sex offense. Sub-analyses of additional data sets confirm the relation of prior non-sexual violence and sexual recidivism (Hanson & Thornton, 2002).

Information Required to Score this Item: To score this item the evaluator must have access to an official criminal record as compiled by police, court, or correctional authorities. Self-report of criminal convictions may not be used to score this item except in specific rare situations, please see sub-section "Self-report and the STATIC-99" in the Introduction section.

The Basic Rule: If the offender's criminal record shows a separate conviction for a non-sexual violent offence prior to the Index Offence, you score the offender a "1" on this item. If the offender's criminal record does not show a separate conviction for a non-sexual violent offence prior to their Index Offence, you score the offender a "0" on this item.

This item refers to convictions for non-sexual violence that are dealt with on a sentencing occasion that pre-dates the Index sex offence sentencing occasion. A separate non-sexual violence conviction is required to score this item. These convictions can involve the same victim as the Index sex offence or they can involve a different victim, but the offender must have been convicted for this non-sexual violent offence before the sentencing date for the Index offence. All non-sexual violence convictions are included, providing they were dealt with on a sentencing occasion prior to the Index sex offence.

Both adult and juvenile convictions count in this section. In cases where a juvenile is not charged with a violent offence but is moved to a secure or more secure residential placement as the result of a non-sexually violent incident, this counts as a conviction for Non-sexual Violence.

Included are:

- Aggravated Assault
- Arson
- Assault
- Assault Causing Bodily Harm
- Assault Peace/Police Officer
- Attempted Abduction
- Attempted Robbery
- False Imprisonment
- Felonious Assault
- Forcible Confinement
- Give Noxious Substance (alcohol, narcotics, or other stupefacient in order to impair a victim)
- Grand Theft Person ("Grand Theft Person" is a variation on Robbery and may be counted as Non-sexual violence)
- Juvenile Non-sexual Violence convictions count on this item

- Kidnapping
- Murder
- "PINS" Petition (Person in need of supervision) There have been cases where a juvenile has been removed from his home by judicial action under a "PINS" petition due to violent actions. This would count as a conviction for Non-sexual violence.
- Robbery
- Threatening
- Using/pointing a weapon/firearm in the commission of an offence
- Violation of a Domestic Violence Order (Restraining Order) (a conviction for)
- Wounding

Note: If the conviction was "Battery" or "Assault" and the evaluator knew that there was a sexual component, this would count as a sexual offence and as a Non-sexual Violence offence.

Excluded are:

- Arrest/charges do not count
- Convictions overturned on appeal do not count
- Non-sexual violence that occurs after the Index offence does not count
- Institutional rules violations cannot count as Non-sexual Violence convictions
- Do not count driving accidents or convictions for Negligence causing Death or Injury

Weapons offences

Weapons offences do not count unless the weapon was used in the commission of a violent or a sexual offence. For example, an offender might be charged with a sexual offence and then in a search of the offenders home the police discover a loaded firearm. As a result, the offender is convicted, in addition to the sexual offence, of unsafe weapons storage. This would not count as a conviction for non-sexual violence as the weapons were not used in the commission of a violent or sexual offence.

A conviction for Possession of a firearm or Possession of a firearm without a licence would generally not count as a non-sexual violent offence. A conviction for Pointing a firearm would generally count as non-sexual violence as long as the weapon was used to threaten or gain victim compliance. Intent to harm or menace the victim with the weapon must be present in order to score a point on this item.

Resisting arrest

"Resisting Arrest" does not count as non-sexual violence. In Canadian law this charge could apply to individuals who run from an officer or who hold onto a lamppost to delay arrest. If an offender fights back he will generally be charged with "Assault a Peace/Police Officer" which would count as non-sexual violence.

Convictions that are coded as only "sexual"

- Sexual Assault, Sexual Assault with a Weapon, Aggravated Sexual Assault, and Sexual Assault Causing Bodily Harm are not coded separately as Non-sexual Violence – these convictions are simply coded as sexual
- Assault with Intent to Commit Rape (U.S. Charge) – A conviction under this charge is scored as only a sex offence – Do not code as Non-sexual Violence
- Convictions for "Sexual Battery" (U.S. Charge) – A conviction under this charge is scored as only a sex offence – Do not code as Non-sexual Violence

Situations where points are scored both for a "Sexual Offence" and a Non-sexual Violence offence

An offender may initially be charged with one count of sexual assault of a child but plea-bargains this down to one Forcible Confinement and one Physical Assault of a Child. In this instance, both offences would be considered sexual offences (they could be used as an "Index" offence or could be used as "priors" if appropriate) as well; a risk point would be given for non-sexual violence.

If you have an individual convicted of Kidnapping/Forcible Confinement (or a similar offence) and it is known, based on the balance of probabilities, this was a sexual offence - this offence may count as the "Index" offence or you may score this conviction as a sexual offence under Prior Sexual Offences, whichever is appropriate given the circumstances.

For Example

Criminal Record for Joe Smith			
Date	**Charge**	**Conviction**	**Sentence**
July 2000	Forcible Confinement	Forcible Confinement	20 Months incarceration and 3 years probation
If the evaluator knows that the behaviour was sexual this conviction for Forcible Confinement would count as One Sexual Offence (either for "priors" or an "Index") and One Non-sexual Violence (either "prior" or "Index")			

However, were you to see the following:

Criminal Record for Joe Smith			
Date	**Charge**	**Conviction**	**Sentence**
July 2000	1) Forcible Confinement 2) Sexual Assault	1) Forcible Confinement 2) Sexual Assault	20 Months incarceration and 3 years probation
If the evaluator knows that the Forcible Confinement was part of the sexual offence this situation would count as Two Sexual Offences (either for "priors" or an "Index") and One Non-sexual Violence (either "prior" or "Index")			

Military

If an "undesirable discharge" is given to a member of the military as the direct result of a violent offence (striking an officer, or the like) this would count as a Non-sexual Violence conviction and as a sentencing date (Item #6). However, if the member left the military when he normally would have and the "undesirable discharge" is equivalent to a bad job reference, this offence would not count as Non-sexual Violence or as a Sentencing Date.

Murder – With a sexual component

A sexual murderer who only gets convicted of murder would get one risk point for Non-sexual violence, but this murder would also count as a sexual offence.

Revocation of Conditional Release for "Lifers", Dangerous Offenders, and Others with Indeterminate Sentences

If a "lifer", Dangerous Offender, or other offender with an already imposed indeterminate sentence has been revoked (returned to prison from conditional release in the community without trial) for a Non-sexual Violent offence that happened prior to the Index sexual offence (or Index Cluster) this revocation can stand as a conviction for Non-sexual Violence if that non-sexually violent act were sufficient that it would generally attract a separate criminal charge for a violent offence. Note: the evaluator should be sure that were this offender not already under sanction that it is highly likely that a violent offence charge would be laid by police.

Item # 5 – Prior Sex Offences

The Basic Principle: This item and the others that relate to criminal history and the measurement of persistence of criminal activity are based on a firm foundation in the behavioural literature. As long ago as 1911 Thorndyke stated that the "the best predictor of future behaviour, is past behaviour". Andrews & Bonta (2003) state that having a criminal history is one of the "Big Four" predictors of future criminal behaviour. More recently, and specific to sexual offenders, a meta-analytic review of the literature indicates that having prior sex offences is a predictive factor for sexual recidivism. See Hanson and Bussière (1998), Table 1 – Item "Prior Sex Offences".

Information Required to Score this Item: To score this item you must have access to an official criminal record as compiled by police, court, or correctional authorities. Self-report of criminal convictions may not be used to score this item except in specific rare situations, please see sub-section "Self-report and the STATIC-99" in the Introduction section.

The Basic Rule: This is the only item in the STATIC-99 that is not scored on a simple "0" or "1" dichotomy. From the offender's official criminal record, charges and convictions are summed separately. Charges that are not proceeded with or which do not result in a conviction are counted for this item. If the record you are reviewing only shows convictions, each conviction is also counted as a charge.

Charges and convictions are summed separately and these totals are then transferred to the chart below.

Note: For this item, arrests for a sexual offence are counted as "charges".

Prior Sexual Offences		
Charges	**Convictions**	**Final Score**
None	None	0
1-2	1	1
3-5	2-3	2
6+	4	3

Whichever column, charges or convictions, gives the offender the "higher" final score is the column that determines the final score. Examples are given later in this section.

This item is based on officially recorded institutional rules violations, probation, parole and conditional release violations, charges, and convictions. Only institutional rules violations, probation, parole, and conditional release violations, charges, and convictions of a sexual nature that occur **PRIOR** to the Index offence are included.

Do not count the Index Sexual Offence

The Index sexual offence charge(s) and conviction(s) are not counted, even when there are multiple offences and/or victims involved, and the offences occurred over a long period of time.

Count all sexual offences prior to the Index Offence

All pre-Index sexual charges and convictions are coded, even when they involve the same victim, or multiple counts of the same offence. For example, three charges for sexual assault involving the same victim would count as three separate charges. Remember, "counts count". If an offender is charged with six counts of Invitation to Sexual Touching and is convicted of two counts you would score a "6" under

charges and a "2" under convictions. Convictions do not take priority over charges. If the record you are reviewing only shows convictions, each conviction is also counted as a charge.

Generally when an offender is arrested, they are initially charged with one or more criminal charges. However, these charges may change as the offender progresses through the criminal justice system. Occasionally, charges are dropped for a variety of legal reasons, or "pled down" to obtain a final plea bargain. As a basic rule, when calculating charges use the most recent charging document as your source of official charges.

In some cases a number of charges are laid by the police and as the court date approaches these charges are "pled-down" to fewer charges. When calculating charges and convictions you count the number of charges that go to court. In other cases an offender may be charged with a serious sexual offence (Aggravated Sexual Assault) and in the course of plea bargaining agrees to plead to two (or more) lesser charges (Assault). Once again, you count the charges that go to court and in a case like this the offender would score as having more charges than were originally laid by the police.

When scoring this item, counting charges and convictions, it is important to use an official criminal record. One incident can result in several charges or convictions. For example, an offender perpetrates a rape where he penetrates the victim once digitally and once with his penis while holding her in a room against her will. This may result in two convictions for Sexual Battery (Sexual Assault or equivalent) and one conviction of False Imprisonment (Forcible Confinement or equivalent). So long as it is known that the False Imprisonment was part of the sexual offence, the offender would be scored as having three (3) sexual charges, three (3) sexual convictions and an additional risk point for a conviction of Non-sexual Violence [the False Imprisonment] (Either "Index" {Item #3} or "Prior" {Item #4} as appropriate).

Probation, Parole and Conditional Release Violations

If an offender violates probation, parole, or conditional release with a sexual misbehaviour, these violations are counted as one charge.

If the offender violates probation or parole on more than one occasion, within a given probation or parole period, each separate occasion of a sexual misbehaviour violation is counted as one charge. For example, a parole violation for indecent exposure in July would count as one charge. If the offender had another parole violation in November for possession of child pornography, it would be coded as a second charge.

Multiple probation, parole and conditional release violations for sexual misbehaviours laid at the same time are coded as one charge. Even though the offender may have violated several conditions of parole during one parole period, it is only counted as one charge, even if there were multiple sex violations.

The following is an example of counting charges and convictions.

Criminal History for John Jack

Date	Charges	Convictions	Sanction
July 1996	Lewd and Lascivious with Child (X3) Sodomy Oral Copulation Burglary	Lewd and Lascivious with Child (X3) Sodomy (dismissed) Oral Copulation (dismissed) Burglary (dismissed)	3 Years
May 2001	Sexual Assault on a Child		

To determine the number of Prior Sex Offences you first exclude the Index Offence. In the above case, the May 2001 charge of Sexual Assault on a Child is the Index Offence. After excluding the May 2001

charge, you sum all remaining sexual offence charges. In this case you would sum, {Lewd and Lascivious with Child (X3), Sodomy (X1), and Oral Copulation (X1)} for a total of five (5) previous Sex Offence charges. You then sum the number of Prior Sex Offence convictions. In this case, there are three convictions for Lewd and Lascivious with Child. These two sums are then moved to the scoring chart shown below. The offender has five prior charges and three prior convictions for sexual offences. Looking at the chart below, the evaluator reads across the chart that indicates a final score for this item of two (2).

Prior Sexual Offences		
Charges	**Convictions**	**Final Score**
None	None	0
1-2	1	1
3-5	2-3	2
6+	4	3

Charges and Convictions are counted separately – the column that gives the higher final score is the column that scores the item. It is possible to have six (6+) or more charges for a sexual offence and no convictions. Were this to happen, the offender's final score would be a three (3) for this item.

Acquittals

Acquittals count as charges and can be used as the Index Offence. The reason that acquittals are scored this way is based upon a research study completed in England that found that men acquitted of rape are more likely to be convicted of sexual offences in the follow-up period than men who had been found guilty {with equal times at risk} (Soothill et al., 1980).

Note: Acquittals do not count for Item #6 – Prior Sentencing Dates.

Adjudication Withheld

In some jurisdictions it is possible to attract a finding of "Adjudication Withheld", in which case the offender receives a probation-like period of supervision. This is counted as a conviction because a sentence was given.

Appeals

If an offender is convicted and the conviction is later overturned on appeal, code as one charge.

Arrests Count

In some instances, the offender has been arrested for a sexual offence, questioning takes place but no formal charges are filed. If the offender is arrested for a sexual offence and no formal charges are filed, a "1" is coded under charges, and a "0" is coded under convictions. If the offender is arrested and one or more formal charges are filed, the total number of charges is coded, even when no conviction ensues.

Coding "Crime Sprees"

Occasionally, an evaluator may have to score the STATIC-99 on an offender who has been caught at the end of a long line of offences. For example, over a 20-day period an offender breaks into 5 homes, each of which is the home of an elderly female living alone. One he rapes, one he attempts to rape but she gets away, and three more get away, one with a physical struggle (he grabs her wrists, tells her to shut up). The offender is subsequently charged with Sexual Assault, Attempted Sexual Assault, B & E with Intent (X2), and an Assault. The question is, do all the charges count as sexual offences, or just the two charges

that are clearly sexual? Or, does the evaluator score the two sex charges as sex charges and the assault charges as Non-sexual Violence?

In cases such as this, code all 5 offences as sex offences - based upon the following thinking:

1) From the evidence presented this appears to be a "focused" crime spree – We assume the evaluator has little doubt what would have happened had the women not escaped or fought back.
2) Our opinion of "focus" is reinforced by the exclusive nature of the victim group, "elderly females". This offender appears to want something specific, and, the very short time span - 20 days – leads us to believe that the offender was feeling some sexual or psychological pressure to offend.
3) An attempted contact sex offence is scored as a contact sex offence for the purposes of the STATIC-99. Charges such as Attempted Sexual Assault (Rape) and Invitation to Sexual Touching are coded as contact sex offences due to their intention.
4) We recommend that if the evaluator "based on the balance of probabilities" (not "beyond a reasonable doubt") - is convinced that sex offences were about to occur that these actions can be counted as sex offences.
5) Please also read sub-section "Similar Fact Crimes" in the "Definitions" section.

Conditional Discharges

Where an offender has been charged with a sexual offence and receives a Conditional Discharge, for the purposes of the STATIC-99 a conditional discharge counts as a conviction and a sentencing date.

Consent Decree

Where applicable, "Consent Decree" counts as a conviction and a sentencing date.

Court Supervision

In some states it is possible to receive a sentence of Court Supervision, where the court provides some degree of minimal supervision for a period (one year), this is similar to probation and counts as a conviction.

Detection by Child Protection Officials

Being "detected" by the Children's Aid Society or other Child Protection Services does not count as an official sanction; it may not stand as a charge or a conviction.

Extension of Sentence by a Parole Board (or similar)

In some jurisdictions Parole Boards (or similar) have the power to extend the maximum period of incarceration beyond that determined by the court. If an offender is assigned extra time, added to their sentence, by a parole board for a sexual criminal offence this counts as an additional sexual charge and conviction. The new additional period of incarceration must extend the total sentence and must be for sexual misbehaviour. This would not count as a sexual conviction if the additional time was to be served concurrently or if it only changed the parole eligibility date. This situation is not presently possible in Canada.

Giving Alcohol to a Minor

The charge of Giving Alcohol to a Minor (or it's equivalent, drugs, alcohol, noxious substance, or other stupefacient) – can count as a sexual offence (both charge and conviction) if the substance was given with the intention of making it easier to commit a sexual offence. If there were evidence the alcohol (or substance) was given to the victim just prior to the sexual assault, this would count as a sexual offence. If

there is no evidence about what went on, or the temporal sequence of events, the substance charge would not count as a sexual offence.

Institutional Disciplinary Reports

Institutional Disciplinary Reports for sexual misbehaviours that would likely result in a charge were the offender not already in custody count as charges. In a prison environment it is important to distinguish between targeted activity and non-targeted activity. Institutional disciplinary reports that result from an offender who specifically chooses a female guard and masturbates in front of her, where she is the obvious and intended target of the act would count as a "charge" and hence, could stand as an Index offence. The alternative situation is where an offender who is masturbating in his cell and is discovered by a female employee and she is not an obvious and intended target. In some jurisdictions this would lead to a Disciplinary Report. Violations of this "non-targeted" nature do not count as a "charge' and could not stand as an Index offence. If you have insufficient information to distinguish between these two types of occurrences the offender gets the benefit of the doubt and you do not score the occurrence.

> An example of a behaviour that might get an inmate a disciplinary charge, but would not be used as a charge for scoring the STATIC-99, includes the inmate who writes an unwanted love letter to a female staff. The letter does not contain sexual content to the extent that the offender could be charged. Incidents of this nature do not count as a charge.
>
> Prison misconducts for sexual misbehaviours count as one charge per sentence, even when there are multiple incidents. The reason for this is that in some jurisdictions the threshold for misconducts is very low. Often, as previously described, misconduct will involve a female guard simply looking into a cell and observing an inmate masturbating. Even in prison, serious sexual offences, rape and attempted rape will generally attract official criminal charges.

Juvenile Offences

Both adult and juvenile charges and convictions count when scoring this item. In cases where a juvenile was not charged with a sexual offence but was moved to a secure or more secure residential placement as the result of a sexual incident, this counts as a charge and a conviction for the purposes of scoring Prior Sex Offences.

Juvenile Petitions

In some states, it is impossible for a juvenile offender to get a "conviction". Instead, the law uses the wording that a juvenile "petition is sustained" (or any such wording). For the purposes of scoring the STATIC-99 this is equivalent to an adult conviction because there are generally liberty-restricting consequences. Any of these local legal wordings can be construed as convictions if they would be convictions were that term available.

Military

For members of the military, a discharge from service as a result of sexual crimes would count as a charge and a conviction.

If an "undesirable discharge" were given to a member of the military as the direct result of a sexual offence, this would count as a sexual conviction and as a sentencing date (Item #6). However, if the member left the military when he normally would have, and the "undesirable discharge" is the equivalent to a bad job reference, the undesirable discharge would not count as a sexual offence or as a Sentencing Date (Item #6).

Military Courts Martial

If an offender is given a sanction (Military Brig or it's equivalent) for a criminal offence, rather than a purely military offence {failure of duty}, these offences count, both charges and convictions, when scoring the STATIC-99. If the charges are sexual they count as sexual offences and if violent, they count as violent offences. These offences also count as sentencing dates (Item #6). Pure Military Offences {Conduct Unbecoming, Insubordination, Not following a lawful order, Dereliction of Duty, etc.} do not count when scoring the STATIC-99.

Noxious Substance

The charge of Giving A Noxious Substance (or it's equivalent, drugs, alcohol, or other stupefacient) – can count as a sexual offence (both charge and conviction) if the substance was given with the intention of making it easier to commit the sexual offence. If there were evidence the substance was given to the victim just prior to the sexual assault, this would count as a sexual offence. If there is no evidence about what went on, or the temporal sequence of events, the substance charge would not count as a sexual offence.

Not Guilty

Being found "Not Guilty" can count as charges and can be used as the Index Offence. Note: This is not the case for Item #6, "Prior Sentencing Dates", where being found "Not Guilty" is not counted as a Prior Sentencing Date.

Official Cautions – United Kingdom

In the United Kingdom, an official caution should be treated as equivalent to a charge and a conviction.

Official Diversions

Official diversions are scored as equivalent to a charge and a conviction (Restorative Justice, Reparations, Family Group Conferencing, Community Sentencing Circles).

Peace Bonds, Judicial Restraint Orders and "810" Orders

In some instances a Peace Bond/Judicial Restraint Order/810 Orders are placed on an offender when sexual charges are dropped or dismissed or when an offender leaves jail or prison. Orders of this nature, primarily preventative, **are not counted** as charges or convictions for the purposes of scoring the STATIC-99.

"PINS" Petition (Person in need of supervision)

There have been cases where a juvenile has been removed from his home by judicial action under a "PINS" petition due to sexual aggression. This would count as a charge and a conviction for a sexual offence.

Priests and Ministers

For members of a religious group (Clergy and similar professions) some disciplinary or administrative actions within their own organization can count as a charge and a conviction. The offender has to receive some form of official sanction in order for it to count as a conviction. An example of an official sanction would be removal from a parish for a priest or minister under the following circumstances.

If the receiving institution knows they are being sent a sex offender and considers it part of their mandate to address the offender's problem or attempt to help, this would function as equivalent to being sent to a

correctional institution and would count as a charge and a conviction. A conviction of this nature may stand as an Index offence.

Allegations that result in a "within-organization" disciplinary move or a move designed to explicitly address the offenders problems would be counted as a charge and a conviction. A conviction of this nature may stand as an Index offence.

Being transferred to a new parish or being given an administrative posting away from the public with no formal sanction or being sent to graduate school for re-training would not count as a charge or conviction.

Where a priest/minister is transferred between parishes due to allegations of sexual abuse but there is no explicit internal sanction; these moves would not count as charges or convictions.

Prison Misconducts for Sexual Misbehaviours Count as One Charge per Sentence

Prison misconducts for sexual misbehaviours count as one charge per sentence, even when there are multiple incidents. The reason for this is that in some jurisdictions the threshold for misconducts is very low. Often, as previously described, misconduct will involve a female guard simply looking into a cell and observing an inmate masturbating. Even in prison, serious sexual offences, rape and attempted rape will generally attract official criminal charges.

Post-Index Offences

Offences that occur after the Index offence do not count for STATIC-99 purposes. Post-Index sexual offences create a new Index offence. Post-Index violent offences should be considered "external" risk factors and would be included separately in any report about the offender's behaviour.

> **For Example, Post-Index Sexual Offences:** Consider a case where an offender commits a sexual offence, is apprehended, charged, and released on bail. You are assigned to evaluate this offender but before you can complete your evaluation he commits another sexual offence, is apprehended and charged. Because the offender was apprehended, charged, and released this does not qualify as a crime "spree". He chose to re-offend in spite of knowing that he was under legal sanction. These new charges and possible eventual convictions would be considered separate crimes. In a situation of this nature the new charges would create a new sexual offence and become the new Index offence. If these charges happened to be the last sexual offences on the offender's record – the most recent charges would become the Index and the charge on which he was first released on bail would become a "Prior" Sexual Offence.
>
> **For Example, Post-Index Violent Offences:** Consider a case where an offender in prison on a sexual offence commits and is convicted of a serious violent offence. This violent offence would not be scored on either Item #3 (Index Non-sexual Violence convictions) or Item #4 (Prior Non-sexual Violence convictions) but would be referred to separately, outside the context of the STATIC-99 assessment, in any subsequent report on the offender.

Probation before Judgement

Where applicable, "Probation before judgment" counts as a charge, conviction, and a sentencing date.

Revocation of Conditional Release for "Lifers", Dangerous Offenders, and Others with Indeterminate Sentences

If a "lifer", Dangerous Offender, or other offender with an already imposed indeterminate sentence is simply revoked (returned to prison from conditional release in the community without trial) for a sexual behaviour that is of sufficient gravity that a person not already involved with the criminal justice system would most likely be charged with a sexual criminal offence, this revocation of conditional release would

count as both a Prior Sex Offence "charge" and a Prior Sex Offence "conviction". Note: the evaluator should be sure that were this offender not already under sanction that it is highly likely that a sexual offence charge would be laid by police. Revocations for violations of conditional release conditions, so called "technicals" (drinking violations, failure to report, being in the presence of minors, being in the possession of legally obtained pornography) are insufficient to stand as Prior Sentencing Dates.

RRASOR and STATIC-99 – Differences in Scoring

Historical offences are scored differently between the RRASOR and the STATIC-99. On the RRASOR, if the offender is charged or convicted of historical offences committed prior to the Index Offence, these are counted as Prior Sexual Offences (User Report, The Development of a Brief Actuarial Risk Scale for Sexual Offense Recidivism 1997-04, Pg. 27, end of paragraph titled Prior Sexual Offences). This is not the case for the STATIC-99. For the STATIC-99, if the offender is charged or convicted of historical offences after the offender is charged or convicted of a more recent offence, these offences are to be considered part of the Index Offence (pseudo-recidivism) – forming an "Index Cluster".

Suspended Sentences

Suspended sentences should be treated as equivalent to a charge and a conviction.

Teachers

Being transferred to a new school or being given an administrative posting away from the public with no formal sanction or being sent to graduate school for re-training would not count as a charge or conviction.

Where a teacher is transferred between schools due to allegations of sexual abuse but there is no explicit internal sanction; these moves would not count as charges or convictions.

Item # 6 Prior Sentencing Dates

The Basic Principle: This item and the others that relate to criminal history and the measurement of persistence of criminal activity are based on a firm foundation in the behavioural literature. As long ago as 1911 Thorndyke stated that the "the best predictor of future behaviour, is past behaviour". Andrews & Bonta (2003) state that having a criminal history is one of the "Big Four" predictors of future criminal behaviour. Prior Sentencing Dates is a convenient method of coding the length of the criminal record.

Information Required to Score this Item: To score this item you must have access to an official criminal record as compiled by police, court, or correctional authorities. Self-report of criminal convictions may not be used to score this item except in specific rare situations, please see sub-section "Self-report and the STATIC-99 in the Introduction section.

The Basic Rule: If the offender's criminal record indicates four or more separate sentencing dates prior to the Index Offence, the offender is scored a "1" on this item. If the offender's criminal record indicates three or fewer separate sentencing dates prior to the Index Offence, the offender scores a "0" on this item.

Count the number of distinct occasions on which the offender was sentenced for criminal offences. The number of charges/convictions does not matter, only the number of sentencing dates. Court appearances that resulted in complete acquittal are not counted, nor are convictions overturned over on appeal. The Index sentencing date is not included when counting up the sentencing dates.

If the offender is on some form of conditional release (parole/probation/bail etc.) "technical" violations do not count as new sentencing dates. For example, if an offender had a condition prohibiting drinking alcohol, a breach for this would not be counted as a new sentencing date. To be counted as a new sentencing date, the breach of conditions would have to be a new offence for which the offender could be charged if he were not already under criminal justice sanction.

Institutional rule violations do not count, even when the offence was for behaviour that could have resulted in a legal sanction if the offender had not already been incarcerated.

Count:

- Juvenile offences count (if you know about them – please see section on the use of self-report in the Introduction)
- Where applicable "Probation before judgment" counts as a conviction and a sentencing date
- Where applicable "Consent Decree" counts as a conviction and a sentencing date
- Suspended Sentences count as a sentencing date

Do Not Count:

- Stayed offences do not count as sentencing dates
- Institutional Disciplinary Actions/Reports do not count as sentencing dates

The offences must be of a minimum level of seriousness. The offences need not result in a serious sanction (the offender could have been fined), but the offence must be serious enough to permit a sentence of community supervision or custody/incarceration (as a juvenile or adult). Driving offences generally do not count, unless they are associated with serious penalties, such as driving while intoxicated or reckless driving causing death or injury.

Generally, most offences that would be recorded on an official criminal history would count – but the statute, as written in the jurisdiction where the offence took place, must allow for the imposition of a custodial sentence or a period of community supervision (adult or juvenile). Only truly trivial offences

are excluded; those where it is impossible to get a period of incarceration or community supervision. Offences that can **only** result in fines do not count.

Sentences for historical offences received while the offender is incarcerated for a more recent offence (pseudo-recidivism), are not counted. For two offences to be considered separate offences, the second offence must have been committed after the offender was sanctioned for the first offence.

Offence convictions occurring after the Index offence cannot be counted on this item.

Conditional Discharges

Where an offender has been charged with a sexual offence and receives a Conditional Discharge, for the purposes of the STATIC-99 a conditional discharge counts as a conviction and a sentencing date.

Diversionary Adjudication

If a person commits a criminal offence as a juvenile or as an adult and receives a diversionary adjudication, this counts as a sentencing date (Restorative Justice, Reparations, Family Group Conferencing, Community Sentencing Circles).

Extension of Sentence by a Parole Board (or similar)

If an offender is assigned extra time added to their sentence by a parole board for a criminal offence this counts as an additional sentencing date if the new time extended the total sentence. This would not count as a sentencing date if the additional time was to be served concurrently or if it only changed the parole eligibility date. This situation is presently not possible in Canada.

Failure to Appear

If an offender fails to appear for sentencing, this is not counted as a sentencing date. Only the final sentencing for the charge for which the offender missed the sentencing date is counted as a sentencing date.

Failure to Register as a Sexual Offender

If an offender receives a formal legal sanction, having been convicted of Failing to Register as a Sexual Offender, this conviction would count as a sentencing date. However, it should be noted that charges and convictions for Failure to Register as a Sexual Offender are not counted as sexual offences.

Juvenile Extension of Detention

In some states it is possible for a juvenile to be sentenced to a Detention/Treatment facility. At the end of that term of incarceration it is possible to extend the period of detention. Even though a Judge and a prosecutor are present at the proceedings, because there has been no new crime or charges/convictions, the extension of the original order is not considered a sentencing date.

Juvenile Offences

Both adult and juvenile convictions count in this item. In the case where a juvenile is not charged with a sexual or violent offence but is moved to a secure or more secure residential placement as the result of a sexual or violent incident, this counts as a sentencing date for the purposes of scoring Prior Sentencing Dates.

Military

If an "undesirable discharge" is given to a member of the military as the direct result of criminal behaviour (something that would have attracted a criminal charge were the offender not in the military),

this would count as a sentencing date. However, if the member left the military when he normally would have and the "undesirable discharge" is the equivalent to a bad job reference then the criminal behaviour would not count as a Sentencing Date.

Military Courts Martial
If an offender is given a sanction (Military Brig or it's equivalent) for a criminal offence rather than a purely military offence {failure of duty} this counts as a sentencing date. Pure Military Offences {Insubordination, Not Following a Lawful Order, Dereliction of Duty, Conduct Unbecoming, etc.} do not count as Prior Sentencing Dates.

Not Guilty
Being found "Not Guilty" is not counted as a Prior Sentencing Date.

Official Cautions – United Kingdom
In the United Kingdom, an official caution should be treated as equivalent to a sentencing date.

Post-Index Offences
Post-Index offences are not counted as sentencing occasions for the STATIC-99.

Revocation of Conditional Release for "Lifers", Dangerous Offenders, and Others with Indeterminate Sentences
If a "lifer", Dangerous Offender, or other offender with an already imposed indeterminate sentence is simply revoked (returned to prison from conditional release in the community without trial) for criminal behaviour that is of sufficient gravity that a person not already involved with the criminal justice system would most likely be charged with a criminal offence, this revocation of conditional release would count as a Prior Sentencing Date. Note: the evaluator should be sure that were this offender not already under sanction that a criminal charge would be laid by police and that a conviction would be highly likely. Revocations for violations of conditional release conditions, so called "technicals", (drinking violations, failure to report, being in the presence of minors) are insufficient to stand as Prior Sentencing Dates.

> Note: for this item there have been some changes to the rules from previous versions. Some rules were originally written to apply to a specific jurisdiction. Over time, and in consultation with other jurisdictions the rules have been generalized to make them applicable across jurisdictions in a way that preserves the original intent of the item.

Suspended Sentences
Suspended sentences count as a sentencing date.

Item # 7 - Any Convictions for Non-contact Sex Offences

The Basic Principle: Offenders with paraphilic interests are at increased risk for sexual recidivism. For example, most individuals have little interest in exposing their genitals to strangers or stealing underwear. Offenders who engage in these types of behaviours are more likely to have problems conforming their sexual behaviour to conventional standards than offenders who have no interest in paraphilic activities.

Information Required to Score this Item: To score this item you must have access to an official criminal record as compiled by police, court, or correctional authorities. Self-report of criminal convictions may not be used to score this item except in specific rare situations, please see sub-section "Self-report and the STATIC-99" in the Introduction section.

The Basic Rule: If the offender's criminal record indicates a separate conviction for a non-contact sexual offence, the offender is scored a "1" on this item. If the offender's criminal record does not show a separate conviction for a non-contact sexual offence, the offender is scored a "0" on this item.

This category requires a conviction for a non-contact sexual offence such as:

- Exhibitionism
- Possessing obscene material
- Obscene telephone calls
- Voyeurism
- Exposure
- Elicit sexual use of the Internet
- Sexual Harassment (Unwanted sexual talk)
- In certain jurisdictions "Criminal Trespass" or "Trespass by Night" may be used as a charge for voyeurism – these would also count

The criteria for non-contact sexual offences are strict: the offender must have been convicted, and the offence must indicate non-contact sexual misbehaviour. The "Index" offence(s) may include a conviction for a non-contact sexual offence and this offence can count in this category. The most obvious example of this is where an offender is charged and convicted of Exposure for "mooning" a woman from a car window. This would result in a coding of "1" for this item.

There are some cases, however, where the legal charge does not reflect the sexual nature of the offence. Take, for example, the same situation where an offender is charged with Exposure for "mooning" a woman from a car window, but the case is pled-down to, and the offender is finally convicted of Disorderly Conduct. In cases like this, while this item requires that there be a conviction, the coding of a non-contact sexual offence can be based on the behaviour that occurred in cases where the name of the offence is ambiguous.

Charges and arrests do not count, nor do self-reported offences. Sexual offences in which the offender intended to make contact with the victim (but did not succeed) would be considered attempted contact offences and are coded as contact offences (e.g., invitation to sexual touching, attempted rape). Some offences may include elements of both contact and non-contact offences, for example, sexual talk on Internet - arranging to meet the child victim. In this case, the conviction would count as a non-contact sex offence.

Attempted Contact Offences

Invitation to Sexual Touching, Attempted Rape and other such "attempted" contact offences are counted as "Contact" offences due to their intention.

Internet Crimes

Internet crimes were not recorded in the original samples for the STATIC-99 because the Internet had not advanced to the point where it was commonly available. As a result, determining how to score Internet crimes on the STATIC-99 requires interpretation beyond the available data. Internet crimes could be considered in two different ways. First, they could be considered a form of attempted sexual contact, where the wrongfulness of the behaviour is determined by what is about to happen. Secondly, they could be considered an inappropriate act in themselves, akin to indecent telephone calls (using an older technology). We believe that luring children over the Internet does not represent a fundamentally new type of crime but is best understood as a modern expression of traditional crimes. We consider communicating with children over the Internet for sexual purposes to be an inappropriate and socially harmful act in itself and, therefore, classify these acts with their historical precursors, such as indecent/obscene telephone calls, in the category of non-contact sexual offences.

Pimping and Prostitution Related Offences

Pimping and other prostitution related offences (soliciting a prostitute, promoting prostitution, soliciting for the purposes of prostitution, living off the avails of prostitution) do not count as non-contact sexual offences. (Note: prostitution was not illegal in England during the study period, though soliciting was).

Plea Bargains

Non-contact sexual offence convictions do not count if the non-contact offence charge arose as the result of a plea bargain. Situations such as this may appear in the criminal record where charges for a contact offence are dropped and the non-contact charges appear simultaneously with a guilty plea. An occurrence of this nature would be considered a contact offence and scored as such.

Revocation of Conditional Release for "Lifers", Dangerous Offenders, and Others with Indeterminate Sentences

If a "lifer", Dangerous Offender, or other offender with an already imposed indeterminate sentence is simply revoked (returned to prison from conditional release in the community without trial) for a Non-contact Sexual Offence that is of sufficient gravity that a person not already involved with the criminal justice system would most likely be charged with a Non-contact Sexual Offence, this revocation of conditional release would count as a conviction for a Non-contact Sexual Offence. Note: the evaluator should be sure that were this offender not already under sanction that it is highly likely that a non-contact sexual offence charge would be laid by police.

Items #8, #9, & # 10 – The Three Victim Questions

The following three items concern victim characteristics: Unrelated Victims, Stranger Victims, and Male Victims. For these three items the scoring is based on all available credible information, including self-report, victim accounts, and collateral contacts. The items concerning victim characteristics, however, only apply to sex offences in which the victims were children or non-consenting adults (Category "A" sex offences). Do not score victim information from non-sexual offences or from sex offences related to prostitution/pandering, possession of child pornography, and public sex with consenting adults (Category "B" sex offences). Do not score victim information on sexual offences against animals (Bestiality and similar charges).

In addition to all of the "everyday" sexual offences (Sexual Assault, Rape, Invitation to Sexual Touching, Buggery) you also score victim information on the following charges:

- Illegal use of a Minor in Nudity-oriented Material/Performance
- Importuning (Soliciting for Immoral Purposes)
- Indecent Exposure (When a specific victim has been identified)
- Sexually Harassing Telephone Calls
- Voyeurism (When a specific victim has been identified)

You do not score Victim Information on the following charges:

- Compelling Acceptance of Objectionable Material
- Deception to Obtain Matter Harmful to Juveniles
- Disseminating/Displaying Matter Harmful to Juveniles
- Offences against animals
- Pandering Obscenity
- Pandering Obscenity involving a Minor
- Pandering Sexually-Oriented Material involving a Minor
- Prostitution related offences

"Accidental Victims"

Occasionally there are "Accidental Victims" to a sexual offence. A recent example of this occurred when an offender was raping a woman in her living room. The noise awoke the victim's four-year-old son. The son wandered into the living room and observed the rape in progress. The victim instructed her son to return to his bedroom and he complied at once. The perpetrator was subsequently charged and convicted of "Lewd and Lascivious Act on a Minor" in addition to the rape. In court the offender pleaded to both charges. In this case, the four-year-old boy would not count as a victim as there was no intention to commit a sexual offence against him. He would not count in any of the three victim items regardless of the conviction in court.

A common example of an accidental victim occurs when a person in the course of his/her daily life or profession happens across a sexual offence. Examples include police officers, park wardens, janitors, and floor walkers who observe a sexual offence in the course of their duties. If a male officer were to observe an exhibitionist exposing himself to a female, the offender would not be given the point for "Male Victim" as there was no intention to expose before the male officer. The evaluator would not give the offender a point for "male victim" unless the offender specifically chose a male officer to expose himself to. In the same vein, a floor walker or janitor who observes an offender masturbating while looking at a customer in a store would not be counted as a "stranger victim" or an "unrelated victim". In short there has to be some intention to offend against that person for that person to be a victim. Merely

stumbling upon a crime scene does not make the observer a victim regardless of how repugnant the observer finds the behaviour.

Acquitted or Found Not Guilty

The criteria for coding victim information is "all credible information". In this type of situation it is important to distinguish between the court's stringent standard of determining guilt (Beyond a reasonable doubt) and "What is most likely to be true" – a balance of probabilities. When the court sticks to the "Beyond a reasonable doubt" criteria they are not concluding that someone did not do the crime, just that the evidence was insufficient to be certain that they did it. The risk assessment perspective is guided by: "On the balance of probabilities, what is most likely to be true?" If the assessor, "On the balance of probabilities" feels that the offence more likely than not took place the victims may be counted.

For the assessment, therefore, it may be necessary to review the cases in which the offender was acquitted or found "Not Guilty" and make an independent determination of whether it is more likely than not that there were actual victims. If, in the evaluators opinion, it were more likely that there was no sexual offence the evaluator would not count the victim information. In the resulting report the evaluator would generally include a score with the contentious victim information included and a score without this victim information included, showing how it effects the risk assessment both ways.

This decision to score acquittals and not guilty in this manner is buttressed by a research study in England that found that men acquitted of rape are more likely to be convicted of sexual offences in the follow-up period than men who had been found guilty {with equal times at risk} (Soothill et al., 1980).

Child Pornography

Victims portrayed in child pornography are not scored as victims for the purposes of the STATIC-99. They do not count as non-familial, stranger, nor male victims. Only real, live, human victims count. If your offender is a child pornography maker and a real live child was used to create pornography by your offender or your offender was present when pornography was created with a real live child, this child is a victim and should be scored as such on the STATIC-99 victim questions. (Note: manipulating pre-existing images to make child pornography [either digitally of photographically] is not sufficient – a real child must be present) Making child pornography with a real child victim counts as a "Category A" offence and, hence, with even a single charge of this nature, the STATIC-99 is appropriate to use.

The evaluator may, of course, in another section of the report make reference to the apparent preferences demonstrated in the pornography belonging to the offender.

Conviction, But No Victim

For the purposes of the STATIC-99, consensual sexual behaviour that is prohibited by statute does not create victims. This is the thinking behind Category "B" offences. Examples of this are prostitution offences and public toileting (Please see "Category "A" and Category "B" offences" in the Introduction section for a further discussion of this issue). Under some circumstances it is possible that in spite of a conviction for a sexual offence the evaluator may conclude that there are no real victims. An example of this could be where a boy (age 16 years) is convicted of Statutory Rape of his 15-year-old boyfriend (Assume age of consent in this jurisdiction to be 16 years of age). The younger boy tells the police that the sexual contact was consensual and the police report informs the evaluator that outraged parents were the complainants in the case. In a scenario like this, the younger boy would not be scored as a victim, the conviction notwithstanding.

Credible Information

Credible sources of information would include, but are not limited to, police reports, child welfare reports, victim impact statements or discussions with victims, collateral contacts and offender self-report.

If the information is credible (Children's Protective Association, victim impact statements, police reports) you may use this information to code the three victim questions, even if the offender has never been arrested or charged for those offences.

Exhibitionism

In cases of exhibitionism, the three victim items may be scored if there was a targeted victim, and the evaluator is confident that they know before whom the offender was trying to exhibit. If the offender exhibits before a mixed group, males and females, do not score "Male Victim" unless there is reason to believe that the offender was exhibiting specifically for the males in the group. Assume only female victims unless you have evidence to suggest that the offender was targeting males.

> Example: If a man exposed to a school bus of children he had never seen before (both genders), the evaluator would score this offender one risk point for Unrelated Victim, one risk point for Stranger Victim, but would not score a risk point for Male Victim unless there was evidence the offender was specifically targeting the boys on the bus.

In cases where there is no sexual context (i.e., the psychotic street person who takes a shower in the town fountain) there are no victims regardless of how offended they might be or how many people witnessed the event.

Internet Victims and Intention

If an offender provides pornographic material over the Internet, the intent of the communication is important. In reality a policeman may be on the other end of the net in a "sting" operation. If the offender thought he was providing pornography to a child, even though he sent it to a police officer, the victim information is counted as if a child received it. In addition, when offenders attempt, over the Internet, to contact face-to-face a "boy or girl" they have contacted over the Internet the victim information counts as the intended victim, even if they only "met" a policeman.

Intention is important. In a case were a child was pretending to be an adult and an adult "shared" pornography with that person in the honest belief that they were (legally) sharing it with another adult there would not be a victim.

Polygraph Information

Victim information derived solely from polygraph examinations is not used to score the STATIC-99 unless it can be corroborated by outside sources or the offender provides sufficient information to support a new criminal investigation.

Prowl by Night - Voyeurism

For these types of offences the evaluator should score specific identifiable victims. However, assume only female victims unless you have evidence to suggest that the offender was targeting males.

Sexual Offences Against Animals

While the sexual assault of animals counts as a sexual offence, animals do not count as victims. This category is restricted to human victims. It makes no difference whether the animal was a member of the family or whether it was a male animal or a stranger animal.

Sex with Dead Bodies

If an offender has sexual contact with dead bodies these people do count as victims. The evaluator should score the three victim questions based upon the degree of pre-death relationship between the perpetrator and the victim.

Stayed Charges

Victim information obtained from stayed charges should be counted.

Victims Not at Home

If an offender breaks into houses, (regardless of whether or not the victims are there to witness the offence) to commit a sexual offence, such as masturbating on or stealing their undergarments or does some other sexual offence – victims of this nature are considered victims for the purposes of the STATIC-99. Assume only female victims unless you have evidence to suggest that the offender was targeting males.

Item # 8 - Any Unrelated Victims?

The Basic Principle: Research indicates that offenders who offend only against family members recidivate at a lower rate compared to those who have victims outside of their immediate family (Harris & Hanson, Unpublished manuscript). Having victims outside the immediate family is empirically related to a corresponding increase in risk.

Information Required to Score this Item: To score this item use all available credible information. "Credible Information" is defined in the previous section "Items #8, #9, & #10 -The Three Victim Questions".

The Basic Rule: If the offender has victims of sexual offences outside their immediate family, score the offender a "1" on this item. If the offender's victims of sexual offences are all within the immediate family score the offender a "0" on this item.

A related victim is one where the relationship is sufficiently close that marriage would normally be prohibited, such as parent, brother, sister, uncle, grandparent, stepbrother, and stepsister. Spouses (married and common-law) are also considered related. When considering whether step-relations are related or not, consider the nature and the length of the pre-existing relationship between the offender and the victim before the offending started. Step-relationships lasting less than two years would be considered unrelated (e.g., step-cousins, stepchildren). Adult stepchildren would be considered related if they had lived for two years in a child-parent relationship with the offender.

Time and Jurisdiction Concerns

A difficulty in scoring this item is that the law concerning who you can marry is different across jurisdictions and across time periods within jurisdictions. For example, prior to 1998, in Ontario, there were 17 relations a man could not marry, including such oddities as "nephew's wife" and "wife's grandmother". In 1998 the law changed and there are now only 5 categories of people that you cannot marry in Ontario: grandmother, mother, daughter, sister, and granddaughter (full, half, and adopted). Hence, if a man assaulted his niece in 1997 he would not have an unrelated victim but if he committed the same crime in 1998 he would technically be assaulting an unrelated victim. We doubt very much the change in law would affect the man's choice of victim and his resulting risk of re-offence. As a result the following rules have been adopted.

People who are seen as related for the purposes of scoring the STATIC-99

1. Legally married spouses
2. Any live-in lovers of over two years duration. (Girlfriends/Boyfriends become related once they have lived with the offender as a lover for two years)
3. Anyone too closely related to marry (by jurisdiction of residence of the perpetrator)
4. The following relations whether or not marriage is permitted in the jurisdiction of residence of the perpetrator:
    - Aunt
    - Brother's wife
    - Common-law wife/Ex common-law wife (lived together for 2 years)
    - Daughter
    - Father's wife/step-mother
    - First cousins
    - Granddaughter
    - Grandfather
    - Grandfather's wife

- Grandmother
- Grandson's wife
- Mother
- Niece/Nephew
- Sister
- Son's wife
- Stepdaughter/Stepson (Must have more than two years living together before abuse begins)
- Wife and Ex-wife
- Wife's daughter/step-daughter
- Wife's granddaughter
- Wife's grandmother
- Wife's mother

The relationships can be full, half, adopted, or common-law (two years living in these family relationships). The mirror relationships of the opposite gender would also count as related (e.g., brother, sons, nephews, granddaughter's husband).

People who are seen as <u>unrelated</u> for the purposes of scoring the STATIC-99

- Any step-relations where the relationship lasted less than two years
- Daughter of live-in girlfriend/Son of live-in girlfriend
  (less than two years living together before abuse begins)
- Nephew's wife
- Second cousins
- Wife's aunt

Decisions about borderline cases (e.g., brother's wife) should be guided by a consideration of the psychological relationship existing prior to the sexual assault. If an offender has been living with the victim in a family/paternal/fraternal role for two years prior to the onset of abuse, the victim and the offender would be considered related.

Becoming "Unrelated"

If an offender who was given up for adoption (removed etc.) at birth (Mother and child having no contact since birth or shortly after) and the Mother (Sister, Brother etc.) is a complete stranger that the offender would not recognize (facial recognition) as their family, these biological family members could count as Unrelated Victims. This would only happen if the offender did not know they were offending against a family member.

Item # 9 - Any Stranger Victims?

The Basic Principle: Research shows that having a stranger victim is related to sexual recidivism. See Hanson and Bussière (1998), Table 1 – Item "Victim Stranger (versus acquaintance)".

Information Required to Score this Item: Use all credible information to score this item. "Credible Information" is defined in the section "Items #8, #9, & #10 - The Three Victim Questions".

The Basic Rule: If the offender has victims of sexual offences who were strangers at the time of the offence, score the offender a "1" on this item. If the offender's victims of sexual offences were all known to the offender for at least 24 hours prior to the offence, score the offender a "0" on this item. If the offender has a "stranger" victim, Item #8, "Any Unrelated Victims", is generally scored as well.

A victim is considered a stranger if the victim did not know the offender 24 hours before the offence. Victims contacted over the Internet are not normally considered strangers unless a meeting was planned for a time less than 24 hours after initial communication.

For Stranger victims, the offender can either not know the victim or it can be the victim not knowing the offender. In the first case, where the offender does not know the victim, (the most common case), the offender chooses someone who they are relatively sure will not be able to identify them (or they just do not care) and offends against a stranger. However, there have been examples where the offender "should" have known the victim but just did not recognize them. This occurred in one case where the perpetrator and the victim had gone to school together but the perpetrator did not recognize the victim as someone they knew. In cases like this, the victim would still be a stranger victim as the offender's intention was to attack a stranger.

The criteria for being a stranger are very high. Even a slight degree of knowing is enough for a victim not to be a stranger. If the victim knows the offender at all for more than 24 hours, the victim is not a stranger. For example, if the victim was a convenience store clerk and they recognized the perpetrator as someone who had been in on several occasions to buy cigarettes, the victim would no longer be a stranger victim. If a child victim can say they recognize the offender from around the neighborhood and the perpetrator has said "Hi" to them on occasion, the child is no longer a stranger victim. The evaluator must determine whether the victim "knew" the offender twenty-four hours (24) before the assault took place. The criteria for "know/knew" is quite low but does involve some level of interaction. They need not know each other's names or addresses. However, simply knowing of someone but never having interacted with them would not be enough for the victim to count as "known".

The Reverse Case

In cases of "stalking" or stalking-like behaviours the offender may know a great deal about the victim and their habits. However, if the victim does not know the offender when they attack this still qualifies as a stranger victim.

The "24 hour" rule also works in reverse – there have been cases where a performer assaulted a fan the first time they met. In this case, the victim (the fan) had "known of" the performer for years, but the performer (the perpetrator) had not known the fan for 24 hours. Hence, in cases such as this, the victim would count as a stranger because the perpetrator had not known the victim for 24 hours prior to the offence.

Internet, E-mail, and Telephone

Sometimes offenders attempt to access or lure victims over the Internet. This is a special case and the threshold for not being a stranger victim is quite low. If the offender and the victim have communicated over the Internet (e-mail, or telephone) for more than twenty-four hours (24 hours) before the initial face-

to-face meeting, the victim (child or adult) is not a stranger victim. To be clear, this means that if an offender contacts, for the first time, a victim at 8 p.m. on a Wednesday night, their first face-to-face meeting must start before 8 p.m. on Thursday night. If this meeting starts before 8 p.m., and they remain in direct contact, the sexual assault might not start until midnight – as long as the sexual assault is still within the first face-to-face meeting – this midnight sexual assault would still count as a stranger assault. If they chat back and forth for longer than 24 hours, the victim can no longer be considered a stranger victim for the purposes of scoring the STATIC-99.

It is possible in certain jurisdictions to perpetrate a sexual offence over the Internet, by telephone or e-mail and never be in physical proximity to the victim. If the offender transmits sexually explicit/objectionable materials over the Internet within 24 hours of first contact, this can count as a stranger victim; once again the "24 hour rule" applies. However, if the perpetrator and the victim have been in communication for more than 24 hours prior to the sending of the indecent material or the starting of indecent talk on the telephone then the victim can no longer be considered a stranger.

Becoming a "Stranger" Again

It is possible for someone who the offender had met briefly before to become a stranger again. It is possible for the offender to have met a victim but to have forgotten the victim completely (over a period of years). If the offender believed he was assaulting a stranger, the victim can be counted as a stranger victim. This occurred when an offender returned after many years absence to his small hometown and assaulted a female he thought he did not know, not realizing that they had gone to the same school.

Item # 10 - Any Male Victims?

The Basic Principle: Research shows that offenders who have offended against male children or male adults recidivate at a higher rate compared to those who do not have male victims. Having male victims is correlated with measures of sexual deviance and is seen as an indication of increased sexual deviance; see Hanson and Bussière (1998), Table 1.

Information Required to Score this Item: To score this item use all available credible information. "Credible Information" is defined in section "Items #8, #9, & #10 - The Three Victim Questions".

The Basic Rule: If the offender has male victims of sexual offences, non-consenting adults or child victims, score the offender a "1" on this item. If the offender's victims of sexual offences are all female, score the offender a "0" on this item.

Included in this category are all sexual offences involving male victims. Possession of child pornography involving boys, however, does not count. Exhibitionism to a mixed group of children (girls and boys) would not count unless there was clear evidence the offender was targeting the boys. Contacting male victims over the Internet does count.

If an offender assaults a transvestite in the mistaken belief the victim is a female (may be wearing female clothing) do not score the transvestite as a male victim. If it is certain the offender knew he was assaulting a male before the assault, score a male victim.

In some cases a sexual offender may beat-up or contain (lock in a car trunk) another male in order to sexually assault the male's date (wife, etc.). If the perpetrator simply assaults the male (non-sexual) in order to access the female you do not count him as a male victim on the STATIC-99. However, if the perpetrator involves the male in the sexual offence, such as tying him up and making him watch the rape (forced voyeuristic activity), the assault upon the male victim would count as a sexual offence and the male victim would count on the STATIC-99.

Scoring the STATIC-99 & Computing the Risk Estimates

Using the STATIC-99 Coding Form (Appendix 5) sum all individual item scores for a total risk score based upon the ten items. This total score can range from "0" to "12".

Scores of 6 and greater are all considered high risk and treated alike.

Once you have computed the total raw score refer to the table titled STATIC-99 Recidivism Percentages by Risk Level (Appendix 6).

Here you will find recidivism risk estimates for both sexual and violent recidivism over 5, 10, and 15-year projections. In the left-most column find the offender's raw STATIC-99 risk score. Remember that scores of 6 and above are read off the "6" line, high risk.

For example, if an offender scored a "4" on the STATIC-99 we would read across the table and find that this estimate is based upon a sample size of 190 offenders which comprised 18% of the original sample. Reading further, an offender with a score of "4" on the STATIC-99 is estimated as having a 26% chance of sexual reconviction in the first 5 years of liberty, a 31% chance of sexual reconviction over 10 years of freedom, and a 36% chance of sexual reconviction over 15 years in the community.

For violent recidivism we would estimate that an offender that scores a "4" on the STATIC-99 would have a 36% chance of reconviction for a violent offence over 5 years, a 44% chance of reconviction for a violent offence over 10 years, and a 52% chance of reconviction for a violent offence over a 15 year period. It is important to remember that sexual recidivism is included in the estimates of violent recidivism. You **do not** add these two estimates together to create an estimate of violent and sexual recidivism. The estimates of violent recidivism include incidents of sexual recidivism.

STATIC-99 risk scores may also be communicated as nominal risk categories using the following guidelines. Raw STATIC-99 scores of "0" and "1" should be reported as "Low Risk", scores of "2" and "3" reported as "Moderate-Low" risk, scores of "4" and "5" reported as "Moderate-High" risk, and scores of "6" and above as "High Risk".

Having determined the estimated risk of sexual and violent recidivism we suggest that you review Appendix seven (7) which is a suggested template for communicating STATIC-99 risk information in a report format.

Appendices

Appendix One

Adjustments in Risk Based on Time Free

In general, the expected sexual offence recidivism rate should be reduced by about half if the offender has five to ten years of offence-free behaviour in the community. The longer the offender has been offence-free, post-Index, the lower the expected recidivism rate. It is not known what the expected rates of sexual re-offence should be if the offender has recidivated post-Index with a non-sexual offence. Presently, no research exists shedding light on this issue. Arguments could be made that risk scores should be increased (further criminal activity), decreased (he has still not committed another sexual offence in the community) or remain the same. We suspect that an offender who remains criminally active will maintain the same risk for sexual recidivism.

Adjusted crime-free rates only apply to offenders who have been without a new sexual or violent offence. Criminal misbehaviour such as threats, robberies, and assaults void any credit the offender may have for remaining free of additional sexual offences. For these purposes, an offender could, theoretically, commit minor property offences and still remain offence-free.

The recidivism rate estimates reported in Hanson & Thornton (2000) are based on the offender's risk for recidivism at the time they were released into the community after serving time for a sexual offence (Index offence). As offenders successfully live in the community without incurring new offences, their recidivism risk declines. The following table provides reconviction rates for new sexual offences for the three STATIC-99 samples where survival data were available (Millbrook, Pinel, HM Prison), based on offence-free time in the community. "Offence-free" means no new sexual or violent convictions, nor a non-violent conviction that would have resulted in more than minimal jail time (1-2 months).

The precise amount of jail time for non-violent recidivism was not recorded in the data sets, but substantial periods of jail time would invalidate the total time at risk. We do not recommend attempting to adjust the survival data given below by subtracting "time in prison for non-violent offences" from the total time elapsed since release from Index sexual offence.

For example, if offender "A" has been out for five years on parole got 60 days in jail for violating a no-drinking condition of parole the adjusted estimates would most likely still apply. However, if offender "B" also out on parole for five years got 18 months for Driving While Under the Influence these adjustments for time at risk would not be valid.

Adjusted risk estimates for time free would apply to offenders that are returned to custody for technical violations such as drinking or failing to register as a sexual offender.

Table for Adjustments in Risk Based on Time Free

STATIC-99 Risk Level at original assessment	Years offence-free in community					
	0	2	4	6	8	10
	Recidivism rates – Sex Offence Convictions %					
0-1 (n = 259)						
5 year	5.7	4.6	4.0	2.0	1.4	1.4
10 year	8.9	6.4	4.6	3.3	3.2	(5.8)
15 year	10.1	8.7	9.5	7.7	(6.5)	
2-3 (n = 412)						
5 year	10.2	6.8	4.4	3.1	5.5	5.3
10 year	13.8	11.1	9.1	8.1	8.2	8.4
15 year	17.7	14.5	13.6	13.9	(18.7)	
4-5 (n = 291)						
5 year	28.9	14.5	8.0	6.9	7.6	6.8
10 year	33.3	21.4	13.7	11.5	(13.1)	(11.5)
15 year	37.6	22.8	(18.7)			
6+ (n = 129)						
5 year	38.8	25.8	13.1	7.0	9.4	13.2
10 year	44.9	30.3	23.7	16.0	(17.8)	(17.8)
15 year	52.1	37.4	(27.5)			

Note: The total sample was 1,091. The number of cases available for each analysis decreases as the follow-up time increases and offenders recidivate. Values in parentheses were based on less than 30 cases and should be interpreted with caution.

Appendix Two

Self-Test

1.Qu estion: In 1990, Mr. Smith is convicted of molesting his two stepdaughters. The sexual abuse occurred between 1985 and 1989. While on conditional release in 1995, Mr. Smith is reconvicted for a sexual offence. The offence related to the abuse of a child that occurred in 1980. Which conviction is the Index offence?

> ***Answer:*** The 1990 and 1995 convictions would both be considered part of the Index offence. Neither would be counted as a prior sexual offence. The 1995 conviction is pseudo-recidivism because the offender did not re-offend after being charged with the 1990 offence.

2.Qu estion: In April 1996, Mr. Jones is charged with sexual assault for an incident that occurred in January 1996. He is released on bail and reoffends in July 1996, but this offence is not detected until October 1996. Meanwhile, he is convicted in September 1996, for the January 1996 incident. The October 1996 charge does not proceed to court because the offender is already serving time for the September 1996 conviction. You are doing the evaluation in November. What is the Index offence?

> ***Answer:*** The October 1996 charge is the Index offence because the offence occurred after Mr. Jones was charged for the previous offence. The Index sexual offence need not result in a conviction.

3.Qu estion: In January 1997, Mr. Dixon moves in with Ms. Trembley after dating since March 1996. In September 1999, Mr. Dixon is arrested for molesting Ms. Trembley's daughter from a previous relationship. The sexual abuse began in July 1998. Is the victim related?

> ***Answer:*** No, the victim would not be considered related because when the abuse began, Mr. Dixon had not lived for two years in a parental role with the victim.

4.Qu estion: At age 15, Mr. Miller was sent to a residential treatment centre after it was discovered he had been engaging in sexual intercourse with his 12 year old stepsister. Soon after arriving, Mr. Miller sexually assaulted a fellow resident. He was then sent to a secure facility that specialized in the treatment of sexual offenders. Charges were not laid in either case. At age 24, Mr. Miller sexually assaults a cousin and is convicted shortly thereafter. Mr. Miller has how many prior sexual offences?

> ***Answer:*** For Item #5, Prior Sexual Offences, score this as 2 prior charges and 2 prior convictions. Although Mr. Miller has no prior convictions for sexual offences, there are official records indicating he has engaged in sexual offences as an adolescent that resulted in custodial sanctions on two separate occasions. The Index offence at age 24 is not counted as a prior sexual offence.

5.Qu estion: Mr. Smith was returned to prison in July 1992 for violating several conditions of parole including child molestation, lewd act with a child and contributing to the delinquency of a minor. Once back in prison he sexually assaulted another prisoner. Mr. Smith has now been found guilty of the sexual assault and the judge has asked you to contribute to a pre-sentence report. How many Prior Sexual Offence (Item #5) points would Mr. Smith receive for his parole violations?

Answer: 1 charge and no convictions. Probation, parole and conditional release violations for sexual misbehaviours are counted as one charge, even when there are violations of multiple conditions of release.

6.Qu estion: Mr. Moffit was charged with child molestation in April 1987 and absconded before he was arrested. Mr. Moffit knew the police were coming to get him when he left. He travelled to another jurisdiction where he was arrested and convicted of child molesting in December 1992. He served 2 years in prison and was released in 1994. He was apprehended, arrested and convicted in January of 1996 for the original charges of Child Molestation he received in April 1987. Which offence is the Index offence?

Answer: The most recent offence date, December 1992 becomes the Index offence. In this case, the offence dates should be put back in chronological order given that he was detected and continued to offend. The April, 1987 charges and subsequent conviction in January of 1996 become a prior sexual offence.

7.Qu estion: While on parole, Mr. Jones, who has an extensive history of child molestation, was found at the county fair with an 8 year-old male child. He had met the child's mother the night before and volunteered to take the child to the fair. Mr. Jones was in violation of his parole and he was returned to prison. He subsequently got out of prison and six months later re-offended. You are tasked with the pre-sentence report. Do you count the above parole violation as a prior sex offence charge?

Answer: No. Being in the presence of children is not counted as a charge for prior sex offences unless an offence is imminent. In this case, Mr. Jones was in a public place with the child among many adults. An incident of this nature exhibits "high-risk" behaviour but is not sufficient for a charge of a sex offence.

Appendix Three

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Appendix Four

Surgical Castration in Relation to Sex Offender Risk Assessment

Surgical castration or orchidectomy is the removal of the testicles. In most cases this is done for medical reasons but in sex offenders may be done for the reduction of sexual drive. Orchidectomy was practiced in Nazi Germany and in post-war Europe in sufficient numbers that several studies have been conducted on the recidivism rates of those who have undergone the operation. In general, the post-operative recidivism rates are low, but not zero (2% - 5%). In addition, the subjects in the European samples tended to be older men and this data may not generalize well to ordinary sex offender samples. The recidivism rates reported, however, are lower than expected base rates. This may suggest that there is some protective effect from castration.

However, this effect can be reversed. There have been a number of case studies where a castrated individual has obtained steroids, reversed the effects of the operation, and gone on to re-offend.

In terms of overall risk assessment, if an individual has undergone surgical castration it is worth consideration but this is not an overriding factor in risk assessment. In particular, an evaluator must consider the extent to which sex drive contributes to the offence pattern and whether the offender has the motivation and intellectual resources to maintain a low androgen lifestyle in the face of potentially serious side effects (e.g., bone loss, weight gain, breast growth).

Appendix Five

STATIC-99 Coding Form

Question Number	Risk Factor	Codes	Score
1	Young (S9909)	Aged 25 or older Aged 18 – 24.99	0 1
2	Ever Lived With (S9910)	Ever lived with lover for at least two years? Yes No	 0 1
3	Index non-sexual violence - Any Convictions (S9904)	No Yes	0 1
4	Prior non-sexual violence - Any Convictions (S9905)	No Yes	0 1
5	Prior Sex Offences (S9901)	Charges / Convictions None / None 1-2 / 1 3-5 / 2-3 6+ / 4+	 0 1 2 3
6	Prior sentencing dates (excluding index) (S9902)	3 or less 4 or more	0 1
7	Any convictions for non-contact sex offences (S9903)	No Yes	0 1
8	Any Unrelated Victims (S9906)	No Yes	0 1
9	Any Stranger Victims (S9907)	No Yes	0 1
10	Any Male Victims (S9908)	No Yes	0 1
	Total Score	**Add up scores from individual risk factors**	

TRANSLATING STATIC 99 SCORES INTO RISK CATEGORIES

Score	Label for Risk Category
0,1	Low
2,3	Moderate-Low
4,5	Moderate-High
6 plus	High

Appendix Six

STATIC-99 Recidivism Percentages by Risk Level

Static-99 score	sample size	sexual recidivism			violent recidivism		
		5 years	10 years	15 years	5 years	10 years	15 years
0	107 (10%)	.05	.11	.13	.06	.12	.15
1	150 (14%)	.06	.07	.07	.11	.17	.18
2	204 (19%)	.09	.13	.16	.17	.25	.30
3	206 (19%)	.12	.14	.19	.22	.27	.34
4	190 (18%)	.26	.31	.36	.36	.44	.52
5	100 (9%)	.33	.38	.40	.42	.48	.52
6 +	129 (12%)	.39	.45	.52	.44	.51	.59
Average							
3.2	1086 (100%)	.18	.22	.26	.25	.32	.37

Appendix Seven

Suggested Report Paragraphs for Communicating STATIC-99-based Risk Information

The STATIC-99 is an instrument designed to assist in the prediction of sexual and violent recidivism for sexual offenders. This risk assessment instrument was developed by Hanson and Thornton (1999) based on follow-up studies from Canada and the United Kingdom with a total sample size of 1,301 sexual offenders. The STATIC-99 consists of 10 items and produces estimates of future risk based upon the number of risk factors present in any one individual. The risk factors included in the risk assessment instrument are the presence of prior sexual offences, having committed a current non-sexual violent offence, having a history of non-sexual violence, the number of previous sentencing dates, age less than 25 years old, having male victims, having never lived with a lover for two continuous years, having a history of non-contact sex offences, having unrelated victims, and having stranger victims.

The recidivism estimates provided by the STATIC-99 are group estimates based upon reconvictions and were derived from groups of individuals with these characteristics. As such, these estimates do not directly correspond to the recidivism risk of an individual offender. The offender's risk may be higher or lower than the probabilities estimated in the STATIC-99 depending on other risk factors not measured by this instrument. This instrument should not be used with Young Offenders (those less than 18 years of age) or women.

Mr. X scored a ?? on this risk assessment instrument. Individuals with these characteristics, on average, sexually reoffend at ??% over five years and at ??% over ten years. The rate for any violent recidivism (including sexual) for individuals with these characteristics is, on average, ??% over five years and ??% over ten years. Based upon the STATIC-99 score, this places Mr. X in the Low, [score of 0 or 1](between the 1st and the 23rd percentile); Moderate-Low, [score of 2 or 3] (between the 24th and the 61st percentile); Moderate-High, [score of 4 or 5] (between the 62nd and the 88th percentile); High, [score of 6 plus](in the top 12%) risk category relative to other adult male sex offenders.

Based on a review of other risk factors in this case I believe that this STATIC-99 score (Over/Under/Fairly) represents Mr. X's risk at this time. The other risk factors considered that lead me to this conclusion were the following: {Stable Variables: Intimacy Deficits, Social Influences, Attitudes Supportive of Sexual Assault, Sexual Self-Regulation, and General Self-Regulation; Acute Variables: Substance Abuse, Negative Mood, Anger/Hostility, Opportunities for Victim Access - Taken from the SONAR*}, (Hanson & Harris, 2001). Both the STATIC-99 and the SONAR 2000 are available from the Solicitor General Canada's Website www.sgc.gc.ca.

* Note: This list is not intended to be definitive. Evaluators may want to include other static or dynamic variables in their evaluations.

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[Evaluator – these paragraphs are available electronically by e-mailing Andrew Harris, harrisa@sgc.gc.ca and requesting the electronic file – Standard STATIC-99 Paragraphs]

Appendix Eight

STATIC-99 Inter-rater Reliability

Reliability is the extent to which the same individual receives the same score on different assessments. Inter-rater reliability is the extent to which different raters independently assign the same score to the same individual at a given point in time.

These independent studies utilized different methods of calculating inter-rater reliability. The Kappa statistic provides a correction for the degree of agreement expected by chance. Percent agreement is calculated by dividing the agreements (where both raters score "0" or both raters score "1") by the total number in the item sample. Pearson correlations compare the relative rankings between raters. Intra-class correlations compare absolute values between raters.

The conclusion to be drawn from this data is that raters would rarely disagree by more than one point on a STATIC-99 score.

Summary of Inter-rater Reliability			
Study	**N of cases double coded**	**Method of reliability calculation**	**Reliability**
Barbaree et al.	30	Pearson correlations between total scores	.90
Hanson (2001)	55	Average Item Percent Agreement	.91
	55	Average Item Kappa	.80
	55	Intra-class correlation for total scores	.87
Harris et al.	10	Pearson correlations between total scores	.96

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STATIC-99 Replication Studies References

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STATIC-99 Replications

Authors	Country	Sample	n	Reported ROC
Hanson & Thornton (2000)	**Canada & the UK**	**Prison Males**	**1,301**	**.71**
	These are the original samples for the Static-99 Prison Males			
Barbaree et al., (2001)	Canada	Prison Males	215	.70
Beech et al., (2002)	England	Community	53	.73
Hanson (2002) Unpublished	Canada	Community	202	.59
Harris et al., (Submitted)	Canada	Forensic Mental Health Patients	396	.62
Hood et al., (2002)	England	HM Prison Males	162	.77
McGrath et al., (2000)	United States	Prison Males	191	.74
Motiuk (1995)	Canada	Prison Males	229	.77
Nicholaichuk (2001)	Canada	Aboriginal Males	109	.67
Nunes et al., (2002)	Canada	Community Pre-trial	258	.70
Poole et al., (2001)	United States	Juv. sex offenders released after age 18	45	.95
Reddon et al., (1995)	Canada	Prison Males	355	.76
Sjöstedt & Långström (2001)	Sweden	All released male offenders (1993-1997)	1,400	.76
Song & Lieb (1995)	United States	Community	490	.59
Thornton (2000a)	England	Prison Males	193	.89
Thornton (2000b)	England	Prison Males	110	.85
Tough (2001)	Canada	Developmentally Delayed Males	76	.60
Wilson et al., (2001)	Canada	Detained High-Risk Offenders	30	.61
		TOTAL	**4,514**	**MEAN = 72.4**

Appendix Ten

Interpreting STATIC-99 Scores Greater than 6

In the original Hanson and Thornton (1999, 2000) study, all offenders with scores of 6 or more were grouped together as "high risk" because there were insufficient cases to provide reliable estimates for offenders with higher scores. Consequently, some evaluators have wondered how to interpret scores for offenders with scores greater than 6. We believe that there is insufficient evidence to conclude that offenders with scores greater than 6 are higher risk to re-offend than those who have a score of 6. However, as an offender's score increases, there is increased confidence that he is indeed a member of the high-risk group.

Below are the sexual and violent recidivism rates for the offenders with scores of 6 through 9. No offender in these samples had a score of 10 or greater. The rates were based on the same subjects and the same statistics (survival analysis) as those used to generate the estimates reported in Table 5 of Hanson and Thornton (1999, 2000).

Overall, the recidivism rates for the offenders with scores of 6, 7 and 8 were similar to the rates for the high-risk group as a whole. There were only three cases with a Static-99 score of 9, one of which sexually recidivated after 3 years, one re-offended with non-sexual violent offence after 18 years, and one did not recidivate. None of the differences between the groups were statistically significant.

Static-99 score	sample size	Sexual recidivism			Violent recidivism		
		5 years	10 years	15 years	5 years	10 years	15 years
6	72	.36	.44	.51	.46	.53	.60
7	33	.43	.43	.53	.43	.46	.56
8	21	.33	.52	.57	.43	.57	.62
9	3	.33	.33	.33	.33	.33	.33
10, 11, 12	0						
Scores 6 thru 12	129	.39	.45	.52	.44	.51	.59

STATIC-99 Coding Form

Question Number	Risk Factor	Codes	Score
1	Young (S9909)	Aged 25 or older Aged 18 – 24.99	0 1
2	Ever Lived With (S9910)	Ever lived with lover for at least two years? Yes No	 0 1
3	Index non-sexual violence - Any Convictions (S9904)	No Yes	0 1
4	Prior non-sexual violence - Any Convictions (S9905)	No Yes	0 1
5	Prior Sex Offences (S9901)	Charges / Convictions None / None 1-2 / 1 3-5 / 2-3 6+ / 4+	 0 1 2 3
6	Prior sentencing dates (excluding index) (S9902)	3 or less 4 or more	0 1
7	Any convictions for non-contact sex offences (S9903)	No Yes	0 1
8	Any Unrelated Victims (S9906)	No Yes	0 1
9	Any Stranger Victims (S9907)	No Yes	0 1
10	Any Male Victims (S9908)	No Yes	0 1
	Total Score	**Add up scores from individual risk factors**	

TRANSLATING STATIC 99 SCORES INTO RISK CATEGORIES

Score	Label for Risk Category
0,1	**Low**
2,3	**Moderate-Low**
4,5	**Moderate-High**
6 plus	**High**

STATIC-99 Coding Form

Question Number	Risk Factor	Codes	Score
1	Young (S9909)	Aged 25 or older Aged 18 – 24.99	0 1
2	Ever Lived With (S9910)	Ever lived with lover for at least two years? Yes No	 0 1
3	Index non-sexual violence - Any Convictions (S9904)	No Yes	0 1
4	Prior non-sexual violence - Any Convictions (S9905)	No Yes	0 1
5	Prior Sex Offences (S9901)	Charges / Convictions None / None 1-2 / 1 3-5 / 2-3 6+ / 4+	 0 1 2 3
6	Prior sentencing dates (excluding index) (S9902)	3 or less 4 or more	0 1
7	Any convictions for non-contact sex offences (S9903)	No Yes	0 1
8	Any Unrelated Victims (S9906)	No Yes	0 1
9	Any Stranger Victims (S9907)	No Yes	0 1
10	Any Male Victims (S9908)	No Yes	0 1
	Total Score	**Add up scores from individual risk factors**	

TRANSLATING STATIC 99 SCORES INTO RISK CATEGORIES

Score	Label for Risk Category
0,1	**Low**
2,3	**Moderate-Low**
4,5	**Moderate-High**
6 plus	**High**

Static-99 Quick Reference Guide

It should be noted that this is not a replacement for the Static 99 Coding Rules, revised 2003 by A. Harris, A. Phenix, R.K. Hanson, and D. Thornton.

Risk Factor #1 – Young

- Age greater than or equal to 25 years of age = 0
- Age less than 25 = 1
- Age is calculated at the time of release from an institution or time of assessment
- See page 23 of the Static 99 Coding Rules, revised 2003 for specific details.

Risk Factor #2 – Ever lived with an intimate partner

- Must be 2 years or longer, continuous.
- Must be a sexual relationship.
- Roommates/prison cellies do not count.
- Legitimate absences tolerated.
- Length of legal marriage is irrelevant.
- See page 25 of the Static 99 Coding Rules, revised 2003 for specific details.

Risk Factor #3 – Index non-sexual violence

- At the time of the index offense, was there a violent conviction in addition to a sex offense? Example: rape and murder; sex abuse and kidnapping.
- Sex offenses convicted as a violent offense count. Example: Assault that was by description a rape.
- Convictions overturned on appeal do not count.
- Violations or institutional rules violations do not count.
- See page 27 of the Static 99 Coding Rules, revised 2003 for specific details.

Risk Factor #4 – Prior non-sexual violence

- Same rules as Risk Factor #3.
- Any violent convictions, prior to the index offense.

- Driving accidents/convictions resulting in injury or death do not count.
- See page 31 of the Static 99 Coding Rules, revised 2003 for specific details.

Risk Factor #5 – Prior sex offenses

- Only count sex offenses **PRIOR** to the index offense.
- Things to count:
  - Sex offense convictions
  - Sex offense charges
  - Convictions/charges and attempts with a sexual intent (burglary with the intent to steal women's underwear).
  - Institution rules violations **IF** the action could be charged as a new crime.
  - Probation, parole, Post-Prison Supervision violations that could be charged as a new crime or there is a "truly imminent" risk of a new crime/new victim.
- "pseudo-recidivism" is not counted and is a part of the "index cluster".
- Convictions overturned on appeal do not count
- Non-sexual charges and convictions can be coded as a sex offense if the act involved sexual behavior.
- See page 35 of the Static 99 Coding Rules, revised 2003 for specific details.

Risk Factor #6 – Prior sentencing dates

- All convictions that resulted in a penalty from the Court (restitution, probation, jail, prison).
- Sanctions count only if the offense could be charged as a new crime.
- See page 43 of the Static 99 Coding Rules, revised 2003 for specific details.

Risk Factor #7 – Non-contact sex offense convictions

- **Only** convictions
- Non-contact sex offenses: exhibitionism, voyeurism, exposure, etc...
- No offenses with attempted contact
- See page 46 of the Static 99 Coding Rules, revised 2003 for specific details.

Risk Factor #8 – Any unrelated victims

- step-children are considered related if the offender lived with children for 2+ years.
- Exclude biological relatives.
- See page 52 of the Static 99 Coding Rules, revised 2003 for specific details.

Risk Factor #9 – Any stranger victims

- If the victim states, "I have never met the offender before", believe the victim and score.
- If both have known each other for 24 hours, not a stranger and do not score.
- If #9 is scored, #8 is ALWAYS scored. We get to double dip.
- If victim has had internet communication with offender for 24 hours, not a stranger and do not score.
- See page 54 of the Static 99 Coding Rules, revised 2003 for specific details.

Risk Factor #10 – Any male victims

- No "accidental" victims (exposing to a female in a grocery store and a male comes into the isle).
- Child pornography does not count, unless there is clear evidence of a history of targeting boys.
- Exposing to a mixed group does not count.
- See page 56 of the Static 99 Coding Rules, revised 2003 for specific details.

Glossary of Odd Terms

Index Offense— "Generally the most recent sexual offense. It could be a charge, arrest, conviction, or rule violation. Sometimes Index Offenses include multiple counts, multiple victims, and numerous crimes perpetrated at different times because the offender may not have been detected and apprehended. Some offenders are apprehended after a spree of offending. It this results in a single conviction regardless of the number of counts, all counts are considered part of the Index Offense. Convictions for sexual offenses that are subsequently overturned on appeal con count as the Index Offense. Charges for sexual offenses can count as the Index Offense, even if the offender is later acquitted." See page 18 of the Static 99 Coding Rules, revised 2003 for an expanded definition and examples.

Index Cluster— an offender commits multiple offenses prior to being caught. Rather than counting the offenses individually, for purposes of scoring on the Static 99, all the offenses are "lumped together" and are only counted once if the offenses go undetected or without an arrest. See page 19 of the Static 99 Coding Rules, revised 2003 for an expanded definition and examples.

Pseudo-Recidivism— "when an offender who is currently involved in the criminal justice system is charged with old offenses for which they have never before been charged." To count as a new sex offense for the Static 99, the offender must be released and reoffends to be a new sex offense. See page 20 of the Static 99 Coding Rules, revised 2003 for specific details.

Truly Imminent— "examples of this nature would include an individual with a history of child molesting being discovered alone with a child about to engage in a 'wrestling game'." See page 16 of the Static 99 Coding Rules, revised 2003 for specific details.*

Compiled by Will A. Benson, Parole/Probation Officer with Umatilla/Morrow County Community Corrections, Pendleton, Oregon. Reviewed by Amy Phenix, PhD. All information for this guide was gathered from the **Static 99 Coding Rules; revised 2003**, by Harris, et al and the "Train The Trainer" seminar facilitated by Dr. Phenix on 10/13/03-10/14/03 in Salem, Oregon

Scoring Example #1

Name: Mr. Good
DOB: 06/07/43
Assessment date: 12/11/99

DATE	CHARGES	Conviction/Disposition
01-02-81	Sexual Assault (3 counts)	Sexual Assault (2 counts) 5 yrs DOC
04-05-99	Invitation to Sexual Touching Possession of Child Pornography	Invitation to Sexual Touching 6 years DOC

Relationship History:

Mr. Good married Judy F. in January 1967. They separated in November 1968, and divorced the following year (1969).

Mr. Good moved in with Gail C. in July 1977 after dating for three years. Gail C. had three children from a previous relationship: Lucy (DOB: 03/04/68), Susan (DOB: 24/06/70) and Ryan (DOB: 18/12/76).

Mr. Good and Gail C. separated after disclosure of the incidents that resulted in the 1981 charges.

In 1997, Mr. Good started dating Tammy R., who had a daughter, Nicki (DOB 27/11/86).

Description of offenses:

The 1981 offenses all involve the children of Mr. Good's common-law wife, Gail C.

Victim 1: Lucy C. stated that Mr. Good came into her bedroom and touched her on her breasts and between her legs sometime in February/March, 1980.

Victim 2: Susan C. stated that Mr. Good came into her bedroom naked and lay on top of her. He had just come home from a Christmas party in 1979.

Victim 3: Ryan stated that in the summer of 1980, Mr. Good had pulled on his own penis and told Ryan to do the same. When Ryan hesitated, Mr. Good pulled on Ryan's penis. Mr. Good claimed that he was trying to teach Ryan about personal hygiene and the charge was dismissed in court.

The 1999 offenses involved his girlfriend's daughter.

Victim 4: In January 1999, Tammi came home to find Mr. Good showing pictures to Nicki, her daughter. The pictures were cut-outs showing girls in erotic poses with men or other girls. Nicki said that Mr. Good asked her if she wanted to do the things described in the pictures.

Scoring Example #2

Name: Mr. Quick
DOB: 03-09-77
Assessment date: 12-11-00

DATE	CHARGES	Conviction/Disposition
11-04-93	Gross Indecency (which is exhibitionism)	Gross Indecency 3 months probation as juvenile
04-09-00	Gross Indecency Harassing Telephone Calls (or obscene telephone calls) Assault Break and Enter	Gross Indecency Assault 1 year

Relationship history:

Mr. Quick shared a house with Debbie K. (and 2 others) between September 1995 and April 1998 while they were both at college. Mr. Quick and Debbie did social activities together (movies, bike rides). Mr. Quick said that he was in love with Debbie (and she with him), but they never had a sexual relationship.

In May/June of 1999, Mr. Quick dated a Lynn, a co-worker, and they had sexual intercourse on several occasions. In July 1999, Lynn stopped going out in the evenings with Mr. Quick, although they would occasionally have lunch together at work. In August, Mr. Quick began leaving messages on her answering machine telling her how much he loved her and describing the sexual activities that he wanted to do with her. She avoids him at work that week. The following week, Lynn comes home to find Mr. Quick naked in her apartment. She turns to leave and Mr. Quick runs and grabs her. She struggles free and calls the police from a local convenience store.

Offense 1: In March 1993, a member of the evening maintenance staff (a male) finds Mr. Quick masturbating in a public park. The staff member does not confront Mr. Quick, but calls the police. Mr. Quick tells the police/courts that he has no privacy at home.

Offense 2: Lynn, ex-girlfriend – see above.

Scoring Example #3

Name: Mr. Reckless
DOB: 11-11-68
Assessment date: 12-11-99

DATE	CHARGES		Conviction/Disposition	
03-12-83	Theft Under $50	1	Theft Under $50 Restitution	1
06-30-84	Possession of Stolen Property Breaking and Entering Possession of Burglary Tools	3	Possession of Stolen Property 6 months probation	1
07-15-84	Assault	1	Dismissed	0
03-31-87	Armed Robbery	1	Armed Robbery 6 years	1
08-18-91	Parole Violation Theft Under $50	1	Parole Violation Recommitted	0
02-01-96	Public Mischief	1	Public Mischief $100 fine	1
01-23-97	Forcible Confinement Sexual Assault	2	Forcible Confinement 3 years	1

Relationship History:

Prior to 1987, Mr. Reckless dated a number of women, but no relationship lasted longer than six months. While serving time for the 1987 Armed Robbery, Mr. Reckless began a relationship with a prison volunteer. He lived with her when he was paroled in May 1991, and they married in July 1991. They stayed in the relationship when he returned to prison in August 1991, and they lived together when he was released in February 1993. They separated in May 1993.

Sexual Assault Victim 1: Joan M. (DOB: 04-12-75). On the evening of 12-08-96, Mr. Reckless recognizes Joan, a neighbor, at his usual bar. She does not remember seeing him before. After an evening of drinking and dancing, they return to Mr. Reckless' apartment, where Joan is bound with tape and sexually assaulted. She frees herself and escapes after Mr. Reckless falls asleep beside her.

Scoring Example #4

Name: Mr. Jones
DOB: 11-11-67
Assessment date: 03-03-01

DATE	CHARGES	Conviction/Disposition
10-03-86	Auto Theft	Auto Theft 12 months probation
01-05-96	Lewd and Lascivious Act with a Child under 1 (3 counts)	Sexual Assault (3 counts) 4 years
02-15-01	Lewd and Lascivious Act with a Child under 14 (2 counts)	Lewd and Lascivious Act with a Child under 14 (2 counts) 18 months conditional sentence and 3 years probation

> index sex off
-index cluster

In January 2000 when Mr. Jones was released from prison, two women came forward and charged Mr. Jones with having touched them in 1987. These two women are now both 21 years of age and were friends of Mr. Jones's family. Mr. Jones was subsequently charged and in February 2001 Mr. Jones was convicted of two counts of Lewd and Lascivious Act with a Child for which he received an 18-month conditional sentence and three years on probation.

From 1990 to 1996 Mr. Jones worked as a farm laborer. Two of his victims were the daughters of his employer on the farm where Mr. Jones lived each summer (Tammy, age 12 and Ruth, age 14). The third victim was a friend of Ruth's (Crystal, age 15). The offenses occurred during the summer of 1994 and 1995, and involved fondling Tammy and Crystal, and intercourse with Ruth on at least one occasion.

Mr. Jones has never been married, although he has dated occasionally. His only previous criminal conviction was for riding around his hometown in a stolen car. Because he was older than the other teenage boys in the car, he was the only one convicted.

never went out to re-offend (sexual offense)

Scoring Example #5

Name: Mr. Busy
DOB: 05-05-65
Assessment Date: 11-27-03

Official Criminal History:

DATE	CHARGES	Conviction/Disposition
10-04-83	Sodomy Exhibitionism	Sodomy California Youth Authority for 4 years
03-14-88	Forgery	Forgery, 3yr probation, 6 Days Jail
06-16-90	Driving with Revoked license	Driving with revoked license, 3 years probation
10-09-90	Driving with Revoked license	Driving with revoked license, 3 years probation, jail, fine
06-18-93	Burglary Possession of a Weapon	Burglary (2 years prison) Possession of a Weapon (a gun was found on the dash of his car)
08-05-93	Lewd and Lascivious Act with a Child under 14 (25 counts)	Lascivious Act with a child under 14 (2 counts) 6 yr & 8 mo prison
09-19-97	Parole Violation	Mr. Busy was within 120 yards of a High School and had contact with several 15 to 16 year old juveniles who were found talking to him while he was in his car. He began spinning his tires and creating smoke. He was arrested by police and his parole was violated for being in the presence of children.
09-28-99	Parole Violation	Parole Violation for being in the presence of children. Mr. Busy was found with an 8 year old at the county fair. He was on parole and knew he was not to be with minors. The 8 year old male reported that he and his older brother spent the night at Mr. Busy's several times over the years but denied any physical or sexual contact. When Mr. Busy was in custody they would write to each other. The boy said he "loved "Mr. Busy." Mr. Busy had bought the boy Scooby Doo underwear, dropped the boy off at school at the mother's request and signed medical forms the child turned into school. He had a picture of the boy in his wallet. The police thought that Mr. Busy was "grooming" the boy.
05-20-2000	Lewd and Lascivious Act with a Child under 14 (2 counts)	Lewd and Lascivious Act with a Child under 14 (1 count)

Relationship History:

Mr. Busy had two relationships as a teen. Prior to age 17 he dated Katie and a child was born to this union. Mr. Busy has had no contact with the child. Although reporting an attraction to adult females he has never had a sustained relationship with a female or married.

Description of Offenses:

10-04-83: Sodomy 3 ½ year-old male: Details of this offense are unknown since his juvenile records were unavailable.

08-05-93: 12-year-old John was being investigated as having sodomized a five-year-old male child. During the investigation his mother reported that Mr. Busy had sodomized her son, John, on numerous occasions from the late 1987 to mid 1989. Mr. Busy would visit with her son one to four times a month. John had been repeatedly sodomized by Mr. Busy. While spending the night at John's house, Jimmy reported that he was also fondled by Mr. Busy. Jimmy came over to John's house about 5 p.m. and the molest occurred that evening while watching a movie. Jimmy indicated he had not met Mr. Busy before meeting him at John's house.

05-20-00: Billy, a 14-year-old male child disclosed to his mother that he was molested by Mr. Busy when he spent the night at John L. and Jimmy L.'s house in 1993. Billy was seven years old at the time. He said he trusted Mr. Busy because when he had visited with him previously Mr. Busy was so nice to the boys. This conviction occurred when Mr. Busy was serving time in San Quinton State Prison on his 1999 Parole Violation.

Scoring Example #6

Name: Father Clergy
DOB: 09-01-38
Assessment Date: Today

Official Criminal History:

Date	Charges	Convictions
1993	Lewd and Lascivious Act on a Child under 14 (4 counts)	Lewd and Lascivious Act on a Child under 14 (2 counts)
2001	Lewd and Lascivious Act on a Child under 14 (31 counts)	Lewd and Lascivious Act on a Child under 14 (31 counts)

Relationship History:

Father Clergy attended a Catholic Seminary just out of High School and thereafter worked as a Catholic Priest. He has never been married and has no children. He has engaged in sexual activity with adult and minor males as an adult but he has not maintained any adult relationships.

Sexual Offense Victims:

Father Clergy was arrested in connection with his molest of Sam, Joe and James in September of 1992, and then released on his own recognizance. After his conviction, he served a six-month jail sentence from March of 1993 to September of 1993. Per Interstate Compact Agreement, he was placed on probation in Kansas City, Missouri, where he was in residence of and under the direct supervision of the Missionaries of the Kind of Heart. He entered a sex offender treatment center on 11-22-93 where he spent approximately six months in intensive residential treatment. He then participated in a halfway house continuation program for approximately three months and then entered their aftercare program through the Missionaries of the Kind of Heart who worked closely with the treatment program. He was discharged from the aftercare program in June of 1999.

Since 1994 Father Clergy has resided at the Missionaries in Kansas City doing administrative work. He has been prohibited from working as a priest in situations that might place him in the presence of children. In October of 1999, Father Clergy was served a warrant for his arrest for the offenses perpetrated against Ty and Bob in the 1980s. He was sentenced to prison in March of 2001. He has been incarcerated since that time.

Father Clergy reported first becoming involved with Mark in 1978 when Mark was 10 years of age. Mark was an alter boy who helped him with mass. Later he asked him to help with lawn work. It started with mutual back rubs on fishing trips. Genital touching

and anal intercourse started in 1980. Father Clergy believed there was "mutual caring." The molest against Mark was never charged or convicted.

1993 Offense: After changing parishes in 1990, Father Clergy met Sam, the son of a local police officer. Sam was an alter boy and he helped to maintain the church grounds. He slept at the priest's home on more than 100 occasions over three years so that he could wake up early to work on Father Clergy's home and grounds. They engaged in back rubs, body rubs and genital rubbing. The investigation revealed two other boys; Joe and James from the church were molested by Father Clergy using a similar M.O. The molests against Sam, Joe and James resulted in the 1992/1993 charges and convictions.

2001 Offense: Father Clergy molested brothers Ty from age 11 and Bob from age 10. Bob was an alter boy in the early 1980's and he worked on the grounds of Father Clergy's parish and home. From 1978 to 1982 he engaged in mutual masturbation, oral copulation and sodomy with Father Clergy. He went on trips with Father Clergy to many states. Ty first had contact with Father Clergy in spring of 1981 and within one year the sexual activity began. He engaged in mutual masturbation, oral copulation and sodomy with Father Clergy. Ty was also given alcohol to drink at the time of the molests. He was last molested in 1982.

Scoring Example #7

Name: Mr. Force
DOB: 11-05-51
Assessment Date: 10-10-03

DATE	CHARGES	CONVICTION / DISPOSITION
12-12-68	Strong Arm Rape (In the military)	Strong Arm Rape 2 years In military brig
09-14-70	Larceny	60 days jail
10-09-72	Escape from jail	recaptured
04-15-74 24 years (CONV)	Rape, First Degree (6 counts)	Rape, First Degree (2 counts) 10 years prison
08-14-80	Drunk driving	One year probation, fine
04-30-82	Residential burglary	Residential burglary, 1 year prison
05-21-83	Possession of marijuana	Arrest in prison, 3 months added to prison sentence
04-04-84	Criminal Trespass	Criminal Trespass, 18 months prison, probation
07-17-87	Rape by Force and Violence False Imprisonment Oral Copulation Sexual Penetration Foreign Object Burglary Assault With Deadly Weapon Attempted Murder	Rape by Force and Violence False Imprisonment Oral Copulation Sexual Penetration Foreign Object Burglary Assault With Deadly Weapon Attempted Murder Sentenced to 24 years in Prison

Relationship History:

- Married Susie 11-22-69. Lived together for 6 months.
- Hallie. Lived together "on and off" for 9 years.
- Married June in 1989 when he was in prison. Met her in 1986 where he worked. Dated her for 18 month's but did not want to be tied down. They are still married.

Sexual Offense Victims:

12-12-68: Strong Arm Rape. He goes to the door of a 24-year-old housewife, asking for directions and when the victim goes to get a phone book, he follows her into the house and forcefully rapes her.

04-15-74: 2 Counts Rape First Degree. He forcefully raped 6 women strangers, was charged and convicted of two rapes.

04-30-82: Residential Burglary. He entered an apartment of a woman and removed panties, bras, bathing suit; dress from dresser drawers and spread them on her bed. He said to police he was her former boyfriend and he became sexually aroused in her bedroom and removed her under garments from the drawers to masturbate. He admitted to other acts of entering homes to look for female lingerie to use for masturbation purposes.

04-04-84: Criminal Trespass. At a hotel he was in the women's bathroom when an unsuspecting woman came into bathroom and used restroom. She saw his boots under stall door became alarmed.

07-17-87: Rape by Force, False Imprisonment, Oral Copulation, Sexual Penetration Foreign Object, Burglary, Assault with a Deadly Weapon and Attempted Murder. After the 22 year old female pulled into her garage and Mr. Force grabbed the victim around the neck. He took her into her house, put her on her bed face down, and tied her hands behind her with a scarf and placed a sock in her mouth. He tied a cloth around her eyes. He raped the victim. Her roommate arrived home and Mr. Force assaulted the victim's roommate by pounding her head against concrete walk. She suffered a fractured jaw and skull fracture. This assault resulted in the arrest and conviction for assault with a deadly weapon and attempted murder. The other charges and convictions pertained to the rape victim.

Scoring Example #1

Name: Mr. Good
DOB: 06/07/43
Assessment date: 12/11/99

DATE	CHARGES	Conviction/Disposition
01-02-81	Sexual Assault (3 counts)	Sexual Assault (2 counts) 5 yrs DOC
04-05-99	Invitation to Sexual Touching Possession of Child Pornography	Invitation to Sexual Touching 6 years DOC

Relationship History:

Mr. Good married Judy F. in January 1967. They separated in November 1968, and divorced the following year (1969).

Mr. Good moved in with Gail C. in July 1977 after dating for three years. Gail C. had three children from a previous relationship: Lucy (DOB: 03/04/68), Susan (DOB: 24/06/70) and Ryan (DOB: 18/12/76).

Mr. Good and Gail C. separated after disclosure of the incidents that resulted in the 1981 charges.

In 1997, Mr. Good started dating Tammy R., who had a daughter, Nicki (DOB 27/11/86).

Description of offenses:

The 1981 offenses all involve the children of Mr. Good's common-law wife, Gail C.

Victim 1: Lucy C. stated that Mr. Good came into her bedroom and touched her on her breasts and between her legs sometime in February/March, 1980.

Victim 2: Susan C. stated that Mr. Good came into her bedroom naked and laid on top of her. He had just come home from a Christmas party in 1979.

Victim 3: Ryan stated that in the summer of 1980, Mr. Good had pulled on his own penis and told Ryan to do the same. When Ryan hesitated, Mr. Good pulled on Ryan's penis. Mr. Good claimed that he was trying to teach Ryan about personal hygiene and the charge was dismissed in court.

The 1999 offenses involved his girlfriend's daughter.

Victim 4: In January 1999, Tammi came home to find Mr. Good showing pictures to Nicki, her daughter. The pictures were cut-outs showing girls in erotic poses with men or other girls. Nicki said that Mr. Good asked her if she wanted to do the things described in the pictures.

Answers to Example #1

Question Number	Risk Factor	Codes	Score
1	Young	**Aged 25 or older – He's an old guy** Aged 18 – 24.99	**0** 1
2	Ever Lived With	Ever lived with lover for at least two years? **Yes – Lived with Gail C. July 77 -81** No	**0** 1
3	Index non-sexual violence Convictions	**No – Not Present in the Record** Yes	**0** 1
4	Prior non-sexual violence Convictions	**No – Not Present in the Record** Yes	**0** 1
5	Prior Sex Offenses	Charges / Convictions None / None 1-2 / 1 **3-5 / 2-3** 6 + / 4+	0 1 **2** 3
6	Prior sentencing dates (excluding index)	**3 or less -- Only 1 prior** 4 or more	**0** 1
7	Any convictions for non-contact sex offenses	**No – Note: Not convicted** Yes	**0** 1
8	Any Unrelated Victims	No **Yes -- Nicki**	0 **1**
9	Any Stranger Victims	**No** Yes	**0** 1
10	Any Male Victims	No **Yes -- Ryan**	0 **1**
	Total Score	**Add up scores from individual risk factors**	**4**

Scoring Example #2

Name: Mr. Quick
DOB: 03-09-77
Assessment date: 12-11-00

DATE	CHARGES	Conviction/Disposition
11-04-93	Gross Indecency (which is exhibitionism)	Gross Indecency 3 months probation as juvenile
04-09-00	Gross Indecency Harassing Telephone Calls (or obscene telephone calls) Assault Break and Enter	Gross Indecency Assault 1 year

Relationship history:

Mr. Quick shared a house with Debbie K. (and 2 others) between September 1995 and April 1998 while they were both at college. Mr. Quick and Debbie did social activities together (movies, bike rides). Mr. Quick said that he was in love with Debbie (and she with him), but they never had a sexual relationship.

In May/June of 1999, Mr. Quick dated a Lynn, a co-worker, and they had sexual intercourse on several occasions. In July 1999, Lynn stopped going out in the evenings with Mr. Quick, although they would occasionally have lunch together at work. In August, Mr. Quick began leaving messages on her answering machine telling her how much he loved her and describing the sexual activities that he wanted to do with her. She avoids him at work that week. The following week, Lynn comes home to find Mr. Quick naked in her apartment. She turns to leave and Mr. Quick runs and grabs her. She struggles free and calls the police from a local convenience store.

Offense 1: In March 1993, a member of the evening maintenance staff (a male) finds Mr. Quick masturbating in a public park. The staff member does not confront Mr. Quick, but calls the police. Mr. Quick tells the police/courts that he has no privacy at home.

Offense 2: Lynn, ex-girlfriend – see above.

Answers to Example #2

The September 1999 Gross Indecency, Harassing Telephone Calls, Assault, and B&E form the INDEX CLUSTER of offenses. The Gross Indecency and the Harassing Telephone Calls are the Index Sexual Offenses.

Question Number	Risk Factor	Codes	Score
1	Young	Aged 25 or older **Aged 18 – 24.99 – He's a young guy**	0 **1**
2	Ever Lived With	Ever lived with lover for at least two years? Yes **No – No Sexual Relationships**	 0 **1**
3	Index non-sexual violence Convictions	No **Yes – Assault Conviction**	0 **1**
4	Prior non-sexual violence Convictions	**No – Not Present in the Record** Yes	**0** 1
5	Prior Sex Offenses	Charges / Convictions None / None **1-2 / 1** 3-5 / 2-3 6 + / 4+	 0 **1** 2 3
6	Prior sentencing dates (excluding index)	**3 or less -- Only 1 prior** 4 or more	**0** 1
7	Any convictions for non-contact sex offenses	No **Yes – Gross Indecency Conviction**	0 **1**
8	Any Unrelated Victims	No **Yes -- Lynn**	0 **1**
9	Any Stranger Victims	**No** Yes	**0** 1
10	Any Male Victims	**No – Note: Maintenance Staff does not count "accidental"** Yes	**0** 1
	Total Score	**Add up scores from individual risk factors**	**6**

Scoring Example #3

Name: Mr. Reckless
DOB: 11-11-68
Assessment date: 12-11-99

DATE	CHARGES	Conviction/Disposition
03-12-83	Theft Under $50	Theft Under $50 Restitution
06-30-84	Possession of Stolen Property Breaking and Entering Possession of Burglary Tools	Possession of Stolen Property 6 months probation
07-15-84	Assault	Dismissed
03-31-87	Armed Robbery	Armed Robbery 6 years
08-18-91	Parole Violation Theft Under $50	Parole Violation Recommitted
02-01-96	Public Mischief	Public Mischief $100 fine
10-23-97	Forcible Confinement Sexual Assault	Forcible Confinement 3 years

Relationship History:

Prior to 1987, Mr. Reckless dated a number of women, but no relationship lasted longer than six months. While serving time for the 1987 Armed Robbery, Mr. Reckless began a relationship with a prison volunteer. He lived with her when he was paroled in May 1991, and they married in July 1991. They stayed in the relationship when he returned to prison in August 1991, and they lived together when he was released in February 1993. They separated in May 1993.

Sexual Assault Victim 1: Joan M. (DOB: 04-12-75). On the evening of 12-08-96, Mr. Reckless recognizes Joan, a neighbor, at his usual bar. She does not remember seeing him before. After an evening of drinking and dancing, they return to Mr. Reckless' apartment, where Joan is bound with tape and sexually assaulted. She frees herself and escapes after Mr. Reckless falls asleep beside her.

Answers to Example #3

The October 1996 Forcible Confinement and Sexual Assault are the Index Sexual Offenses

This exercise tests knowledge of the rules surrounding Prior Sentencing Dates

Question Number	Risk Factor	Codes	Score
1	Young	**Aged 25 or older – He's an old guy** Aged 18 – 24.99	**0** 1
2	Ever Lived With {May 91 – Aug. 91} {Feb. 93 – May 93}	Ever lived with lover for at least two years? Yes **No – No 2-year long Relationships**	 0 **1**
3	Index non-sexual violence Convictions	No **Yes: Forcible Confinement Conviction**	0 **1**
4	Prior non-sexual violence Convictions	No **Yes – Armed Robbery**	0 **1**
5	Prior Sex Offenses	Charges / Convictions **None / None** 1-2 / 1 3-5 / 2-3 6 + / 4+	 **0** 1 2 3
6	Prior sentencing dates (excluding index)	3 or less **4 or more – See note below**	0 **1**
7	Any convictions for non-contact sex offenses	**No – No Convictions on record** Yes	**0** 1
8	Any Unrelated Victims	No **Yes -- Joan M.**	0 **1**
9	Any Stranger Victims **Remember "24 hr" rule**	No **Yes – She does not know him**	0 **1**
10	Any Male Victims	**No – None on record** Yes	**0** 1
	Total Score	**Add up scores from individual risk factors**	**6**

Note 1: The Forcible Confinement counts as both a sexual offense and as non-sexual violence (Kidnapping also works the same way)

Note 2: This exercise tests knowledge of the rules surrounding Prior Sentencing Dates – As you count back through the criminal record – The Index is the October 96 Forcible Confinement/Sexual Assault, these do not count in "Prior Sentencing Dates" – The Feb. 96 Public Mischief is a good sentencing date (#1) – the August 91 Parole Revocation does not count as he is not a lifer – the March 83 Armed Robbery counts as a good sentencing date (#2) The July 84 Assault does not count as a sentencing date because he wasn't given any sanction, he was not sentenced to anything on that date – The June 84 Poss. Stolen Property etc. counts as a good sentencing date (#3) and the December 83 Petty Theft counts as a good sentencing date as he was ordered Restitution (#4) – Hence, four (4) prior sentencing dates for this offender Extra Points for those who note that the 83 Theft Under $50 is a Juvenile Offense!

Scoring Example #4

Name: Mr. Jones
DOB: 11-11-67
Assessment date: 03-03-01

DATE	CHARGES	Conviction/Disposition
10-03-86	Auto Theft	Auto Theft 12 months probation
01-05-96	Lewd and Lascivious Act with a Child under 1 (3 counts)	Sexual Assault (3 counts) 4 years
02-15-01	Lewd and Lascivious Act with a Child under 14 (2 counts)	Lewd and Lascivious Act with a Child under 14 (2 counts) 18 months conditional sentence and 3 years probation

In January 2000 when Mr. Jones was released from prison, two women came forward and charged Mr. Jones with having touched them in 1987. These two women are now both 21 years of age and were friends of Mr. Jones's family. Mr. Jones was subsequently charged and in February 2001 Mr. Jones was convicted of two counts of Lewd and Lascivious Act with a Child for which he received an 18-month conditional sentence and three years on probation.

From 1990 to 1996 Mr. Jones worked as a farm laborer. Two of his victims were the daughters of his employer on the farm where Mr. Jones lived each summer (Tammy, age 12 and Ruth, age 14). The third victim was a friend of Ruth's (Crystal, age 15). The offenses occurred during the summer of 1994 and 1995, and involved fondling Tammy and Crystal, and intercourse with Ruth on at least one occasion.

Mr. Jones has never been married, although he has dated occasionally. His only previous criminal conviction was for riding around his hometown in a stolen car. Because he was older than the other teenage boys in the car, he was the only one convicted.

Answers to Example #4

The January 96 Lewd and Lascivious Act With a Child Under the Age of 14 and Sexual Assault (3 counts) are the Index Sexual Offenses.

This exercise is designed to test the knowledge of the rules surrounding Pseudo-recidivism

Question Number	Risk Factor	Codes	Score
1	Young	**Aged 25 or older – He's an old guy** Aged 18 – 24.99	**0** 1
2	Ever Lived With	Ever lived with lover for at least two years? Yes **No**	 0 **1**
3	Index non-sexual violence Convictions	**No – Not Present in the Record** Yes	**0** 1
4	Prior non-sexual violence Convictions	**No – Not Present in the Record** Yes	**0** 1
5	Prior Sex Offenses	Charges / Convictions **None / None** 1-2 / 1 3-5 / 2-3 6 + / 4+	 **0** 1 2 3
6	Prior sentencing dates (excluding index)	**3 or less -- Only 1 prior** 4 or more	**0** 1
7	Any convictions for non-contact sex offenses	**No – Note: Not convicted** Yes	**0** 1
8	Any Unrelated Victims	No **Yes -- The Two Women**	0 **1**
9	Any Stranger Victims	**No** Yes	**0** 1
10	Any Male Victims	**No** Yes	**0** 1
	Total Score	**Add up scores from individual risk factors**	**2**

This is a case where there is pseudo-recidivism – In this case the Feb. 2001 Lewd and Lascivious Act with a Child (2 counts)- while the latest conviction – is not the latest

sexual offense – the actual behavior for the Feb. 2001 Lewd and Lascivious Act with a Child (2 counts) happened back in 1987 – the trick here is to put the behavior back in chronological order – in addition, Mr. Jones was never sanctioned for those behaviors – so he never had the chance to make the conscious decision to reoffend after having been sanctioned. So here we get an "Index Cluster" – the Feb. Lewd and Lascivious Act with a Child (2 counts) comes forward and joins the Jan 96 L & L and Sexual Assault (X3) charges and forms an Index Cluster. He has only one Prior Sentencing Date – the Oct. 86 Theft Auto. – He has no prior sexual offenses.

Scoring Example #5

Name: Mr. Busy
DOB: 05-05-65
Assessment Date: 11-27-03

Official Criminal History:

DATE	CHARGES	Conviction/Disposition
10-04-83	Sodomy Exhibitionism	Sodomy California Youth Authority for 4 years
03-14-88	Forgery	Forgery, 3yr probation, 6 Days Jail
06-16-90	Driving with Revoked license	Driving with revoked license, 3 years probation
10-09-90	Driving with Revoked license	Driving with revoked license, 3 years probation, jail, fine
06-18-93	Burglary Possession of a Weapon	Burglary (2 years prison) Possession of a Weapon (a gun was found on the dash of his car)
08-05-93	Lewd and Lascivious Act with a Child under 14 (25 counts)	Lascivious Act with a child under 14 (2 counts) 6 yr & 8 mo prison
09-19-97	Parole Violation	Mr. Busy was within 120 yards of a High School and had contact with several 15 to 16 year old juveniles who were found talking to him while he was in his car. He began spinning his tires and creating smoke. He was arrested by police and his parole was violated for being in the presence of children.
09-28-99	Parole Violation	Parole Violation for being in the presence of children. Mr. Busy was found with an 8 year old at the county fair. He was on parole and knew he was not to be with minors. The 8 year old male reported that he and his older brother spent the night at Mr. Busy's several times over the years but denied any physical or sexual contact. When Mr. Busy was in custody they would write to each other. The boy said he "loved " Mr. Busy." Mr. Busy had bought the boy Scooby Doo underwear, dropped the boy off at school at the mother's request and signed medical forms the child turned into school. He had a picture of the boy in his wallet. The police thought that Mr. Busy was "grooming" the boy.
05-20-2000	Lewd and Lascivious Act with a Child under 14 (2 counts)	Lewd and Lascivious Act with a Child under 14 (1 count)

Relationship History:

Mr. Busy had two relationships as a teen. Prior to age 17 he dated Katie and a child was born to this union. Mr. Busy has had no contact with the child. Although reporting an attraction to adult females he has never had a sustained relationship with a female or married.

Description of Offenses:

10-04-83: Sodomy 3 ½ year-old male: Details of this offense are unknown since his juvenile records were unavailable.

08-05-93: 12-year-old John was being investigated as having sodomized a five-year-old male child. During the investigation his mother reported that Mr. Busy had sodomized her son, John, on numerous occasions from the late 1987 to mid 1989. Mr. Busy would visit with her son one to four times a month. John had been repeatedly sodomized by Mr. Busy. While spending the night at John's house, Jimmy reported that he was also fondled by Mr. Busy. Jimmy came over to John's house about 5 p.m. and the molest occurred that evening while watching a movie. Jimmy indicated he had not met Mr. Busy before meeting him at John's house.

05-20-00: Billy, a 14-year-old male child disclosed to his mother that he was molested by Mr. Busy when he spent the night at John L. and Jimmy L.'s house in 1993. Billy was seven years old at the time. He said he trusted Mr. Busy because when he had visited with him previously Mr. Busy was so nice to the boys. This conviction occurred when Mr. Busy was serving time in San Quinton State Prison on his 1999 Parole Violation.

Answers to Example #5

The index offense is the 08-05-93 offense. The 05-20-00 offense is pseudo-recidivism. Thus the INDEX CLUSTER is the 08-05-93 offense and the 05-20-00 offense. Count the two convictions for Driving with a Revoked License as sentencing dates since the disposition of the offenses was probation and prison.

Question Number	Risk Factor	Codes	Score
1	Young	Aged 25 or older Aged 18 – 24.99	**0** 1
2	Ever Lived With	Ever lived with lover for at least two years? Yes No	 0 **1**
3	Index non-sexual violence Convictions	No Yes	**0** 1
4	Prior non-sexual violence Convictions	No Yes	**0** 1
5	Prior Sex Offenses	Charges / Convictions None / None 1-2 / 1 3-5 / 2-3 6 + / 4+	 0 **1** 2 3
6	Prior sentencing dates (excluding index)	3 or less 4 or more	0 **1**
7	Any convictions for non-contact sex offenses	No Yes	**0** 1
8	Any Unrelated Victims	No Yes	0 **1**
9	Any Stranger Victims	No Yes	0 **1**
10	Any Male Victims	No Yes	0 **1**
	Total Score	**Add up scores from individual risk factors**	**6**

Scoring Example #6

Name: Father Clergy
DOB: 09-01-38
Assessment Date: Today

Official Criminal History:

Date	Charges	Convictions
1993	Lewd and Lascivious Act on a Child under 14 (4 counts)	Lewd and Lascivious Act on a Child under 14 (2 counts)
2001	Lewd and Lascivious Act on a Child under 14 (31 counts)	Lewd and Lascivious Act on a Child under 14 (31 counts)

Relationship History:

Father Clergy attended a Catholic Seminary just out of High School and thereafter worked as a Catholic Priest. He has never been married and has no children. He has engaged in sexual activity with adult and minor males as an adult but he has not maintained any adult relationships.

Sexual Offense Victims:

Father Clergy was arrested in connection with his molest of Sam, Joe and James in September of 1992, and then released on his own recognizance. After his conviction, he served a six-month jail sentence from March of 1993 to September of 1993. Per Interstate Compact Agreement, he was placed on probation in Kansas City, Missouri, where he was in residence of and under the direct supervision of the Missionaries of the Kind of Heart. He entered a sex offender treatment center on 11-22-93 where he spent approximately six months in intensive residential treatment. He then participated in a halfway house continuation program for approximately three months and then entered their aftercare program through the Missionaries of the Kind of Heart who worked closely with the treatment program. He was discharged from the aftercare program in June of 1999.

Since 1994 Father Clergy has resided at the Missionaries in Kansas City doing administrative work. He has been prohibited from working as a priest in situations that might place him in the presence of children. In October of 1999, Father Clergy was served a warrant for his arrest for the offenses perpetrated against Ty and Bob in the 1980s. He was sentenced to prison in March of 2001. He has been incarcerated since that time.

Father Clergy reported first becoming involved with Mark in 1978 when Mark was 10 years of age. Mark was an alter boy who helped him with mass. Later he asked him to help with lawn work. It started with mutual back rubs on fishing trips. Genital touching

and anal intercourse started in 1980. Father Clergy believed there was "mutual caring." The molest against Mark was never charged or convicted.

1993 Offense: After changing parishes in 1990, Father Clergy met Sam, the son of a local police officer. Sam was an alter boy and he helped to maintain the church grounds. He slept at the priest's home on more than 100 occasions over three years so that he could wake up early to work on Father Clergy's home and grounds. They engaged in back rubs, body rubs and genital rubbing. The investigation revealed two other boys. Joe and James. from the church were molested by Father Clergy using a similar M.O. The molests against Sam, Joe and James resulted in the 1992/1993 charges and convictions.

2001 Offense: Father Clergy molested brothers Ty from age 11 and Bob from age 10. Bob was an alter boy in the early 1980's and he worked on the grounds of Father Clergy's parish and home. From 1978 to 1982 he engaged in mutual masturbation, oral copulation and sodomy with Father Clergy. He went on trips with Father Clergy to many states. Ty first had contact with Father Clergy in spring of 1981 and within one year the sexual activity began. He engaged in mutual masturbation, oral copulation and sodomy with Father Clergy. Ty was also given alcohol to drink at the time of the molests. He was last molested in 1982.

Answers to Example #6

The 1993 sex offense is the Index Offense. The 2000 sexual offense is an example of pseudo-recidivism. Thus the INDEX CLUSTER is the 1993 offense and the 2000 offense.

Question Number	Risk Factor	Codes	Score
1	Young	Aged 25 or older Aged 18 – 24.99	**0** 1
2	Ever Lived With	Ever lived with lover for at least two years? Yes No	 0 **1**
3	Index non-sexual violence Convictions	No Yes	**0** 1
4	Prior non-sexual violence Convictions	No Yes	**0** 1
5	Prior Sex Offenses	Charges / Convictions None / None 1-2 / 1 3-5 / 2-3 6 + / 4+	 **0** 1 2 3
6	Prior sentencing dates (excluding index)	3 or less 4 or more	**0** 1
7	Any convictions for non-contact sex offenses	No Yes	**0** 1
8	Any Unrelated Victims	No Yes	0 **1**
9	Any Stranger Victims	No Yes	**0** 1
10	Any Male Victims	No Yes	0 **1**
	Total Score	**Add up scores from individual risk factors**	**3**

Scoring Example #7

Name: Mr. Force
DOB: 11-05-51
Assessment Date: 10-10-03

DATE	CHARGES	CONVICTION / DISPOSITION
12-12-68	Strong Arm Rape (In the military)	Strong Arm Rape 2 years In military brig
09-14-70	Larceny	60 days jail
10-09-72	Escape from jail	recaptured
04-15-74 24 years (CONV)	Rape, First Degree (6 counts)	Rape, First Degree (2 counts) 10 years prison
08-14-80	Drunk driving	One year probation, fine
04-30-82	Residential burglary	Residential burglary, 1 year prison
05-21-83	Possession of marijuana	Arrest in prison, 3 months added to prison sentence
04-04-84	Criminal Trespass	Criminal Trespass, 18 months prison, probation
07-17-87	Rape by Force and Violence False Imprisonment Oral Copulation Sexual Penetration Foreign Object Burglary Assault With Deadly Weapon Attempted Murder	Rape by Force and Violence False Imprisonment Oral Copulation Sexual Penetration Foreign Object Burglary Assault With Deadly Weapon Attempted Murder Sentenced to 24 years in Prison

Relationship History:

- Married Susie 11-22-69. Lived together for 6 months.
- Hallie. Lived together "on and off" for 9 years.
- Married June in 1989 when he was in prison. Met her in 1986 where he worked. Dated her for 18 month's but did not want to be tied down. They are still married.

Sexual Offense Victims:

12-12-68: Strong Arm Rape. He goes to the door of a 24-year-old housewife, asking for directions and when the victim goes to get a phone book, he follows her into the house and forcefully rapes her.

04-15-74: 2 Counts Rape First Degree. He forcefully raped 6 women strangers, was charged and convicted of two rapes.

04-30-82: Residential Burglary. He entered an apartment of a woman and removed panties, bras, bathing suit; dress from dresser drawers and spread them on her bed. He said to police he was her former boyfriend and he became sexually aroused in her bedroom and removed her under garments from the drawers to masturbate. He admitted to other acts of entering homes to look for female lingerie to use for masturbation purposes.

04-04-84: Criminal Trespass. At a hotel he was in the women's bathroom when an unsuspecting woman came into bathroom and used restroom. She saw his boots under stall door became alarmed.

07-17-87: Rape by Force, False Imprisonment, Oral Copulation, Sexual Penetration Foreign Object, Burglary, Assault with a Deadly Weapon and Attempted Murder. After the 22 year old female pulled into her garage and Mr. Force grabbed the victim around the neck. He took her into her house, put her on her bed face down, and tied her hands behind her with a scarf and placed a sock in her mouth. He tied a cloth around her eyes. He raped the victim. Her roommate arrived home and Mr. Force assaulted the victim's roommate by pounding her head against concrete walk. She suffered a fractured jaw and skull fracture. This assault resulted in the arrest and conviction for assault with a deadly weapon and attempted murder. The other charges and convictions pertained to the rape victim.

Answers to Example #7

The 07-17-87 is the Index Offense. He received a point for Any convictions for non-contact sex offenses for the 04-30-82 Residential Burglary.

Question Number	Risk Factor	Codes	Score
1	Young	Aged 25 or older Aged 18 – 24.99	**0** 1
2	Ever Lived With	Ever lived with lover for at least two years? Yes No	 0 **1**
3	Index non-sexual violence Convictions	No Yes	0 **1**
4	Prior non-sexual violence Convictions	No Yes	**0** 1
5	Prior Sex Offenses	Charges / Convictions None / None 1-2 / 1 3-5 / 2-3 6 + **(9)** / 4+ **(5)**	 0 1 2 **3**
6	Prior sentencing dates (excluding index)	3 or less 4 or more	0 **1**
7	Any convictions for non-contact sex offenses	No Yes	0 **1**
8	Any Unrelated Victims	No Yes	0 **1**
9	Any Stranger Victims	No Yes	0 **1**
10	Any Male Victims	No Yes	**0** 1
	Total Score	**Add up scores from individual risk factors**	**9**

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Improving Risk Assessments for Sex Offenders: A Comparison of Three Actuarial Scales

R. Karl Hanson[1] and David Thornton[2]

The study compared the predictive accuracy of three sex offender risk-assessment measures: the RRASOR (Hanson, 1997), Thornton's SACJ-Min (Grubin, 1998), and a new scale, Static-99, created by combining the items from the RRASOR and SACJ-Min. Predictive accuracy was tested using four diverse datasets drawn from Canada and the United Kingdom (total n *= 1301). The RRASOR and the SACJ-Min showed roughly equivalent predictive accuracy, and the combination of the two scales was more accurate than either original scale. Static-99 showed moderate predictive accuracy for both sexual recidivism (*r *= 0.33, ROC area = 0.71) and violent (including sexual) recidivism (*r *= 0.32, ROC area = 0.69). The variation in the predictive accuracy of Static-99 across the four samples was no more than would be expected by chance.*

The management of sex offenders within the criminal justice system can be substantially influenced by the offender's perceived risk for recidivism. Those sex offenders deemed high risk may be subject to substantial restrictions, such as postsentence detention, indeterminate sentences, and long-term community supervision. Conversely, sex offenders deemed to be low risk may be placed on probation and, if incarcerated, considered for early release.

Although many decisions require risk assessments, the procedures used for making such assessments often have limited validity. In general, the average predictive accuracy of professional judgment to predict sex offense recidivism is only slightly better than chance (average $r = 0.10$; Hanson & Bussière, 1998). Some researchers have even argued that the accuracy of prediction is sufficiently low that it threatens the very basis of risk-based legal sanctions for sex offenders (Janus & Meehl, 1997).

Recent research, however, has the potential of substantially improving the accuracy of recidivism risk assessments for sex offenders. Hanson and Bussière's

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(1998) meta-analytic review identified a number of risk factors that were associated reliably with sex offense recidivism. Most of these factors were static, historical variables related to sexual deviance (e.g., prior sex offenses, stranger victims) and general criminality (e.g., prior nonsex offenses, antisocial personality disorder). Several different actuarial risk instruments have also been developed to predict recidivism among sex offenders [e.g., Sex Offender Risk Appraisal Guide (SORAG), Quinsey, Harris, Rice, & Cormier, 1998; Minnesota Sex Offender Screening Tool–Revised (MnSOST-R), Epperson, Kaul & Hesselton, 1998; Rapid Risk Assessment for Sex Offense Recidivism (RRASOR), Hanson, 1997; Thornton's Structured Anchored Clinical Judgement (SACJ), Grubin, 1998]. These actuarial scales not only specify the items to consider, but also provide explicit direction as to the relative importance of each item. The items in the scales are similar, although the scales vary as to the relative weight accorded to the general factors of sexual deviance vs. antisociality.

The SORAG (Quinsey et al., 1998) is a variation of the Violence Risk Appraisal Guide (VRAG; Quinsey et al., 1998) for sex offenders. Like the VRAG, the SORAG was designed to assess any violent recidivism, not just sexual recidivism. It contains 15 items addressing early childhood behavior problems, alcohol problems, sexual and nonsexual criminal history, age, marital status, and personality disorders (with a large weight on psychopathy). The MnSOST-R was developed to predict sexual recidivism among rapists and extrafamilial child molesters. The MnSOST-R includes 16 items addressing sexual and nonsexual criminal history, the victim's age and relationship to the offender, substance abuse, unstable employment, age, and treatment history (Epperson et al., 1998). Both the RRASOR (Hanson, 1997) and SACJ (Grubin, 1998) were intended to be relatively brief screening instruments for predicting sex offense recidivism.

The purpose of the present study was to compare the predictive accuracy of two of these actuarial schemes: the RRASOR (Hanson, 1997) and the SACJ (see Grubin, 1998). Although rarely used in North America, the SACJ is routinely used in Her Majesty's Prison Service (England and Wales) and in many police departments in the United Kingdom. The SACJ contains items related to sexual deviance but also places considerable weight on nonsexual criminal history. The RRASOR, in contrast, almost exclusively targets factors related to sexual deviance. The RRASOR is widely used in Canada and the United States, being the most common risk assessment tool used in postsentence detention procedures (Doren, 1999). Given the different emphasis of the RRASOR and SACJ, one goal of the current study was to examine whether a simple combination of these two scales could improve on the predictive accuracy of either original scale.

Rapid Risk Assessment for Sex Offense Recidivism

The aim of the RRASOR (Hanson, 1997) was to predict sex offense recidivism using a small number of easily scored variables. The initial pool of seven items were those that correlated at least 0.11 with sex offense recidivism in Hanson and Bussière's (1998) meta-analysis and were commonly recorded: prior sex offenses, any prior nonsex offenses, any male victims, any stranger victims, any unrelated

victims, never married, and age less than 25 years. In order to identify the most efficient combination of these items, the correlations between these predictor variables were calculated in seven different datasets (total sample of 2592), and then averaged using standard meta-analytic techniques (Hedges & Olkin, 1985). Following a suggestion by Becker (1996), the averaged correlation matrix was then subjected to stepwise regression to identify the best predictor variables.

Of the original seven variables, four contributed substantially to the regression equation (beta >0.09): prior sex offenses, any unrelated victims, any male victims, and age less than 25 (see Table 1). The scale resulting from the simple combination of these four variables was then tested on an entirely new sample (HM Prison). Overall, the scale showed comparable predictive accuracy in both the development and validation samples (average r = 0.27; average ROC area = 0.71).

Structured Anchored Clinical Judgement

Unlike many actuarial tools, risks scores on the SACJ (Grubin, 1998) are not based on the simple summation of weighted items. Instead, it uses a stepwise approach. The first step classifies offenders into three risk categories (low, medium, and high) based on their official convictions. In the next steps, offenders can be reclassified (up or down) based on protective or aggravating factors. Each stage incorporates different types of information.

The first step considers the following five items: any current sexual offenses, any prior sex offenses, any current nonsexual violent offenses, any prior nonsexual violent offenses, and four or more prior sentencing occasions (see Table 1). If offenders have four or more of the initial factors, they are automatically considered high risk. If two or three factors are present, offenders are considered medium risk, and zero or one factor indicates low initial risk.

The second step considers the following eight items: any stranger victims, any male victims, never married, convictions for noncontact sex offenses (e.g., exhibitionism, obscene phone calls), substance abuse, placement in residential care as a child, deviant sexual arousal, and psychopathy. If two or more of these factors are present, then the offenders' initial risk level is increased one category (i.e., low to medium, or medium to high).

Table 1. Items in the RRASOR, SACJ-Min, and Static-99

RRASOR	SACJ-Min	Static-99
Male victims	Male victims	Male victims
	Never married	Never married
	Noncontact sex offenses	Noncontact sex offenses
Unrelated victims		Unrelated victims
	Stranger victims	Stranger victims
Prior sex offenses (3 points)	Current sex offense	Prior sex offenses (3 points)
	Prior sex offense	
	Current nonsexual violence	Current nonsexual violence
	Prior nonsexual violence	Prior nonsexual violence
	4+ sentencing dates	4+ sentencing dates
18–24.99 years		18–24.99 years

The SACJ was designed to be used even when there is missing data. The minimum information required is the step 1 variables and the first four variables from step 2 (strangers, males, single, noncontact offenses). This minimum set of items is called *SACJ-Min.*

The final step of the SACJ (step 3) considers information that is unlikely to be obtained except for sex offenders who enter treatment programs (e.g., treatment drop-out, improvement on dynamic risk factors). Because only the SACJ-Min has been subject to cross-validation, the final step of the SACJ is not considered further in this report.

The SACJ was developed through exploratory analyses on several UK datasets. The primary aim in scale development was the prediction of sexual recidivism, but the prediction of any violent recidivism was also a consideration. The SACJ-Min was then validated on an entirely new sample of approximately 500 sex offenders released from Her Majesty's Prison Service in 1979 (16-year follow-up on the complete cohort). This HM Prison sample included the 303 offenders originally used to validate the RRASOR. In the validation sample, the SACJ-Min correlated 0.34 with sex offense recidivism and 0.30 with any sexual or violent recidivism (Thornton, personal communication, February 10, 1999). The SACJ-Min has yet to be tested on samples from outside the United Kingdom.

Static-99

Preliminary analyses suggested that RRASOR and the SACJ-Min were assessing related but not identical constructs. Both scales contributed unique variance to regression equations when their total scores were used to predict sexual recidivism. Consequently, it was possible that a combination of the two scales would predict better than either original scale. A new scale was created by adding together the items from the RRASOR and SACJ-Min. The scale is called *Static-99* to indicate that it includes only static factors and that it is the 1999 version of a work in progress. The complete list of items is listed in Table 1 and the scoring criteria are given in Appendix I.

The risk scales (RRASOR, SACJ-Min, and Static-99) were compared in four diverse samples selected from Canada and the United Kingdom. Because the datasets were created independently, the variables were not identical in each sample. Any observed variability across samples could therefore be attributed to either variation in scoring procedures or differential validity across samples. However, if similar results are found across samples (despite minor differences in coding rules), then the scale would appear robust.

METHOD

Samples

The first three samples were, with minor modifications, the same samples used in the development of the RRASOR (see Table 2). The results reported here are

Table 2. Sample Characteristics

	Sample			
	Institut Philippe Pinel	Millbrook	Oak Ridge	HM Prison, England and Wales
Setting	Secure psychiatric	Provincial prison	Secure psychiatric	All prisoners released in 1979
Minimum sample size	344	191	142	531
Age at release (*SD*)	36.2 (10.9)	33.1 (9.9)	30.4 (9.5)	34.4 (12.7)
Child molesters (%)	70.4	100.0	49.3	60.7
Prior offenses				
Sexual (%)	50.5	41.9	31.8	34.0
Any (%)	58.1	72.0	67.7	74.9
Average years of follow-up	4	23	10	16
Recidivism criteria	Convictions	Convictions	Charges/ readmissions	Convictions
Recidivism rates				
Sexual only (%)	15.4	35.1	35.1	25.0
Any violent (%)	21.5	44.0	57.6	37.4

not identical to those reported in Hanson (1997) due to minor recoding of some variables (correcting coding errors, replacing missing data). The fourth sample (HM Prison) was not used in the development of either the RRASOR or SACJ, but a subsample of the HM Prison offenders were used as the validation sample for both risk scales. The HM Prison sample has the important feature of being an unbiased cohort of all the sex offenders released in the target year (1979). In contrast, the other samples primarily comprised sex offenders referred to assessment and/or treatment at particular institutions. The racial ethnicity of the samples was not recorded, but given the demographics of the provinces and countries from which they were selected, the samples can be expected to be predominantly white.

Institut Philippe Pinel (Montreal)

This study (Proulx, Pellerin, McKibben, Aubut, & Ouimet, 1995; see also Proulx, Pellerin, McKibben, Aubut, & Ouimet, 1997; Pellerin et al., 1996) focused on sexual offenders treated at a maximum security psychiatric facility between 1978 and 1993. The Institut Philippe Pinel provides long-term (1–3 years) treatment for sex offenders referred from both the mental health and correctional systems. Information concerning predictor variables was drawn from their clinical files and recidivism information from RCMP records collected in 1994.

Information was available on all the predictor variables except stranger victims and noncontact sex offences. As well, it was impossible to separate index and prior nonsexual violence because only the total number of charges for nonsexual violence were recorded. Similarly, the variable marking the total number of sex offense charges included index offenses. To estimate the number of prior sex offense convictions, the number of victims for the index offense was subtracted from the total number of charges.

Millbrook Recidivism Study

This study (Hanson, Steffy, & Gauthier, 1993b; see also Hanson, Scott, & Steffy, 1995; Hanson, Steffy, & Gauthier, 1992; Hanson, Steffy & Gauthier, 1993a) collected long-term recidivism information (15–30 years) for child molesters released between 1958 and 1974 from Millbrook Correctional Centre, a maximum security provincial correctional facility located in Ontario, Canada. About half of the sample went through a brief treatment program. For the treatment sample, the information concerning the predictors was collected from their clinical files, whereas for the remainder of the sample, the information was extracted from their correctional files. Recidivism information was coded from national records maintained by the Royal Canadian Mounted Police (RCMP).

Information was available on all the relevant predictor variables, except for convictions for noncontact sex offenses (missing for all cases). Information concerning stranger victims was available for the treatment sample only (n = 99). As well, the total number of prior convictions was used instead of the total number of prior sentencing dates.

Oak Ridge Division of the Penetanguishene Mental Health Centre

The Oak Ridge study (Rice & Harris, 1996; see also Quinsey, Rice, & Harris, 1995; Rice & Harris, 1997; Rice, Harris, & Quinsey, 1990; Rice, Quinsey, & Harris, 1991) followed sexual offenders referred for treatment and/or assessment between 1972 and 1993 to a maximum security mental health center located in Ontario, Canada. The majority of the referrals came from the mental health systems or the courts (e.g., pretrial fitness examinations), with a minority of cases coming from provincial or federal corrections. Follow-up information was based on RCMP records as well as mental health records (i.e., new admissions for sex offenses, regardless of whether new charges were laid).

Information was available for all the predictor variables with the following exceptions. Data for convictions for noncontact sex offense were not available for all cases. Data for relationship to victim were available only for the most serious offense. The dataset counted any male child victims rather than any male victims. The number of prior convictions was used instead of the number of prior sentencing dates. Finally, only the most serious index offense was recorded in the data set. Consequently, index convictions for nonsexual violence that was considered less serious than the index sex offense would not have been recorded.

Her Majesty's Prison Service (UK)

This study (Thornton, 1997) provided a 16-year follow-up of 563 sex offenders released from Her Majesty's Prison Service (England and Wales) in 1979. Recidivism information was based on Home Office records collected in 1995. Very few of the offenders in this sample would have received specialized sex offender treatment.

Information was available for all the relevant predictor variables. Data for previous sex offenses, however, were coded based on the offenders' previous sentencing occasions rather than the number of convictions or charges.

ANALYSIS

Measure of Predictive Accuracy

The area under the receiver operating characteristic (ROC) curve was used as the primary measure of predictive accuracy (Hanley & McNeil, 1982; Mossman, 1994; Rice & Harris, 1995). The ROC curve plots the hits (accurately identified recidivists) and false alarms at each level of the risk scale. The area under the ROC curve can range from 0.50 to 1.0, with 1.0 indicating perfect prediction (no overlap between recidivists and nonrecidivists) and 0.50 indicating prediction no better than chance. In general, the ROC area can be interpreted as the probability that a randomly selected recidivist would have a more deviant score than a randomly selected nonrecidivist. The ROC area has advantages over other commonly used measures of predictive accuracy (e.g., percentage agreement, correlation coefficients, RIOC) because it is not constrained by base rates or selection ratios (see Swets, 1986).

The correlation coefficient, *r,* is also presented to facilitate comparison with the results of other studies. For example, the average correlation between prior sex offenses and sex offense recidivism is 0.19 (95% Confidence Interval 0.17–0.21; Hanson & Bussière, 1998). To have utility in predicting long-term recidivism, risk scales must improve on this minimum standard.

Comparing Results

Standard meta-analytic procedures were used to compare results across studies (Hedges & Olkin, 1985; Hedges, 1994; McClish, 1992). Variability across studies was indexed by the Q statistic: $Q = \Sigma\ w_i\ (A_i - A.)^2$, where A_i is the ROC area for each sample, w_i is the weight for each sample (inverse of its variance $- SE^2$), and $A.$ is the weighted grand mean ($\Sigma w_i A_i / \Sigma w_i$). The Q statistic is distributed as χ^2 with degrees of freedom equal to $k - 1$, where k is the number of groups. The predictive accuracy of the risk scales was compared using the test of correlated ROC areas described by Hanley and McNeil (1983): $Z = (A_1 - A_2)/(SE_1^2 + SE_2^2 - 2rSE_1SE_2)^{1/2}$. The ROC statistics were computed using ROCKIT Version 0.9.1 (Metz, 1998).

Estimating Recidivism Rates

Applied risk assessments are often concerned about whether offenders have a specific probability of recidivism (e.g., >50%). Because recidivism rates are highly influenced by the length of the follow-up period, recidivism probabilities were estimated using survival analysis (Allison, 1984; Soothill & Gibbens, 1978). Survival analysis calculates the probability of recidivating for each time period given that the offender has not yet reoffended. Once offenders recidivate, they are removed from the analysis of subsequent time periods. Survival analysis has the advantage of being able to estimate year-by-year recidivism rates even when the follow-up periods vary across offenders. Readers should be aware, however, that the estimates

Table 3. Predictive Accuracy of RRASOR, SAC-J-Min, and Static-99 Across Samples (ROC Areas)

	Pinel	Millbrook	Oak Ridge	HM Prison 1979	Average *A.*	Average *Q*	Average Sample size
Sexual recidivism							
RRASOR	0.71	0.66	0.62	0.71	0.68	3.56	1225
SACJ-Min	0.66	0.61	0.63	0.74	0.69	7.89*	1301
Static-99	0.73	0.65	0.67	0.72	0.70	3.42	1228
Any violent recidivism							
RRASOR	0.65	0.67	0.60	0.65	0.65	1.17	1228
SACJ-Min	0.65	0.65	0.67	0.69	0.67	2.24	1304
Static-99	0.71	0.71	0.69	0.69	0.69	1.52	1231

*$p < 0.05$.

for the longest follow-up periods can be unstable if there are few offenders remaining in the later years.

RESULTS

As can be seen in Table 3, the predictive accuracy of the scales was relatively consistent across the samples. For both the RRASOR and Static-99, the amount of variability was no greater than would be expected by chance (all $p > 0.30$). The SACJ-Min, however, showed significant variability in the prediction of sexual recidivism ($Q = 7.89$, $df = 3$, $p < 0.05$). The SACJ-Min predicted sex offense recidivism best in HM Prison sample ($A = 0.74$) and worst in the Millbrook sample ($A = 0.61$).

The samples were combined to test directly the relative predictive accuracy of the RRASOR, SACJ-Min, and Static-99 (see Table 4). Only subjects who had complete data on all three risk scales were used in the combined sample (total $n = 1208$). The average values of the scales in the combined samples were as follows: RRASOR mean = 1.77, $SD = 1.29$; SACJ-Min, mean = 2.02, $SD = 0.76$; Static-99 mean = 3.15, $SD = 1.97$. The comparison of predictive accuracy of the

Table 4. Relative Predictive Accuracy of the RRASOR, SACJ-Min, and Static-99

	Combined ($n = 1208$)				ROC area	
	ROC area	95% CI	*r*	95% CI	Rapists ($n = 363$)	Child molesters ($n = 799$)
Sexual recidivism						
RRASOR	0.68	0.65–0.72	0.28	0.23–0.33	0.68	0.69
SACJ-Min	0.67	0.63–0.71	0.23	0.18–0.28	0.69	0.68
Static-99	0.71	0.68–0.74	0.33	0.28–0.38	0.71	0.72
Any violent recidivism						
RRASOR	0.64	0.60–0.67	0.22	0.16–0.27	0.64	0.66
SACJ-Min	0.64	0.61–0.68	0.22	0.16–0.27	0.62	0.66
Static-99	0.69	0.66–0.72	0.32	0.27–0.37	0.69	0.71

scales used the test for correlated ROC areas described by Hanley and McNeil (1983).

For the prediction of sex offense recidivism, Static-99 ($A = 0.71$) was more accurate than the RRASOR ($A = 0.68$, $Z = 2.38$, $p < 0.05$) or the SACJ-Min ($A = 0.67$, $Z = 2.84$, $p < 0.01$). The RRASOR and SACJ-Min predicted sex offense recidivism with similar levels of accuracy ($Z = 0.72$, $p > 0.40$). For the prediction of any violent recidivism (including sexual), Static-99 ($A = 0.69$) was more accurate than either the RRASOR ($A = 0.64$, $Z = 5.37$, $p < 0.001$) or SACJ-Min ($A = 0.64$, $Z = 3.84$, $p < 0.001$). The RRASOR and SACJ-Min did not differ in the accuracy with which they predicted violent recidivism ($Z = 0.35$, $p > 0.70$).

In order to test the generalizability of the scales across subgroups of sex offenders, the offenders were divided into those who victimized adult females (rapists, $n = 363$) and those who victimized children (child molesters, $n = 799$). The comparison of predictive accuracy across these groups used the test of uncorrelated ROC areas described by McClish (1992). All the scales showed similar predictive accuracy for both rapists and child molesters (all $Z < 1$, all $p > 0.30$).

As can be seen from Figs. 1 and 2, the recidivism rates were very similar in the Pinel, HM Prison, and Millbrook samples (for sexual recidivism, Survival $\chi^2 = 1.62$, $df = 2$, $p > 0.40$; for violent recidivism, Survival $\chi^2 = 0.65$, $df = 2$, $p > 0.70$). Survival dates were not available for the Oak Ridge sample. Given the similarity in the samples, the three datasets (Pinel, HM Prison, and Millbrook) were combined for the purpose of creating estimated recidivism rates.

The relationship between Static-99 scores and sexual recidivism is presented

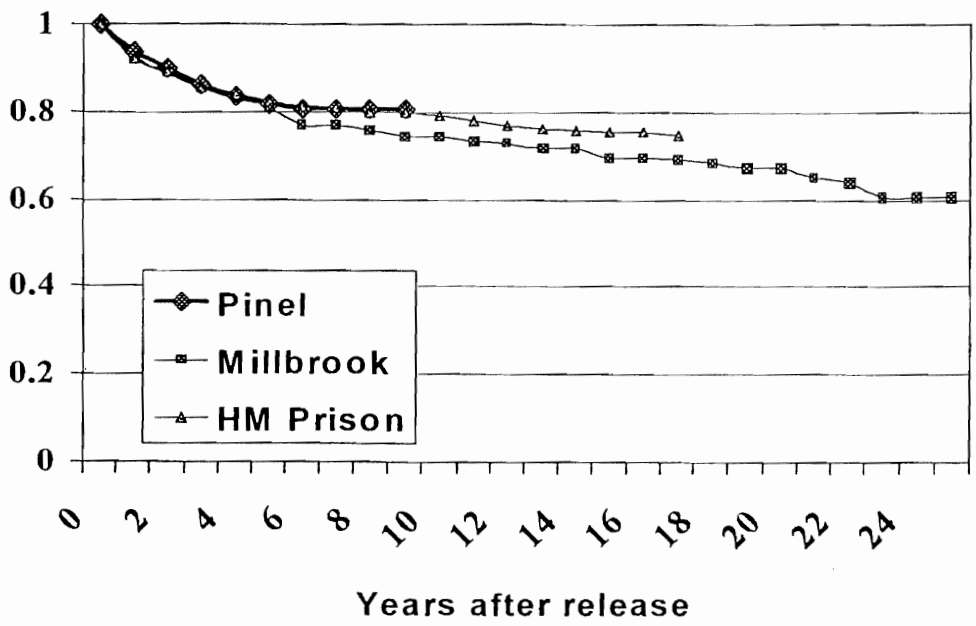

Fig. 1. Sex offense recidivism rates (survival curves) for offenders released from three institutions.

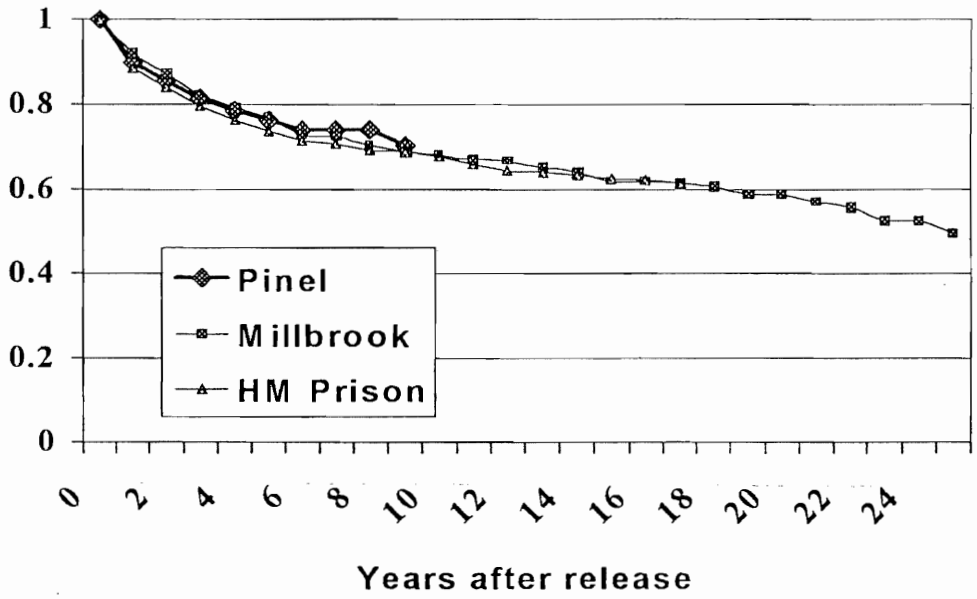

Fig. 2. Violent recidivism rates (survival curves) for offenders released from three institutions.

in Fig. 3. The Static-99 scores were categorized as low (0, 1; n = 257), medium-low (2, 3; n = 410), medium-high (4, 5; n = 290), and high (6+ n = 129). To minimize the influence of isolated, late recidivism events, the survival curves ended when there were fewer than 15 offenders exposed to risk for a particular year. The observed 5-, 10-, and 15-year recidivism rates are presented in Table 5. The rates up to 15 years should be reasonably reliable because all the offenders in the HM Prison and Millbrook samples were followed for at least 15 years.

Static-99 identified a substantial subsample (approximately 12%) of offenders whose long-term risk for sexual recidivism was greater than 50%. The recidivism rates for the minimum entrant into the high-risk category (score of 6) was 37%, 44%, and 51% after 5, 10, and 15 years, respectively, postrelease. Most of the offenders, however, were in the lower risk categories, with long-term recidivism risk of 10% to 20%.

As can be seen in Fig. 4, offenders with high scores on Static-99 were also at substantial risk for any violent recidivism (approximately 60% violent recidivism rate over 15 years). The violent recidivism rate (including sexual) for the minimum entrant into the high-risk category (score of 6) was 46%, 53%, and 60% over 5, 10, and 15 years, respectively. The violent recidivism rate of Static-99's low-risk category (0, 1) was 17% after 15 years.

DISCUSSION

The study compared the predictive accuracy of three sex offender risk assessment measures (RRASOR, SACJ-Min, and a combined scale, Static-99) across four

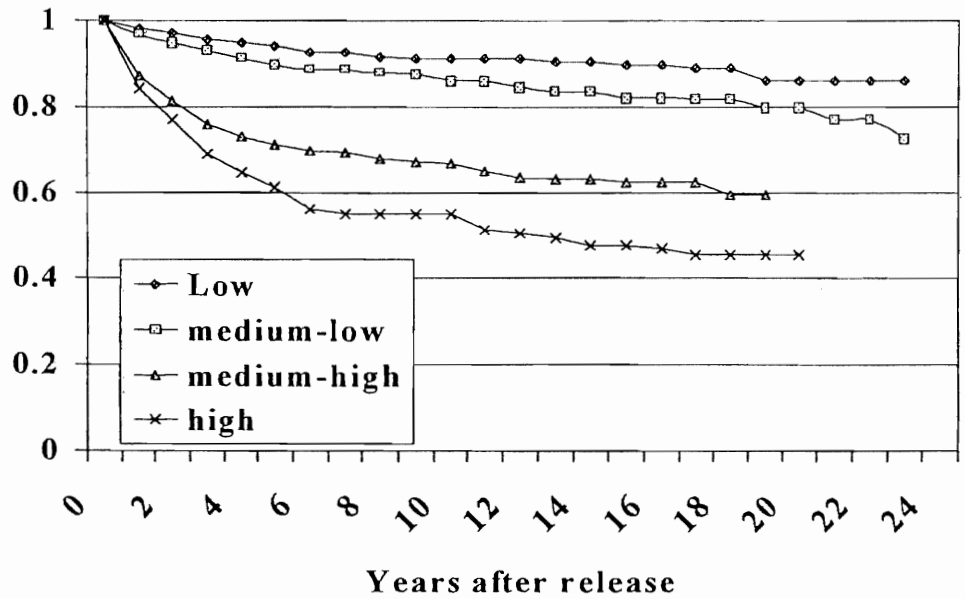

Fig. 3. The relationship of Static-99 scores to sexual recidivism.

datasets. The RRASOR and the SACJ-Min showed roughly equivalent predictive accuracy, and the combination of the two scales was more accurate than either original scale. The incremental improvement of Static-99, however, was relatively small. Static-99 showed moderate predictive accuracy for both sexual recidivism (r = 0.33, ROC area = 0.71) and violent (including sexual) recidivism (r = 0.32, ROC area = 0.69). The variation in the predictive accuracy of Static-99 across the four samples was no more than would be expected by chance.

If a risk scale is to be used in applied contexts, then it is important that the degree of predictive accuracy is sufficient to inform rather than mislead. Critics could suggest, for example, that a correlation in the 0.30 range is insufficient for decision making because it accounts for only 10% of the variance. Even if such an argument was correct (and many argue that it is not—see Ozer, 1985), most decision

Table 5. Recidivism Rates for Static-99 Risk Levels

		Sexual recidivism			Violent recidivism		
Static-99 score	Sample size	5 years	10 years	15 years	5 years	10 years	15 years
0	107 (10%)	0.05	0.11	0.13	0.06	0.12	0.15
1	150 (14%)	0.06	0.07	0.07	0.11	0.17	0.18
2	204 (19%)	0.09	0.13	0.16	0.17	0.25	0.30
3	206 (19%)	0.12	0.14	0.19	0.22	0.27	0.34
4	190 (18%)	0.26	0.31	0.36	0.36	0.44	0.52
5	100 (9%)	0.33	0.38	0.40	0.42	0.48	0.52
6+	129 (12%)	0.39	0.45	0.52	0.44	0.51	0.59
Average—3.2	1086 (100%)	0.18	0.22	0.26	0.25	0.32	0.37

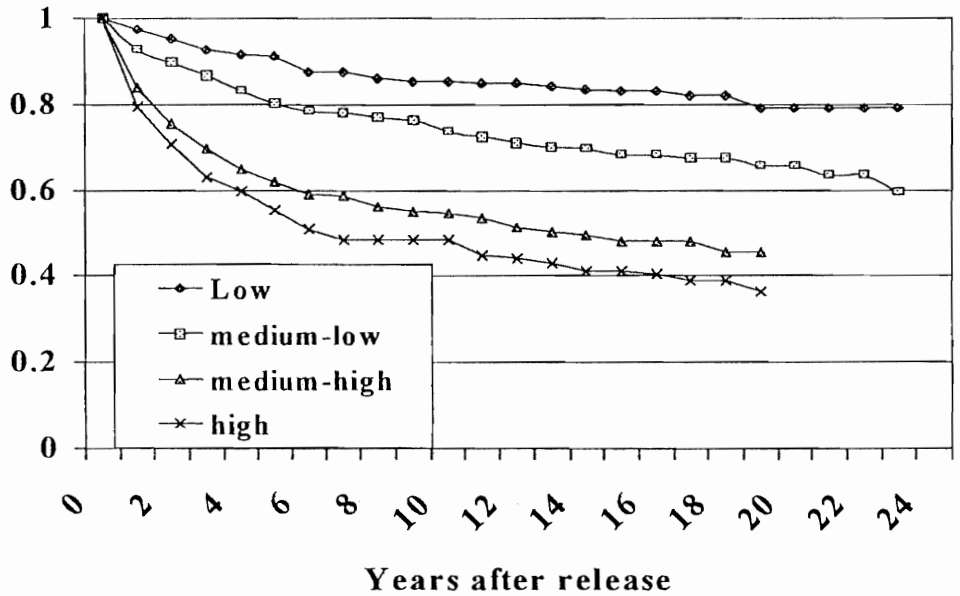

Fig. 4. The relationship of Static-99 scores to violent recidivism.

makers are not particularly concerned about "percent of variance accounted for." Instead, applied risk decisions typically hinge on whether offenders surpass a specified probability of recidivism (e.g., >50%).

Estimating absolute recidivism rates is a difficult task because many sex offenses go undetected (e.g., Bonta & Hanson, 1994). Observed recidivism rates (especially with short follow-up periods) are likely to substantially underestimate the actual recidivism rates. Nevertheless, Static-99 identified a substantial subsample of offenders (approximately 12%) whose observed sex offense recidivism rate was greater than 50%. At the other end, the scale identified another subsample whose observed recidivism rates was only 10% after 15 years. Differences of this magnitude should be of interest to many applied decision makers.

The similarity in the observed recidivism rates across the samples allows some confidence in conviction rate estimates provided by Static-99. The degree of similarity was remarkable considering that the studies were drawn from different countries, different language groups, different settings (i.e., prison, secure hospital), and different decades. All the studies for which survival data was available used official conviction as the outcome criteria. However, the Oak Ridge sample had a higher recidivism rate than the other three samples. Thirty-five percent of the Oak Ridge sample recidivated with a sex offense recidivism rate within 10 years, whereas only 25% of the HM Prison Service recidivated after a longer follow-up period (16 years). The Oak Ridge recidivism rates were relatively high because they used a broad recidivism criteria (arrests, readmissions) and they may have included particularly high-risk offenders. In support of the later hypothesis, Scheffé's *post hoc* tests found that the mean score on Static-99 was higher in the Oak Ridge sample (mean =

4.1) than in the other three samples (mean = 3.0). Whether recidivism rate differences would remain after controlling for preexisting risk levels could not be determined with the available data.

Another approach to judging a measure's predictive accuracy is to compare it to the available alternatives. For the prediction of sex offense recidivism, Static-99 is clearly more accurate ($r = 0.33$) than unstructured clinical judgment (average $r = 0.10$; Hanson & Bussière, 1998). The VRAG, one of best established risk assessment instruments, correlated only 0.20, with sex offense recidivism in a cross-replication (Rice & Harris, 1997). Quinsey et al. (1998) proposed a revision of the VRAG, for sexual offenders. In the Oak Ridge dataset, the SORAG and Static-99 predicted sex offense recidivism with similar levels of accuracy. Whether the SORAG shows equal accuracy in other datasets remains to be determined. The MnSOST-R appears to predict sex offense recidivism ($r = 0.45$) somewhat better than Static-99, but the Min-SOST has yet to be fully cross-validated (Epperson et al., 1998).

Although Static-99 was designed to predict sex offense recidivism, it also showed reasonable accuracy in the prediction of any violent recidivism among sex offenders ($r = 0.32$, ROC area = 0.69). In comparison, a recent meta-analysis found the average correlation between Hare's Psychopathy Checklist-Revised (PCL-R; Hare, 1991) and violent recidivism was 0.27 ($n = 1374$; Hemphill, Hare, & Wong, 1998). Static-99, however, may not be the instrument of choice when the goal is predicting any violent recidivism. The VRAG, for one, predicts any violent recidivism substantially better than the Static-99 ($r = 0.47$, ROC area = 0.77; in a cross-replication sample of 159 sex offenders; Rice & Harris, 1997). Nevertheless, Static-99 may be useful in settings that lack the time, resources, and/or information required to complete the VRAG.

Rater reliability for Static-99 could not be assessed directly in the current study because the scales were scored from existing datasets. An effort was made to promote rater reliability by selecting only clearly defined variables, but a certain amount of disagreement would be expected given the complexity of real cases. Evaluators wishing to minimize coding errors should study the coding rules in Appendix I and the corresponding RRASOR coding rules carefully (Phenix & Hanson, in press).

It is likely that actuarial risk scales can improve on Static-99 by including dynamic (changeable) risk factors as well as additional static variables. Many of the variables used in Static-99 can be grouped into general dimensions that are plausibly related to the risk of sex offense recidivism, such as sexual deviance, range of available victims, persistence (lack of deterrence or "habit strength"), antisociality, and age (young). Victimizing males, for example, has been correlated with deviant sexual preferences (Freund & Watson, 1991), and the willingness to victimize strangers indicates a wide range of potential victims. Deliberate efforts to create variables targeting these general risk dimensions has the promise of substantially improving the prediction of sex offense recidivism. Additional variables could include, for example, repetitive victim choice (same age and sex) as a marker for sexual deviance (see Freund & Watson, 1991), or early onset of sex offending as a marker of "persistence."

The inclusion of dynamic factors would likely increase the scale's predictive

accuracy (Hanson & Harris, 1998, in press). Among nonsexual criminals, dynamic variables predict recidivism as well as or better than static variables (Gendreau, Little, & Goggin, 1996). The research on dynamic factors related to sex offending is not well developed, but some plausible dynamic risk factors include intimacy deficits (Saidman, Marshall, Hudson, & Robertson, 1994), sexualization of negative affect (Cortoni, 1998), attitudes tolerant of sexual assault (Hanson & Harris, 1998), emotional identification with children (Wilson, 1999), treatment failure, and noncooperation with supervision (Hanson & Harris, 1998).

Use of Static-99 in Sex Offender Risk Assessments

Static-99 is intended to be a measure of long-term risk potential. Given its lack of dynamic factors, it cannot be used to select treatment targets, measure change, evaluated whether offenders have benefited from treatment, or predict when (or under what circumstances) sex offenders are likely to recidivate.

There are several different ways in which empirically derived risk scales can be used in clinical assessments. Quinsey et al. (1998) argue for a pure actuarial approach: risk predictions are those provided by the actuarial scale with no allowances for other factors. They argue that clinical judgment is so much inferior to actuarial methods that any consideration of clinical judgment simply dilutes predictive accuracy.

Their position is plausible and likely true in many situations. When actuarial tools are available, they have generally proved more accurate than clinical judgment (Grove & Meehl, 1996). The prediction of sexual recidivism is no exception (Hanson & Bussière, 1998). Critics of pure actuarial prediction, however, argue that the existing scales fail to consider all relevant risk factors. Consequently, many evaluators conduct clinically adjusted actuarial predictions in which the actuarial predictions are adjusted up or down based on external factors.

Static-99 does not claim to provide a comprehensive assessment, for it neglects whole categories of potentially relevant variables (e.g., dynamic factors). Consequently, prudent evaluators would want to consider whether there are external factors that warrant adjusting the initial score or special features that limit the applicability of the scale (e.g., a debilitating disease or stated intentions to reoffend). Given the poor track record of clinical prediction, however, adjustments to actuarial predictions require strong justifications. In most cases, the optimal adjustment would be expected to be minor or none at all.

The Structured Risk Assessment (SRA) framework developed by David Thornton is one example of a structured approach to combining actuarial risk scales with other empirically based risk factors. The current version of SRA uses Static-99 as the first step in risk assessment. The second step uses the offenders' functioning on dynamic risk factors to revise this initial classification. Medium-risk cases are reclassified up as high risk if their functioning is psychologically similar to high-risk offenders, and it is reclassified down to lower risk if their functioning is psychologically similar to low-risk offenders. The third step uses information devised from response to treatment. The fourth step considers the offenders' typical offense pattern in conjunction with situational risk factors. This kind of system reflects the

complexity of the real situations in which risk assessment takes place. At each stage, the system is empirically based, becoming actuarial where practical and elsewhere using lesser, although still credible, forms of evidence (bivariate analyses, retrospective analyses, etc.). Two recent prospective studies (Allam, 1998; Clark, 1999, personal communication) found that the key dynamic components of the SRA improved on assessments using solely static factors.

Although Static-99 can differentiate meaningfully between sex offenders with higher or lower probabilities of recidivism, the labels used to describe the various risk levels (low, medium-low, medium-high, high) do not reflect any absolute standard of risk. The standard of tolerable risk depends on the context of the assessment. An offender with a 10% chance of sexual recidivism over 15 years may be a good candidate for conditional release (i.e., "low" risk), but an unacceptably high risk for holding positions of trust over children.

CONCLUSION

The present study is part of growing body of research supporting empirically based risk prediction for sexual offenders. No risk prediction scheme will be entirely accurate, and the measures described in this article are far from perfect. Nevertheless, the current results are a serious challenge to sceptics who claim that sexual recidivism cannot be predicted with sufficient accuracy to be worthy of consideration in applied contexts. The value of unstructured clinical opinion can be questioned, but there is sufficient evidence to indicate that empirically based risk assessments can meaningfully predict the risk for sexual offence recidivism. It is up to future researchers and clinicians to build on the foundations that have already been established.

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APPENDIX I
Coding Rules for Static-99

Risk factor	Codes		Score
Prior sex offenses (same rules as in PRASOR)[a]	Charges	Convictions	
	None	None	0
	1–2	1	1
	3–5	2–3	2
	6+	4+	3

Prior sentencing dates (excluding index)[b]	3 or less	0
	4 or more	1
Any convictions for noncontact sex offenses[c]	No	0
	Yes	1
Index nonsexual violence[d]	No	0
	Yes	1
Prior nonsexual violence[e]	No	0
	Yes	1
Any unrelated victims[f]	No	0
	Yes	1
Any stranger victims[g]	No	0
	Yes	1
Any male victims[h]	No	0
	Yes	1
Young[i]	Age 25 or older	0
	Age 18–24.99	1
Single[j]	Ever lived with lover for at least 2 years?	
	Yes	0
	No	1
Total score	Add up scores from individual risk factors	

Notes. Static-99 is intended for males aged at least 18 who are known to have committed at least one sex offense involving a child or a nonconsenting adult. It is not recommended for men convicted only of prostitution, pornography, or public toileting offenses.

[a]Count only officially recorded offenses. These could include (1) arrests and charges, (2) convictions, (3) institutional rules violations, and (4) probation, parole, or conditional release violations arising from sexual assault, sexual abuse, sexual misconduct, or violence engaged in for sexual gratification. Prostitution and pornography offenses would count, provided that the offender has at least one sexual offense against a nonconsenting victim. Count only those prison or community supervision violations that would normally have resulted in a charge for a sexual offense if the offender had not already been under legal sanction. Do not count violations for sexual behavior that is a crime only because the offender is under legal sanction (e.g., failure to register as a sex offender, possession of legal pornography).

Nonsexual charges or convictions resulting from sexual behavior are counted as sexual offenses (e.g., voyeur convicted of trespass by night). When the offense behavior was sexual but resulted in a conviction for a violent offense (e.g., assult, murder), then the offender is considered to have committed both a sexual and nonsexual violent offenses and could receive points for both items.

Count only the number of sexual convictions or charges prior to the index offense. Do not count the sex offenses included in the most recent court appearance. Institutional rule violations and conditional release violations count as one charge. Use either charges or convictions, whichever indicates the higher risk. More detailed examples of scoring prior sex offenses are given in the RRASOR scoring guidelines (Phenix & Hanson, in press).

[b]Count the number of distinct occasions on which the offender has been sentenced for criminal offenses of any kind. The number of charges/convictions does not matter; only the number of sentencing dates. Court appearances that resulted in complete acquittal are not counted, nor is the index sentencing date.

[c]This category includes convictions for noncontact sexual offenses, such as exhibitionism, possessing obscene material, obscene telephone calls, and voyeurism. Self-reported offenses do not count in this category. The index offense does count.

[d]Refers to convictions for nonsexual assault that are dealt with on the same sentencing occasion as the index sex offense. These convictions can involve the same victim as the index sex offense or they can involve a different victim. All nonsexual violence convictions are included providing they were dealt with on the same sentencing occasion as the index sex offenses. Example offenses would include murder, wounding, assault causing bodily harm, assault, robbery, pointing a firearm, arson, and threatening.

[e]This category includes any conviction for nonsexual violence prior to the index sentencing occasion.

The previous items (*a–e* 1–5; prior offenses) are based on official records. The following items (*f–j*) are based on all available information, including self-report, victim accounts, and collateral contacts. Information based solely on polygraph testing (lie detector) would not count without corroborating evidence.

[f]A related victim is one for whom the relationship would be sufficiently close that marriage would normally be prohibited, such as parent, uncle, grandparent, or stepsister.

[g]A victim is considered to be a stranger if the victim did not know the offender 24 hours before the offense.
[h]Included in this category are all sexual offenses involving male victims. Possession of child pornography involving boys, however, would not count in this category. Indecent exposure to a group of boys and girls would not count unless it was clear that the offender was specifically targeting the boys.
[i]This item refers to the offender's age at the time of the risk assessment. If the assessment concerns the offender's current risk level, it would be his current age. If the assessment concerns an anticipated exposure to risk (e.g., release, reduced security at some future date), the relevant age would be his age when exposed to risk. Static-99 is not intended for those who are less than 18 years old at the time of exposure to risk.
[j]The offender is considered single if he has not lived with a lover (male or female) for at least 2 years. Legal marriages involving less than 2 years of cohabitation do not count.

Translating Static-99 Scores into Risk Categories

Score	Label for Risk Category
0, 1	Low
2, 3	Medium-low
4, 5	Medium-high
6+	High

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Effective: September 30, 2006

West's Annotated California Codes Currentness
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→ § 1202.8. Probation; supervision by county officer; assessment and electronic monitoring of sex offenders; report on monitoring of offenders

(a) Persons placed on probation by a court shall be under the supervision of the county probation officer who shall determine both the level and type of supervision consistent with the court-ordered conditions of probation.

(b) Commencing January 1, 2009, every person who has been assessed with the State Authorized Risk Assessment Tool for Sex Offenders (SARATSO) pursuant to Sections 290.04 to290.06, inclusive, and who has a SARATSO risk level of high shall be continuously electronically monitored while on probation, unless the court determines that such monitoring is unnecessary for a particular person. The monitoring device used for these purposes shall be identified as one that employs the latest available proven effective monitoring technology. Nothing in this section prohibits probation authorities from using electronic monitoring technology pursuant to any other provision of law.

(c) Within 30 days of a court making an order to provide restitution to a victim or to the Restitution Fund, the probation officer shall establish an account into which any restitution payments that are not deposited into the Restitution Fund shall be deposited.

(d) Beginning January 1, 2009, and every two years thereafter, each probation department shall report to the Corrections Standard Authority all relevant statistics and relevant information regarding on the effectiveness of continuous electronic monitoring of offenders pursuant to subdivision (b). The report shall include the costs of monitoring and the recidivism rates of those persons who have been monitored. The Corrections Standard Authority shall compile the reports and submit a single report to the Legislature and the Governor every two years through 2017.

CREDIT(S)

(Added by Stats.1981, c. 1142, § 6.5. Amended by Stats.1986, c. 47, § 2; Stats.1996, c. 629 (S.B.1685), § 4; Stats.2006, c. 336 (S.B.1178), § 4, eff. Sept. 20, 2006; Stats.2006, c. 886 (A.B.1849), § 5, eff. Sept. 30, 2006.)

HISTORICAL AND STATUTORY NOTES

2008 Electronic Update

2006 Legislation

Stats.2006, c. 336 (S.B.1178), added subds. (b) and (d); and redesignated former subd. (b) as subd. (c).

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The 2006 amendment of this section by c. 886 explicitly amended the 2006 amendment of this section by c. 337.

Sections 8 to 11 of Stats.2006, c. 886 (A.B.1849), provide:

"SEC. 8. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

"SEC. 9. This bill shall only become operative if Senate Bill 1128 [c. 337] of the 2005-06 Regular Session is also enacted and becomes effective on or before January 1, 2007.

"SEC. 10. Sections 1, 2, 3, 5, and 6 of this act shall become operative only if Senate Bill No. 1178 [c. 336] is also enacted and this act is enacted after Senate Bill 1178 [c. 336].

"SEC. 11. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

"In order to ensure the public safety of California families and their children and to ensure that the Megan's Law database provides adequate information about registered sex offenders living in California, it is necessary that this act take effect immediately."

2004 Main Volume

The 1986 amendment substituted "both the level and type of supervision consistent with the court-ordered conditions of probation" for "the level of supervision".

The 1996 amendment designated the existing section as subd. (a); and added subd. (b) authorizing probation officers to establish an account for restitution payments not deposited into the Restitution Fund.

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CROSS REFERENCES

"Probation" defined for purposes of this Code, see Penal Code § 1203.

LAW REVIEW AND JOURNAL COMMENTARIES

Good for more than just driving directions: GPS helps protect Californians from recidivist sex offenders. R. Brooks Whitehead, 38 McGeorge L. Rev. 265 (2007).

The interstate compact for adult offender supervision: Parolee and probationer supervision enters the twenty-first century. James G. Gentry, 32 McGeorge L.Rev. 533 (2001).

Lost in probation: Contrasting the treatment of probationary search agreements in California and federal courts. Marc R. Lewis, 51 UCLA L. Rev. 1703 (2004).

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Westlaw Topic No. 350H.
C.J.S. Criminal Law §§ 1556, 1559, 1771 to 1786.

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CA Jur. 3d Criminal Law: Post-Trial Proceedings § 390, Evaluation and Hearing Prior to Grant of Probation for Specified Sexual Offenders.

CA Jur. 3d Criminal Law: Post-Trial Proceedings § 432, Determination of Amount and Manner of Payment; Interest.

Treatises and Practice Aids

3 Witkin Cal. Crim. L. 3d Punishment § 189, Collection of Information.

3 Witkin Cal. Crim. L. 3d Punishment § 504, (S 504) Supervision of Probationer.

3 Witkin Cal. Crim. L. 3d Punishment § 549, (S 549) Statutory Requirements.

NOTES OF DECISIONS

Discretion of court 1
Probation conditions 2

1. Discretion of court

Trial court has broad discretion to determine probation conditions. People v. Kwizera (App. 4 Dist. 2000) 93 Cal.Rptr.2d 522, 78 Cal.App.4th 1238, review denied. Sentencing And Punishment 1962

2. Probation conditions

A condition of probation will not be held invalid unless it (1) has no relationship to the crime of which the defendant was convicted, (2) relates to conduct which is not in itself criminal, (3) requires or forbids conduct which is not reasonably related to future criminality. People v. Kwizera (App. 4 Dist. 2000) 93 Cal.Rptr.2d 522, 78 Cal.App.4th 1238, review denied. Sentencing And Punishment 1963

Condition of probation which requires or forbids conduct which is not itself criminal is valid if that conduct is reasonably related to the crime of which the defendant was convicted or to future criminality. People v. Kwizera (App. 4 Dist. 2000) 93 Cal.Rptr.2d 522, 78 Cal.App.4th 1238, review denied. Sentencing And Punishment 1963

Probation condition must be reasonable in relation to the seriousness of the offense. People v. Kwizera (App. 4 Dist. 2000) 93 Cal.Rptr.2d 522, 78 Cal.App.4th 1238, review denied. Sentencing And Punishment 1963

Condition of probation, requiring that defendant "follow such course of conduct as the probation officer prescribes," was reasonable and necessary to enable probation department to supervise compliance with specific conditions of probation. People v. Kwizera (App. 4 Dist. 2000) 93 Cal.Rptr.2d 522, 78 Cal.App.4th 1238, review denied. Sentencing And Punishment 1969(2)

West's Ann. Cal. Penal Code § 1202.8, CA PENAL § 1202.8

Current with urgency legislation through Ch. 266 of 2008 Reg.Sess. and Ch. 7 of 2007-2008 Third Ex.Sess., and Prop. 99

END OF DOCUMENT

➡ § 1202.8. Probation; supervision by county officer; assessment and electronic monitoring of sex offenders; report on monitoring of offenders

(a) Persons placed on probation by a court shall be under the supervision of the county probation officer who shall determine both the level and type of supervision consistent with the court-ordered conditions of probation.

(b) Commencing January 1, 2009, every person who has been assessed with the State Authorized Risk Assessment Tool for Sex Offenders (SARATSO) pursuant to Sections 290.04 to290.06, inclusive, and who has a SARATSO risk level of high shall be continuously electronically monitored while on probation, unless the court determines that such monitoring is unnecessary for a particular person. The monitoring device used for these purposes shall be identified as one that employs the latest available proven effective monitoring technology. Nothing in this section prohibits probation authorities from using electronic monitoring technology pursuant to any other provision of law.

(c) Within 30 days of a court making an order to provide restitution to a victim or to the Restitution Fund, the probation officer shall establish an account into which any restitution payments that are not deposited into the Restitution Fund shall be deposited.

(d) Beginning January 1, 2009, and every two years thereafter, each probation department shall report to the Corrections Standard Authority all relevant statistics and relevant information regarding on the effectiveness of continuous electronic monitoring of offenders pursuant to subdivision (b). The report shall include the costs of monitoring and the recidivism rates of those persons who have been monitored. The Corrections Standard Authority shall compile the reports and submit a single report to the Legislature and the Governor every two years through 2017.

CREDIT(S)

(Added by Stats.1981, c. 1142, § 6.5. Amended by Stats.1986, c. 47, § 2; Stats.1996, c. 629 (S.B.1685), § 4; Stats.2006, c. 336 (S.B.1178), § 4, eff. Sept. 20, 2006; Stats.2006, c. 886 (A.B.1849), § 5, eff. Sept. 30, 2006.)

HISTORICAL AND STATUTORY NOTES

2008 Electronic Update

2006 Legislation

Stats.2006, c. 336 (S.B.1178), added subds. (b) and (d); and redesignated former subd. (b) as subd. (c).

For reimbursement and urgency effective provisions relating to Stats.2006, c. 336 (S.B.1178), see Historical and Statutory Notes under Penal Code § 290.04.

Stats.2006, c. 886 (A.B.1849), rewrote subds. (b) and (d), which had read:

"(b) Commencing July 1, 2008, every adult male who is convicted of an offense that requires him to register as a sex offender pursuant to Section 290 shall be assessed for the risk of reoffending consistent with Section 290.06. The assessment shall be performed by a probation officer who has been trained pursuant to Section 290.05. Every adult male who has a risk assessment of high shall be continuously electronically monitored while on probation, unless the court determines that such monitoring is unnecessary for a particular person. The monitoring device used for these purposes shall be identified as one that employs the latest available proven effective monitoring technology. Nothing in this section prohibits probation authorities from using electronic monitoring technology pursuant to any other provision

of law."

"(d) Beginning January 1, 2009, each probation department shall report every two years to the Legislature and to the Governor on the effectiveness of continuous electronic monitoring of offenders pursuant to subdivision (b). The report shall include the costs of monitoring and the recidivism rates of those persons who have been monitored."

The 2006 amendment of this section by c. 886 explicitly amended the 2006 amendment of this section by c. 337.

Sections 8 to 11 of Stats.2006, c. 886 (A.B.1849), provide:

"SEC. 8. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

"SEC. 9. This bill shall only become operative if Senate Bill 1128 [c. 337] of the 2005-06 Regular Session is also enacted and becomes effective on or before January 1, 2007.

"SEC. 10. Sections 1, 2, 3, 5, and 6 of this act shall become operative only if Senate Bill No. 1178 [c. 336] is also enacted and this act is enacted after Senate Bill 1178 [c. 336].

"SEC. 11. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

"In order to ensure the public safety of California families and their children and to ensure that the Megan's Law database provides adequate information about registered sex offenders living in California, it is necessary that this act take effect immediately."

2004 Main Volume

The 1986 amendment substituted "both the level and type of supervision consistent with the court-ordered conditions of probation" for "the level of supervision".

The 1996 amendment designated the existing section as subd. (a); and added subd. (b) authorizing probation officers to establish an account for restitution payments not deposited into the Restitution Fund.

For provisions of Stats.1996, c. 629 (S.B.1685), requiring the Judicial Council to undertake certain measures to ensure that restitution is ordered in every case as required by law, see Historical and Statutory Notes under Penal Code § 155.5.

CROSS REFERENCES

"Probation" defined for purposes of this Code, see Penal Code § 1203.

Effective: October 13, 2007

West's Annotated California Codes Currentness
Penal Code (Refs & Annos)
Part 2. Of Criminal Procedure (Refs & Annos)
Title 8. Of Judgment and Execution
Chapter 1. The Judgment (Refs & Annos)
§ 1202.7. Probation; legislative findings, declarations and intent; primary considerations in granting

The Legislature finds and declares that the provision of probation services is an essential element in the administration of criminal justice. The safety of the public, which shall be a primary goal through the enforcement of court-ordered conditions of probation; the nature of the offense; the interests of justice, including punishment, reintegration of the offender into the community, and enforcement of conditions of probation; the loss to the victim; and the needs of the defendant shall be the primary considerations in the granting of probation. It is the intent of the Legislature that efforts be made with respect to persons who are subject to Section 290.011 who are on probation to engage them in treatment.

CREDIT(S)

(Added by Stats.1981, c. 1142, § 6. Amended by Stats.1986, c. 47, § 1; Stats.2001, c. 485 (A.B.1004), § 2; Stats.2007, c. 579 (S.B.172), § 42, eff. Oct. 13, 2007.)

HISTORICAL AND STATUTORY NOTES

2008 Electronic Update

2007 Legislation

Stats.2007, c. 579 (S.B.172), substituted "Section 290.011" for "subparagraph (C) of paragraph (1) of subdivision (a) of Section 290".

For legislative intent and urgency effective provisions relating to Stats.2007, c. 579 (S.B.172), see Historical and Statutory Notes under Penal Code § 290.

2004 Main Volume

The 1986 amendment rewrote the second sentence, which formerly read: "The safety of the public, the nature of the offense, the interests of justice, the loss to the victim, and the needs of the defendant shall be primary considerations in the granting of probation."

Stats.2001, c. 485 (A.B.1004), added the third sentence concerning sex offenders under Section 290.

CROSS REFERENCES

"Probation" defined for purposes of this Code, see Penal Code § 1203.

LAW REVIEW AND JOURNAL COMMENTARIES

Juvenile court dispositional alternatives: Imposing a defense duty. John L. Roche, 27 Santa Clara L.Rev. 279 (1987).

Lost in probation: Contrasting the treatment of probationary search agreements in California and federal courts. Marc R. Lewis, 51 UCLA L. Rev. 1703 (2004).

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Westlaw Topic No. 350H.
C.J.S. Criminal Law §§ 1460, 1472, 1477, 1479, 1492 to 1495, 1530, 1549 to 1550, 1552 to 1555.

RESEARCH REFERENCES

Encyclopedias

CA Jur. 3d Criminal Law: Post-Trial Proceedings § 391, Court's Discretion to Grant or Deny Probation.

CA Jur. 3d Criminal Law: Post-Trial Proceedings § 392, Criteria Affecting Decision to Grant or Deny Probation.

CA Jur. 3d Criminal Law: Post-Trial Proceedings § 399, Discretion of Court.

Treatises and Practice Aids

3 Witkin Cal. Crim. L. 3d Punishment § 250, (S 250) Commitment of Vietnam Veteran to Federal Institution.

3 Witkin Cal. Crim. L. 3d Punishment § 502, (S 502) Nature and Purpose.

NOTES OF DECISIONS

1. Discretion of court

The sentencing court has broad discretion to determine whether an eligible defendant is suitable for probation and, if

so, under what conditions. People v. Orabuena (App. 6 Dist. 2004) 10 Cal.Rptr.3d 99, 116 Cal.App.4th 84, as modified. Sentencing And Punishment 1802

Although the trial court's probation discretion is broad, it is not without limits; a condition of probation must serve a purpose specified in the statute. People v. Orabuena (App. 6 Dist. 2004) 10 Cal.Rptr.3d 99, 116 Cal.App.4th 84, as modified. Sentencing And Punishment 1962

As with any exercise of discretion, sentencing court violates standard for granting or denying probation when its determination is arbitrary or capricious or exceeds the bounds of reason, all of the circumstances being considered. People v. Orabuena (App. 6 Dist. 2004) 10 Cal.Rptr.3d 99, 116 Cal.App.4th 84, as modified. Sentencing And Punishment 1802

2. Factors considered

In granting probation, the primary considerations are the nature of the offense, the interests of justice, including punishment, reintegration of the offender into the community, and enforcement of conditions of probation, the loss to the victim, and the needs of the defendant. People v. Orabuena (App. 6 Dist. 2004) 10 Cal.Rptr.3d 99, 116 Cal.App.4th 84, as modified. Sentencing And Punishment 1830

3. Public safety

Probation is generally reserved for convicted criminals whose conditional release into society poses minimal risk to public safety and promotes rehabilitation. People v. Welch (1993) 19 Cal.Rptr.2d 520, 5 Cal.4th 228, 851 P.2d 802. Sentencing And Punishment 1832; Sentencing And Punishment 1833

West's Ann. Cal. Penal Code § 1202.7, CA PENAL § 1202.7

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END OF DOCUMENT

CALIFORNIA DEPARTMENT OF
Mental Health

1600 9th Street, Sacramento, CA 95814
(916) 654-2309

February 1, 2008

SUBJECT: SARATSO (State Authorized Risk Assessment Tool for Sex Offenders) Review Committee Notification

Senate Bill 1128, Alquist (Chapter 337, Statutes of 2006) established the state committee, known as the SARATSO (State Authorized Risk Assessment Tool for Sex Offenders) Review Committee, to consider the selection of the risk assessment tools for California. (Pen. Code, 290.04) This Committee has three representatives appointed from the Department of Mental Health (DMH), the Attorney General's office, and the California Department of Corrections and Rehabilitation (CDCR). One mandate of the committee is to select a state risk assessment tool for juvenile sex offenders, female offenders and adult offenders, if an appropriate tool is available and approved by the committee. To that end, the Committee has heard testimony from several experts who have authored risk assessment tools. The Committee has considered all testimony and reviewed the presentations in concert with the associated requirements established by statute.

For adults, the Committee has selected the Static-99 designed and cross-validated by Dr. Karl Hanson and Dr. David Thornton. This instrument is currently in use by CDCR as a tool to designate a parolee as a High Risk Sex Offender (HRSO). This instrument will become the only statewide risk assessment tool for adult males, which is mandated to be used by CDCR to assess every eligible inmate prior to parole and every eligible inmate on parole. This tool is further mandated for use by DMH to assess every eligible individual prior to release and by Probation for every eligible individual for whom there is a probation report. (Pen. Code, § 290.06)

For juveniles the Committee has selected the J-SORAT II designed and cross-validated by Dr. Douglas Epperson. This instrument will become the only state-authorized risk assessment tool for juveniles, which is mandated to be used by probation when assessing a juvenile sex offender at adjudication, and by CDCR/DJJ both prior to release from DJJ and while on supervision. (Pen. Code, §290.06.)

For female offenders the Committee has found that there currently is no risk assessment tool for this population that has been scientifically researched and validated. Therefore, the Committee does not have a recommendation

Implementation and Training:

On July 1, 2008 the Static-99 is mandated for use by the DMH, CDCR Parole and County Probation. Training-for-Trainers sessions will take place in the Winter/Spring of 2008.

This training shall be conducted by experts in the field of risk assessment and the use of actuarial instruments in predicting sex offender risk. Subject to requirements established by the committee, CDCR, DMH, County Probation Departments, and authorized local law enforcement agencies shall designate the appropriate persons within their organizations to attend training and, as authorized by the department, to train others within their organizations. Any person who administers the SARATSO shall receive training no less frequently than every two years.

The time factor is immediate. All agencies need to be fully trained for the July 1, 2008 implementation date.

If you have any questions or comments about the decisions of the Committee, please contact Kimberly Anderson, M.A. at (916) 651-2067 or by email at kimberly.anderson@dmh.ca.gov

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

IN RE TEST CLAIM ON: Penal Code Sections 1000.93, 1000.94 and 1000.95; Penal Code Sections 273.5, Subdivisions (e), (f), (g), (h), and (i); and Penal Code Section 1203.097; As Repealed, Added or Amended by Statutes of 1992, Chapters 183 and 184; Statutes of 1994, Chapter 28X; and Statutes of 1995, Chapter 641; And filed on November 13, 1996; By County of Los Angeles, Claimant.	NO. CSM-9628101 *Domestic Violence Treatment Services - Authorization and Case Management* ADOPTION OF PARAMETERS AND GUIDELINES PURSUANT TO GOVERNMENT CODE SECTION 17557 AND TITLE 2, CALIFORNIA CODE OF REGULATIONS, SECTIONS 1183.12. (Adopted on November 30, 1998)

ADOPTED PARAMETERS & GUIDELINES

The attached Parameters & Guidelines of the Commission on State Mandates is hereby adopted in the above-entitled matter.

This Decision shall become effective on December 8, 1998.

Paula Higashi, Executive Director

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Adopted: November 30, 1998

Parameters and Guidelines

Penal Code Sections 1000.93, 1000.94 and 1000.95
Penal Code Sections 273 .5, subdivisions (e), (f), (g), (h) and (i)
Penal Code Section 1203.097
As Repealed, Added or Amended by Chapters 183/92, 184/92, 28X/94, 641195
Domestic Violence Treatment Services — Authorization and Case Management

I. Summary and Source of the Mandate

The test claim legislation provides that if an accused is convicted of a domestic violence crime and granted probation as part of sentencing, the defendant is required to successfully complete a batterer's treatment program as a condition of probation.

The Commission determined that probation *is a penalty* for conviction of a crime. The successful completion of probation is required before the unconditional release of the defendant. If the defendant fails to successfully complete a batterer's treatment program, the test claim legislation subjects the defendant to further sentencing and incarceration.

Since the legislature changed the penalty for domestic violence crimes by changing the requirements for probation, the Commission determined that the "crimes and infractions" disclaimer in Government Code section 17556, subdivision (g), applies to this claim. Based on the plain and ordinary meaning of the words used by the Legislature, the Commission concluded that subdivision (g) applies to those activities required by the test claim legislation that are directly related to the enforcement of the statute which changed the penalty for a crime.

The Commission concluded that the activities listed below are *not* directly related to the enforcement of the test claim statute under Government Code section 17556, subdivision (g), and, therefore, are reimbursable:

- Administration and regulation of batterers' treatment programs (Pen. Code, § 1203.097, subds. (c)(l), (c)(2), and (c)(5)) offset by the claimant's fee authority under Penal Code section 1203.097, subdivision (c)(5)(B).
- Providing services for victims of domestic violence. (Pen. Code, § 1203.097, subd. (b)(4) .)
- Assessing the future probability of the defendant committing murder. (Pen. Code, § 1203.097, subd. (b)(3)(1).)

II. Eligible Claimants

Eligible claimants include counties, and city and county.

III. Period of Reimbursement

Section 17557 of the Government Code states that a test claim must be submitted on or before December 3 1 following a given fiscal year to establish eligibility for reimbursement for that fiscal year. The test claim was filed by the County of Los Angeles on October 4, 1996.

Statutes of 1995, Chapter 641, became effective and operative on January 1, 1996. Therefore, costs incurred on or after January 1, 1996, are eligible for reimbursement.

Actual costs for one fiscal year shall be included in each claim. Estimated costs for the subsequent year may be included on the same claim, if applicable.

Pursuant to Government Code section 1756 1, subdivision (d)(1), all claims for reimbursement of initial years' costs shall be submitted within 120 days of issuance of the claiming instructions by the State Controller.

If total costs for a given year do not exceed $200, no reimbursement shall be allowed, except as otherwise allowed by Government Code section 17564.

IV. Reimbursable Activities

For each eligible claimant, all direct and indirect costs of labor, supplies, services, travel and training, for the following activities are eligible for reimbursement:

A. Administration and regulation of batterers' treatment programs (Pen. Code, §§ 1203.097, subds. (c)(l), (c)(2) and (c)(5)) offset by the claimant's fee authority under Penal Code section 1203.097, subdivision (c)(5)(B).

1. Development of an approval and annual renewal process for batterers' programs, not previously claimed under former Penal Code sections 1000.93 and 1000.95. (One-time activity .)

   a. Meeting and conferring with and soliciting input from criminal justice agencies and domestic violence victim advocacy programs.

   b. Staff training regarding the administration and regulation of batterers' treatment programs. (One-time for each employee performing the mandated activity.)

2. Processing of initial and annual renewal approvals for vendors, including:

   a. Application review.

   b. On-site evaluations.

   c. Notification of application approval, denial, suspension or revocation.

B. Victim Notification. (Pen. Code, § 1203.097, subd (b)(4).)

1. The probation department shall attempt to:

   a. Notify victims regarding the requirement foi the defendant's participation in a batterer's program.

   b. Notify victims regarding available victim resources.

   c. Inform victims that attendance in any program does not guarantee that an abuser will not be violent.

2. Staff training on the following activities:

   a. Notify victims regarding the requirement for the defendant's participation in a batterer's program, and inform victims that attendance in any program does not guarantee that an abuser will not be violent. (One-time for each employee performing the mandated activities .)

b. Notify victims regarding available victim resources. (Once-a-year training for each employee performing the mandated activity .)

C. Assessing the future probability of the defendant connnitting murder. (Pen. Code, § 1203.097, subd. (b)(3)(1).)

1. Evaluation and selection of a homicidal risk assessment instrument.

2. Purchasing or developing a homicidal risk assessment instrument.

3. Training staff on the use of the homicidal risk assessment instrument.

4. Evaluation of the defendant using the homicidal risk assessment instrument, interviews and investigation, to assess the future probability of the defendant committing murder.

In the event a local agency obtains a new homicidal risk assessment instrument, documentation substantiating the improved value of the new instrument is required to be provided with the claim.

v. Claim Preparation

Claims for reimbursement must be timely filed and identify each cost element for which reimbursement is claimed under this mandate. Clairned costs must be identified to each reimbursable activity identified in Section IV of this document.

SUPPORTING DOCUMENTATION

Claimed costs shall be supported by the following cost element information:

A. Direct Costs

Direct Costs are defined as costs that can be traced to specific goods, services, units, programs, activities or functions .

Claimed costs shall be supported by the following cost element information:

1. Salaries and Benefits

Identify the employee(s), and/or show the classification of the employee(s) involved. Describe the reimbursable activities performed and specify the actual time devoted to each reimbursable activity by each employee, productive hourly rate and related fringe benefits.

Reimbursement for personal services includes compensation paid for salaries, wages and employee fringe benefits. Employee fringe benefits include regular compensation paid to an employee during periods of authorized absences (e.g., annual leave, sick leave) and the employer's contribution of social security, pension plans, insurance and worker's compensation insurance. Fringe benefits are eligible for reimbursement when distributed equitably to all job activities which the employee performs.

2. Materials and Supplies

Only expenditures that can be identified as direct costs of this mandate may be claimed. List the cost of the materials and supplies consumed specifically for the purposes of this mandate. Purchases shall be claimed at the actual price after deducting cash discounts, rebates and allowances received by the claimant. Supplies that are withdrawn from inventory shall be charged based on a recognized method of costing, consistently applied.

3. Contract Services

Provide the name(s) of the contractor(s) who performed the services, including any fixed contracts for services. Describe the reimbursable activity(ies) performed by each named contractor and give the number of actual hours spent on the activities, if applicable. Show the inclusive dates when services were performed and itemize all costs for those services.

4. Fixed Assets

List the costs of the fixed assets that have been acquired specifically for the purpose of this mandate. If the fixed asset is utilized in some way not directly related to the mandated program, only the pro-rata portion of the asset which is used for the purposes of the mandated program is eligible for reimbursement.

5. Travel

Travel expenses for mileage, per diem, lodging and other employee entitlements are eligible for reimbursement in accordance with the rules of the local jurisdiction. Provide the name(s) of the traveler(s), purpose of travel, inclusive dates and times of travel, destination points and travel costs.

6. Training

The cost of training an employee to perform the mandated activities is eligible for reimbursement. Identify the employee(s) by name and job classification. Provide the title and subject of the training session, the date(s) attended and the location. Reimbursable costs may include salaries and benefits, registration fees, transportation, lodging and per diem.

B. Indirect Costs

Indirect costs are defined as costs which are incurred for a common or joint purpose, benefiting more than one program and are not directly assignable to a particular department or program without efforts disproportionate to the result achieved. Indirect costs may include both (1) overhead costs of the unit performing the mandate; and (2) the costs of central government services distributed to other departments based on a systematic and rational basis through a cost allocation plan.

Compensation for indirect costs is eligible for reimbursement utilizing the procedure provided in the OMB A-87. Claimants have the option of using 10% of direct labor, excluding fringe benefits, or preparing an Indirect Cost Rate Proposal (ICRP) for the department if the indirect cost rate claimed exceeds 10%. If more than one department is claiming indirect costs for the mandated program, each department must have its own ICRP prepared in accordance with OMB A-87. An ICRP must be submitted with the claim when the indirect cost rate exceeds 10%.

VI. Supporting Data

For audit purposes, all costs claimed shall be traceable to source documents (e.g., employee time records, invoices, receipts, purchase orders, contracts, worksheets, calendars, declarations, etc.) that show evidence of the validity of such costs and their relationship to the state mandated program. All documentation in support of the claimed costs shall be made available to the State Controller's Office, as may be requested, and all reimbursement claims

are subject to audit during the period specified in Government Code section 17558.5, subdivision (a).

VII. Data for Development of a Statewide Cost Estimate

The State Controller's Office is directed to include in the claiming instructions a request that claimants send an additional copy of the test claim specific form for the initial years' reimbursement claim by mail or facsimile to the Commission on State Mandates, 1300 I Street, Suite 950, Sacramento, California 958 14, Facsimile number: (9 16) 445-0278. Although providing this information to the Commission on State Mandates is not a condition of reimbursement, claimants are encouraged to provide this information to enable the Commission to develop a statewide cost estimate. which will be the basis for the Legislature's appropriation for this program.

VIII. Offsetting Savings and Other Reimbursement

Any offsetting savings the claimant experiences as a direct result of the subject mandate must be deducted from the costs claimed. In addition, reimbursement for this mandate received from any source, including but not limited to, service fees collected under Penal Code section 1203.097, subdivision (c)(5)(B), federal funds and other state funds shall be identified and deducted from this claim.

IX. State Controller's Office Required Certification

An authorized representative of the claimant shall be required to provide a certification of the claim, as specified in the State Controller's claiming instructions, for those costs mandated by the State contained herein.

DECLARATION OF SERVICE BY MAIL

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento and I am over the age of 18 years, and not a party to the within action. My place of employment and business address is 1300 I Street, Suite 950, Sacramento, California 95814.

On December 8, 1998, I served the attached:

Adopted Parameters and Guidelines for CSM-9628101 *Domestic* ***Violence*** *Treatment Services - Authorization and Case Management.*

for the Commission on State Mandates by placing a true copy thereof in an envelope addressed to each of the persons listed on the attached mailing list, and by sealing and depositing said envelope in the United States mail at Sacramento, California, with postage thereon fully prepaid.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on December 8, 1998 at Sacramento, California.

Caroline Baltazar

DOMESTIC VIOLENCE TREATMENT SERVICES AUTHORIZATION AND CASE MANAGEMENT

1. Summary of Chapters 183/92, 184/92, 28/94, and 641/95

Penal Code Sections 1000.93, 1000.94, and 1000.95
Penal Code Sections 273.5, Subdivisions (e), (f), (g), (h), and (i)
Penal Code Section 1203.097
As repealed, added, or amended by Chapters 183 and 184, Statutes of 1992, Chapter 28, Statutes of 1994, Chapter 641, Statutes of 1995

Legislation provides that if an accused is convicted of a domestic violence crime and granted probation as part of sentencing, the defendant is required to successfully complete a batterer's treatment program as a condition of probation.

The Commission on State Mandates determined that probation is a penalty for conviction of a crime. The successful completion of probation is required before the unconditional release of the defendant. If the defendant fails to successfully complete a batterer's treatment program, the test claim legislation subjects the defendant to further sentencing and incarceration.

Since the Legislature changed the penalty for domestic violence crimes by changing the requirements for probation, the Commission determined that the "crimes and infractions" disclaimer in Government Code Section 17556, Subdivision (g), applies to this claim. The Commission also concluded that Subdivision (g) applies to those activities required by the test claim legislation that are directly related to the enforcement of the statute that changed the penalty for a crime.

On November 30, 1998, the Commission on State Mandates determined that the activities listed below are not directly related to the enforcement of the test claim statute under Government Code Section 17556, Subdivision (g) and, therefore, are reimbursable.

A. Administration and regulation of batterer's treatment programs (Pen. Code § 1203.097, Subds. (c)(1), (c)(2), and (c)(5)), offset by the claimant's fee authority under Penal Code Section 1203.097, Subdivision (c)(5)(B).

B. Providing services for victims of domestic violence (Pen. Code § 1203.097, Subd. (b)(4).

C. Assessing the future probability of the defendant committing murder (Pen. Code § 1203.097, Subd. (b)(3)(I)).

2. Eligible Claimants

Any city, county, or city and county incurring increased costs as a direct result of this mandate is eligible to claim reimbursement of these costs.

3. Appropriations

These claiming instructions are issued following the adoption of the program's parameters and guidelines by the Commission on State Mandates. Funding for payment of initial claims covering the period January 1, 1996, through June 30, 1996, and fiscal years 1996-97, 1997-98, and 1998-99 will be made available in a future appropriation act subject to approval of the Legislature and the Governor.

To determine if funding is available for the current fiscal year, refer to the schedule "Appropriations for State Mandated Cost Programs" in the *Annual Claiming Instructions for*

State Mandated Costs issued in October of each year to city fiscal officers and county auditors.

4. Types of Claims

A. Reimbursement and Estimated Claims

A claimant may file a reimbursement and/or an estimated claim. A reimbursement claim details the costs actually incurred for a prior fiscal year. An estimated claim shows the costs to be incurred for the current fiscal year.

B. Minimum Claim

Section 17564(a) of the Government Code provides that no claim shall be filed pursuant to Section 17561 unless such a claim exceeds $200 per program per fiscal year.

5. Filing Deadline

A. Initial Claims

Pursuant to Government Code Section 17561, Subdivision (d)(3), initial claims must be filed within 120 days from the issuance date of claiming instructions. Accordingly:

(1) Reimbursement claims detailing the actual costs incurred for the period January 1, 1996, through June 30, 1996, and 1996-97 and 1997-98 fiscal years must be filed with the State Controller's Office and postmarked by June 25, 1999. If the reimbursement claim is filed after the deadline of June 16, 1999, the approved claim must be reduced by a late penalty of 10%, not to exceed $1,000. Claims filed more than one year after the deadline will not be accepted.

(2) Estimated claims for costs to be incurred during the 1998-99 fiscal year must be filed with the State Controller's Office and postmarked by June 25, 1999. Timely filed estimated claims are paid before late claims. If a payment is received for the estimated claim, a 1998-99 reimbursement claim must be filed by January 15, 2000.

B. Annually Thereafter

Refer to the item "Reimbursable State Mandated Cost Programs," contained in the cover letter for mandated cost programs issued annually in October, that identifies the fiscal years for which claims may be filed. If an "x" is shown for the program listed under "19__/19__ Reimbursement Claim," and/or "19__/19__ Estimated Claim," claims may be filed as follows:

(1) An estimated claim filed with the State Controller's Office must be postmarked by January 15 of the fiscal year in which the costs will be incurred. Timely filed estimated claims will be paid before late claims.

After having received payment for an estimated claim, the claimant must file a reimbursement claim by January 15 of the following fiscal year. If the local agency fails to file a reimbursement claim, monies received for the estimated claim must be returned to the State. If no estimated claim was filed, the agency may file a reimbursement claim detailing the actual costs incurred for the fiscal year, provided there was an appropriation for the program for that fiscal year. For information regarding appropriations for reimbursement claims refer to the "Appropriation for State Mandated Cost Programs" in the previous fiscal year's annual claiming instructions.

(2) A reimbursement claim detailing the actual costs must be filed with the State Controller's Office and postmarked by January 15 following the fiscal year in

which the cost will be incurred. If the claim is filed after the deadline, but by January 15 of the succeeding fiscal year, the approved claim must be reduced by a late penalty of 10%, not to exceed $1,000. Claims filed more than one year after the deadline will not be accepted.

6. Reimbursable Activities

For each eligible claimant, all direct and indirect costs of labor, supplies, services, training, and travel for the following activities only are eligible for reimbursement:

A. Administration and regulation of batterers' treatment programs (Pen. Code § 1203.097, Subds. (c)(1), (c)(2), and (c)(5)) offset by the claimant's fee authority under Penal Code Section 1203.097, Subdivision (c)(5)(B).

1. Development of an approval and annual renewal process for batterers' programs not previously claimed under former Penal Code Sections 1000.93 and 1000.95 (one-time activity).

   a. Meeting and conferring with and soliciting input from criminal justice agencies and domestic violence victim advocacy programs.

   b. Staff training regarding the administration and regulation of batterers' treatment programs (once for each employee performing the mandated activity).

2. Processing of initial and annual renewal approvals for vendors, including:

   a. application review;

   b. on-site evaluations; and

   c. notification of application approval, denial, suspensions, or revocation.

B. Victim Notification (Pen. Code § 1203.097, Subd. (b)(4)).

1. The probation department shall attempt to:

   a. Notify victims regarding the requirement for the defendant's participation in a batterer's program.

   b. Notify victims regarding available victim resources.

   c. Inform victims that attendance in any program does not guarantee that an abuser will not be violent.

2. Staff training on the following activities:

   a. Notify victims regarding the requirement for the defendant's participation in a batterer's program and inform victims that attendance does not guarantee that an abuser will not be violent (once for each employee performing the mandated activities).

   b. Notify victims regarding available victims resources (once-a-year training for each employee performing the mandated activity).

C. Assessing the future probability of the defendant committing murder (Pen. Code § 1203.097, Subd. (b)(3)(I)).

1. Evaluation and selection of a homicidal risk assessment instrument.

2. Purchasing or developing a homicidal risk assessment instrument.

3. Training staff on the use of the homicidal risk assessment instrument.

4. Evaluation of the defendant using the homicidal risk assessment instrument, interviews, and investigation to assess the future probability of the defendant committing murder.

In the event a local agency obtains a new homicidal risk instrument, documentation substantiating the improved value of the new instrument is required to be provided with the claim.

7. Reimbursement Limitations

Any offsetting savings or reimbursement the claimant received from any source including, but not limited to, service fees collected, federal funds, and other state funds as a direct result of this mandate shall be identified and deducted so only the net local cost is claimed.

8. Claiming Forms and Instructions

The diagram "Illustration of Claim Forms" provides a graphical presentation of forms required to be filed with a claim. A claimant may submit a computer-generated report in substitution for forms DVTS-1 and DVTS-2 provided the format of the report and data fields contained within the report are identical to the claim forms included in these instructions. The claim forms provided with these instructions should be duplicated and used by the claimant to file estimated or reimbursement claims. The State Controller's Office will revise the manual and claim forms as necessary. In such instances, new replacement forms will be mailed to claimants.

A. Form DVTS-2, Component/Activity Cost Detail

This form is used to segregate the detailed costs by claim component. A separate form DVTS-2 must be completed for each cost component being claimed. Costs reported on this form must be supported as follows:

(1) Salaries and Benefits

Identify the employee(s) and/or show the classification of the employee(s) involved. Describe the mandated functions performed by each employee and specify the actual time spent, the productive hourly rate, and related fringe benefits.

Reimbursement of personnel services includes compensation paid for salaries, wages, and employee fringe benefits. Employee fringe benefits include regular compensation paid to an employee during periods of authorized absences (e.g., annual leave, sick leave) and the employer's contribution of social security, pension plans, insurance, and worker's compensation insurance. Fringe benefits are eligible for reimbursement when distributed equitably to all job activities which the employee performs.

Source documents required to be maintained by the claimant may include, but are not limited to, employee time records that show the employee's actual time spent on this mandate.

(2) Supplies

Only expenditures that can be identified as a direct cost of this mandate may be claimed. List the cost of materials consumed or expended specifically for the purpose of this mandate. The cost of materials and supplies that are not used exclusively for the mandate is limited to the pro rata portion used to comply with

this mandate. Purchases shall be claimed at the actual price after deducting cash discounts, rebates, and allowances received by the claimant. Supplies that are withdrawn from inventory shall be charged based on a recognized method of costing, consistently applied.

Source documents required to be maintained by the claimant may include, but are not limited to, invoices, receipts, purchase orders, and other documents providing evidence of the validity of the expenditures.

(3) Contract Services

Give the name(s) of the contractor(s) who performed the services. Describe the activities performed by each named contractor, actual time spent on this mandate, inclusive dates when services were performed, and itemize all costs for services performed. Attach consultant invoices with the claim.

Source documents required to be maintained by the claimant may include, but are not limited to, contracts, invoices, and other documents providing evidence of the validity of the expenditures.

(4) Equipment

Compensation for fixed asset costs are reimbursable utilizing the procedure provided in the Office and Management Budget Circular A-87 (OMB A-87). Example: Compensation for the use of equipment. The claimant may be compensated for the equipment use through a use allowance or depreciation. A use allowance may be computed at an annual rate not to exceed 6 2/3% of acquisition cost. This is reported and claimed through the agency's service-wide cost allocation plan under the cost element "Use Allowance." Where a depreciation method is followed, adequate property records must be maintained and any generally accepted method of computing depreciation may be used. However, the method of computing depreciation must be consistently applied for any specific class of assets for all affected programs.

List the cost of equipment acquired specifically for the purpose of this mandate. If the equipment is acquired for the subject state mandate, but is utilized in some way not directly related to the program, only the pro-rated portion of the equipment that is used for purposes of the program is reimbursable.

Source documents required to be maintained by the claimant may include, but are not limited to, invoices, receipts, purchase orders, and other documents providing evidence of the validity of the purchases.

(5) Travel

Travel expenses for mileage, per diem, lodging, and other employee entitlements are reimbursable in accordance with the rules of the local jurisdiction. Give the name(s) of the traveler(s), purpose of travel, inclusive travel dates, destination points, and costs.

Source documents required to be maintained by the claimant may include, but are not limited to, receipts, employee travel expense claims, and other documents providing evidence of the validity of the expenditures.

(6) Training

Only the cost of a reasonable number of employees attending the training is reimbursable. Give the class title, dates, location, and name(s) of the employee(s)

attending training associated with the mandate. Reimbursable costs include salaries and benefits for time spent, the registration fee, transportation, lodging, and per diem. Reimbursement for travel expenses, lodging, and per diem shall not exceed those rates which are applicable to state employees. Refer to the Appendix "State of California Travel Expense Guidelines."

Source documents may include, but are not limited to, employee travel expense claims, receipts, and other documents providing evidence of the training expenses.

For audit purposes, all supporting documents must be retained for a period of two years after the end of the calendar year in which the reimbursement claim was filed or last amended, whichever is later. When no funds were appropriated for the initial claim at the time the claim was filed, supporting documents must be retained for two years from the date of initial payment of the claim. Such documents shall be made available to the State Controller's Office on request.

B. Form DVTS-1, Claim Summary

This form is used to summarize direct costs by cost component and compute allowable indirect costs for the mandate. Direct costs summarized on this form are derived from form DVTS-2 and carried forward to form FAM-27.

Indirect costs may be computed as 10% of direct labor costs, excluding fringe benefits. If an indirect cost rate greater than 10% is used, include the Indirect Cost Rate Proposal (ICRP) with the claim. If more than one department is involved in the mandated program, each department must have its own ICRP.

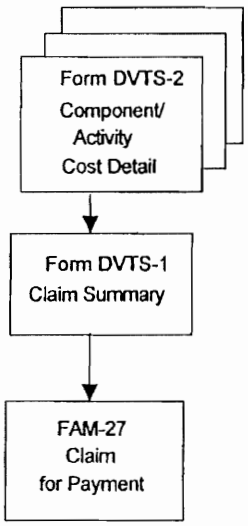
C. Form FAM-27, Claim for Payment

This form contains a certification that must be signed by an authorized representative of the local agency. All applicable information from form DVTS-1 must be carried forward to this form for the State Controller's Office to process the claim for payment.

D. Cost Accounting Statistics

The Commission on State Mandates requests that claimants send a copy of form DVTS-1 for each of the initial year's reimbursement claims by mail to the Commission on State Mandates, 1300 I Street, Suite 950, Sacramento, CA 95814, or by facsimile, (916) 445-0278. Although providing this information is not a condition of payment, claimants are encouraged to provide this information to enable the Commission to develop a statewide cost estimate and recommend an appropriation to the Legislature.

Illustration of Claim Forms



Form DVTS-2 Component/Activity Cost Detail

Complete a separate form DVTS-2 for each cost component for which expenses are claimed.

A. Administration and Regulation of Batterers' Treatment Program.

B. Victim Notification.

C. Assessing Future Probability of Defendant Committing Murder.

State Controller's Office | Mandated Cost Manual

CLAIM FOR PAYMENT
Pursuant to Government Code Section 17561
DOMESTIC VIOLENCE TREATMENT SERVICES
AUTHORIZATION AND CASE MANAGEMENT

For State Controller Use Only
(19) Program Number 00177
(20) Date Filed ____/____/____
(21) LRS Input ____/____/____

Program **177**

LABEL HERE

(01) Claimant Identification Number

(02) Claimant Name

County of Location

Street Address or P.O. Box | Suite

City | State | Zip Code

Type of Claim	Estimated Claim	Reimbursement Claim
	(03) Estimated ☐	(09) Reimbursement ☐
	(04) Combined ☐	(10) Combined ☐
	(05) Amended ☐	(11) Amended ☐
Fiscal Year of Cost	(06) 20___/20___	(12) 20___/20___
Total Claimed Amount	(07)	(13)
Less: **10% Late Penalty, not to exceed $1,000**		(14)
Less: **Prior Claim Payment Received**		(15)
Net Claimed Amount		(16)
Due from State	(08)	(17)
Due to State		(18)

Reimbursement Claim Data

(22) DVTS-1, (03)(a)	
(23) DVTS-1, (03)(b)	
(24) DVTS-1, (04)(1)(f)	
(25) DVTS-1, (04)(2)(f)	
(26) DVTS-1, (04)(3)(f)	
(27) DVTS-1, (06)	
(28) DVTS-1, (08)	
(29) DVTS-1, (09)	
(30) DVTS-1, (10)	
(31)	
(32)	
(33)	
(34)	
(35)	
(36)	

(37) CERTIFICATION OF CLAIM

In accordance with the provisions of Government Code §17561, I certify that I am the officer authorized by the local agency to file mandated cost claims with the State of California for this program, and certify under penalty of perjury that I have not violated any of the provisions of Government Code Sections 1090 to 1098, inclusive.

I further certify that there was no application other than from the claimant, nor any grant or payment received, for reimbursement of costs claimed herein, and such costs are for a new program or increased level of services of an existing program. All offsetting savings and reimbursements set forth in the Parameters and Guidelines are identified, and all costs claimed are supported by source documentation currently maintained by the claimant.

The amounts for this Estimated Claim and/or Reimbursement Claim are hereby claimed from the State for payment of estimated and/or actual costs set forth on the attached statements. I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Signature of Authorized Officer | Date

Type or Print Name | Title

(38) Name of Contact Person for Claim

Telephone Number ( ) - Ext.

E-Mail Address

Form FAM-27 (Revised 09/03)

Program 177	DOMESTIC VIOLENCE TREATMENT SERVICES AUTHORIZATION AND CASE MANAGEMENT Certification Claim Form Instructions	FORM FAM-27

(01) Enter the payee number assigned by the State Controller's Office.

(02) Enter your Official Name, County of Location, Street or P. O. Box address, City, State, and Zip Code.

(03) If filing an estimated claim, enter an "X" in the box on line (03) Estimated.

(04) If filing a combined estimated claim on behalf of districts within the county, enter an "X" in the box on line (04) Combined.

(05) If filing an amended estimated claim, enter an "X" in the box on line (05) Amended.

(06) Enter the fiscal year in which costs are to be incurred.

(07) Enter the amount of the estimated claim. If the estimate exceeds the previous year's actual costs by more than 10%, complete form DVTS-1 and enter the amount from line (11). If more than one form is completed due to multiple department involvement in this mandate, add line (11) of each form.

(08) Enter the same amount as shown on line (07).

(09) If filing a reimbursement claim, enter an "X" in the box on line (09) Reimbursement.

(10) If filing a combined reimbursement claim on behalf of districts within the county, enter an " X " in the box on line (10) Combined.

(11) If filing an amended reimbursement claim, enter an "X " in the box on line (11) Amended.

(12) Enter the fiscal year for which actual costs are being claimed. If actual costs for more than one fiscal year are being claimed, complete a separate form FAM-27 for each fiscal year.

(13) Enter the amount of the reimbursement claim from form DVTS-1, line (11). The total claimed amount must exceed $1,000.

(14) Reimbursement claims must be filed by January 15 of the following fiscal year in which costs are incurred or the claims shall be reduced by a late penalty. Enter zero if the claim was timely filed, otherwise, enter the product of multiplying line (13) by the factor 0.10 (10% penalty), or $1,000, whichever is less.

(15) If filing a reimbursement claim and a claim was previously filed for the same fiscal year, enter the amount received for the claim. Otherwise, enter a zero.

(16) Enter the result of subtracting line (14) and line (15) from line (13).

(17) If line (16), Net Claimed Amount, is positive, enter that amount on line (17), Due from State.

(18) If line (16), Net Claimed Amount, is negative, enter that amount on line (18), Due to State.

(19) to (21) Leave blank.

(22) to (36) Reimbursement Claim Data. Bring forward the cost information as specified on the left-hand column of lines (22) through (26) for the reimbursement claim, e.g., DVTS-1, (03)(a), means the information is located on form DVTS-1, block (03), line (a). Enter the information on the same line but in the right-hand column. Cost information should be rounded to the nearest dollar, i.e., no cents. Indirect costs percentage should be shown as a whole number and without the percent symbol, i.e., 35.19% should be shown as 35. **Completion of this data block will expedite the payment process.**

(37) Read the statement "Certification of Claim." If it is true, the claim must be dated, signed by the agency's authorized officer, and must include the person's name and title, typed or printed. **Claims cannot be paid unless accompanied by an original signed certification. (To expedite the payment process, please sign the form FAM-27 with blue ink, and attach a copy of the form FAM-27 to the top of the claim package.)**

(38) Enter the name, telephone number, and e-mail address of the person to contact if additional information is required.

SUBMIT A SIGNED ORIGINAL, AND A COPY OF FORM FAM-27, WITH ALL OTHER FORMS AND SUPPORTING DOCUMENTS TO:

Address, if delivered by U.S. Postal Service:

OFFICE OF THE STATE CONTROLLER
ATTN: Local Reimbursements Section
Division of Accounting and Reporting
P.O. Box 942850
Sacramento, CA 94250

Address, if delivered by other delivery service:

OFFICE OF THE STATE CONTROLLER
ATTN: Local Reimbursements Section
Division of Accounting and Reporting
3301 C Street, Suite 500
Sacramento, CA 95816

MANDATED COSTS DOMESTIC VIOLENCE TREATMENT SERVICES - AUTHORIZATION AND CASE MANAGEMENT CLAIM SUMMARY	FORM DVTS-1

(01) Claimant	(02) Type of Claim Reimbursement ☐ Estimated ☐	Fiscal Year 19___/19___

(03) (a) Number of vendor applications reviewed during the fiscal year of claim	
(b) Number of domestic violence cases for which the victim was notified pursuant to Penal Code Section 1203.097(b)(4) during the fiscal year of claim	

Direct Costs

(04) Reimbursable Components	(a) Salaries	(b) Benefits	(c) Services and Supplies	(d) Training and Travel	(e) Fixed Assets	(f) Total
1. Administration and Regulation of Batterers' Treatment Programs						
2. Victim Notification						
3. Assessing Future Probability of Defendant Committing Murder						
(05) Total Direct Costs						

Indirect Costs

(06) Indirect Cost Rate	[From ICRP]	%
(07) Total Indirect Costs	[Line (06) x line (05)(a)] or [line (06) x {line (05)(a) + line (05)(b)}]	
(08) Total Direct and Indirect Costs	[Line (05)(f) + line (07)]	

Cost Reduction

(09) Less: Offsetting Savings, if applicable	
(10) Less: Amount Received from Penal Code § 1203.097(c)(5)(B) and Other Applicable	
(11) Total Claimed Amount [Line (08) - {Line (09) + Line (10)}]	

DOMESTIC VIOLENCE TREATMENT SERVICES - AUTHORIZATION AND CASE MANAGEMENT CLAIM SUMMARY Instructions	FORM DVTS-1

(01) Enter the name of the claimant.

(02) Type of Claim. Check a box, Reimbursement or Estimated, to identify the type of claim being filed. Enter the fiscal year for which costs were incurred or are to be incurred.

Form DVTS-1 must be filed for a reimbursement claim. Do not complete form DVTS-1 if you are filing an estimated claim and the estimate does not exceed the previous fiscal year's actual costs by more than 10%. Simply enter the amount of the estimated claim on form FAM-27, line (07). However, if the estimated claim exceeds the previous fiscal year's actual costs by more than 10%, form DVTS-1 must be completed and a statement attached explaining the increased costs. Without this information the high estimated claim will automatically be reduced to 110% of the previous fiscal year's actual costs.

(03) (a) Enter the number of vendor applications that were reviewed during the fiscal year of claim.
(b) Enter the number of domestic violence cases for which the victim was notified pursuant to Penal Code Section 1203.097(b)(4) during the fiscal year of claim.

(04) Reimbursable Components. For each reimbursable component, enter the totals from form DVTS-2, line (05), columns (d) through (h) to form DVTS-1, block (04) columns (a) through (e) in the appropriate row. Total the rows.

(05) Total Direct Costs. Total columns (a) through (f).

(06) Indirect Cost Rate. Indirect costs may be computed as 10% of direct labor costs, excluding fringe benefits. If an indirect cost rate of greater than 10% is used, include the Indirect Cost Rate Proposal (ICRP) with the claim. If more than one department is reporting costs, each must have their own ICRP.

(07) Total Indirect Costs. Multiply Total Salaries, line (05)(a), by the Indirect Cost Rate, line (06). If both salaries and benefits were used in the distribution base for the computation of the indirect cost rate, then multiply the sum of Total Salaries, line (05)(a), and Total Benefits, line (05)(b), by the Indirect Cost Rate, line (06).

(08) Total Direct and Indirect Costs. Enter the sum of Total Direct Costs, line (05)(f), and Total Indirect Costs, line (07).

(09) Less: Offsetting Savings, if applicable. Enter the total savings experienced by the claimant as a direct result of this mandate. Submit a detailed schedule of savings with the claim.

(10) Less: Other Reimbursements, if applicable. Enter the amount of other reimbursements received from Penal Code Section 1203.097(c)(5)(B), including but not limited to, service fees collected, federal funds, and other state funds, which reimbursed any portion of the mandated cost program. Submit a schedule detailing the reimbursement sources and amounts.

(11) Total Claimed Amount. Subtract the sum of Offsetting Savings, line (09), and Other Reimbursements, line (10), from Total Direct and Indirect Costs, line (08). Enter the remainder on this line and carry the amount forward to form FAM-27, line (13) for the Reimbursement Claim.

MANDATED COSTS DOMESTIC VIOLENCE TREATMENT SERVICES - AUTHORIZATION AND CASE MANAGEMENT COMPONENT/ACTIVITY COST DETAIL	FORM DVTS-2

(01) Claimant

(02) Fiscal Year Costs Were Incurred

(03) Reimbursable Components: Check **only** one box per form to identify the component being claimed.

☐ Administration and Regulation of Batterers' Treatment Programs

☐ Victim Notification ☐ Assessing Future Probability of Defendant Committing Murder

(04) Description of Expenses: Complete columns (a) through (h).

(a) Employee Names, Job Classifications, Functions Performed and Description of Expenses	(b) Hourly Rate or Unit Cost	(c) Hours Worked or Quantity	Object Accounts (d) Salaries	(e) Benefits	(f) Services and Supplies	(g) Travel and Training	(h) Equipment
(05) Total ☐ Subtotal ☐ Page: _____of_____							

DOMESTIC VIOLENCE TREATMENT SERVICES - AUTHORIZATION AND CASE MANAGEMENT COMPONENT/ACTIVITY COST DETAIL Instructions	FORM DVTS-2

(01) Enter the name of the claimant.

(02) Enter the fiscal year in which costs were incurred.

(03) Reimbursable Components. Check the box which indicates the cost component being claimed. Check only one box per form. A separate form DVTS-2 shall be prepared for each component which applies.

(04) Description of Expenses. The following table identifies the type of information required to support reimbursable costs. To detail costs for the component activity box "checked" in line (03), enter the employee's name, position title, a brief description of the activities performed, actual time spent by each employee, productive hourly rates, fringe benefits, supplies used, contract services, training and travel expenses. **The descriptions required in column (4)(a) must be of sufficient detail to explain the cost of activities or items being claimed.** For audit purposes, all supporting documents must be retained by the claimant for a period of not less than two years after the end of the calendar year in which the reimbursement claim was filed or last amended, whichever is later. When no funds are appropriated for the initial claim at the time the claim is filed, supporting documents must be retained for two years from the date of initial payment of the claim. Such documents shall be made available to the State Controller's Office on request.

Object/ Subobject Accounts	Columns								Submit these supporting documents with the claim
	(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	
Salaries	Employee Name Title	Hourly Rate	Hours Worked	Salaries = Hourly Rate x Hours					
Benefits	Activities	Benefit Rate			Benefits = Benefit Rate x Salaries				
Services and Supplies Supplies	Description of Supplies Used	Unit Cost	Quantity Used			Cost = Unit Cost x Quantity Used			
Contracted Services	Name of Contractor Specific Tasks Performed	Hourly Rate	Hours Worked Inclusive Dates of Service			Itemized Cost of Services Performed			Invoices
Travel and Training Travel	Purpose of Trip Name and Title	Per Diem Rate Mileage Rate	Days Miles Transportation Mode				Rate x Days or Miles Total Transportation Cost		
Training	Employee Name & Title Name of Class		Dates Attended				Registration Fee		
Equipment	Description of Equipment Purchased Equipment ID	Unit Cost	Quantity Used					Itemized Cost of Equipment	Invoice

(05) Total line (04), columns (d), (e), (f), (g), and (h) and enter the sum on this line. Check the appropriate box to indicate if the amount is a total or subtotal. If more than one form is needed for the component/activity, number each page. Enter totals from line (05), columns (d), (e), (f), (g), and (h) to form DVTS-1, block (04), columns (a), (b), (c), (d), and (e) in the appropriate row.

BEFORE THE
COMMISSION ON STATE MANDATES

Claim of: County of San Mateo Claimant	No. CSM-4256 Chapter 1077, Statutes of 1986 Guardianships

PROPOSED DECISION

This claim was heard by the Commission on State Mandates (commission) on September 23, 1987, in Sacramento, California, during a regularly scheduled hearing.

Evidence both oral and documentary having been introduced, the matter submitted, and vote taken, the commission finds:

I.

NOTE

1. The finding of a reimbursable state mandate does not mean that all increased costs claimed will be reimbursed. Reimbursement, if any, is subject to commission approval of parameters and guidelines for reimbursement of the claim, and a statewide cost estimate; a specific legislative appropriation for such purposes; a timely-filed claim for reimbursement; and subsequent review of the claim by the State Controller.

II.

FINDINGS AND CONCLUSIONS

1. The test claim was filed with the commission on April 1, 1987, by the County of San Mateo.

2. The claim alleges that Chapter 1017, Statutes of 1986, imposes costs mandated by the State.

3. Probate Code Section 1513, as added by Chapter 1017, Statutes of 1986, requires for the first time that investigations of certain guardianship petitions be conducted by probate court staff, unless waived by the court. Prior law provided for such investigations when expressly ordered by the court. Probate Code Section 1513 also specifies the content of the report of the guardianship investigation. Prior to the enactment of Chapter 1017, the specific content of the report of the guardianship investigation was not set forth in statute.

4. Chapter 1017, Statutes of 1986, allows for an assessment, in an amount determined by the State Controller's Office, to be used by counties to cover the costs of mandated guardianship activities. The State Controller's Office establishes a statewide rate for the allowable assessment by averaging actual costs for conducting the investigations. The average is derived from actual cost data submitted by counties.

III.

DETERMINATION OF ISSUES

1. The commission has the authority to decide this claim under the provisions of Government Code Section 17551.

2. Chapter 1017, Statutes of 1986, added Probate Code Section 1513 which requires investigations of guardianship petitions unless such investigation is waived by the court. Chapter 1017 added the requirement that certain specific information be included in the report reflecting the results of the investigation.

3. The Commission on State Mandates concludes that the costs of investigations, and reports, required by Chapter 1017, Statutes of 1986, which exceed the amount of the allowable assessment, as determined by the State Controller, are costs mandated by the state and as such are reimbursable costs.

WP:0114r

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

IN RE REQUEST FOR REMOVAL FROM THE STATE MANDATES APPORTIONMENT SYSTEM: Statutes of 1975, Chapter 694; Filed on November 4, 1998; By the County of Tulare, Requester.	No. 98-RSMAS-01 *Developmentally Disabled-Attorney Service* STATEMENT OF DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ. ; TITLE 2, CALIFORNIA CODE OF REGULATIONS, DIVISION 2, CHAPTER 2.5, ARTICLE 7 *(Adopted on March 30, 2000)*

STATEMENT OF DECISION

The attached Statement of Decision of the Commission on State Mandates is hereby adopted in the above-entitled matter.

This Decision shall become effective on March 3 1, 2000.

Paula Higashi, Executive Director

Hearing Date: March 30, 2000

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

IN RE REQUEST FOR REMOVAL FROM THE STATE MANDATES APPORTIONMENT SYSTEM: Statutes of 1975, Chapter 694; Filed on November 4, 1998; By the County of Tulare, Requester.	No. 98-RSMAS-01 *Developmentally Disabled-Attorney Services* STATEMENT OF DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ. ; TITLE 2, CALIFORNIA CODE OF REGULATIONS, DIVISION 2, CHAPTER 2.5, ARTICLE 7 *(Adopted on March 30, 2000)*

STATEMENT OF DECISION

This Request for Removal from the State Mandates Apportionment System (SMAS) was heard and decided by the Commission on State Mandates (Commission) on February 24, 2000 during a regularly scheduled hearing.

The law applicable to the Commission's determination to remove a program from SMAS is Government Code section 17615 et seq.

The Commission, by a vote of 5 to 0, approved this Request.

Background and Findings of Fact

State Mandate Apportionments System

The process for filing and processing claims for reimbursement with the State Controller is cumbersome. Local governments are required to maintain voluminous records and documentation to support their claims. The Controller may conduct extensive audits. Therefore, in 1985, the Legislature enacted SMAS to allow certain ongoing state-mandated programs to be funded automatically through the State Budget process, without the need for local governments to file annual claims for those costs with the State Controller. [1]

[1] Statutes of 1985, Chapter 1534; Government Codes sections 1761517616

Following is a description of the procedures related to SMAS:

- Reviewing Mandated Cost Programs for Eligibility

  The Department of Finance, State Controller, local governments or school districts may request that the Commission review any mandated cost programs, for which appropriations have been made by the State to local governments and school districts for any three consecutive years, to determine if those programs are eligible for inclusion in SMAS.[2] The requesting agency is required to file a "request for inclusion" with the Commission.

  The Commission must then determine at a public hearing whether to include the subject mandated cost program in SMAS. When considering the request for inclusion, the Commission must determine if the program has a history of stable costs for most claimants, if the program has been recently modified, and if inclusion would accurately reflect the costs of the program. If the Commission determines that the program should be included in SMAS, it then directs the State Controller to include the program in SMAS.[3]

- Calculating Actual Allocations

  Once a program is included in SMAS, the State Controller determines the amount of reimbursement that will be disbursed to local agencies and school districts that submitted reimbursement claims for the program. The amount of reimbursement is computed by taking three consecutive years of actual reimbursement claims for the subject program, adjusting each year's amount by the Implicit Price Deflator for Costs of Goods and Services to Governmental Agencies (IPD), and then averaging those three amounts. This amount is called the base year entitlement. Reimbursements are then allocated to local governments and school districts to the extent money is provided in the State Budget Act.[4]

- Adjusting Allocations

  Allocations for reimbursement for programs included in SMAS must be adjusted annually, according to changes in the IPD, and changes in the workload of the affected local agency or school district.[5] For purposes of this calculation, "workload" is defined as follows:

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[2] Government Code section 176 15.1; Title 2, California Code of Regulations, section 1184.6

[3] Title 2, California Code of Regulations, sections 1184.6 and 1184.7

[4] Government Code sections 176 15.2 and 176 15.3

[5] Government Code sections 176 15.4

For cities and counties: changes in population within their boundaries.

- For special districts: *changes in the population of the county in which the largest percentage of the district's population is located.*
- For school districts and county offices of education: *changes in the average daily attendance.*
- For community colleges: *changes in the number of full-time equivalent students.*

- Review of Apportionment or Base Year Entitlement

If local agencies or school districts believe that the total apportionment for all of their SMAS programs is inadequate to cover their actual costs for the programs, they are entitled to request that the Commission review the reimbursement they receive or the base year entitlements of any program included in SMAS. The local agency or school district must file a Request for Review with the Commission. [6]

If the Commission determines that a local agency or school district's apportionment over or under reimburses the agency or district by 20 percent or $1,000 (whichever is less), then the Commision directs the State Controller to adjust the apportionment .[7]

- Removal of Mandated Cost Programs from SMAS

For any mandated cost program included in SMAS that has been modified or amended by the Legislature or by Executive Order, any local agency, school district, or state agency may request that the Commission review that program for removal from SMAS.

The Commission must adopt a finding that the mandated cost program shall or shall not be removed from SMAS, based upon a determination that the program was significantly modified, and as a result, the apportionment no longer accurately reflects actual costs incurred. Upon adoption of a finding that a program should be removed from SMAS, the Commission directs the State Controller to remove the program.[8]

There are currently seven programs in SMAS, including the program for providing attorney representation for developmentally disabled persons. There are currently 36 counties that receive reimbursement through SMAS, 17 of

[6] Government Code section 176 15.8; Title 2, California Code of Regulations, section 1184.10
[7] Government Code section 176 15.8; Title 2, California Code of Regulations, section 1184.10
[8] Title 2, California Code of Regulations, section 1184.11

which receive reimbursement under SMAS for the Developmentally Disabled - Attorney Services Program.

Developmentally Disabled - Attorney Services Program

Under existing law, the Director of the California Department of Developmental Services may be appointed as a guardian or conservator over developmentally disabled persons. In addition, existing law allows a court to commit mentally retarded persons who are a danger to themselves or others to a state hospital. Statutes of 1975, Chapter 694 provides developmentally disabled persons and mentally retarded persons with the right to court-appointed legal counsel prior to entering guardianship or being committed to a state hospital. Chapter 694 requires those persons for whom counsel is appointed to pay the cost of the legal services if he or she is able to do so.

Reauest for Removal from SMAS

The Requester (Tulare County) requested that the Commission remove the Developmentally Disabled - Attorney Services Program from SMAS. The requester contends that since this program was included in SMAS, two state hospitals have closed, causing patients to be relocated to the Porterville State Hospital in Tulare County. Therefore, costs for attorney services has increased, and the reimbursement Tulare County receives under SMAS is inadequate.

Issue 1

DID THE LEGISLATU RE MODIFY THE DEVELOPMENTALLY DISABLED - ATTORNEY SERVICES PROGRAM IN A MANNER THAT SIGNIFICANTLY AFFECTED THE COST OF THE PROGRAM?

Prior to 1969, the state housed its committed developmentally disabled and mentally retarded persons in state institutions. In 1969, the Lanterman Mental Retardation Services Act was enacted to move from the state institution system to a community-based system. This shift resulted in a substantial decline in state hospital population as those persons were transferred to local regional facilities.

In addition, the state was under threat of litigation because it had not taken sufficient action to reduce the number of persons residing in state hospitals and to move those persons to community facilities. This prompted the state to develop plans to close the Stockton State Hospital and the Camarillo State Hospital. As a result, the Legislature enacted legislation to close the Stockton facility in 1995, and the Camarillo facility in 1996.[9] Those patients who were judicially committed to the closed facilities were transferred to the Porterville Developmental Center in Tulare County.

[9] Statutes of 1995, Chapter 303, and Statutes of 1996, Chapter 162. These statutes provided revenues for closure costs.

Prior to closure of the Stockton and Camarillo facilities, Tulare County's costs for the Developmentally Disabled - Attorney Services program were stable. For fiscal year (FY) 1995-96, Tulare County's Public Defender represented 67 patients from the Porterville facility, and in FY 1996-97 the caseload grew to 90. After patients from the closed facilities were transferred, the caseload grew to 158 in FY 1997-98. Therefore, the Requester asserted that it faced a 135 percent increase in caseload during a two-year period.

Due to the increased caseload, the amount of reimbursement it receives for this program is inadequate under SMAS. The Requester stated that for FY 1996-97, it received $1,890 in reimbursement, while its actual costs were $8,441.

Based on this information, the Commission found that the Legislature's closure of the two state hospitals, and the subsequent transfer of patients to the Tulare County facility, significantly affected the costs of Tulare County's Developmentally Disabled - Attorney Services program.

Issue 2

DOES REMOVAL OF THE DEVELOPMENTALLY DISABLED - ATTORNEY SERVICES PROGRAM FROM SMAS NEGATIVELY IMPACT THE OTHER PARTICIPATING COUNTIES?

When a program is removed from SMAS, the program is removed for all participating local governments and school districts. Therefore, all counties that receive reimbursement for the Developmentally Disabled - Attorney Services through SMAS will be required to revert to filing annual reimbursement claims for this program if it is removed from SMAS.

There are currently 17 counties that receive reimbursement for this program under SMAS. San Joaquin County does not receive reimbursement for this program through SMAS. Therefore, this request will not negatively impact San Joaquin County. Tulare County, Ventura County, and 15 other counties do receive reimbursement through SMAS. However, while the costs for Tulare County may have increased, there should have been a corresponding reduction in costs in Ventura and San Joaquin Counties where the two state facilities were closed. The Commission notified these participating counties of the Request for Removal from SMAS, but none of these counties responded.

The Commission found that although removing this program from SMAS may result in less revenue for some of the participating counties, those counties may no longer be entitled to the revenues.

Conclusion

The Commission found that the Developmentally Disabled - Attorney Services program has been modified by the Legislature in a manner that significantly affects the cost of the program, and as a result, reimbursement for the program no longer accurately reflects the actual costs of the program. Therefore, the Commission approved Tulare County's Request to Remove the Developmentally Disabled - Attorney Services Program from SMAS.

DEPARTMENT OF FINANCE
OFFICE OF THE DIRECTOR

ARNOLD SCHWARZENEGGER, GOVERNOR
STATE CAPITOL ■ ROOM 1145 ■ SACRAMENTO CA ■ 95814-4998 ■ WWW.DOF.CA.GOV

March 25, 2009

Ms. Paula Higashi
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

Dear Ms. Higashi:

As requested in your letter of February 10, 2009, the Department of Finance (Finance) has reviewed the test claim, Claim No. CSM-08-TC-03 "State Authorized Risk Assessment Tool for Sex Offenders (SARATSO)," submitted by Los Angeles County (claimant). The claimant asserts that the Sex Offender's Punishment, Control, and Containment Act of 2006 (Act) and the Department of Mental Health's Executive Order (executive order) imposed reimbursable state mandated costs on local agencies. The claimant has identified the following new duties which, it asserts, are reimbursable state mandates on county probation offices and district attorney offices:

- Administering the SARATSO program.
- Training on the SARATSO program.
- Providing intensive specialized probation supervision for high risk sex offenders.
- Compiling reports for other agencies.
- Performing investigative duties.
- Providing electronic monitoring for sex offenders on probation.
- Providing services to an increased sexual offender population.
- Treating registered transients.
- Providing record retention for 75 years.

As a result of our review, Finance finds that the Act and the executive order could result in a reimbursable state mandate; however, the reimbursement may be limited based on the statutory exception specified in subdivision (g) of Government Code Section 17556 and pending litigation.

Finance believes the activities related to completing the SARATSO are subject to subdivision (g) of Government Code Section 17556. The results of the SARATSO are required for the court to make a determination on the probation conditions of a convicted sex offender. Therefore, the results affect the sex offender's penalty after he/she has been convicted of the crime. In the *County of Orange v. State Board of Control* (1985) 167 Cal.App.3d 660, 663, probation was found to be a penalty for conviction of a crime because it is an "alternative sentencing device imposed after conviction."

If a sex offender violates the probation conditions, then subdivision (a) of Penal Code Section 1203.2 provides the authority to revoke probation and impose additional penalties, including incarceration. Consequently, the Commission on State Mandates (Commission) is prohibited from finding costs mandated by the state because the SARATSO program is part of the sentencing process that affects the penalty for a crime or infraction (probation) within the meaning of Section 6, Article XIII B of the California Constitution.

Finance also finds that prior law required county probation offices to perform investigative duties to complete reporting requirements under the Penal Code Section 1203. The alleged investigative duties are not new under the SARATSO program. Similarly, the reporting conditions for treating registered transients is not a new duty imposed on the county probation offices within the meaning of Section 6, Article XIII B of the California Constitution, as noted on page 38 of the test claim.

Additionally, the findings on the requirement to provide the monitoring may be affected by the outcome of *The People v. Milligan* (2008) which is pending a rehearing in the Fourth District Court of Appeal, Division 3, Case No. G039546. The case seeks clarification as to whether monitoring devices may be required for persons who committed a sex offense before November 2006.

As a result of our review, we have concluded that the Act and the executive order may have resulted in a partial reimbursable state mandate for some of the activities identified by the claimant. If the Commission reaches the same conclusion at its hearing on the matter, the nature and extent of the specific activities required can be addressed in the parameters and guidelines, which will then have to be developed for the program. Furthermore, Finance may submit additional comments when relevant information becomes available.

As required by the Commission's regulations, a "Proof of Service" has been enclosed indicating that the parties included on the mailing list which accompanied your February 10, 2009 letter have been provided with copies of this letter via either United States Mail or, in the case of other state agencies, Interagency Mail Service.

If you have any questions regarding this letter, please contact Carla Castañeda, Principal Program Budget Analyst at (916) 445-3274.

Sincerely,

Diana L. Ducay
Program Budget Manager

Enclosures

Attachment A

DECLARATION OF CARLA CASTAÑEDA
DEPARTMENT OF FINANCE
CLAIM NO. CSM-08-TC-03

1. I am currently employed by the State of California, Department of Finance (Finance), am familiar with the duties of Finance, and am authorized to make this declaration on behalf of Finance.

2. We concur that the sections relevant to this claim are accurately quoted in the test claim submitted by claimants and, therefore, we do not restate them in this declaration.

3. We declare that the attached opinions of the court cases are authentic and can be retrieved by accessing either the California Courts' website, http://www.courtinfo.ca.gov, or the Westlaw's website, http://web2.westlaw.com.

I certify under penalty of perjury that the facts set forth in the foregoing are true and correct of my own knowledge except as to the matters therein stated as information or belief and, as to those matters, I believe them to be true.

March 25, 2009
at Sacramento, CA

Carla Castañeda
Carla Castañeda

PROOF OF SERVICE

Test Claim Name: State Authorized Risk Assessment Tool for Sex Offenders (SARATSO)
Test Claim Number: CSM-08-TC-03

I, the undersigned, declare as follows:
I am employed in the County of Sacramento, State of California, I am 18 years of age or older and not a party to the within entitled cause; my business address is 915 L Street, 12 Floor, Sacramento, CA 95814.

On 3/25/2009, I served the attached recommendation of the Department of Finance in said cause, by facsimile to the Commission on State Mandates and by placing a true copy thereof: (1) to claimants and nonstate agencies enclosed in a sealed envelope with postage thereon fully prepaid in the United States Mail at Sacramento, California; and (2) to state agencies in the normal pickup location at 915 L Street, 12 Floor, for Interagency Mail Service, addressed as follows:

A-16
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Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814
Facsimile No. 445-0278

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Chief Probation Officers of California
921 11th Street
Sacramento, CA 95814

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County of Los Angeles
Auditor-Controller's Office
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Los Angeles, CA 90012

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A-15
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Folsom, CA 95630

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Ms. Sharon Stevenson
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Sacramento, CA 95814

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on 3/25/2009 at Sacramento, California.

K. Montelongo
Kelly Montelongo

COUNTY OF ORANGE, Plaintiff and Respondent,
v.
STATE BOARD OF CONTROL, Defendant and Appellant.
No. G000401.

Court of Appeal, Fourth District, Division 3, California.
Apr 30, 1985.

SUMMARY

Respondent County of Orange filed a claim for reimbursement from the State Board of Control for increased probation department expenses incurred as a result of mandatory domestic violence diversion legislation (Pen. Code, §§ 1000.6-1000.11). Asserting that the legislation changed the penalty for a crime and that Rev. & Tax. Code, § 2253.2, precluded consideration of a local agency's claim in such a case, the board refused to consider the claim. The superior court issued a writ of mandate compelling consideration of the claim. (Superior Court of Orange County, No. 401300, Philip Edgar Schwab, Jr., Judge.)

The Court of Appeal affirmed, holding that pretrial diversion programs could be distinguished from probation following conviction by the fact that diversion affects the decision to prosecute-not any sentence after successful prosecution-while probation means suspension of imposition or execution of a sentence. Because a device intended to avoid prosecution altogether thus has no effect on punishment for the diverted offense, the provision cited by the board was inapplicable and the board would be compelled to consider the claim. (Opinion by Wallin, J., with Sonenshine, Acting P. J., and Crosby, J., concurring.)

HEADNOTES

Classified to California Digest of Official Reports

(1) Criminal Law § 149--Discharge or Holding to Answer--Pretrial Diversion--Domestic Violence.
Pen. Code, §§ 1000.6 through 1000.11, establish a program under which persons accused of domestic violence can be diverted, following an investigation of the accused's suitability for diversion, into education, treatment, and rehabilitative programs while criminal proceedings are suspended, with charges dismissed and arrest records expunged upon successful completion of the program under probation department supervision.

(2) Criminal Law § 514--Punishment--Pretrial Diversion Distinguished.
Although an accused who is diverted for domestic violence under Pen. Code, §§ 1000.6 through 1000.11, is subject to a penal statute, criminal judicial proceedings, and supervision by the probation department, diversion is an alternative to prosecution and punishment and not a form of punishment for the diverted offense.

(3) Counties § 15--Fiscal Matters--Claim for Increased Expenses Due to Mandatory Domestic Violence Diversion Program--Change of Penalty for Crime.
Because probation is the suspension of imposition or execution of a sentence and an order of conditional and revocable community release following conviction for an offense, while diversion is a pretrial program of attempted rehabilitation designed to avoid conviction, the Board of Control could not, under Rev. & Tax. Code, § 2253.2, avoid consideration of a county's claim for increased probation department costs resulting from mandatory domestic violence diversion on the ground that the diversion statute constituted only a change in punishment for crime, notwithstanding similarities between probation and diversion.
[Pretrial diversion: statute or court rule authorizing suspension or dismissal of criminal prosecution on defendant's consent to noncriminal alternative, note, 4 **A.L.R.4th** 147. See also **Cal.Jur.3d**, State of California, § 120; **Am.Jur.2d**, Criminal Law, § 408.]

COUNSEL

John K. Van de Kamp, Attorney General, Richard D. Martland, Chief Assistant Attorney General, N. Eugene Hill, Assistant Attorney General, and Melvin R. Segal, Deputy Attorney General, for Defendant and Appellant.

Adrian Kuyper, County Counsel, and Daniel J. Didier, Deputy County Counsel, for Plaintiff and Respondent.

George Agnost, City Attorney (San Francisco), Burk E. Delventhal and Thomas J. Owen, Deputy City Attorneys, as Amici Curiae on behalf of Plaintiff and Respondent. ***662**

WALLIN, J.

Respondent County of Orange (County) filed a claim for reimbursement from appellant State Board of Control (Board) for the increased costs of its probation department incurred by County in implementing mandatory domestic violence diversion legislation. (Rev. & Tax. Code, § 2250 et seq.) The Board refused to hear the claim because it determined the legislation changed the penalty for a crime and therefore it lacked jurisdiction. (Rev. & Tax. Code, § 2253.2.) [FN1]The County sought review of the Board's decision by writ of mandate in the superior court. The court found the law establishing the diversion program did not change the penalty for a crime and issued a writ compelling the Board to exercise its jurisdiction over the claim. The Board appeals. We agree with the court below and affirm the judgment.

> FN1 Revenue and Taxation Code section 2253.2, subdivision (c)(2) provides: "The Board of Control shall not consider ... any claims submitted by a local agency ... if: ... (2) The chaptered bill created a new crime or infraction, eliminated a crime or infraction, or changed the penalty for a crime or infraction ...."

(1)In 1979, the Legislature enacted a diversion program for persons arrested for acts of domestic violence. (Pen. Code, §§ 1000.6-1000.11.) [FN2]Under the program, an accused who meets certain criteria can be diverted into a community program of education, treatment or rehabilitation while the criminal proceedings against him are suspended. The accused must consent to participation and waive his right to a speedy trial (§ 1000.7, subd. (b)), but no admission of guilt is required of him (§ 1000.6, subd. (c)). Upon the accused's successful completion of the diversion program, the charges against him are dropped and his arrest is deemed never to have occurred. (§§ 1000.9, 1000.10.) If he is unsuccessful, however, he is returned to the court for resumption of the criminal proceedings. (§ 1000.9.)

> FN2 All statutory references hereafter are to the Penal Code.

Before diversion can be ordered, the court must refer potential cases to the probation department for an investigation to determine if the accused is one who would benefit from diversion and into which community program he should be placed. (§ 1000.7, subd. (b).) The probation department is also required to monitor the progress of the diverted person and to return him to court if he is not benefiting from the program or if he is convicted of any violent crime. (§ 1000.9.)

(2)The Board argues that diversion constitutes an alternate penalty to the crime of domestic violence. It points out a diverted defendant is subjected to a penal statute and criminal judicial proceedings, and is placed under the supervision of the probation department with certain restrictions ***663** on his behavior. We disagree with the Board and conclude the diversion program creates an alternative to criminal prosecution and conviction rather than changing the penalty. No person can be punished for a crime unless he has been found guilty by a court or jury, or has entered a guilty plea. (§§ 681, 689; *People v. Clapp* (1944) 67 Cal.App.2d 197, 200 [153 P.2d 758].) Consequently, since participation in the program occurs prior to a determination of guilt or innocence, it cannot be considered a penalty.

(3)However, the Board stresses the similarity between diversion and probation, arguing both constitute the imposition of a penalty. For this proposition, the Board cites *People v. Superior Court (On Tai Ho)* (1974) 11 Cal.3d 59 [113 Cal.Rptr. 21, 520 P.2d 405], where the court held the act of ordering an accused to a drug diversion program was a judicial act and did not require the consent of the prosecutor. In this context, the court stated: "[D]iversion may also be viewed as a specialized form of probation, available to a different class of defendants but sharing many similarities with general probation and commitment for addiction." (*Id.*, at p. 66.)The existence of some similarities between probation and diversion does not affect the basic distinction between the two. Probation means "the suspension of the imposition or

execution of a *sentence* and the order of conditional and revocable release in the community under the supervision of the probation officer." (Italics added.) (§ 1203, subd. (a).) Diversion, on the other hand, can only be ordered prior to trial. (See *Morse v. Municipal Court* (1974) 13 Cal.3d 149, 156 [118 Cal.Rptr. 14, 529 P.2d 46].) Thus, probation is an alternative sentencing device imposed after conviction, while diversion is a pretrial program designed to avoid conviction.

We conclude the domestic violence diversion legislation did not change the penalty for a crime, and the Board is thus required to hear the County's claim for reimbursement. The judgment is affirmed.

Sonenshine, Acting P. J., Crosby, J., concurred. ***664**

Cal.App.4.Dist.
County of Orange v. State Bd. of Control
167 Cal.App.3d 660, 213 Cal.Rptr. 440

END OF DOCUMENT

Exhibit F

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JUDI E. THOMAS

June 1, 2009

Ms. Paula Higashi
Executive Director
Commission on State Mandates
900 Ninth Street, Suite 300
Sacramento, California 95814

Dear Ms. Higashi:

REVIEW OF STATE AGENCY COMMENTS
COUNTY OF LOS ANGELES TEST CLAIM [CSM-08-TC-03]
STATE AUTHORIZED RISK ASSESSMENT TOOL
FOR SEX OFFENDERS (SARATSO):
SEX OFFENDER'S PUNISHMENT, CONTROL, AND CONTAINMENT ACT

The County of Los Angeles respectfully submits its review of the State Agency comments to the SARATSO test claim. This review supports our contention that State mandated costs are reimbursable for training, investigation, assessment, reporting, supervision, treatment, and preparing the facts of offense sheet.

If you have any questions concerning this submission, please contact Hasmik Yaghobyan, at (213) 893-0792 or via e-mail at hyaghobyan@auditor.lacounty.gov.

Very truly yours,

Wendy L. Watanabe
Auditor-Controller

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Enclosure

Review of State Agency Comments
State Authorized Risk Assessment Tool for Sex Offenders (SARATSO): Sex Offender's Punishment, Control, and Containment Act

Statement of Facts

The County of Los Angeles ("County") filed the SARATSO[1] test claim with the Commission on State Mandates ("CSM"). CSM requested that State agencies comment on the County's test claim. On March 25, 2009, Ms. Diana L. Ducay, Program Budget Manager of the State Department of Finance ("DOF")[2] commented on the County's test claim by stating, in part, that the SARATSO activities claimed by the County could result in a reimbursable mandate; however, the reimbursement might be limited pursuant to Government Code Section 17556 (g)[3]; *County of Orange v. Board of Control*[4] *("County of Orange")* case; Penal Code Section 1203[5]; and *The People v. Milligan*[6] *("Milligan")* case.

County's Argument

I. Gov. Code Sec. 17556 (g) Does Not Apply to the Results of the SARATSO Activities Because the SARATSO Statute did not Create a New Crime or Infraction, and the *County of Orange* Case is Distinguishable From the SARATSO Activities

DOF bases its position on the case of *County of Orange,* where probation was found to be a penalty for conviction of a crime as it was imposed after conviction, and therefore,

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[1] The SARATSO test claim, State Authorized Risk Assessment Tool for Sex Offenders, Chapter 337, Statutes of 2006, ... was filed on January 22, 2009.

[2] Department of Finance's letter in response to the CSM's request to review and comment on the subject test claim.

[3] Gov. Code Sec. 17556(g), Legislative defining a new crime or changing an existing definition of a crime.

[4] *County of Orange v. Board of Control*, (1985) 167 Cal.App.3d 660, 663, probation was found to be a penalty for conviction of a crime because it is an "alternative sentencing device imposed after conviction".

[5] Penal Code Section 1203 (C), "If a person was convicted of an offense that requires him or her to register as a sex offender.....the results of SARATSO, administered pursuant to section 290.04 to 290.06, inclusive, if applicable".

[6] *The People v. Milligan* (2008), which is pending a rehearing in the Fourth District Appellate Court, Division 3, Case No. G039546, where the case is seeking clarification as to whether monitoring devices may be required for sex offenders who committed a sex offense before November 2006.

barred by the Government Code Section 17556(g), which bars legislation defining a new crime or changing an existing definition of a crime from reimbursement.

Relying on *County of Orange*, DOF erroneously believes that the registered sex offenders are on probation, and since probation was found to be a part of sentencing and punishment for a crime, therefore, SARATSO activities are not reimbursable.

We disagree. Chapter 337, Statutes of 2006, mandates SARATSO on every registered sex offender who is required to register as a sex offender. The registered sex offenders do not have to be on probation and SARATSO is not a part of the offender's sentencing. SARATSO is a device to eliminate future victimization.

California Attorney General's Office[7], in Summary of California Law On Sex Offenders, Section III, Sex Offender Registration, Initial Registration, second paragraph states that:

> "The registrant must appear in person..... The person has five working days to register after release from custody or on probation, or after coming into, or changing his or her residence within, any city or county."

Additionally, in the same section, under the heading of "Relief from the Lifetime Duty to Register"[8] , it states that:

> "Persons whose registerable sex offenses are nondiscloseable to the public may obtain relief from the duty to register upon obtaining a certificate of rehabilitation.....All others must obtain a governor's pardon to obtain relief from the duty to register as a sex offender....."[Emphasis added.]

Therefore, SARATSO does not change the penalty for a crime since the registered sex offender could be released from probation. On the other hand, it provides safety for society, and therefore, SARATSO's mandated costs claimed are not barred by the Government Code Section 17566 (g), and are within the meaning of Section 6, Article XIII B of the California Constitution.

Further, *County of Orange* found that the diversion program was not an alternative sentencing device, and therefore, did not change the penalty for a crime and ruled that:

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[7] California Attorney General's Office, Summary of California Law On Sex Offenders, Section III, Sex Offender Registration, Initial Registration, second paragraph. Exhibit A, page 1

[8] California Attorney General's Office, Summary of California Law On Sex Offenders, Section III, "Relief from the Lifetime Duty to Register". Exhibit A, page 3

> ".....the domestic violence diversion legislation did not change the penalty for a crime, and the Board is thus required to hear the County's claim for reimbursement."

Therefore, SARATSO, like *County of Orange*[9], did not change the penalty for a crime and mandated costs claimed are not barred by the Government Code Section 17566 (g), and are within the meaning of Section 6, Article XIII B of the California Constitution.

II. The Investigative Activities Mandated By SARATSO are New and Were not Required Under the Penal Code Section 1203

DOF finds that the investigative duties mandated by SARATSO are not new duties and were previously required under the Penal Code Section 1203 and states that:

> " ....prior law required county probation offices to perform investigative duties to complete reporting requirements under Penal Code Section 1203. The alleged investigative duties are not new under SARATSO program....."

We disagree. Penal Code Section 1203(C)[10] was amended by Chapter 337, Statutes of 2006, mandating probation officers to include additional information in their reports. For example, the probation officers are now required to include the results of the SARATSO administered on the sex offenders in their reports.

III. The People v. Milligan[11] Has No Precedent Value on the SARATSO's Mandated Activities

The DOF finds that the monitoring requirement claimed by the County could be affected by the outcome of *Milligan*, which is pending a rehearing. Insofar, as there is no final determination of the case, *Milligan* should not be relied as being conclusive and, therefore, the basis for a precedent.

If the findings in *Milligan* decision determine that the use of monitoring devices is not a penalty or punishment for a sexual offense under the Sexual Predator Punishment and Control Act, then the use of monitoring devices required under SARATSO would also

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[9] *Ibid*

[10] Penal Code Section 1203(C), If the person was convicted of an offenses that requires him or her to register as a sex offender pursuant to Section 290, the probation officer's report shall include the results of the State-Authorized Risk Assessment Tool for Sex Offenders (SARATSO) administered pursuant to Section 290.04 to 290.06, inclusive, if applicable.

[11] *Ibid*

not be a penalty. As such, the costs claimed under electronic monitoring would not be subject to the penalty funding disclaimer in subdivision (g) of Government Code Section 17556.

Conclusion

We believe the forgoing analysis unequivocally supports our contention. We continue to maintain that the County's test claim submitted on January 22, 2009 supports our conclusion that reimbursement of costs for the following activities is required:

Training

County probation officers must be trained. Essentially anyone who will be administering the SARATSO on sex offenders in the County must be trained through the process per the statute.

Investigation

County probation officers are mandated to include additional information in their reports. For example, the probation officers are now required to include the results of the SARATSO administered on the sex offenders in their reports.

Assessment

For the County Probation Department, preparation of the assessment is rated at two hours per case for an Investigator. The assessment consists of a criminal record check and a rating based upon the history. The series of questions are scored and the form is attached to a brief court report which rates the cases as Low, Medium or High Risk.

Reporting

For the County Probation Department, when authorized persons request that probation officers provide criminal histories, sex offender registration records, police reports, probation and presentencing reports, judicial records and case files, juvenile records, psychological evaluations and psychiatric hospital reports, sexually violent predator treatment program reports in their custody, access must be granted. The probation officer's duty to provide such reports is mandated.

Supervision

Persons placed on probation by a court shall be under the supervision of the county probation officer who shall determine both the level and type of supervision consistent with the court-ordered conditions of probation.

Treatment

County probation officers are required to provide treatment for specified sex offenders.

Facts of Offense Sheet

County Probation officers have a duty to send to the Department of Corrections and Rehabilitation a report of the circumstances surrounding the offense and the prior record and history of the defendant, as may be required by the Secretary of the Department of Corrections and Rehabilitation.

Summary of California Law On Sex Offenders

I. Who Is Disclosed on the Internet Web Site

Effective September 24, 2004, Penal Code section 290.46 required the Department of Justice to create this Web site on or before July 1, 2005. There are four categories of registered sex offenders for purposes of disclosure on the Megan's Law Internet web site.

HOME ADDRESS CATEGORY The conviction of certain sex offenses requires that the home address of the offender be posted, along with other information about the registrant. 290.46, subd. (b).

CONDITIONAL HOME ADDRESS CATEGORY The conviction of other designated sex offenses, along with the conviction of any other registrable sex offense, requires that the home address be posted, along with other information about the registrant. 290.46, subd. (c).

ZIP CODE CATEGORY Commission of certain other sex offenses requires that information about the offender, including his or her ZIP Code and other information, but not including the home address, be posted on the web site. 290.46, subd. (d).

UNDISCLOSED CATEGORY Finally, there is a category of registered sex offenders that may not be displayed on the Internet web site. These are registrants who have been convicted of sex offenses not listed in the above three categories. Offenders in the undisclosed category must still register as sex offenders with local law enforcement agencies, and are known to law enforcement.

II. Disclosure About Registrants by Local Law Enforcement Agencies

Local law enforcement agencies, under statutes defining the type and extent of notice allowed, may also notify their communities about the presence of designated registered sex offenders in their area. This is usually done only when an offender is suspected of posing a risk to the public. Penal Code section 290.45.

III. Sex Offender Registration

Initial Registration. Penal Code section 290 requires mandatory registration as a sex offender for persons convicted of the sex offenses listed in that section. section290(a)(2)(A)-(E). Even if the offense is not listed in section 290, the person may be ordered by a court to register as a sex offender if the criminal offense committed was sexually motivated. Section 290 applies automatically to the enumerated offenses, and imposes on each person convicted a lifelong obligation to register.

The registrant must appear in person to register with the police department of the city in which he or she resides, or with the sheriff's department if he or she resides in an unincorporated area or city which has no police department. The person has five working days to register after release from custody or on probation, or after coming into, or changing his or her residence within, any city or county.

Transient Registration. If the person has no residence address (is homeless), he or she must register within five working days after release from custody or on probation and, beginning January 1, 2005, no less than every 30 days thereafter, as a transient. Registration is with the law enforcement agency in whose jurisdiction the transient is physically present. Penal Code section 290, subd. (a)(1)(C).

Campus Registration. A person who resides, or is living as a transient upon, or is enrolled at or employed by, a campus of the University of California, California State University, community college or other institution of higher learning must register with the campus police department, in addition to registering with the police or sheriff's department having jurisdiction over his or her

residence. Penal Code section 290, subd. (a)(1)(C).

Registration of Sex Offenders Who Come to School or Work in California. Students and employees who reside out of state but go to school or work in California must register as sex offenders here if they are required to register in their state of residence. Penal Code 290, subd. (a)(1)(G). An employee is defined as a person who is employed in California on a full 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. A student is defined as a person who is registered in an educational institution, as defined in Education Code section 22129, on a full or part-time basis. The student/employee must register in the jurisdiction where he or she attends school or is employed.

Moves. Registrants with residence addresses must notify the last registering agency in writing within five working days of moving, and must re-register in person if the move is to a new jurisdiction. (Penal Code section 290, subds.(a), (f).) If a move makes a person homeless, he or she must register as a transient within 5 working days of leaving the residence address. Transients, who re-register no less than every 30 days, need not re-register upon changing their location unless to a destination outside the state, in which case the transient must give written notification of his move to the law enforcement agency in whose jurisdiction he or she was physically present before leaving the state, within five working days of leaving. Transients who move into a residence must register at that address within 5 working days of moving there. If the registrant does not know his or her new address out-of-state, the person must still give notice of the move within 5 working days of leaving, and must mail written notice later of the new address or location (if transient) within 5 working days of moving into the new residence. Penal Code section 290, subds. (a)(1)(C), (f).

Updates. All registrants must update their registration annually, within five working days of their birthday. Penal Code section 290, subd. (a)(1)(D). Transient registrants must also update their registration no less than every 30 days, and sexually violent predator registrants must update no less than every 90 days. Penal Code section 290 subds. (a)(1)(C), (E).

Out of State Sex Offenses. If a sex offender was convicted in another state, he or she is very likely to be required to register in California, and should register in accordance with the sex offender registration law. If the offender is not required to register in California, the Department of Justice will notify him or her of that assessment and terminate the registration.

Registration At More Than One Residence. Registrants who regularly reside at more than one residence address must register at each address, regardless of the number of days or nights spent there. If the addresses are in different jurisdictions, the registrant must go to the law enforcement agency having jurisdiction over each address. Penal Code section 290, subd. (a)(1)(B).

Juvenile Sex Offender Registration. Juveniles convicted of certain offenses are required to register as sex offenders upon release from the California Youth Authority. Penal Code section290, subd. (d)(1)-(3). However, registrants whose offenses were adjudicated in juvenile court cannot be publicly disclosed on the Internet web site. Local law enforcement agencies may, in their discretion, notify the public about juvenile registrants who are posing a risk to the public. Penal Code section 290.45.

Name Changes. A registrant must inform the law enforcement agency with which he or she is currently registered of a name change within 5 working days. Penal Code section 290, subd. (f)(3).

Penalties for Violation of Registration Law. There are various criminal penalties that apply to persons who fail to comply with the sex offender registration requirements. In general, a person convicted of a registrable felony sex offense who willfully violates the registration law is guilty of a felony. A person convicted of a registrable misdemeanor sex offense who violates the registration law is guilty of a misdemeanor on the first violation, and subsequent convictions for violating the registration law are felonies. Penal Code section 290, subd. (g).

Dismissal of Offense after Completion of Probation. Sex offenders who successfully complete probation may apply to have the offense dismissed under Penal Code section 1203.4, but

dismissal does not relieve the person from the duty to register as a sex offender. Penal Code section 290(a)(2)(F).

Relief from the Lifetime Duty to Register. Persons whose registrable sex offenses are nondisclosable to the public may obtain relief from the duty to register upon obtaining a certificate of rehabilitation. Penal Code section 290.5. All others must obtain a governor's pardon to obtain relief from the duty to register as a sex offender. A person is eligible to apply for a certificate of rehabilitation seven to ten years (depending on the registrable sex offense) after release from custody or on parole or probation, whichever is sooner. Certain registrable sex offenders are not eligible to obtain a certificate of rehabilitation. Penal Code sections 4852.01 & 4852.03.

COUNTY OF LOS ANGELES
DEPARTMENT OF AUDITOR-CONTROLLER

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June 2, 2009

County of Los Angeles Test Claim
State Authorized Risk Assessment Tool for Sex Offenders (SARATSO):
Sex Offender's Punishment, Control, and Containment Act

Declaration of Hasmik Yaghobyan

Hasmik Yaghobyan makes the following declaration and statement under oath:

I, Hasmik Yaghobyan, SB90 Administrator, in and for the County of Los Angeles, am responsible for filing test claims, reviews of State agency comments, Commission staff analysis, and for proposing parameters and guidelines (P's& G's) and amendments thereto, all for the complete and timely recovery of costs mandated by the State. Specifically, I have prepared the subject test claim.

Specifically, I declare that I have examined the County's State mandated duties and resulting costs, in implementing the subject law, and find that such costs as set forth in the subject test claim, are, in my opinion, reimbursable "costs mandated by the State", as defined in Government Code section 17514:

" ' Costs mandated by the State' means any increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution."

I am personally conversant with the foregoing facts and if so required, I could and would testify to the statements made herein.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct of my own knowledge, except as to the matters which are therein stated as information or belief, and as to those matters I believe them to be true.

6/2/09 Los Angeles, CA
Date and Place

Signature

State Authorized Risk Assessment Tool For Sex Offenders (SARATSO)
Claim Number: CSM-08-TC-03

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Declaration of Lorraine Hadden

STATE OF CALIFORNIA, County of Los Angeles:

Lorraine Hadden states: I am and at all times herein mentioned have been a citizen of the United States and a resident of the County of Los Angeles, over the age of eighteen years and not a party to nor interested in the within action; that my business address is 603 Kenneth Hahn Hall of Administration, City of Los Angeles, County of Los Angeles, State of California;

That on the 2nd day of June, 2009, I served the attached:

Documents: Los Angeles County, Review of State Agency Comments, SARATSO [CSM-08-TC-03], including *a 1 page letter of Wendy L. Watanabe dated 6/1/09, a five page narrative, Exhibit A, and a 1 page declaration of Hasmik Yaghobyan, now* pending before the Commission on State Mandates.

upon all Interested Parties listed on the attachment hereto and by

[X] by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date. Commission on State Mandates FAX as well as mail of originals.

[ ] by placing [ ] true copies [ ] original thereof enclosed in a sealed envelope addressed as stated on the attached mailing list.

[X] by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Los Angeles, California, addressed as set forth below.

[ ] by personally delivering the document(s) listed above to the person(s) as set forth below at the indicated address.

PLEASE SEE ATTACHED MAILING LIST

That I am readily familiar with the business practice of the Los Angeles County for collection and processing of correspondence for mailing with the United States Postal Service; and that the correspondence would be deposited within the United States Postal Service that same day in the ordinary course of business. Said service was made at a place where there is delivery service by the United States mail and that there is a regular communication by mail between the place of mailing and the place so addressed.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 2nd day of June, 2009, at Los Angeles, California.

Lorraine Hadden

STATE OF CALIFORNIA
COMMISSION ON STATE MANDATES
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October 11, 2013

Ms. Wendy Watanabe
County of Los Angeles Auditor-Controller
500 West Temple Street, Room 525
Los Angeles, CA 90012

Ms. Hasmik Yaghobyan
County of Los Angeles Auditor-Controller's Office
500 West Temple Street, Room 603
Los Angeles, CA 90012

And Parties, Interested Parties, and Interested Persons (See Mailing List)

Re: **Draft Staff Analysis and Proposed Statement of Decision, Schedule for Comments, and Notice of Hearing**
State Authorized Risk Assessment Tool for Sex Offenders (SARATSO), 08-TC-03
Penal Code Sections 290.3 et al.
County of Los Angeles, Claimant

Dear Ms. Watanabe and Ms. Yaghobyan:

The draft staff analysis and proposed statement of decision for the above-named matter is enclosed for your review and comment.

Written Comments

Written comments may be filed on the draft staff analysis by **November 1, 2013.** You are advised that comments filed with the Commission are required to be simultaneously served on the other interested parties on the mailing list, and to be accompanied by a proof of service. However, this requirement may also be satisfied by electronically filing your documents. Please see http://www.csm.ca.gov/dropbox.shtml on the Commission's website for instructions on electronic filing. (Cal. Code Regs., tit. 2, § 1181.2.)

If you would like to request an extension of time to file comments, please refer to section 1183.01(c)(1) of the Commission's regulations.

Hearing

This matter is set for hearing on **Friday, December 6, 2013**, at 10:00 a.m., State Capitol, Room 447, Sacramento, California. The final staff analysis will be issued on or about November 22, 2013. Please let us know in advance if you or a representative of your agency will testify at the hearing, and if other witnesses will appear. If you would like to request postponement of the hearing, please refer to section 1183.01(c)(2) of the Commission's regulations.

Please contact Matt Jones at (916) 323-3562 if you have any questions

Sincerely,

Heather Halsey
Executive Director

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Hearing Date: December 6, 2013
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ITEM _

TEST CLAIM
DRAFT STAFF ANALYSIS

AND

PROPOSED STATEMENT OF DECISION

Statutes 2006, Chapter 336 (SB 1178), amending Section 1202.8, and adding Sections 290.04, 290.05, and 290.06 of the Penal Code;

Statutes 2006, Chapter 337 (SB 1128), amending Sections 290, 290.3, 290.46, 1203, 1203c, 1203.6, 1203.075, and adding Sections 290.03, 290.04, 290.05, 290.06, 290.07, 290.08, 1203e, 1203f of the Penal Code;

Statutes 2006, Chapter 886 (SB 1849), amending Sections 290.46, 1202.8, repealing Sections 290.04, 290.05, and 290.06 of the Penal Code;

Statutes 2007, Chapter 579 (SB 172), amending Sections 290.04, 290.05, 290.3, and 1202.7, adding Sections 290.011, 290.012, and repealing and adding Section 290 to the Penal Code; and

California Department of Mental Health's Executive Order, SARATSO (State Authorized Risk Assessment Tool for Sex Offenders) Review Committee Notification, issued on February 1, 2008

State Authorized Risk Assessment Tool for Sex Offenders (SARATSO):

08-TC-03

County of Los Angeles, Claimant

EXECUTIVE SUMMARY

Attached is the draft proposed statement of decision for this matter. This draft proposed statement of decision also functions as the draft staff analysis, as required by section 1183.07 of the Commission's regulations.

Overview

This test claim alleges reimbursable state-mandated increased costs resulting from additions and amendments made to the Penal Code by the Sex Offender Punishment, Control, and Containment Act of 2006[1] and the Sex Offender Registration Act.[2,3] In addition, the test claim

[1] Statutes 2006, chapter 337 (SB 1128), and amendments made by Statutes 2006, chapter 886 (AB 1849).

[2] Statutes 2007, chapter 579 (SB 172).

[3] Statutes 2006, chapter 336 (SB 1178) is also pled, but three of the code sections addressed in that statute were repealed prior to this test claim being filed, and the other two were subsequently

alleges that the SARATSO Review Committee Notification, issued February 1, 2008, imposes a reimbursable state mandate.

The test claim statutes generally provide for the establishment of a statewide system of risk assessment to be applied to convicted sex offenders. The statutes provide for a committee to select an appropriate risk assessment tool for each population (adult males, adult females, juvenile males, and juvenile females), which will be known as the State Authorized Risk Assessment Tool for Sex Offenders, or SARATSO. The test claim statutes require a statewide committee to develop a training program for those who will administer the SARATSO assessments, and require those persons in turn to be trained at least every two years. Then, when a person is convicted of an offense requiring registration as a sex offender, the SARATSO is utilized to assess the risk of that person committing future sex crimes, so that the higher- risk offenders can be more adequately supervised while on probation or parole. The test claim statutes provide for electronic monitoring of the highest-risk offenders, as well as "intensive and specialized probation supervision." And finally, the test claim statutes require probation departments to report to statewide authorities regarding the effectiveness of continuous monitoring, and the costs of monitoring weighed against the results in reducing recidivism, and require all relevant agencies to grant reciprocal access to records and information pertaining to a sex offender subject to SARATSO assessment.

Procedural History

On January 22, 2009, the County of Los Angeles (County) filed this test claim. On March 25, 2009, the Department of Finance (Finance) submitted written comments on the test claim, suggesting that some or all of the SARATSO requirements should not be reimbursable consistent with section 17556(g), because the statutes are related to the expansion of crimes or penalties for crimes. On June 8, 2009, the County submitted a written rebuttal to Finance's comments, asserting that section 17556(g) does not bar reimbursement because the activities required by the test claim statutes are not limited to probationers.

Commission Responsibilities

Under article XIII B, section 6 of the California Constitution, local agencies and school districts are entitled to reimbursement for the costs of state-mandated new programs or higher levels of service. In order for local government to be eligible for reimbursement, one or more similarly situated local agencies or school districts must file a test claim with the Commission. "Test claim" means the first claim filed with the Commission alleging that a particular statute or executive order imposes costs mandated by the state. Test claims function similarly to class actions and all members of the class have the opportunity to participate in the test claim process and all are bound by the final decision of the Commission for purposes of that test claim.

The Commission is the quasi-judicial body vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6. In

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amended. Therefore, the requirements of Statutes 2006, chapter 336 (SB 1178) are addressed as amended.

making its decisions, the Commission cannot apply article XIII B as an equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities.[4]

Claims

The County of Los Angeles alleges that the test claim statutes and executive order impose reimbursable state-mandated increased costs for county probation departments to provide "new probation services;" to be trained in the use of the SARATSO; to perform a presentencing risk assessment of every person convicted of an offense requiring registration as a sex offender; to compile a Facts of Offense Sheet for persons convicted of registerable offenses; to place individuals who are determined to present a high risk of recidivism on intensive and specialized probation; and to ensure that an assessment using the SARATSO is performed for 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.[5]

The following chart provides a brief summary of the claims and issues raised and staff's recommendation.

Subject	Description	Staff Recommendation
Penal Code sections 290.3, 290.46, 1203.6, and 1203.075	Section 290.3 addresses fines for sex offenses but does not require any activities of local agencies. Section 290.46 addresses the DOJ sex offender registry. Sections 1203.06 and 1203.075 provide specific prohibitions against sentencing a person to probation for certain crimes when certain criteria are met.	*Deny*—These sections do not impose any state-mandated requirements on local agencies and claimant does not allege any activities specific to these sections.
Penal Code section 290.03 (added, Stats. 2006, ch. 337 (SB 1128))	Section 290.03 provides the Legislature's findings and declarations regarding the need for a "comprehensive system of risk assessment, supervision, monitoring and containment," and states that the Legislature "hereby creates" a statewide system to identify, assess, monitor and contain known sex offenders for the purpose of reducing the risk of recidivism.	*Deny* – Section 290.03 does not impose any state-mandated requirements upon county probation departments; the section only states the Legislature's findings and declarations.
Penal Code section 290.04 (added, Stats. 2006, ch. 337 (SB 1128); amended,	Section 290.04 states that the sex offender risk assessments tools selected for each population (e.g., adult males, juveniles) shall be known as the State-Authorized Risk Assessment Tool for Sex Offenders (SARATSO). Section 290.04 also provides that every person required to register as a sex offender under section 290 shall be subject to assessment under the SARATSO, and that a	*Deny* – Section 290.04 does not impose any state-mandated requirements on county probation departments; it only provides for the creation of the Review Committee and defines the SARATSO.

[4] *City of San Jose v. State of California (1996)* 45 Cal.App.4th 1802.

[5] Exhibit A, Test Claim, at pp. 7-8.

Stats. 2007, ch. 579 (SB 172))	Review Committee shall be established to select an appropriate SARATSO test for each population.	
Penal Code section 290.05 (added, Stats. 2006, ch. 337 (SB 1128); amended, Stats. 2007, ch. 579 (SB 172))	Section 290.05 provides for a SARATSO Training Committee, charged with developing a training program and protocol for persons authorized by statute to administer the SARATSO. The section requires CDCR, DMH, county probation departments, and authorized local law enforcement agencies to designate personnel to attend training and train others, and requires that all persons administering the SARATSO receive training no less frequently than every two years.	*Partially approve* – Section 290.05 imposes a reimbursable state mandate on probation departments and authorized local law enforcement agencies to designate key persons within the organization to attend training and to train others, and to ensure that all persons within the department who administer the SARATSO receive training no less frequently than every two years.
Penal Code section 290.06 (added, Stats. 2006, ch. 337 (SB 1128)); Penal Code section 1203 (amended, Stats. 2006, ch. 337 (SB 1128)); Executive Order, SARATSO Review Committee Notification, issued February 1, 2008	Section 290.06 provides that CDCR, DMH, and local probation departments shall administer the SARATSO to all persons under their supervision and custody, and that probation departments shall administer the SARATSO to all persons for whom a presentencing report is prepared pursuant to section 1203. Section 1203 requires a probation department to investigate and prepare a presentencing report for the court when a person is convicted of certain offenses; when the offense is one that requires a person to register under section 290, the probation report is required to include the results of the SARATSO administered pursuant to sections 290.04 to 290.06, if applicable. The alleged executive order announces the Review Committee's determination of an appropriate risk assessment tool, or SARATSO, for adult males and juvenile males, but states that an objective and verifiable tools is not selected for female sex offenders. Section 290.04 provides that if a SARATSO is not identified for a given population any duties to administer the SARATSO found elsewhere in the Penal Code do not apply.	*Partially approve* – Sections 290.06 and 1203 impose a reimbursable state mandate on county probation departments to perform SARATSO evaluations and include the results of those evaluations in presentencing reports for adult male offenders and juvenile male offenders, beginning July 1, 2008. These activities are not barred from reimbursement by Government Code section 17556(g), because these activities constitute administrative functions that are not directly related to the enforcement of criminal laws or the augmentation of criminal penalties.

Penal Code section 1203c (amended, Stats. 2006, ch. 337 (SB 1128))	Section 1203c provides that if a person is committed to the jurisdiction of the CDCR, the probation officer shall include in the report the results of the SARATSO evaluation performed pursuant to sections 290.04 to 290.06, if applicable.	*Approve* – Section 1203c imposes a reimbursable state mandate on county probation departments to include the results of the SARATSO evaluation in the report sent to CDCR.
Penal Code section 1203e (added, Stats. 2006, ch. 337 (SB 1128))	Section 1203e requires a probation department, beginning June 1, 2010, to compile a Facts of Offense Sheet for every person convicted of an offense that requires him or her to register as a sex offender. The Facts of Offense Sheet shall include the results of the SARATSO, "if required," and shall be included in the probation officer's report to the court and shall be sent to the Department of Justice Sex Offender Tracking Program within 30 days of conviction. The section also requires the CDCR or the DMH to send a copy of the Facts of Offense Sheet to the local law enforcement agency of the community into which the person is released or paroled within three days of release.	*Approve* – Section 1203e imposes a reimbursable state mandate on county probation departments to compile the Facts of Offense Sheet, including the results of the SARATSO, if applicable, and to send the Facts of Offense Sheet to the Department of Justice Sex Offender Tracking Program. These activities are not barred from reimbursement by section 17556(g), because they are not directly related to the enforcement of criminal laws or the augmentation of criminal penalties.
Penal Code section 1203f (added, Stats. 2006, ch. 337 (SB 1128))	Section 1203f provides that a probation department shall ensure that all probationers under active supervision who are deemed to pose a high risk to the public of committing sex crimes, as determined by the SARATSO, are placed on intensive and specialized probation supervision and are required to report frequently to designated officers.	*Deny* – Section 1203f imposes new activities on local agencies, but those activities relate directly to the enforcement of the underlying sex crime law and the augmentation of criminal penalties. Therefore section 17556(g) prohibits a finding of costs mandated by the state.
Penal Code section 1202.8 (added, Stats. 2006, ch. 336 (SB	Section 1202.8 provides that persons on probation who have been assessed with the SARATSO and determined to have a risk level of high shall be continuously electronically monitored while on probation. Section 1202.8 also requires that beginning January 1, 2009, and every two years	*Partially Approve* – Section 1202.8 requires county probation departments to perform new activities to continuously electronically monitor high risk sex

1178); amended, Stats. 2006, ch. 886 (AB 1849))	thereafter, a probation department shall report to the Corrections Standards Authority regarding the effectiveness of continuous electronic monitoring in reducing recidivism.	offenders, and to report to the Corrections Standards Authority on the effectiveness of such monitoring at every two years. However, continuous electronic monitoring of probationers relates directly to the enforcement of the underlying sex crime law and augmentation of criminal penalties and is therefore barred from reimbursement by section 17556(g). However, the report required every two years to the Corrections Standards Authority is a new mandated activity, is administrative in nature, and not barred by section 17556(g) and so imposes a reimbursable state-mandate.
Penal Code sections 290, 290.011, 290.012, and 1202.7 (as amended, Stats. 2007, ch. 579 (SB 172))	Section 290 requires every person who has been or is hereafter convicted of one of the specified sex crimes to register with the local police or sheriff's department in the community in which the person is residing. Section 290.011, as amended, requires a person living as a transient to re-register every thirty days. Section 290.012 requires a person adjudicated to be a sexually violent predator to update his or her registration every 90 days. Section 1202.7 provides that "[i]t is the *intent of the Legislature* that *efforts be made* with respect to persons who are subject to Section 290.011 who are on probation t*o engage them in treatment*."	*Deny* – Sections 290, 290.011, and 290.012 are pled only to provide context and reference for section 1202.7, and do not impose any state-mandated activities on county probation departments. Section 1202.7 also does not impose any requirements on local agencies based on the plain language, and in any event section 1202.7 is not new. The amendments made by Statutes 2007, chapter 579 (SB 172) were made to ensure that section 1202.7 correctly references section 290.011, as that section was renumbered.

Penal Code section 290.07 (added by Stats. 2006, ch. 337 (SB 1128)	Section 290.07 requires that a person authorized by statute to administer the SARATSO shall be granted access to all relevant records pertaining to a registered sex offender, including, but not limited to judicial records, police reports, probation and presentencing reports, psychiatric hospital reports, and records sealed by the courts or the Department of Justice.	*Partially Approve* – Section 290.07 imposes new requirements on local agencies to provide access to records pertaining to a registered sex offender to any person authorized to administer the SARATSO. However, the claimant has submitted evidence only that the County probation department first incurred costs under section 290.07 within 12 months of the filing date of this test claim. Therefore section 290.07 is denied with respect to all other agencies, and approved for reimbursement only for probation departments.
Penal Code section 290.08 (added by Stats. 2006, ch. 337 (SB 1128)	Section 290.08 requires a District Attorney's office to retain records relating to a conviction for a registerable sex offense for 75 years after disposition of the case.	*Deny* – Section 290.08 imposed a requirement on District Attorneys' offices to retain records of convictions for registerable sex offenses for 75 years effective September 20, 2006. There, is no evidence in the record to support a finding that District Attorneys' offices first incurred costs to implement this requirement within 12 months of the filing date of this test claim, as required by section 17551.

Analysis

A. The Commission Has Jurisdiction Over the 2006 Test Claim Statutes as Specified, Because Claimant First Incurred Costs In February 2008.

Government Code section 17551(c) establishes the statute of limitations for the filing of test claims as follows:

> Local agency and school district test claims shall be filed not later than 12 months following the effective date of a statute or executive order, or within 12 months of incurring increased costs as a result of a statute or executive order, whichever is later.

Section 1183(c) of the Commission's regulations provides, accordingly, that "'within 12 months' means by June 30 of the fiscal year following the fiscal year in which increased costs were first incurred by the test claimant."[6]

The effective date of Statutes 2006, chapter 336 (SB 1178), and Statutes 2006, chapter 337 (SB 1128), both enacted as urgency measures, is September 20, 2006. Statutes 2006, chapter 886 (AB 1849) was enacted as urgency legislation September 30, 2006. Therefore, "within 12 months," as defined in the Commission's regulations would be by June 30, 2008. This test claim was filed on January 22, 2009, several months beyond the statute of limitations provided in section 17551 and section 1183 of the Commission's regulations, based on the effective date of the test claim statutes.

However, some activities required by the test claim statutes, including conducting SARATSO assessments, were not required to be performed until July 1, 2008. Additionally, the claimant has declared under penalty of perjury that *"[c]ounty probation officers* began incurring SARATSO costs during February 2008 and, [*sic*] so this test claim, filed on January 9, 2009, within one year of the date the County began incurring such costs is timely filed in accordance with Government Code Section 17553."[7] There is no evidence in the record to rebut the County's declaration with regard to costs first incurred by the probation department in February 2008.

Moreover, training activities, and any activities that rely on being first trained, could not have been performed by any local agency prior to February 1, 2008, when the alleged executive order was issued. The SARATSO Review Committee Notification identified the SARATSO for certain populations and invited local agencies to designate personnel to receive training and begin to train others to meet the July 1, 2008 implementation date. The plain language of the statutes requires that local agency personnel administering the SARATSO receive training to administer the SARATSO, and the plain language of the alleged executive order makes clear that probation departments and authorized local law enforcement agencies were expected to begin training activities on or after February 1, 2008. Therefore, the statute of limitations is satisfied as to activities imposed by the test claim statutes on probation departments, and for the training activities of probation departments and authorized local law enforcement agencies that could not have been performed prior to the issuance of the executive order inviting the local agencies to attend training on the identified SARATSO. Section 290.08, as added by Statutes 2006, chapter 337, does not impose any requirements on probation departments, and does not rely on the issuance of the alleged executive order, and therefore the Commission declines to take jurisdiction. Section 290.07 is addressed below only with respect to probation departments.

Based on the foregoing, the Commission does not have jurisdiction of Statutes 2006, chapters 336, 337, and 886 (SB 1178; SB 1128; AB 1849), except those activities required of county

[6] Code of Regulations, title 2, section 1183 (Register 2003, No. 17).

[7] Exhibit A, Test Claim, at p. 42.

probation departments, and those activities that could not be performed prior to the issuance of the alleged executive order on February 1, 2008.

B. Some of the Test Claim Statutes, Triggered by the Executive Order, Impose New Required Activities on Local Agencies.

Penal Code sections 290.3, 290.46, 1203.6, and 1203.075 are included in the caption in Box 4 of the test claim form, but are not addressed in the claimant's narrative. Moreover, staff finds that the plain language of these sections does not impose any new activities on local government, and therefore recommends these sections be denied.

Section 290.04 provides for a Review Committee to select an appropriate risk assessment tool for each population of sex offenders, and identifies a SARATSO for adult males to be used in the interim, while the Committee evaluates whether to supplement that tool. The section further provides that if a tool "has not been selected for a given population pursuant to this section, no duty to administer the SARATSO elsewhere in the code shall apply with respect to that population." Section 290.05 requires that every person administering the SARATSO be trained no less frequently than every two years, and requires the SARATSO Training Committee to develop a training program for administering the SARATSO, while the alleged executive order demonstrates that issuance of the Review Committee's findings was a necessary prerequisite to the development of any training program. Therefore, staff finds that while the executive order does not in itself mandate any activities, it sets in motion all other requirements of the test claim statutes, including and especially the training requirements; and the executive order limits the requirement to administer the SARATSO to only male offenders, because no risk assessment tool is identified for female offenders. Therefore, staff finds that some of the test claim statutes impose new required activities on local agencies, primarily triggered by the executive order, as follows:

> **For county probation departments and authorized local law enforcement agencies, beginning February 1, 2008, to:**
>
> 1. Designate key persons within their organizations to attend training and, as authorized by the department, to train others within their organizations;[8] and,
> 2. Ensure that persons administering the SARATSO receive training no less frequently than every two years.[9]
>
> **For county probation departments to:**
>
> 1. Assess, using the SARATSO, as set forth in section 290.04, every eligible person for whom the department prepares a presentencing report pursuant to section 1203 and every eligible person under the department's supervision

[8] Penal Code section 290.05 (Stats. 2006, ch. 337 (SB 1128); Stats. 2007, ch. 579 (SB 172)); SARATSO Review Committee Notification, issued February 1, 2008).

[9] Penal Code section 290.05 (Stats. 2006, ch. 337 (SB 1128); Stats. 2007, ch. 579 (SB 172)); SARATSO Review Committee Notification, issued February 1, 2008).

who was not assessed pursuant to a presentencing report, prior to the termination of probation but no later than January 1, 2010.[10]

2. Include the results of the SARATSO assessment administered pursuant to sections 290.04 to 290.06 in the presentencing report made to the court pursuant to section 1203, if the person was convicted of an offense that requires him or her to register as a sex offender, or if the probation report recommends that registration be ordered at sentencing.[11]

   Preparing the presentencing report under section 1203 is not a new activity.

3. Include in the report prepared for the department pursuant to section 1203c the results of the SARATSO, administered pursuant to sections 290.04 to 290.06, inclusive, if applicable, whenever a person is committed to the jurisdiction of the Department of Corrections and Rehabilitation for a conviction of an offense that requires him or her to register as a sex offender.[12]

   Preparing the report under section 1203c is not a new activity.

4. Beginning January 1, 2010:

   (a) Compile a Facts of Offense Sheet for every person convicted of an offense that requires him or her to register as a sex offender and who is referred to the department pursuant to section 1203;

   (b) Include in the Facts of Offense Sheet all of the information specified in section 1203e, including the results of the SARATSO, as set forth in section 290.04, if required;

   (c) Include the Facts of Offense Sheet in the probation officer's report to the court made pursuant to section 1203; and

   (d) Send a copy of the Facts of Offense Sheet to the Department of Justice Sex Offender Tracking Program within 30 days of the person's sex offense conviction.

   Obtaining information required to complete the presentencing report pursuant to section 1203, as amended by Statutes 1996, chapter 719 (AB 893), or the report to the Department of Corrections and Rehabilitation

[10] Penal Code section 290.06 (Stats. 2006, ch. 337 (SB 1128)); 290.04 (Stats. 2006, ch. 337 (SB 1128); Stats. 2007, ch. 579 (SB 172)) [limiting duty to administer SARATSO to populations for whom an appropriate tool has been selected pursuant to Penal Code section 290.04]; SARATSO Review Committee Notification issued February 1, 2008 [selecting a SARATSO risk assessment tool for adult males and juvenile males only].

[11] Penal Code section 1203 (as amended, Stats. 2006, ch. 337 (SB 1128)).

[12] Penal Code section 1203c (as amended, Stats. 2006, ch. 337 (SB 1128)).

under section 1203c if applicable, as amended by Statutes 1963, chapter 1785 is not new or reimbursable under this activity.[13]

5. Ensure that all probationers under active supervision who are deemed to pose a high risk to the public of committing sex crimes as determined by the SARATSO are placed on intensive and specialized supervision and required to report frequently to designated officers.[14]

6. Beginning January 1, 2009, continuously electronically monitor probationers determined pursuant to the SARATSO to have a high risk of recidivism.[15]

7. Beginning January 1, 2009, and every two years thereafter, report to the Corrections Standards Authority all relevant statistics and relevant information regarding the effectiveness of continuous electronic monitoring of sex offenders, including the costs of monitoring and recidivism rates of those persons who have been monitored.[16]

8. Grant access to all relevant records pertaining to a registered sex offender to any person authorized by statute to administer the SARATSO.[17]

   This activity is limited to granting access to records exempt from disclosure under the California Public Records Act (Government Code § 6250, et seq.).

C. Some of the New Required Activities Impose a Reimbursable State-Mandated Program Within the Meaning of Article XIII B, Section 6 and Government Code Section 17514.

Article XIII B, section 6 of the California Constitution states, in part, that the Legislature "may, but need not, provide a subvention of funds for…[l]egislation defining a new crime or changing an existing definition of a crime." Section 17556(g) provides that the Commission "shall not find" costs mandated by the state if the test claim statute "created a new crime or infraction, eliminated a crime or infraction, or changed the penalty for a crime or infraction, but only for that portion of the statute relating directly to the enforcement of the crime or infraction." The inclusion of subdivision (g) within the statutory exclusions (sometimes called "disclaimers") of section 17556 constitutes the "exercise of the Legislative discretion authorized by article XIII B, section 6" whether to provide a subvention of funds for statutes that create, eliminate, or change the penalty for a crime or infraction.[18]

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[13] Penal Code section 1203e (added, Stats. 2006, ch. 337 (SB 1128)).

[14] Penal Code section 1203f (added, Stats. 2006, ch. 337 (SB 1128)).

[15] Penal Code section 1202.8 (amended, Stats. 2006, ch. 337 (SB 1128)).

[16] Penal Code section 1202.8 (as amended, Stats. 2006, ch. 337 (SB 1128)).

[17] Penal Code section 290.07 (added, Stats. 2006, ch. 337 (SB 1128)).

[18] *County of Contra Costa v. State of California* (Cal. Ct. App. 3d Dist. 1986) 177 Cal.App.3d 62, at p. 67, Fn 1.

The plain language and intent of section 17556(g), along with the statutory and case law determinations that probation is a form of criminal punishment, and a sentencing device,[19] result in a working rule and analysis that required changes to the *duration or conditions of probation* that result in increased costs to local agencies are subject to the exclusion in Government Code section 17556(g), and therefore not reimbursable. However, administrative activities imposed on probation departments can constitute a reimbursable "program," within the meaning of article XIII B, section 6, if those activities do not directly relate to the enforcement of a criminal law or a change in the duration or conditions of a criminal penalty.

1. Training requirements under section 290.05; reporting to Corrections Standards Authority under section 1202.8; and granting access to relevant records under section 290.07 are administrative functions performed by local agencies pursuant to the test claim statutes, and are not directly related to the creation, expansion, or elimination of crimes or penalties for crimes, and therefore are not barred from reimbursement by Government Code section 17556(g).

The plain language of section 17556(g) does not bar a finding of costs mandated by the state for training, reporting, and granting access to relevant records to other agencies and personnel, under sections 290.05, 1202.8, and 290.07. These activities are not related to the expansion or elimination of crime, or the enhancement or elimination of punishment and, thus, Government Code section 17556(g) does not apply. Staff finds that these activities constitute mandated new programs or higher levels of service and result in costs mandated by the state for local agencies, as specified.

2. Administering SARATSO assessments under section 290.06; including the results of the SARATSO assessments in presentencing reports prepared under section 1203; including the results of the SARATSO assessments in reports submitted to the Department of Corrections and Rehabilitation under section 1203c; and compiling a Facts of Offense Sheet under section 1203e, including the results of the SARATSO assessment, where applicable, and including the Facts of Offense Sheet in the presentencing report required by section 1203, are activities performed after conviction, and which may have an impact on the sentence given, but these activities are not *directly related* to the enforcement of crime or the expansion of the definition of crime or enhancement of penalties.

Activities related to administering the SARATSO under section 290.06, and including the SARATSO results in presentencing reports, reports made to CDCR, and the Facts of Offense Sheet included in a presentencing report are all *administrative functions* whose costs *do not result* from a statute altering the duration or conditions of the penalty. In addition, preparation of the Facts of Offense Sheet, which is new as of January 1, 2010, by the plain language of section 1203e, is an administrative activity, not directly related to the enforcement of crime or any change in penalties. Although the activities related to administering the SARATSO and preparing these reports may result in an augmented or mitigated punishment (which may entail increased costs), and may result in changed conditions of probation, as discussed below, the activities for which reimbursement is sought under sections 290.06, 1203, 1203c, and 1203e are not directly related to these changed penalties.

[19] *County of Orange, supra*, 167 Cal.App.3d 660, at p. 667.

Staff finds that these activities constitute mandated new programs or higher levels of service and result in costs mandated by the state for probation departments, as specified.

3. Continuously electronically monitoring high risk sex offenders under section 1202.8, and ensuring that high risk sex offenders are placed under intensive and specialized supervision under section 1203f, are activities directly related to the penalty for the sex crime, and are not reimbursable under section 17556(g).

Section 1202.8 requires local probation departments, beginning January 1, 2009, to continuously electronically monitor sex offenders while on probation who assess at a high risk level under the SARATSO. Electronic monitoring is thus a condition of probation, and facially presents a greater deprivation of liberty, and therefore constitutes a change in the penalty for the underlying crimes. Based on the plain language of section 17556(g), the costs of electronic monitoring under section 1202.8 are not costs mandated by the state, within the meaning of section 17514.

Likewise, section 1203f requires county probation departments to place sex offenders who are on probation and who pose a high risk to the public pursuant to the SARATSO on "intensive and specialized probation," and to require such probationers "to report frequently to designated probation officers." These requirements are conditions of probation placed on a subset of probationers, as specified, and therefore constitute a change in the penalty for the underlying crimes. Based on the plain language of section 17556(g), the costs of providing "intensive and specialized probation" services are not costs mandated by the state, within the meaning of section 17514.

Based on the foregoing, staff finds that sections 1202.8 and 1203f require county probation departments to perform activities, but that under Article XII B, section 6(a)(2) of the constitution and Government Code section 17556(g), the costs for continuous electronic monitoring of high risk sex offenders and placing high risk sex offenders on intensive and specialized probation supervision are exempt from the subvention requirement. Therefore, staff finds that sections 1202.8 and 1203f do not impose a reimbursable new program or higher level of service within the meaning of article XIII B, section 6 of the California Constitution.

Conclusion

Staff finds that the test claim statutes and executive order impose a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514 for the following activities:

For county probation departments and authorized local law enforcement agencies, beginning February 1, 2008, to:

1. Designate key persons within their organizations to attend training and, as authorized by the department, to train others within their organizations;[20] and,
2. Ensure that persons administering the SARATSO receive training no less frequently than every two years.[21]

[20] Penal Code section 290.05 (Stats. 2006, ch. 337 (SB 1128); Stats. 2007, ch. 579 (SB 172)); SARATSO Review Committee Notification, issued February 1, 2008).

For county probation departments to:

1. Assess, using the SARATSO, as set forth in section 290.04, every eligible person for whom the department prepares a presentencing report pursuant to section 1203 and every eligible person under the department's supervision who was not assessed pursuant to a presentencing report, prior to the termination of probation but no later than January 1, 2010.[22]

2. Include the results of the SARATSO assessment administered pursuant to sections 290.04 to 290.06 in the presentencing report made to the court pursuant to section 1203, if the person was convicted of an offense that requires him or her to register as a sex offender, or if the probation report recommends that registration be ordered at sentencing.[23]

   Preparing the presentencing report under section 1203 is not a new activity and, thus, not eligible for reimbursement.

3. Include in the report prepared for the department pursuant to section 1203c the results of the SARATSO, administered pursuant to sections 290.04 to 290.06, inclusive, if applicable, whenever a person is committed to the jurisdiction of the Department of Corrections and Rehabilitation for a conviction of an offense that requires him or her to register as a sex offender.[24]

   Preparing the report under section 1203c is not a new activity and, thus, not eligible for reimbursement.

4. Beginning January 1, 2010:

   (a) Compile a Facts of Offense Sheet for every person convicted of an offense that requires him or her to register as a sex offender and who is referred to the department pursuant to section 1203;

   (b) Include in the Facts of Offense Sheet all of the information specified in section 1203e, including the results of the SARATSO, as set forth in section 290.04, if required;

   (c) Include the Facts of Offense Sheet in the probation officer's report to the court made pursuant to section 1203; and

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[21] Penal Code section 290.05 (Stats. 2006, ch. 337 (SB 1128); Stats. 2007, ch. 579 (SB 172)); SARATSO Review Committee Notification, issued February 1, 2008).

[22] Penal Code section 290.06 (Stats. 2006, ch. 337 (SB 1128)); 290.04 (Stats. 2006, ch. 337 (SB 1128); Stats. 2007, ch. 579 (SB 172)) [limiting duty to administer SARATSO to populations for whom an appropriate tool has been selected pursuant to section 290.04]; SARATSO Review Committee Notification issued February 1, 2008 [selecting a SARATSO risk assessment tool for adult males and juvenile males only].

[23] Penal Code section 1203 (as amended, Stats. 2006, ch. 337 (SB 1128)).

[24] Penal Code section 1203c (as amended, Stats. 2006, ch. 337 (SB 1128)).

(d) Send a copy of the Facts of Offense Sheet to the Department of Justice Sex Offender Tracking Program within 30 days of the person's sex offense conviction.

Obtaining information required to complete the presentencing report pursuant to section 1203, as amended by Statutes 1996, chapter 719 (AB 893), or the report to the Department of Corrections and Rehabilitation under section 1203c if applicable, as amended by Statutes 1963, chapter 1785 is not new or reimbursable under this activity.[25]

5. Beginning January 1, 2009, and every two years thereafter, report to the Corrections Standards Authority all relevant statistics and relevant information regarding the effectiveness of continuous electronic monitoring of sex offenders, including the costs of monitoring and recidivism rates of those persons who have been monitored.[26]

6. Grant access to all relevant records pertaining to a registered sex offender to any person authorized by statute to administer the SARATSO.[27]

This activity is limited to granting access to records exempt from disclosure under the California Public Records Act (Government Code § 6250, et seq.).

All other statutes, regulations, and activities pled in this test claim do not constitute reimbursable state-mandated programs subject to article XIIIB, section 6 of the California Constitution and are, therefore, denied.

Staff Recommendation

Staff recommends that the Commission adopt the attached proposed statement of decision as its test claim decision, partially approving reimbursement for the activities required by the test claim statutes and executive order, as specified.

Staff further recommends that the Commission authorize staff to make any non-substantive, technical changes to the proposed test claim decision following the hearing.

[25] Penal Code section 1203e (added, Stats. 2006, ch. 337 (SB 1128)).

[26] Penal Code section 1202.8 (as amended, Stats. 2006, ch. 337 (SB 1128)).

[27] Penal Code section 290.07 (added, Stats. 2006, ch. 337 (SB 1128)).

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

IN RE TEST CLAIM ON: Statutes 2006, Chapter 336 (SB 1178), amending Section 1202.8, and adding Sections 290.04, 290.05, and 290.06 of the Penal Code; Statutes 2006, Chapter 337 (SB 1128), amending Sections 290, 290.3, 290.46, 1203, 1203c, 1203.6, 1203.075, and adding Sections 290.03, 290.04, 290.05, 290.06, 290.07, 290.08, 1203e, 1203f of the Penal Code; Statutes 2006, Chapter 886 (SB 1849), amending Sections, 290.46, 1202.8, repealing Sections 290.04, 290.05, and 290.06 of the Penal Code; Statutes 2007, Chapter 579 (SB 172) amending Sections 290.04, 290.05, 290.3, and 1202.7, adding Sections 290.011, 290.012, and repealing and adding Section 290 to the Penal Code; and California Department of Mental Health's Executive Order, SARATSO (State Authorized Risk Assessment Tool for Sex Offenders) Review Committee Notification, issued on February 1, 2008 Filed on January 22, 2009 By County of Los Angeles, Claimant.	Case No.: 08-TC-03 *State Authorized Risk Assessment Tool for Sex Offenders (SARATSO)* STATEMENT OF DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; CALIFORNIA CODE OF REGULATIONS, TITLE 2, DIVISION 2, CHAPTER 2.5, ARTICLE 7. (*Adopted December 6, 2013*)

PROPOSED STATEMENT OF DECISION

The Commission on State Mandates (Commission) heard and decided this test claim during a regularly scheduled hearing on December 6, 2013. [Witness list will be included in the final statement of decision.]

The law applicable to the Commission's determination of a reimbursable state-mandated program is article XIII B, section 6 of the California Constitution, Government Code sections 17500 et seq., and related case law.

The Commission [adopted/modified] the proposed statement of decision to [approve/deny] the test claim at the hearing by a vote of [vote count will be included in the final statement of decision].

Summary of the Findings

This test claim alleges reimbursable state-mandated increased costs resulting from additions and amendments made to the Penal Code by the Sex Offender Punishment, Control, and Containment Act of 2006[28] and the Sex Offender Registration Act.[29,30] In addition, the test claim alleges that the SARATSO Review Committee Notification, issued February 1, 2008, imposes a reimbursable state mandate.

The test claim statutes generally provide for the establishment of a statewide system of risk assessment to be applied to convicted sex offenders. The statutes provide for a committee to select an appropriate risk assessment tool for each population (adult males, adult females, juvenile males, and juvenile females), which will be known as the State Authorized Risk Assessment Tool for Sex Offenders, or SARATSO. The test claim statutes require a statewide committee to develop a training program for those who will administer the SARATSO assessments, and require those persons in turn to be trained at least every two years. Then, when a person is convicted of an offense requiring registration as a sex offender, the SARATSO is utilized to assess the risk of that person committing future sex crimes, so that the higher- risk offenders can be more adequately supervised while on probation or parole. The test claim statutes provide for electronic monitoring of the highest-risk offenders, as well as "intensive and specialized probation supervision." And finally, the test claim statutes require probation departments to report to statewide authorities regarding the effectiveness of continuous monitoring, and the costs of monitoring weighed against the results in reducing recidivism, and require all relevant agencies to grant reciprocal access to records and information pertaining to a sex offender subject to SARATSO assessment.

The test claim was filed on January 22, 2009, alleging reimbursable state-mandated increased costs for statutes enacted as early as September 20, 2006. Normally, a statute with an effective date of September 20, 2006 would fall outside the period of reimbursement for a January 2009 test claim filing, pursuant to Government Code section 17551 and, thus, outside of the Commission's jurisdiction. Some of the mandated activities, however, were not required to be performed until July 1, 2008, and certain others, primarily those related to training, could not have been performed until issuance of the alleged executive order on February 1, 2008. In addition, the claimant declares, under penalty of perjury, that the Los Angeles County *probation department* first incurred reimbursable state-mandated increased costs for State Authorized Risk Assessment Tool for Sex Offenders (SARATSO) related activities in February 2008. No such declaration was made on behalf of local law enforcement agencies or district attorneys, which are also affected by the test claim statutes. Therefore, the Commission may exercise jurisdiction over the 2006 test claim statutes, but jurisdiction is limited to consideration only of activities

[28] Statutes 2006, chapter 337 (SB 1128), and amendments made by Statutes 2006, chapter 886 (AB 1849).

[29] Statutes 2007, chapter 579 (SB 172).

[30] Statutes 2006, chapter 336 (SB 1178) is also pled, but three of the code sections addressed in that statute were repealed prior to this test claim being filed, and the other two were subsequently amended. Therefore, the requirements of Statutes 2006, chapter 336 (SB 1178) are addressed as amended.

imposed on county probation departments, and those activities that could not have been performed by other local agencies prior to issuance of the executive order. Section 290.08, as added, is denied on this ground, and jurisdiction over section 290.07 is limited to activities required of county probation departments, based on the claimant's declaration, as discussed.

In addition, many of the alleged requirements of the test claim statutes are imposed on state-level agencies and entities, such as the creation of the SARATSO Review Committee and the SARATSO Training Committee; these requirements do not impose any mandated activities or costs on local agencies. Other alleged requirements of the test claim statutes are not mandated by the plain language, such as the Legislature's expression of its "intent" that probation departments make efforts to engage transient persons who are required to register as sex offenders in treatment. And finally, some of the activities required of local agencies are excluded from reimbursement by operation of article XIII B, section 6(a)(2) and Government Code section 17556(g), which prohibits a finding of costs mandated by the state for statutes that create or eliminate a crime or infraction, or change the penalty for a crime or infraction.

Based on the analysis herein, the Commission finds that the test claim statutes and executive order impose a partially reimbursable state-mandated new program or higher level of service on local agencies within the meaning of article XIII B, section 6 of the California Constitution for the following activities:

For county probation departments and authorized local law enforcement agencies, beginning February 1, 2008, to:

1. Designate key persons within their organizations to attend training and, as authorized by the department, to train others within their organizations;[31] and,
2. Ensure that persons administering the SARATSO receive training no less frequently than every two years.[32]

For county probation departments to:

1. Assess, using the SARATSO, as set forth in section 290.04, every eligible person for whom the department prepares a presentencing report pursuant to section 1203 and every eligible person under the department's supervision who was not assessed pursuant to a presentencing report, prior to the termination of probation but no later than January 1, 2010.[33]

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[31] Penal Code section 290.05 (Stats. 2006, ch. 337 (SB 1128); Stats. 2007, ch. 579 (SB 172)); SARATSO Review Committee Notification, issued February 1, 2008).

[32] Penal Code section 290.05 (Stats. 2006, ch. 337 (SB 1128); Stats. 2007, ch. 579 (SB 172)); SARATSO Review Committee Notification, issued February 1, 2008).

[33] Penal Code section 290.06 (Stats. 2006, ch. 337 (SB 1128)); 290.04 (Stats. 2006, ch. 337 (SB 1128); Stats. 2007, ch. 579 (SB 172)) [limiting duty to administer SARATSO to populations for whom an appropriate tool has been selected as set forth in 290.04]; SARATSO Review Committee Notification issued February 1, 2008 [selecting a SARATSO risk assessment tool for adult males and juvenile males only].

2. Include the results of the SARATSO assessment administered pursuant to sections 290.04 to 290.06 in the presentencing report made to the court pursuant to section 1203, if the person was convicted of an offense that requires him or her to register as a sex offender, or if the probation report recommends that registration be ordered at sentencing.[34]

   Preparing the presentencing report under section 1203 is not a new activity and, thus, not eligible for reimbursement.

3. Include in the report prepared for the department pursuant to section 1203c the results of the SARATSO, administered pursuant to sections 290.04 to 290.06, inclusive, if applicable, whenever a person is committed to the jurisdiction of the Department of Corrections and Rehabilitation for a conviction of an offense that requires him or her to register as a sex offender.[35]

   Preparing the report under section 1203c is not a new activity and, thus, not eligible for reimbursement.

4. Beginning January 1, 2010:

   (a) Compile a Facts of Offense Sheet for every person convicted of an offense that requires him or her to register as a sex offender and who is referred to the department pursuant to section 1203;

   (b) Include in the Facts of Offense Sheet all of the information specified in section 1203e, including the results of the SARATSO, as set forth in section 290.04, if required;

   (c) Include the Facts of Offense Sheet in the probation officer's report to the court made pursuant to section 1203; and

   (d) Send a copy of the Facts of Offense Sheet to the Department of Justice Sex Offender Tracking Program within 30 days of the person's sex offense conviction.

   Obtaining information required to complete the presentencing report pursuant to section 1203, as amended by Statutes 1996, chapter 719 (AB 893), or the report to the Department of Corrections and Rehabilitation under section 1203c if applicable, as amended by Statutes 1963, chapter 1785 is not new or reimbursable under this activity.[36]

5. Beginning January 1, 2009, and every two years thereafter, report to the Corrections Standards Authority all relevant statistics and relevant information regarding the effectiveness of continuous electronic monitoring of

[34] Penal Code section 1203 (as amended, Stats. 2006, ch. 337 (SB 1128)).

[35] Penal Code section 1203c (as amended, Stats. 2006, ch. 337 (SB 1128)).

[36] Penal Code section 1203e (added, Stats. 2006, ch. 337 (SB 1128)).

sex offenders, including the costs of monitoring and recidivism rates of those persons who have been monitored.[37]

6. Grant access to all relevant records pertaining to a registered sex offender to any person authorized by statute to administer the SARATSO.[38]

   This activity is limited to granting access to records exempt from disclosure under the California Public Records Act (Government Code § 6250, et seq.).

COMMISSION FINDINGS

I. Chronology

01/22/2009	Claimant, County of Los Angeles, filed test claim *State Authorized Risk Assessment Tool for Sex Offenders (SARATSO)* (08-TC-03) with the Commission on State Mandates (Commission).
02/19/2009	Commission staff issued a completeness review letter for the test claim and requested comments from state agencies.
03/25/2009	Department of Finance (Finance) submitted comments on the test claim.
06/01/2009	Claimant submitted comments in rebuttal to Finance's comments.
10/11/2013	Commission staff issued a draft staff analysis and proposed statement of decision on the test claim.

II. Introduction

The claimant alleges reimbursable state-mandated increased costs resulting from additions and amendments made to the Penal Code by the Sex Offender Punishment, Control, and Containment Act of 2006 (Stats. 2006, ch. 337 (SB 1128)); Statutes 2006, chapter 886 (AB 1849); and the Sex Offender Registration Act (Penal Code §§ 290 to 290.023, inclusive, as added by Stats. 2007, ch. 579 (SB 172)). In addition, the test claim alleges a reimbursable state mandate imposed by the SARATSO Review Committee Notification, issued February 1, 2008, via the Department of Mental Health (DMH) website.

The test claim statutes provide that every person who is required to register as a sex offender, based on conviction for one of several enumerated offenses, shall be subject to an assessment of the person's risk of recidivism using the State Authorized Risk Assessment Tool for Sex Offenders, or SARATSO. The statutes require the creation of a Review Committee to select an appropriate SARATSO for each population of offenders (adults, juveniles, males, females), and provide that if a SARATSO is not selected for a given population by the Review Committee, "no duty to administer the SARATSO elsewhere in this code shall apply with respect to that population."[39] The statutes provide for a SARATSO Training Committee to develop a training program for persons authorized to administer the SARATSO, and require any person who

[37] Penal Code section 1202.8 (as amended, Stats. 2006, ch. 337 (SB 1128)).

[38] Penal Code section 290.07 (added, Stats. 2006, ch. 337 (SB 1128)).

[39] Penal Code section 290.04 (added, Stats. 2006, ch. 337 (SB 1128); amended, Stats. 2007, ch. 579 (SB 172)).

administers the SARATSO to receive training no less frequently than every two years.[40] The statutes require DMH, CDCR, and local probation departments to administer the SARATSO to persons under their charge, as specified.[41] In addition, the statutes require that probation officers:

1. Include the results of the SARATSO evaluation in the presentencing report required pursuant to section 1203, and the report made to CDCR pursuant to section 1203c, if applicable,[42] and,
2. Compile a Facts of Offense Sheet for every person convicted of a registerable sex offense, and include that document in the presentencing report.[43]

The statutes provide that any person authorized by statute to administer the SARATSO shall be granted access to all relevant records pertaining to a registered sex offender, and that a district attorney shall retain records relating to a person convicted of a registerable offense for 75 years.[44] The statutes require probation departments to place probationers at high risk of recidivism on intensive and specialized probation, including more frequent reporting to designated officers,[45] and provide for continuous electronic monitoring of those high risk probationers.[46] In addition, the statutes require each probation department to report to the Corrections Standard Authority all relevant statistics regarding the effectiveness of continuous electronic monitoring.[47] And, the statutes provide that it is the Legislature's intent that probation departments make efforts to engage in treatment transient persons who are required to register under section 290.[48] Finally, the alleged executive order notifies the relevant departments of the SARATSO Review Committee's selection of an appropriate risk assessment tool for adult males and juvenile males, and thereby triggers the requirement to conduct assessments. The executive order also invites the relevant agencies and departments to designate persons to attend training-for-trainers in winter or spring of 2008, so that they may train the necessary personnel in their respective agencies.

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[40] Penal Code section 290.05 (added, Stats. 2006, ch. 337 (SB 1128); amended, Stats. 2007, ch. 579 (SB 172)).

[41] Penal Code section 290.06 (added, Stats. 2006, ch. 337 (SB 1128)).

[42] Penal Code sections 290.06; 1203; 1203c (added or amended, Stats. 2006, ch. 337 (SB 1128)).

[43] Penal Code section 1203e (added, Stats. 2006, ch. 337 (SB 1128)).

[44] Penal Code sections 290.07; 290.08 (added, Stats. 2006, ch. 337 (SB 1128)).

[45] Penal Code section 1203f (added, Stats. 2006, ch. 337 (SB 1128)).

[46] Penal Code section 1202.8 (amended, Stats. 2006, ch. 337 (SB 1128)).

[47] *Ibid*.

[48] Penal Code section 1202.7 (amended, Stats. 2007, ch. 579 (SB 172)).

III. Positions of the Parties

Claimant's Position

The County alleges that the test claim statutes and SARATSO Review Committee Notification constitute a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution. The County is seeking reimbursement for the following activities:

- Training to administer the SARATSO in accordance with section 290.05.
- Administering the SARATSO in accordance with section 290.06.
- Including the SARATSO in presentencing reports and reports to the Department of Corrections and Rehabilitation pursuant to sections 1203 and 1203c.
- Compiling a Facts of Offense Sheet, including the results of the SARATSO evaluation.
- Continuously electronically monitoring high risk sex offenders, as determined by the SARATSO, pursuant to section 1202.8.
- Providing access to relevant records to any person authorized to administer the SARATSO pursuant to section 290.07.
- Retaining records of all convictions for registerable sex offenses for 75 years pursuant to section 290.08.
- Engaging transient sex offenders in treatment pursuant to section 1202.7.[49]

The County alleges that their costs "for Los Angeles County's SARATSO program…are far in excess of $1,000 per annum."[50] Specifically, the County alleges a "total cost for initial training" of $80,884 for the County and $635,926 statewide.[51] In addition, the County alleges total costs for investigation and researching records of $80,974 for the County and $304,239 statewide.[52] The County also alleges the total cost for performing SARATSO assessments of $213,039 for the County and $361,302 statewide.[53] The County further alleges total costs for supervision (including intensive and specialized probation supervision and continuous electronic monitoring) of $842,582 for the County and $4,124,906 statewide.[54] Finally, the County alleges that "[c]ounty probation officers began incurring SARATSO costs during February 2008 and, so this test claim, filed on January 9, 2009, within one year of the date the County began incurring such costs is timely filed in accordance with Government Code Section 17553."[55]

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[49] Exhibit A, Test Claim, at pp. 11; 13; 23-24; 26-27; and 30-32.

[50] Exhibit A, Test Claim, at p. 43.

[51] Exhibit A, Test Claim, at p. 34.

[52] Exhibit A, Test Claim, at p. 35.

[53] Exhibit A, Test Claim, at p. 36.

[54] Exhibit A, Test Claim, at p. 38.

[55] Exhibit A, Test Claim, at p. 42.

Department of Finance Position

Finance states that the statutes and the executive order "could result in a reimbursable state mandate; however, the reimbursement may be limited based on the statutory exception specified in subdivision (g) of Government Code Section 17556 and pending litigation."[56] Finance contends that the results of the SARATSO evaluation are "required for the court to make a determination on the probation conditions of a convicted sex offender," and therefore "the results affect the sex offender's penalty after he/she has been convicted of the crime," and, thus, this activity is not eligible for reimbursement under Government Code section 17556(g).[57] Finance further contends that "prior law required county probation offices to perform investigative duties to complete reporting requirements under the Penal Code Section 1203," and that therefore these activities are not new.[58] In addition, Finance argues that engaging transient sex offenders in treatment is not a new activity imposed on the county probation offices.[59] Finance concludes that "the Act and the executive order may have resulted in a partial reimbursable state mandate for some of the activities identified by the claimant."[60]

IV. Discussion

Article XIII B, section 6 of the California Constitution provides in relevant part the following:

> Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the state shall provide a subvention of funds to reimburse such local government for the costs of such programs or increased level of service, except that the Legislature *may, but need not*, provide a subvention of funds for the following mandates:
>
> (1) Legislative mandates requested by the local agency affected.
>
> *(2) Legislation defining a new crime or changing an existing definition of a crime.*
>
> (3) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975.[61]

The purpose of article XIII B, section 6 is to "preclude the state from shifting financial responsibility for carrying out governmental functions to local governments, which are 'ill equipped' to assume increased financial responsibilities because of the taxing and spending limitations that articles XIII A and XIII B impose."[62] Thus, the subvention requirement of

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[56] Exhibit E, Department of Finance Comments, at p. 1.

[57] *Ibid*.

[58] *Id*, at p. 2.

[59] *Ibid*.

[60] *Ibid*.

[61] California Constitution, article XIII B, section 6 (adopted November 4, 1979).

[62] *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81.

section 6 is "directed to state-mandated increases in the services provided by [local government] …"[63] Reimbursement under article XIII B, section 6 is required when the following elements are met:

1. A state statute or executive order requires or "mandates" local agencies or school districts to perform an activity.[64]
2. The mandated activity either:
    a. Carries out the governmental function of providing a service to the public; or
    b. Imposes unique requirements on local agencies or school districts and does not apply generally to all residents and entities in the state.[65]
3. The mandated activity is new when compared with the legal requirements in effect immediately before the enactment of the test claim statute or executive order and it increases the level of service provided to the public.[66]
4. The mandated activity results in the local agency or school district incurring increased costs, within the meaning of section 17514. Increased costs, however, are not reimbursable if an exception identified in Government Code section 17556 applies to the activity.[67]

The determination whether a statute or executive order imposes a reimbursable state-mandated program is a question of law.[68] The Commission is vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6.[69] In making its decisions, the Commission must strictly construe article XIII B, section 6, and not apply it as an "equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities."[70]

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[63] *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56.

[64] *San Diego Unified School Dist. v. Commission on State Mandates* (*San Diego Unified School Dist*.) (2004) 33 Cal.4th 859, 874.

[65] *Id*. at 874-875 (reaffirming the test set out in *County of Los Angeles*, *supra*, 43 Cal.3d 46, 56.)

[66] *San Diego Unified School Dist*., *supra*, 33 Cal.4th 859, 874-875, 878; *Lucia Mar Unified School District v. Honig* (1988) 44 Cal.3d 830, 835.

[67] *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487; *County of Sonoma v. Commission on State Mandates* (Cal. Ct. App. 1st Dist. 2000) 84 Cal.App.4th 1265, 1284; Government Code sections 17514 and 17556.

[68] *County of San Diego*, *supra*, 15 Cal.4th 68, 109.

[69] *Kinlaw v. State of California* (1991) 53 Cal.3d 482, 487.

[70] *County of Sonoma*, *supra*, 84 Cal.App.4th 1265, 1280 [citing *City of San Jose*, *supra*].

A. The Commission Has Jurisdiction Over the 2006 Test Claim Statutes, as Specified, Because Claimant First Incurred Costs In February 2008.

Government Code section 17551(c) establishes the statute of limitations for the filing of test claims as follows:

> Local agency and school district test claims shall be filed not later than 12 months following the effective date of a statute or executive order, or within 12 months of incurring increased costs as a result of a statute or executive order, whichever is later.

Section 1183(c) of the Commission's regulations provides, accordingly, that "'within 12 months' means by June 30 of the fiscal year following the fiscal year in which increased costs were first incurred by the test claimant."[71]

The effective date of Statutes 2006, chapter 336 (SB 1178), and Statutes 2006, chapter 337 (SB 1128), both enacted as urgency measures, is September 20, 2006. Statutes 2006, chapter 886 (AB 1849) was enacted as urgency legislation September 30, 2006. Therefore, "within 12 months," as defined in the Commission's regulations would be by June 30, 2008. This test claim was filed on January 22, 2009, several months beyond the statute of limitations provided in section 17551 and section 1183 of the Commission's regulations, based on the effective date of the test claim statutes.

However, some activities required by the test claim statutes, including conducting SARATSO assessments, were not required to be performed until July 1, 2008, and the claimant has, accordingly, declared under penalty of perjury that *"[c]ounty probation officers* began incurring SARATSO costs during February 2008 and, [*sic*] so this test claim, filed on January 9, 2009, within one year of the date the County began incurring such costs is timely filed in accordance with Government Code Section 17553."[72] There is no evidence in the record to rebut the County's declaration with regard to costs first incurred by the probation department in February 2008.

Moreover, training activities, and any activities that rely on being first trained, could not have been performed by any local agency prior to February 1, 2008, when the alleged executive order was issued. The SARATSO Review Committee Notification identified the SARATSO for certain populations and invited local agencies to designate personnel to receive training and begin to train others to meet the July 1, 2008 implementation date. The plain language of the statutes requires that local agency personnel administering the SARATSO receive training to administer the SARATSO, and the plain language of the alleged executive order makes clear that probation departments and authorized local law enforcement agencies were expected to begin training activities on or after February 1, 2008. Therefore, the statute of limitations is satisfied as to activities imposed by the test claim statutes on probation departments, and for the training activities of probation departments and authorized local law enforcement agencies that could not have been performed prior to the issuance of the executive order inviting the local agencies to attend training on the identified SARATSO. Section 290.08, as added by Statutes 2006, chapter

[71] Code of Regulations, title 2, section 1183 (Register 2003, No. 17).

[72] Exhibit A, Test Claim, at p. 42.

337, does not impose any requirements on probation departments, and does not rely on the issuance of the alleged executive order, and therefore the Commission declines to take jurisdiction. Section 290.07 is addressed below only with respect to probation departments.

Based on the foregoing, the Commission does not have jurisdiction of Statutes 2006, chapters 336, 337, and 886 (SB 1178; SB 1128; AB 1849), except those activities required of county probation departments, and those activities that could not be performed prior to the issuance of the alleged executive order on February 1, 2008.

B. Some of the Test Claim Statutes, Triggered by the Executive Order, Impose New Required Activities on Local Agencies.

The alleged executive order, and each code section alleged in the test claim, as added or amended by Statutes 2006, chapters 336, 337, and 886; and Statutes 2007, chapter 579, is addressed in turn, below.

1. Penal Code sections 290.3, 290.46, 1203.6, and 1203.075 do not impose any requirements on local agencies.

Penal Code sections 290.3, 290.46, 1203.6, and 1203.075 are included in the caption in Box 4 of the test claim form, but are not addressed in the claimant's narrative. Moreover, staff finds that the plain language of these sections does not impose any new activities on local government, and therefore recommends these sections be denied.

2. Penal Code section 290.03, as added by Statutes 2006, chapter 337 (SB 1128) is a statement of legislative intent, and does not impose any state-mandated activities on local agencies.

Section 290.03 was added to the Penal Code by Statutes 2006, chapter 337 (SB 1128), and provides the Legislature's findings and declarations regarding the SARATSO program. The County asserts, however, that section 290.03 provides for the duties of county probation officers to "identify, assess, monitor and contain known sex offenders."[73] Section 290.03 states the following:

> (a) The Legislature finds and declares that a comprehensive system of risk assessment, supervision, monitoring and containment for registered sex offenders residing in California communities is necessary to enhance public safety and reduce the risk of recidivism posed by these offenders. The Legislature further affirms and incorporates the following findings and declarations, previously reflected in its enactment of "Megan's Law":
>
> ¶…¶
>
> (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

[73] Exhibit A, Test Claim, at p. 13.

> reducing the risk of recidivism posed by these offenders, thereby protecting victims and potential victims from future harm.[74]

The plain language of section 290.03 does not impose any requirements on local agencies; it merely expresses the Legislature's findings and intent. There is nothing in section 290.03 that expressly directs or requires local agencies to perform any activities. Moreover, the County acknowledges that the activities required are "explicitly defined under other penal code sections included herein as the test claim legislation."[75]

Based on the foregoing, the Commission finds that section 290.03 does not impose any state-mandated activities on local agencies.

3. Penal Code section 290.04, as added by Statutes 2006, chapter 337 (SB 1128), and amended by Statutes 2007, chapter 579 (SB 172) establishes the SARATSO Review Committee, and identifies the default SARATSO to be used for adult males, but does not impose any state-mandated activities on local agencies.

Section 290.04 was added to the Penal Code by Statutes 2006, chapter 337 (SB 1128), and amended by Statutes 2007, chapter 579 (SB 172).[76] Section 290.04 provides that the "sex offender risk assessment tools authorized by this section…shall be known, with respect to each population, as the State-Authorized Risk Assessment Tool for Sex Offenders (SARATSO)."[77] The section provides that "[i]f 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*."[78] The section further provides that every person required to register as a sex offender "shall be subject to assessment with the SARATSO." The section provides that a SARATSO Review Committee shall be established to ensure that the SARATSO for each population reflects reliable, objective and well-established protocols for predicting risk of recidivism. The SARATSO Review Committee, pursuant to section 290.04, shall be comprised of a representative of DMH, "in consultation with a representative of the Department of Corrections and Rehabilitation and a representative of the Attorney General's office." The section provides that "[c]ommencing January 1, 2007, the SARATSO for adult males required to register as sex offenders shall be the STATIC-99 risk assessment scale," and that "[o]n or before January 1, 2008, the SARATSO Review Committee shall determine whether the STATIC-99 should be supplemented with an actuarial instrument…or whether the STATIC-99 should be replaced as the SARATSO with a different risk assessment tool [for adult male sex offenders]." The section further provides that the Review Committee shall research risk assessment tools for adult females, and for male and female juveniles, to determine if there is an appropriate risk assessment tool available. And finally, the section provides that the Review Committee "shall

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[74] Statutes 2006, chapter 337, section 12.

[75] *Ibid*.

[76] An alternate version of sections 290.04 through 290.06 was added to the Penal Code by Statutes 2006, chapter 336 (SB 1178), and repealed by Statutes 2006, chapter 886 (AB 1849); the version added by Statutes 2006, chapter 337 (SB 1128) therefore prevails.

[77] Penal Code section 290.04 (added, Stats. 2006, ch. 337, § 13 (SB 1128)).

[78] *Ibid* [emphasis added].

periodically evaluate the SARATSO for each specified population," and may change the selected tool by unanimous agreement.[79]

The plain language of this section establishes the SARATSO Review Committee, and then defines the SARATSO for adult males, and directs the SARATSO Review Committee to examine whether a SARATSO can be adopted for other populations. The section states that persons required to register "shall be subject to" assessment, but does not impose an express requirement on local agencies to perform those assessments. Importantly, the section provides that if a SARATSO has not been selected for a given population under this section, no duty to administer the SARATSO elsewhere in the code shall apply with respect to that population.

Based on the foregoing, the Commission finds that Penal Code section 290.04, as added and amended in 2006 and 2007, does not impose any state-mandated activities on local agencies.

4. Penal Code section 290.05, as added by Statutes 2006, chapter 337 (SB 1128) and amended by Statutes 2007, chapter 579 (SB 172) imposes new training requirements for probation departments and authorized local law enforcement agencies required to conduct SARATSO evaluations.

Section 290.05 provides as follows:

> (a) The SARATSO Training Committee shall be comprised of a representative of the State Department of Mental Health, a representative of the Department of Corrections and Rehabilitation, a representative of the Attorney General's Office, and a representative of the Chief Probation Officers of California.
>
> (b) On or before January 1, 2008, the SARATSO Training Committee, in consultation with the Corrections Standards Authority and the Commission on Peace Officer Standards and Training, shall develop a training program for persons authorized by this code to administer the SARATSO, as set forth in Section 290.04.
>
> ¶…¶
>
> (d) The training shall be conducted by experts in the field of risk assessment and the use of actuarial instruments in predicting sex offender risk. Subject to requirements established by the committee, the Department of Corrections and Rehabilitation, the State Department of Mental Health, probation departments, and authorized local law enforcement agencies shall designate key persons within their organizations to attend training and, as authorized by the department, to train others within their organizations designated to perform risk assessments as required or authorized by law. Any person who administers the SARATSO shall receive training no less frequently than every two years.
>
> (e) The SARATSO may be performed for purposes authorized by statute only by persons trained pursuant to this section.[80]

[79] Penal Code section 290.04 (as added, Stats. 2006, ch. 337 (SB 1128); amended, Stats. 2007, ch. 579 (SB 172)).

This section primarily addresses responsibilities of state-level agencies to participate in the SARATSO Training Committee and develop a training program and standards for training of probation and law enforcement personnel. But in addition, activities required of county probation departments and authorized local law enforcement agencies include designating persons to attend training and to train others within the organization, and ensuring that all persons administering the SARATSO within the organization receive training no less frequently than every two years in accordance with section 290.05.

The alleged executive order, the SARATSO Review Committee Notification, *issued February 1, 2008*, provides, in pertinent part:

> **Implementation and Training:**
>
> On July 1, 2008, the Static-99 is mandated for use by the DMH, CDCR Parole and County Probation. Training-for-Trainers sessions will take place in Winter/Spring of 2008.
>
> This training shall be conducted by experts in the field of risk assessment and the use of actuarial instruments in predicting sex offender risk. Subject to requirements established by the committee, CDCR, DMH, County Probation Departments, and authorized local law enforcement agencies shall designate the appropriate persons within their organizations to attend training and, as authorized by the department, to train others within their organizations. Any person who administers the SARATSO shall receive training no less frequently than every two years.
>
> The time factor is immediate. All agencies need to be fully trained for the July 1, 2008 implementation date.[81]

These activities are new, with respect to prior law: because no SARATSO previously existed, there was no need to train to administer the SARATSO. Moreover, training activities could not be implemented prior to 2008 because the training program was not prepared until that time.

Based on the foregoing, the Commission finds that Penal Code section 290.05, as added by Statutes 2006, chapter 337 (SB 1128) and amended by Statutes 2007, chapter 579 (SB 172) requires probation departments and authorized local law enforcement agencies, beginning February 1, 2008 to (1) designate key persons within their organizations to attend training and, as authorized by the department, to train others within their organizations; and (2) ensure that persons administering the SARATSO receive training no less frequently than every two years.

5. Penal Code sections 290.06 and 1203, as added or amended by Statutes 2006, chapter 337 (SB 1128), and triggered by the alleged Executive Order, SARATSO Review Committee Notification, February 1, 2008, impose new required activities on local agencies to administer the SARATSO, as set forth under 290.04, and to include the results in presentencing reports, as specified.

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[80] Penal Code section 290.05 (as added, Stats. 2006, ch. 337, section 14; amended, Stats. 2007, ch. 579 (SB 172)).

[81] Exhibit D, Test Claim, Volume IV, at pp. 839-840.

Section 290.06 provides that, "[e]ffective on or before July 1, 2008, the SARATSO, as set forth in section 290.04, shall be administered as follows:"

> (a) (1) The Department of Corrections and Rehabilitation shall assess every eligible person who is incarcerated in state prison. Whenever possible, the assessment shall take place at least four months, but no sooner than 10 months, prior to release from incarceration.
>
> (2) The department shall assess every eligible person who is on parole. Whenever possible, the assessment shall take place at least four months, but no sooner than 10 months, prior to termination of parole.
>
> (3) The Department of Mental Health shall assess every eligible person who is committed to that department. Whenever possible, the assessment shall take place at least four months, but no sooner than 10 months, prior to release from commitment.
>
> (4) Each probation department shall assess every eligible person for whom it prepares a report pursuant to Section 1203.
>
> (5) Each probation department shall assess every eligible person under its supervision who was not assessed pursuant to paragraph (4). The assessment shall take place prior to the termination of probation, but no later than January 1, 2010.
>
> (b) If a person required to be assessed pursuant to subdivision (a) was assessed pursuant to that subdivision within the previous five years, a reassessment is permissible but not required.
>
> (c) The SARATSO Review Committee established pursuant to Section 290.04, in consultation with local law enforcement agencies, shall establish a plan and a schedule for assessing eligible persons not assessed pursuant to subdivision (a). The plan shall provide for adult males to be assessed on or before January 1, 2012, and for females and juveniles to be assessed on or before January 1, 2013, and it shall give priority to assessing those persons most recently convicted of an offense requiring registration as a sex offender. On or before January 15, 2008, the committee shall introduce legislation to implement the plan.
>
> (d) On or before January 1, 2008, the SARATSO Review Committee shall research the appropriateness and feasibility of providing a means by which an eligible person subject to assessment may, at his or her own expense, be assessed with the SARATSO by a governmental entity prior to his or her scheduled assessment. If the committee unanimously agrees that such a process is appropriate and feasible, it shall advise the Governor and the Legislature of the selected tool, and it shall post its decision on the Department of Corrections and Rehabilitation's Internet Web site. Sixty days after the decision is posted, the established process shall become effective.
>
> (e) For purposes of this section, "eligible person" means a person who was convicted of an offense that requires him or her to register as a sex offender pursuant to Section 290 and who has not been assessed with the SARATSO within the previous five years.

The alleged executive order, the SARATSO Review Committee Notification, issued February 1, 2008, identifies the appropriate SARATSO for adult male offenders and juvenile male offenders only, as follows:

> **For adults, the Committee has selected the Static-99** designed and cross-validated by Dr. Karl Hanson and Dr. David Thornton. This instrument is currently in use by CDCR as a tool to designate a parolee as a High Risk Sex Offender (HRSO). This instrument will become the only statewide risk assessment tool for adult males, which is mandated to be used by CDCR to assess every eligible inmate prior to parole and every eligible inmate on parole. This tool is further mandated for use by DMH to assess every eligible individual prior to release and by Probation for every eligible individual for whom there is a probation report. (Pen. Code,§ 290.06)
>
> **For juveniles the Committee has selected the J-SORAT II** [*sic*] designed and cross-validated by Dr. Douglas Epperson. This instrument will become the only state-authorized risk assessment tool for juveniles, which is mandated to be used by probation; when assessing a juvenile sex offender at adjudication, and by CDCR/DJJ both prior to release from DJJ and while on supervision. (Pen. Code, §290.06.)
>
> **For female offenders the Committee has found that there currently is no risk assessment tool for this population** that has been scientifically researched and validated. Therefore, the Committee does not have a recommendation. [82]

The Commission notes that section 290.04, as discussed above, provides that "[i]f 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."[83] Therefore, because the SARATSO Review Committee Notification issued February 1, 2008 does not identify an appropriate risk assessment tool for adult female sex offenders or juvenile female sex offenders, the duty to administer the SARATSO arising from section 290.06 and the alleged executive order is limited to adult male offenders and juvenile male offenders. Consequently, all other requirements of reporting the SARATSO results, as described below (e.g., section 1203 presentencing reports) are *limited to* adult male offenders and juvenile male offenders, until or unless a SARATSO risk assessment device is identified by the SARATSO Review Committee pursuant to section 290.04.

In addition, as discussed above, section 290.04 provides that the Review Committee "shall periodically review the SARATSO," and may change its selection of the tool for a given population. Accordingly, the Review Committee has, since February 1, 2008, revised its findings regarding the appropriate risk assessment tool at least twice: in spring 2011 the Committee added two additional dynamic assessment tools to be used in conjunction with the STATIC-99; and in September 2013 the Committee adopted a new dynamic assessment tool,

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[82] Exhibit D, Test Claim Volume IV, at p. 839.

[83] Penal Code section 290.04 (added by Stats. 2006, ch. 337 (SB 1128); amended by Stats. 2007, ch. 579 (SB 172)) [emphasis added].

"the Stable-2007/Acute-2007."[84] Therefore, all requirements of administering SARATSO evaluations and reporting results describe the SARATSO, "as set forth in Section 290.04," which necessarily includes any later action of the SARATSO Review Committee to add to or change the risk assessment tools selected for a given population.

Section 1203, referenced in section 290.06, above, requires that the results of the SARATSO evaluation be included in the report made to the court under section 1203. *Prior to the amendments made by Statutes 2006, chapter 337* (SB 1128), section 1203(b)(1) provided:

> Except as provided in subdivision (j), if a person is convicted of a felony and is eligible for probation, before judgment is pronounced, the court shall immediately refer the matter to a probation officer to *investigate and report to the court, at a specified time, upon the circumstances surrounding the crime and the prior history and record of the person*, which may be considered either in aggravation or mitigation of the punishment.[85]

Prior law further provided that once the matter is referred to a probation officer, that officer is required to "immediately investigate and make a written report to the court of his or her findings and recommendations, including his or her recommendations as to the granting or denying of probation and the conditions of probation, if granted."[86] Statutes 2006, chapter 337 (SB 1128) *added to section 1203 the following*:

> If the person was convicted of an offense that requires him or her to register as a sex offender pursuant to Section 290, the probation officer's report *shall include the results of the State-Authorized Risk Assessment Tool for Sex Offenders (SARATSO) administered pursuant to Sections 290.04 to 290.06, inclusive*, if applicable.[87]

Section 290.06, above, thus provides that each probation department shall assess every eligible person for whom it prepares a presentencing report pursuant to section 1203, and every eligible person under its supervision prior to the termination of probation.[88] Section 1203, in turn, provides that the results of that assessment shall be included in the presentencing report prepared for the court. And the SARATSO Review Committee Notification, issued February 1, 2008, coupled with the statement in section 290.04 that no duty to administer the SARATSO elsewhere in the code shall apply unless a SARATSO is selected as set forth in section 290.04, limits the requirement to assess to adult male and juvenile male offenders only.

The County argues that identification of the STATIC-99 and the J-SORRAT II as the appropriate risk assessment tools for adult male and juvenile male populations, respectively, triggers certain

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[84] Exhibit X, SARATSO Review and Training Committees Official Publication, "Sex Offender Risk Assessment in California." See also, Exhibit X, SARATSO Review and Training Committees' website main page: http://www.saratso.org/.

[85] Penal Code section 1203(b)(1) (as amended, Stats. 1996, ch. 719 (AB 893)) [emphasis added].

[86] Penal Code section 1203(b)(2) (as amended, Stats. 1996, ch. 719 (AB 893)).

[87] Penal Code section 1203(b)(2)(C) (Stats. 2006, ch. 337 (SB 1128)) [emphasis added].

[88] Statutes 2006, chapter 337, section 15 (SB 1128).

investigative requirements necessary to score the SARATSO and thereby assess risk. The specific information necessary to complete the SARATSO is not found in any of the statutes pled, or the executive order; the information necessary to complete and score the SARATSO can only be determined by reference to the SARATSO risk assessment tool selected for a given population by the Review Committee. In addition, a new or alternative SARATSO may be selected by the Review Committee when, in its discretion, the Committee finds it appropriate to do so, and therefore the scope of investigation necessary may change as the selected risk assessment tool changes. Moreover, some investigative activities that might be required to prepare a SARATSO are not new: section 1203 previously required a presentencing report for all felony convictions, and some of the same information is required to score the SARATSO. For example, the activities required under prior law in section 1203 to "investigate and report to the court, at a specified time, upon the circumstances surrounding the crime and the prior history and record of the person" are not new, and the prior history and record of the person comes into play in scoring the SARATSO.[89]

The County, however, cites to the SARATSO training manual, published by DMH, at page 714 of the test claim, to demonstrate that some of the information required to score the STATIC-99 would not be immediately available to law enforcement, and possibly not available to the courts and, thus, an investigation is necessary to complete the assessment. To illustrate: the Manual states that one of the items required to score the STATIC-99 is whether the individual ever lived with an intimate partner "continuously, for at least two years." In addition, the manual suggests that "self-reporting" may be sufficient for some of the information required, which presumes that an interview with the defendant is expected, prior to or in lieu of an exhaustive search of law enforcement and court records. The requirement in statute is that the probation departments assess eligible individuals using the SARATSO and report the results in a pre-sentencing report to the court, and those required activities are new. The plain language of the statute does not require probation departments to conduct an investigation to complete the assessment. Therefore, the scope of investigation necessary to complete and score the SARATSO, as addressed in the training manual, may be considered reasonably necessary to comply with the mandated activity to complete the assessment and provide a report to the court.[90] That argument, however, may be made when adopting parameters and guidelines and will necessitate substantial evidence in the record demonstrating that the information required to complete the SARATSO is not readily available to the probation officer in other, previously required reports. Eligible claimants will be required to establish that the alleged activities are "reasonably necessary for the performance of the state-mandated program," within the meaning of section 17557, based on substantial evidence in the record, to have them included as reasonably necessary activities in the parameters and guidelines.

Based on the foregoing analysis, the Commission finds that sections 290.06 and 1203, and the SARATSO Review Committee Notification issued February 1, 2008 impose new required activities on probation departments to (1) assess, using the SARATSO, as set forth in section 290.04, every eligible person for whom the department prepares a presentencing report pursuant to section 1203; (2) assess, using the SARATSO, as set forth in section 290.04, every eligible

[89] See Exhibit D, Test Claim, Vol. IV at pp. 709-714.

[90] See Exhibit D, Test Claim, Vol. IV at pp. 709-714.

person under the department's supervision who was not assessed pursuant to a presentencing report prior to the termination of probation but no later than January 1, 2010; and (3) if the person was convicted of an offense that requires him or her to register as a sex offender, or if the probation report recommends that registration be ordered at sentencing, include the results of the SARATSO assessment in the presentencing report made to the court.[91] The activity of preparing the presentencing report under section 1203 is not new or reimbursable; only the *incremental increase in service* to include the results of the SARATSO in the presentencing report required under section 1203 is new.

6. Penal Code section 1203c, as amended by Statutes 2006, chapter 337 (SB 1128) imposes new required activities on county probation departments to include the results of the SARATSO, if applicable, in the report required pursuant to section 1203c.

Prior section 1203c provided that "whenever a person is committed to an institution under the jurisdiction of the Department of Corrections, whether probation has been applied for or not, or granted and revoked," a probation officer of the county in which the person was convicted is required to send to the Department of Corrections [and Rehabilitation] a report on the "circumstances surrounding the offense and the prior record and history of the defendant."[92] As amended by Statutes 2006, chapter 337 (SB 1128), section 1203c now also requires:

> If the person is being committed to the jurisdiction of the department for a conviction of an offense that requires him or her to register as a sex offender pursuant to Section 290, the probation officer shall include in the report the results of the State-Authorized Risk Assessment Tool for Sex Offenders (SARATSO) administered pursuant to Sections 290.04 to 290.06, inclusive, if applicable.[93]

The plain language of section 1203c thus requires that the results of the SARATSO evaluation be included in the report made for CDCR at the time the person is committed to the jurisdiction of the department. The report was required under prior law, as explained above, but inclusion of the SARATSO evaluation is a new mandated activity. However, as discussed above, section 290.04 provides that if a SARATSO has not been selected by the Review Committee for a given population, "no duty to administer the SARATSO elsewhere in this code shall apply with respect to that population." Therefore, because the SARATSO Review Committee Notification did not identify a SARATSO for female offenders, the requirements of section 1203c are limited to adult male and juvenile male offenders.

Based on the foregoing, the Commission finds that section 1203c imposes a new required activity on local probation departments, whenever a person is committed to the jurisdiction of CDCR for a conviction of an offense that requires him or her to register as a sex offender, to include in the report prepared for the department pursuant to section 1203c the results of the SARATSO, administered pursuant to sections 290.04 to 290.06, inclusive, if applicable.[94] This activity does not include preparing the report under section 1203c.

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[91] Penal Code section 1203 (as amended by Stats. 2006, ch. 337 (SB 1128)).

[92] Penal Code section 1203c (as amended by Statutes 1963, chapter 1785).

[93] Penal Code section 1203c (as amended by Stats. 2006, ch. 337 (SB 1128)).

[94] Penal Code section 1203c (as amended by Stats. 2006, ch. 337 (SB 1128)).

7. Penal Code section 1203e, added by Statutes 2006, chapter 337 (SB 1128), imposes new required activities on local agencies to compile a Facts of Offense Sheet, to be included in the presentencing report, for every person convicted of an offense requiring registration under Penal Code section 290, and to include the results of the SARATSO in the Facts of Offense Sheet.

Section 1203e was added to the Penal Code by Statutes 2006, chapter 337 (SB 1128), and provides as follows:

> (a) Commencing June 1, 2010, the probation department shall compile a Facts of Offense Sheet for every person convicted of an offense that requires him or her to register as a sex offender pursuant to Section 290 who is referred to the department pursuant to Section 1203. The Facts of Offense Sheet shall contain the following information concerning the offender: name; CII number; criminal history, including all arrests and convictions for any registerable sex offenses or any violent offense; circumstances of the offense for which registration is required, including, but not limited to, weapons used and victim pattern; and results of the State-Authorized Risk Assessment Tool for Sex Offenders (SARATSO), as set forth in Section 290.04, if required. The Facts of Offense Sheet shall be included in the probation officer's report.
>
> (b) The defendant may move the court to correct the Facts of Offense Sheet. Any corrections to that sheet shall be made consistent with procedures set forth in Section 1204.
>
> (c) The probation officer shall send a copy of the Facts of Offense Sheet to the Department of Justice Sex Offender Tracking Program within 30 days of the person's sex offense conviction, and it shall be made part of the registered sex offender's file maintained by the Sex Offender Tracking Program. The Facts of Offense Sheet shall thereafter be made available to law enforcement by the Department of Justice, which shall post it with the offender's record on the Department of Justice Internet Web site maintained pursuant to Section 290.46, and shall be accessible only to law enforcement.
>
> (d) If the registered sex offender is sentenced to a period of incarceration, at either the state prison or a county jail, the Facts of Offense Sheet shall be sent by the Department of Corrections and Rehabilitation or the county sheriff to the registering law enforcement agency in the jurisdiction where the registered sex offender will be paroled or will live on release, within three days of the person's release. If the registered sex offender is committed to the Department of Mental Health, the Facts of Offense Sheet shall be sent by the Department of Mental Health to the registering law enforcement agency in the jurisdiction where the person will live on release, within three days of release.[95]

Section 1203e is new: the requirement to "compile a Facts of Offense Sheet for every person convicted of an offense that requires him or her to register as a sex offender…who is referred to the department pursuant to Section 1203" was not found in prior law. However, some of the

[95] Penal Code section 1203e (added, Stats. 2006, ch. 337, § 40 (SB 1128)).

information required to complete the Facts of Offense Sheet would have been required to complete the reports required under sections 1203 and 1203c. For example, the name and criminal history of the individual are items required by sections 1203 and 1203c, and would not be an item of information that a probation officer would be required to independently investigate for purposes of section 1203e. Therefore the new activity of compiling the Facts of Offense Sheet is limited to completing the form, which the statute refers to as compiling the document, and gathering only information not collected pursuant to section 1203 or 1203c (i.e., information not required to be collected under prior law). Finally, the plain language of section 1203e also requires a probation department to send a copy of the Facts of Offense Sheet to the Department of Justice Sex Offender Tracking Program within 30 days of the person's conviction.

Based on the foregoing, the Commission finds that section 1203e, as added by Statutes 2006, chapter 337 (SB 1128) imposes new required activities on probation departments, beginning January 1, 2010, to (1) compile a Facts of Offense Sheet for every person convicted of an offense that requires him or her to register as a sex offender who is referred to the department pursuant to section 1203; (2) include in the Facts of Offense Sheet all of the information specified in section 1203e, including the results of the SARATSO, as set forth in section 290.04, if required; (3) include the Facts of Offense Sheet in the probation officer's report to the court made pursuant to section 1203; and (4) send a copy of the Facts of Offense Sheet to the Department of Justice Sex Offender Tracking Program within 30 days of the person's sex offense conviction. Obtaining information that is already required to complete the presentencing report pursuant to section 1203, as amended by Statutes 1996, chapter 719 (AB 893), or the report to CDCR under section 1203c if applicable, as amended by Statutes 1963, chapter 1785 is not part of this new activity.[96]

8. Penal Code section 1203f, as added by Statutes 2006, chapter 337 (SB 1128), imposes new required activities on local probation departments to ensure that high risk sex offenders are placed on intensive and specialized supervision.

Section 1203f was added by Statutes 2006, chapter 337, to provide:

> Every probation department shall ensure that all probationers under active supervision who are deemed to pose a high risk to the public of committing sex crimes, as determined by the State-Authorized Risk Assessment Tool for Sex Offenders, as set forth in Sections 290.04 to 290.06, inclusive, are placed on intensive and specialized probation supervision and are required to report frequently to designated probation officers. The probation department may place any other probationer convicted of an offense that requires him or her to register as a sex offender who is on active supervision to be placed on intensive and specialized supervision and require him or her to report frequently to designated probation officers.[97]

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[96] Penal Code section 1203e (Stats. 2006, ch. 337 (SB 1128)); 290.04 (Stats. 2006, ch. 337 (SB 1128); Stats. 2007, ch. 579 (SB 172)) [limiting duty to administer SARATSO to populations for whom an appropriate tool has been selected pursuant to section 290.04]; SARATSO Review Committee Notification issued February 1, 2008 [selecting a SARATSO risk assessment tool for adult males and juvenile males only].

[97] Penal Code section 1203f (added, Stats. 2006, ch. 337, § 41 (SB 1128)).

This section is new, and the requirement to place high risk offenders on intensive and specialized probation is not found in prior law; prior law stated that "[p]ersons placed on probation by a court shall be under the supervision of the county probation officer who *shall determine both the level and type of supervision* consistent with the court-ordered conditions of probation."[98] The added section requires an additional "level and type of supervision," and does not permit the local probation officer to exercise the discretion available under prior law in the case of sex offenders who are determined to pose a high risk of recidivism.

Based on the foregoing, the Commission finds that section 1203f, as added by Statutes 2006, chapter 337 (SB 1128) imposes a new required activity on local probation departments to ensure that all probationers under active supervision who are deemed to pose a high risk to the public of committing sex crimes, as determined by the SARATSO, as set forth in Sections 290.04 to 290.06, inclusive, are placed on intensive and specialized probation supervision and are required to report frequently to designated probation officers.

9. Penal Code section 1202.8, as amended by Statutes 2006, chapter 886 (AB 1849), imposes a new required activity on local agencies to continuously electronically monitor high risk sex offenders, as determined by the SARATSO.

Prior section 1202.8, as amended by Statutes 1996, chapter 6299 (SB 1685) provided that "[p]ersons placed on probation by a court shall be under the supervision of the county probation officer who shall determine both the level and type of supervision consistent with the court-ordered conditions of probation." As amended by Statutes 2006, chapter 886 (AB 1849), section 1202.8 now provides as follows:

> (b) Commencing January 1, 2009, every person who has been assessed with the State Authorized Risk Assessment Tool for Sex Offenders (SARATSO) pursuant to Sections 290.04 to 290.06, inclusive, and who has a SARATSO risk level of high shall be continuously electronically monitored while on probation, unless the court determines that such monitoring is unnecessary for a particular person…
>
> ¶…¶
>
> (d) Beginning January 1, 2009, and every two years thereafter, each probation department shall report to the Corrections Standards Authority all relevant statistics and relevant information regarding the effectiveness of continuous electronic monitoring of offenders pursuant to subdivision (b). The report shall include the costs of monitoring and the recidivism rates of those persons who have been monitored. The Corrections Standards Authority shall compile the reports and submit a single report to the Legislature and the Governor every two years through 2017.

Both continuously electronically monitoring high risk sex offenders, and reporting to the Corrections Standards Authority on the effectiveness of continuous electronic monitoring, are new activities, not required under prior law. The prior law left the level and type of supervision to the probation officer's discretion, while amended section 1202.8 does not.

[98] Penal Code section 1202.8 (as amended by Stats. 1996, ch. 629 (SB 1685)).

Based on the foregoing, the Commission finds that section 1202.8, as amended by Statutes 2006, chapter 886 (AB 1849), imposes new required activities on probation departments to (1) continuously electronically monitored while on probation, every person who has been assessed with the SARATSO pursuant to Sections 290.04 to 290.06, inclusive, and who has a SARATSO risk level of high; and (2) beginning January 1, 2009, and every two years thereafter, report to the Corrections Standards Authority all relevant statistics and relevant information regarding the effectiveness of continuous electronic monitoring of offenders, including the costs of monitoring and the recidivism rates of those persons who have been monitored.

10. Penal Code sections 290, 290.011, 290.012 and 1202.7, as added or amended by Statutes 2007, chapter 579 (SB 172), do not impose mandated activities on local agencies.

The County alleges that sections 290, 290.011, 290.012, and 1202.7 impose a reimbursable state mandate for probation departments to engage sex offenders who are identified as transient in specialized treatment. The Commission disagrees.

Penal Code section 290 requires every person who "since July 1, 1944 has been or is hereafter convicted in any court in this state or in any federal or military court of a violation of [specified sex crimes and violent sexual offenses]" to register with the chief of police or the sheriff of the county in which he or she is residing. Section 290.011 requires a person required to register pursuant to section 290 who is living as a transient to register within five days of release from incarceration, placement or commitment, and to re-register every thirty days thereafter. The section also provides that a transient who moves to a residence shall have five working days to register at that address, and a person registered at a residence who becomes transient shall have five working days within which to register as a transient. Section 290.012 requires a person to register annually beginning on his or her first birthday following registration or change of address. Section 290.012 also requires a person adjudicated to be a sexually violent predator to update his or her registration every 90 days, and a person subject to registration living as a transient to update his or her registration every 30 days. In addition, section 290.012 provides that no person shall be made to pay a fee to register or update his or her registration, and the agency shall submit registrations, including updates, directly to the Department of Justice Violent Crime Information Network (VCIN).

The test claimant alleges that these sections, in conjunction with section 1202.7, require local agencies to engage in efforts to treat transient sex offenders. Specifically, section 1202.7 provides that "[i]t is the intent of the Legislature that efforts be made with respect to persons who are subject to Section 290.011 who are on probation to engage them in treatment."[99]

However, a statement of Legislative intent does not constitute a mandate, within the meaning of article XIII B, section 6. Moreover, the amendments made to section 1202.7 are made only to ensure that the section is consistent with the amendments made to section 290 et seq, and are not new. The substance of section 290.011, addressing transient sex offenders on probation who are required to register and update their registration with local officials, was previously found in section 290(a)(1)(C). And, accordingly, the prior version of section 1202.7 provided that "[i]t is the intent of the Legislature that efforts be made with respect to persons who are subject to subparagraph (C) of paragraph (1) of subdivision (a) of section 290 who are on probation to

[99] Penal Code section 1202.7 (as amended by Statutes 2007, chapter 579 (SB 172)).

engage them in treatment.[100] Section 290 was repealed and added by Statutes 2007, chapter 579 (SB 172), and the substantive provisions of section 290 were restructured in the Penal Code as sections 290-290.023; section 1202.7 was amended to ensure consistency with the enumeration of the repealed and added language, and did not impose any new requirements.

Therefore, the requirement alleged by the test claimant, to make efforts to provide treatment for transient sex offenders, is not mandated by the state and is not new. The Commission finds that sections 290.011, 290.012, and 1202.7, as added or amended by Statutes 2007, chapter 579 (SB 172), do not impose any state-mandated activities on local agencies.

11. Penal Code section 290.07, as added by Statutes 2006, chapter 337 (SB 1128), imposes new required activities on local agencies to provide access to all relevant records pertaining to a sex offender to persons authorized to administer the SARATSO.

Section 290.07, as added, provides:

> Notwithstanding any other provision of law, *any person authorized by statute to administer the State Authorized Risk Assessment Tool for Sex Offenders and trained pursuant to Section 290.06 shall be granted access to all relevant records pertaining to a registered sex offender*, including, but not limited to, criminal histories, sex offender registration records, police reports, probation and presentencing reports, judicial records and case files, juvenile records, psychological evaluations and psychiatric hospital reports, sexually violent predator treatment program reports, and records that have been sealed by the courts or the Department of Justice. Records and information obtained under this section shall not be subject to the California Public Records Act, Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code.[101]

Prior to the enactment of section 290.07, the CPRA provided for access to the public generally to some of the categories of records named above. Government Code section 6253 provides that "[p]ublic records are open to inspection at all times during the office hours of the state or local agency and every person has a right to inspect any public record, except as hereafter provided."[102] And specifically, section 6254 provides that "state and local law enforcement agencies shall make public" the names and occupations of persons arrested, including physical description and the factual circumstances surrounding the arrest.[103] And since every person convicted of a registerable sex offense must first be arrested, the name and occupation of each person eventually assessed under sections 290.04 to 290.06, as well as the factual circumstances surrounding their arrest, must be made public under CPRA.

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[100] Penal Code section 1202.7 (as amended, Stats. 2001, ch. 485 (AB 1004)).

[101] Statutes 2006, chapter 337, section 16 (SB 1128) [emphasis added].

[102] Government Code section 6253 (Stats. 1998, ch. 620 (SB 143); Stats. 1999, ch. 83 (SB 966); Stats. 2000, ch. 982 (AB 2799); Stats. 2001, ch. 355 (AB 1014)).

[103] Government Code section 6254(f) (as amended, Stats. 2005, ch. 620 (SB 922)).

Therefore, some of the records that a probation department "shall be granted access to" under section 290.07 to complete a SARATSO evaluation are already accessible under CPRA. However, section 290.07 provides for broader access than the CPRA: the court in *Wescott v. County of Yuba* held that the CPRA "is considered to be general legislation and is consequently subordinate to specific legislation on the same subject."[104] The court concluded that "Section 827 of the Welfare and Institutions Code expressly covers the confidentiality of juvenile court records and their release to third parties, and is controlling over the Public Records Act to the extent of any conflict."[105] But section 290.07 expressly states: *"[n]otwithstanding any other provision of law*, any person authorized by statute to administer the [SARATSO] shall be granted access to all relevant records pertaining to a registered sex offender, including, but not limited to…juvenile records."[106] Therefore, as in *Wescott*, *supra*, the more specific provision controls,[107] and section 290.07 imposes a higher level of service on local agencies to provide access to relevant records, including juvenile records, for which disclosure is not otherwise required.

The plain language of section 290.07 does not limit itself to *probation departments* granting access to other agencies and persons, but this test claim must be so limited. As discussed above, the Commission does not have jurisdiction, based on the filing date of this test claim, over activities required by statutes effective prior to July 1, 2007, unless there is evidence that the claimant first incurred costs under a particular statute at a later time. Here, section 290.07, as added by Statutes 2006, chapter 337 (SB 1128), has an effective date of September 20, 2006, and while the County stated in the test claim that the probation department began incurring SARATSO costs in February 2008, there is no such assertion made with respect to any other local agencies. There is no evidence to rebut the County's declaration, made under penalty of perjury, and therefore costs incurred by probation departments, but not any other local agency, are within the Commission's jurisdiction for this test claim.

Based on the foregoing, the Commission finds that section 290.07 imposes a higher level of service on county probation departments to grant access to all relevant records pertaining to a registered sex offender to any person authorized by statute to administer the SARATSO. This activity is restricted to providing access to records that are exempt from disclosure under the California Public Records Act (Government Code § 6250, et seq.).

C. Some of the Newly Required Activities Impose a Reimbursable State-Mandated New Program or Higher Level of Service Within the Meaning of Article XIII B, Section 6 and Government Code Section 17514.

The requirements imposed on county probation departments are reimbursable only if all elements of article XIII B, section 6 and Government Code section 17514 are satisfied; the requirements must be mandated by the state, must impose a new program or higher level of service within the meaning of article XIII B, section 6, and must impose costs mandated by the state. Government

[104] (Cal. Ct. App. 3d Dist. 1980) 104 Cal.App.3d 103, at p. 106 [citations omitted].

[105] *Ibid.*

[106] Penal Code section 290.07 (added, Stats. 2006, ch. 337 (SB 1128)).

[107] 104 Cal.App.3d at p. 106.

Code section 17514 provides that "'[c]osts mandated by the state' means any increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution." In this respect, Government Code section 17564 provides that "[n]o claim shall be made pursuant to Sections 17551, 17561, or 17573, nor shall any payment be made on claims submitted pursuant to Sections 17551, or 17561, or pursuant to a legislative determination under Section 17573, unless these claims exceed one thousand dollars." The County alleges that the activities alleged in this test claim related to the SARATSO program result in state-mandated increased costs "far in excess of [one thousand dollars] per annum," and that those costs are not subject to any "funding disclaimers" specified in section 17556.[108]

Finance argues, however, that "the activities related to completing the SARATSO are subject to subdivision (g) of Government Code section 17556," and therefore barred from reimbursement. Specifically, Finance argues that "[t]he results of the SARATSO are required for the court to make a determination on the probation conditions of a convicted sex offender," and that therefore the SARATSO evaluation necessarily affects "the sex offender's penalty after he/she has been convicted of the crime."[109]

The County responds, in rebuttal comments, that "[c]hapter 337, Statutes of 2006, mandates SARATSO on every registered sex offender who is required to register as a sex offender [sic]." The County argues that persons subject to the SARATSO "do not have to be on probation and SARATSO is not a part of the offender's sentencing." The County argues that "SARATSO is a device to eliminate future victimization" and therefore not subject to the "disclaimer" of section 17556(g).[110]

Article XIII B, section 6 of the California Constitution that states that the Legislature "may, but need not, provide a subvention of funds for…[l]egislation defining a new crime or changing an existing definition of a crime." Government Code section 17556 provides, in pertinent part, that the Commission "shall not find costs mandated by the state," if the test claim statute "created a new crime or infraction, eliminated a crime or infraction, or changed the penalty for a crime or infraction, but only for that portion of the statute relating directly to the enforcement of the crime or infraction."[111] The inclusion of subdivision (g) within the statutory exclusions (sometimes called "disclaimers") of section 17556 constitutes the "exercise of the Legislative discretion authorized by article XIII B, section 6" whether to provide a subvention of funds for statutes that create, eliminate, or change the penalty for a crime or infraction.[112]

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[108] Exhibit A, Test Claim, at p. 43.

[109] Exhibit E, Department of Finance Comments, at p. 1.

[110] Exhibit F, County of Los Angeles Rebuttal Comments, at p. 3.

[111] Government Code section 17556(g) (Stats. 2010, ch. 719 (SB 856)).

[112] See *County of Contra Costa v. State of California* (Cal. Ct. App. 3d Dist. 1986) 177 Cal.App.3d 62, at p. 67, Fn 1 ["After the adoption of article XIII B, section 6, the Legislature in 1980 amended Revenue and Taxation Code sections 2207 and 2231, and expanded the definition

Section 17556(g) prohibits reimbursement for test claim statutes that create or eliminate a crime, or change the penalty for a crime, "*but only* for that portion of the statute *relating directly to the enforcement of the crime or infraction*." Probation is "the suspension of the imposition or execution of a sentence and the order of conditional and revocable release in the community under the supervision of a probation officer."[113] In addition, Penal Code section 1202.7 includes punishment as one of the primary considerations in granting probation:

> "The Legislature finds and declares that the provision of probation services is an essential element in administration of criminal justice. The safety of the public, which shall be a primary goal through enforcement of court-ordered conditions of probation; the nature of the offense, the interests of justice, *including punishment*, reintegration of the offender into the community, and enforcement of conditions of probation; the loss to the victim; and the needs of the defendant shall be the primary considerations in the granting of probation." (Emphasis added.)

Furthermore, the successful completion of probation is required before the unconditional release of the defendant. If the convicted defendant does not successfully complete probation, the defendant is subject to further sentencing and incarceration.[114] Finally, *County of Orange v. State Board of Control* concluded that "probation is an *alternative sentencing device imposed after conviction*," unlike the pretrial diversion program added by statute, which the court held did not change the penalty for a crime.[115]

Therefore the implication of *County of Orange*, and the logical conclusion from the plain language of section 17556(g) is that probation is a penalty for the conviction of certain sex offenses and that changes to the duration or conditions of probation that result in increased costs to local agencies are subject to the exclusion from reimbursement stated in Government Code

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of 'costs mandated by the State' by including certain specified statutes enacted after January 1, 1973. (Stats. 1980, ch. 1256, § 5, p. 4248.) In *County of Los Angeles v. State of California* (1984) 153 Cal.App.3d 568, 573, the court concluded that 'this reaffirmance constituted the exercise of the Legislative discretion authorized by article XIII B, section 6, subdivision (c), of the California Constitution [to provide subvention of funds for mandates enacted prior to January 1, 1975].'"].

[113] Penal Code section 1203(a) (Stats. 2006, ch. 337 (SB 1128)).

[114] Penal Code section 1203.2 provides authority to revoke probation and impose further sentencing, including incarceration, if the defendant violates *any* term of probation. ["At any time during the probationary period…if any probation officer or peace officer has probable cause to believe that the probationer is violating any term or condition of his or her probation or conditional sentence, the officer may, without warrant or other process and at any time until the final disposition of the case, rearrest the person and bring him or her before the court or the court may, in its discretion, issue a warrant for his or her rearrest. Upon such rearrest, or upon the issuance of a warrant for rearrest the court may revoke and terminate such probation if the interests of justice so require and the court, in its judgment, has reason to believe from the report of the probation officer or otherwise that the person has violated any of the conditions of his or her probation…"].

[115] (Cal. Ct. App. 4th Dist. 1985) 167 Cal.App.3d 660, at p. 667.

section 17556(g). Changes to the administrative activities *leading up to probation*, or additional functions resulting in increased costs *not directly related to the duration or conditions of punishment* and that are *administrative* in nature generally are not subject to exclusion from reimbursement under Government Code section 17556(g), because they are not directly related to the definition of or the penalty for a crime.

The following analysis addresses the required new activities identified in the test claim statutes and executive order, and determines whether any or all are barred from reimbursement by section 17556(g).

1. Training requirements under section 290.05; reporting to Corrections Standards Authority under section 1202.8 and granting access to relevant records under section 290.07 are administrative functions performed by local agencies pursuant to the test claim statute, and are not directly related to the creation, expansion, or elimination of crimes or penalties for crimes, and therefore are not barred from reimbursement by Government Code section 17556(g).

The plain language of section 17556(g) does not bar a finding of costs mandated by the state for training, reporting, granting access to other agencies and personnel, and record keeping activities under sections 290.05, 1202.8, 290.07, and 290.08. These activities are not related to the expansion or elimination of crime, or the enhancement or elimination of punishment.

Specifically, section 290.05 requires county probation departments and authorized law enforcement agencies to designate personnel to attend training and to train others within the organization, and to ensure that persons administering the SARATSO receive training no less frequently than every two years. These training activities are not related to the expansion of crime or the execution of punishments for crime.

Likewise, section 1202.8 requires a county probation department to report, beginning January 1, 2009, and every two years thereafter, to the Corrections Standards Authority "all relevant statistics and relevant information" regarding the effectiveness of continuous electronic monitoring of offenders required to register pursuant to section 290, including the costs of the program and recidivism rates of those monitored. While electronic monitoring itself is incident to the punishment and a condition of probation, and therefore not reimbursable in itself under section 17556(g), as discussed below, this reporting requirement is administrative in nature, and does not relate directly to the punishment or enforcement of crime. Section 17556(g) states that the Commission shall not find costs mandated by the state when a statute changes the penalty for a crime or infraction, "but only for that portion of the statute relating directly to the enforcement of the crime or infraction." This activity does not relate directly to enforcement, and is therefore not barred from a finding of costs mandated by the state.

In addition, granting access to relevant records pertaining to a person required to register as a sex offender to any person authorized to administer the SARATSO, as required by section 290.07, is an administrative function, and has little relation to the enforcement of the underlying crimes that trigger the duty of county probation departments to provide access. Therefore these activities and costs are not barred from reimbursement by section 17556(g).

These requirements constitute new programs or higher levels of service that are administrative in nature and not related to the punishment for or enforcement of crime, and that result in local agencies incurring increased costs mandated by the state.

Based on the foregoing, the Commission finds that the following activities constitute reimbursable state-mandated new programs or higher levels of service:

For county probation departments and authorized local law enforcement agencies:

1. Designate key persons within their organizations to attend training and, as authorized by the department, train others within their organizations.[116]

2. Ensure that persons administering the SARATSO receive training no less frequently than every two years.[117]

For county probation departments:

1. Beginning January 1, 2009, and every two years thereafter, report to the Corrections Standards Authority all relevant statistics and relevant information regarding the effectiveness of continuous electronic monitoring of sex offenders, including the costs of monitoring and recidivism rates of those persons who have been monitored.[118]

2. Grant access to all relevant records pertaining to a registered sex offender to any person authorized by statute to administer the SARATSO.

   This activity is not new to the extent of records required to be disclosed under the California Public Records Act (Government Code § 6250, et seq.).[119]

2. Administering SARATSO assessments under section 290.06; including the results of the SARATSO assessments in presentencing reports prepared under section 1203; including the results of the SARATSO assessments in reports submitted to the Department of Corrections and Rehabilitation under section 1203c; and compiling a Facts of Offense Sheet including the results of the SARATSO assessment, where applicable, and including the Facts of Offense Sheet in the presentencing report required by section 1203 impose a reimbursable new program or higher level of service on county probation departments.

The activities related to administering the SARATSO under section 290.06, and including the SARATSO results in presentencing reports, reports made to CDCR, and in the Facts of Offense Sheet included in a presentencing report, are all *administrative functions* whose costs *do not result* from a statute altering the duration or conditions of the penalty. Although the activities related to administering the SARATSO may result in an augmented or mitigated punishment (which may entail increased costs), and may result in changed conditions of probation, as discussed below, the activities for which reimbursement is sought relating to administering the SARATSO are not directly related to these changed penalties.

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[116] Penal Code section 290.05 (Stats. 2006, ch. 337 (SB 1128); Stats. 2007, ch. 579 (SB 172)); SARATSO Review Committee Notification, issued February 1, 2008).

[117] Penal Code section 290.05 (Stats. 2006, ch. 337 (SB 1128); Stats. 2007, ch. 579 (SB 172)); SARATSO Review Committee Notification, issued February 1, 2008).

[118] Penal Code section 1202.8 (Stats. 2006, ch. 336 (SB 1178); Stats. 2006, ch. 886 (AB 1849)).

[119] Penal Code section 290.07 (Stats. 2006, ch. 337 (SB 1128)).

Specifically, section 290.06(a)(4), as discussed above, requires a probation department to assess, using the SARATSO, the risk of reoffending for every sex offender "for whom it prepares a report pursuant to Section 1203." Section 290.06(a)(5) requires a probation department to also assess every "eligible person," meaning every sex offender required to register under section 290, currently under supervision and prior to the termination of probation. Section 1203, as discussed above, requires a report to the court, after conviction but before sentencing, "which may be considered either in aggravation or mitigation of the punishment." Therefore the SARATSO administered pursuant to section 290.06(a)(4) may have an impact on the duration or conditions of probation, based on the plain language of sections 290.06 and 1203. However, the activity for which reimbursement is sought is the assessment itself; this activity is administrative in nature, and is not a penalty in itself, even though it may lead to an increased penalty imposed by the court.

Likewise, section 1203 requires a probation officer to include the results of the SARATSO evaluation in the presentencing report, and requires preparation of a presentencing report for all sex offenses that require a person to register as a sex offender under section 290. The report, when received by the court, may have an effect on the punishment imposed for the underlying crime, but the requirement to prepare the report, and the requirement to include the SARATSO evaluation in the report are administrative functions that are not alleged to result in costs related to the penalty for the underlying offense. As discussed above, the changed penalty is not the subject of reimbursement; the required activity for which reimbursement is sought is preparing the report and ensuring that a SARATSO evaluation, where applicable, is included in the report.

In addition, section 1203c requires a probation officer to include the results of the SARATSO evaluation in the report prepared for CDCR, if applicable. This is an administrative reporting requirement and is not directly related to law enforcement or the penalty for a crime.

And finally, section 1203e requires a county probation department, beginning January 1, 2010, to prepare a Facts of Offense Sheet for inclusion in the presentencing report prepared pursuant to section 1203, and also to be sent to the Department of Justice Sex Offender Tracking Program within 30 days of conviction. The Facts of Offense Sheet is also required, for all offenses requiring registration under section 290, to include the results of the SARATSO evaluation, if applicable. Like sections 290.06 and 1203, above, the requirements of section 1203e are administrative in nature, and do not of themselves change the penalty for the underlying crime.

Based on the foregoing, the Commission finds that the following activities are not barred from reimbursement by section 17556(g), and therefore constitute reimbursable state-mandated new programs or higher levels of service:

For county probation departments to:

1. Assess, using the SARATSO, as set forth in section 290.04, every eligible person for whom the department prepares a presentencing report pursuant to section 1203 and every eligible person under the department's supervision who was not assessed pursuant to a presentencing report, prior to the termination of probation but no later than January 1, 2010.[120]

[120] Penal Code section 290.06 (Stats. 2006, ch. 337 (SB 1128)); 290.04 (Stats. 2006, ch. 337 (SB 1128); Stats. 2007, ch. 579 (SB 172)) [limiting duty to administer SARATSO to populations for

2. Include the results of the SARATSO assessment administered pursuant to sections 290.04 to 290.06 in the presentencing report made to the court pursuant to section 1203, if the person was convicted of an offense that requires him or her to register as a sex offender, or if the probation report recommends that registration be ordered at sentencing,.[121]

   Preparing the presentencing report under section 1203 is not a new activity and, thus, is not eligible for reimbursement.

3. Include in the report prepared for the department pursuant to section 1203c the results of the SARATSO, administered pursuant to sections 290.04 to 290.06, inclusive, if applicable, whenever a person is committed to the jurisdiction of the Department of Corrections and Rehabilitation for a conviction of an offense that requires him or her to register as a sex offender.[122]

   Preparing the report under section 1203c is not a new activity and, thus, is not eligible for reimbursement.

4. Beginning January 1, 2010:

   (a) Compile a Facts of Offense Sheet for every person convicted of an offense that requires him or her to register as a sex offender and who is referred to the department pursuant to section 1203;

   (b) Include in the Facts of Offense Sheet all of the information specified in section 1203e, including the results of the SARATSO, as set forth in section 290.04, if required;

   (c) Include the Facts of Offense Sheet in the probation officer's report to the court made pursuant to section 1203; and

   (d) Send a copy of the Facts of Offense Sheet to the Department of Justice Sex Offender Tracking Program within 30 days of the person's sex offense conviction.

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whom an appropriate tool has been selected pursuant to section 290.04]; SARATSO Review Committee Notification issued February 1, 2008 [selecting a SARATSO risk assessment tool for adult males and juvenile males only].

[121] Penal Code section 1203 (Stats. 2006, ch. 337 (SB 1128)); 290.04 (Stats. 2006, ch. 337 (SB 1128); Stats. 2007, ch. 579 (SB 172)) [limiting duty to administer SARATSO to populations for whom an appropriate tool has been selected pursuant to section 290.04]; SARATSO Review Committee Notification issued February 1, 2008 [selecting a SARATSO risk assessment tool for adult males and juvenile males only].

[122] Penal Code section 1203c (as amended by Stats. 2006, ch. 337 (SB 1128)). See also Penal Code section 290.0404 (Stats. 2006, ch. 337 (SB 1128); Stats. 2007, ch. 579 (SB 172)) [limiting duty to administer SARATSO to populations for whom an appropriate tool has been selected pursuant to section 290.04]; SARATSO Review Committee Notification issued February 1, 2008 [selecting a SARATSO risk assessment tool for adult males and juvenile males only].

Obtaining information that is already required to complete the presentencing report pursuant to section 1203, as amended by Statutes 1996, chapter 719 (AB 893), or the report to the Department of Corrections and Rehabilitation under section 1203c, as amended by Statutes 1963, chapter 1785 is not new or subject to reimbursement under this activity.[123]

3. Continuously electronically monitoring high risk sex offenders under section 1202.8, and ensuring that high risk sex offenders are placed under intensive and specialized supervision under section 1203f, are activities directly related to the penalty for the sex crime, and are not reimbursable under section 17556(g).

As discussed above, the plain language of article XIII B, section 6(a)(2) and section 17556(g), along with the statutory and case law determinations that probation is a form of criminal punishment, and a sentencing device,[124] results in a working rule and analysis that required changes to the duration or conditions of probation that result in increased costs to local agencies are subject to the exclusion in Government Code section 17556(g), and therefore not reimbursable.

Here, section 1202.8 requires county probation departments, beginning January 1, 2009, to continuously electronically monitor sex offenders while on probation who assess at a high risk level under the SARATSO. Electronic monitoring is thus a condition of probation that facially constitutes a greater deprivation of liberty, and therefore constitutes a change in the penalty for the underlying crimes. Based on the plain language of section 17556(g), the costs of electronic monitoring under section 1202.8 are not costs mandated by the state, within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514.

Likewise, section 1203f requires county probation departments to place sex offenders who are on probation and who assess at a high risk level under the SARATSO on "intensive and specialized probation," and to require such probationers "to report frequently to designated probation officers." These requirements are conditions of probation placed on a subset of probationers, as specified, and therefore constitute a change in the penalty for the underlying crimes. Based on the plain language of section 17556(g), the costs of providing "intensive and specialized probation" services are not costs mandated by the state, within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514.

Based on the foregoing, section 1202.8, as amended by Statutes 2006, chapter 336 (SB 1178), and Statutes 2006, chapter 886 (AB 1849), and section 1203f, as added by Statutes 2006, chapter 337 (SB 1128), are denied.

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[123] Penal Code section 1203e (Stats. 2006, ch. 337 (SB 1128)); 290.04 (Stats. 2006, ch. 337 (SB 1128); Stats. 2007, ch. 579 (SB 172)) [limiting duty to administer SARATSO to populations for whom an appropriate tool has been selected pursuant to section 290.04]; SARATSO Review Committee Notification issued February 1, 2008 [selecting a SARATSO risk assessment tool for adult males and juvenile males only].

[124] *County of Orange, supra,* 167 Cal.App.3d 660, at p. 667.

V. Conclusion

Based on the foregoing, the Commission finds that the test claim statutes and executive order constitute a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514 for the following activities only:

For county probation departments and authorized local law enforcement agencies to:

1. Designate key persons within their organizations to attend training and, as authorized by the department, to train others within their organizations;[125] and,
2. Ensure that persons administering the SARATSO receive training no less frequently than every two years.[126]

For county probation departments to:

1. Assess, using the SARATSO, as set forth in section 290.04, every eligible person for whom the department prepares a presentencing report pursuant to section 1203 and every eligible person under the department's supervision who was not assessed pursuant to a presentencing report, prior to the termination of probation but no later than January 1, 2010.[127]
2. Include the results of the SARATSO assessment administered pursuant to sections 290.04 to 290.06 in the presentencing report made to the court pursuant to section 1203, if the person was convicted of an offense that requires him or her to register as a sex offender, or if the probation report recommends that registration be ordered at sentencing.[128]

   Preparing the presentencing report under section 1203 is not a new activity and, thus, not eligible for reimbursement.
3. Include in the report prepared for the department pursuant to section 1203c the results of the SARATSO, administered pursuant to sections 290.04 to 290.06, inclusive, if applicable, whenever a person is committed to the jurisdiction of

[125] Penal Code section 290.05 (Stats. 2006, ch. 337 (SB 1128); Stats. 2007, ch. 579 (SB 172)); SARATSO Review Committee Notification, issued February 1, 2008).

[126] Penal Code section 290.05 (Stats. 2006, ch. 337 (SB 1128); Stats. 2007, ch. 579 (SB 172)); SARATSO Review Committee Notification, issued February 1, 2008).

[127] Penal Code section 290.06 (Stats. 2006, ch. 337 (SB 1128)); 290.04 (Stats. 2006, ch. 337 (SB 1128); Stats. 2007, ch. 579 (SB 172)) [limiting duty to administer SARATSO to populations for whom an appropriate tool has been selected pursuant to section 290.04]; SARATSO Review Committee Notification issued February 1, 2008 [selecting a SARATSO risk assessment tool for adult males and juvenile males only].

[128] Penal Code section 1203 (as amended, Stats. 2006, ch. 337 (SB 1128)).

the Department of Corrections and Rehabilitation for a conviction of an offense that requires him or her to register as a sex offender.[129]

Preparing the report under section 1203c is not a new activity and, thus, not eligible for reimbursement.

4. Beginning January 1, 2010:

   (a) Compile a Facts of Offense Sheet for every person convicted of an offense that requires him or her to register as a sex offender and who is referred to the department pursuant to section 1203;

   (b) Include in the Facts of Offense Sheet all of the information specified in section 1203e, including the results of the SARATSO, as set forth in section 290.04, if required;

   (c) Include the Facts of Offense Sheet in the probation officer's report to the court made pursuant to section 1203; and

   (d) Send a copy of the Facts of Offense Sheet to the Department of Justice Sex Offender Tracking Program within 30 days of the person's sex offense conviction.

   Obtaining information required to complete the presentencing report pursuant to section 1203, as amended by Statutes 1996, chapter 719 (AB 893), or the report to the Department of Corrections and Rehabilitation under section 1203c if applicable, as amended by Statutes 1963, chapter 1785 is not new or reimbursable under this activity.[130]

5. Beginning January 1, 2009, and every two years thereafter, report to the Corrections Standards Authority all relevant statistics and relevant information regarding the effectiveness of continuous electronic monitoring of sex offenders, including the costs of monitoring and recidivism rates of those persons who have been monitored.[131]

6. Grant access to all relevant records pertaining to a registered sex offender to any person authorized by statute to administer the SARATSO.[132]

   This activity is limited to granting access to records exempt from disclosure under the California Public Records Act (Government Code § 6250, et seq.).

All other statutes, regulations, and activities pled in this test claim do not constitute reimbursable state-mandated programs subject to article XIIIB, section 6 of the California Constitution and are, therefore, denied.

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[129] Penal Code section 1203c (as amended, Stats. 2006, ch. 337 (SB 1128)).

[130] Penal Code section 1203e (added, Stats. 2006, ch. 337 (SB 1128)).

[131] Penal Code section 1202.8 (as amended, Stats. 2006, ch. 337 (SB 1128)).

[132] Penal Code section 290.07 (added, Stats. 2006, ch. 337 (SB 1128)).

DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

I am a resident of the County of Solano and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

On October 11, 2013, I served the:

> **Draft Staff Analysis and Proposed Statement of Decision, Schedule for Comments, and Notice of Hearing**
> *State Authorized Risk Assessment Tool for Sex Offenders (SARATSO)*, 08-TC-03
> Penal Code Sections 290.3 et al.
> County of Los Angeles, Claimant

by making it available on the Commission's website and providing notice of how to locate it to the email addresses provided on the attached mailing list.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on October 11, 2013 at Sacramento, California.

Heidi J. Palchik
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814
(916) 323-3562

Commission on State Mandates

Original List Date: 2/10/2009
Last Updated: 10/11/2013
List Print Date: 10/11/2013
Claim Number: 08-TC-03
Issue: State Authorized Risk Assessment Tool for Sex Offenders SARATSO

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DEPARTMENT OF FINANCE

EDMUND G. BROWN JR. • GOVERNOR
915 L STREET ■ SACRAMENTO CA ■ 95814-3706 ■ WWW.DOF.CA.GOV

December 2, 2013

Ms. Heather Halsey
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA. 95814

Dear Ms. Halsey:

Draft Staff Analysis on the State Authorized Risk Assessment Tool for Sex Offenders (SARATSO) Test Claim (08-TC-03)

The Department of Finance, in its March 25, 2009 comments regarding this test claim, acknowledged that the laws that created SARATSO and the Department of Mental Health's executive order could result in a partial reimbursable state mandate for some of the activities identified by the claimant. Finance now concurs with the draft staff analysis and proposed statement of decision which recommends partial approval of the claimant's test claim.

Pursuant to section 1181.2, subdivision (c)(1)(E) of the California Code of Regulations, "documents that are e-filed with the Commission on State Mandates need not be otherwise served on persons that have provided an email address for the mailing list."

If you have any questions regarding this letter, please contact Michael Byrne, Principal Program Budget Analyst at (916) 445-3274.

Sincerely,

Tom Dyer
Assistant Program Budget Manager

Enclosure A

DECLARATION OF MICHAEL BYRNE
DEPARTMENT OF FINANCE
CLAIM NO. 08-TC-03

1. I am currently employed by the State of California, Department of Finance (Finance), am familiar with the duties of Finance, and am authorized to make this declaration on behalf of Finance.
2. I certify under penalty of perjury that the facts set forth in the foregoing are true and correct of my own knowledge except as to the matters therein stated as information or belief and, as to those matters, I believe them to be true.

12/2/2013
at Sacramento, California.

Michael Byrne

DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

On December 3, 2013, I served the:

Department of Finance Comments
State Authorized Risk Assessment Tool for Sex Offenders (SARATSO), 08-TC-03
Penal Code Sections 290.3 et al.
County of Los Angeles, Claimant

by making it available on the Commission's website and providing notice of how to locate it to the email addresses provided on the attached mailing list.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on December 3, 2013 at Sacramento, California.

Lorenzo Duran
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814
(916) 323-3562

Original List Date: 2/10/2009
Last Updated: 12/3/2013
List Print Date: 12/03/2013
Claim Number: 08-TC-03
Issue: State Authorized Risk Assessment Tool for Sex Offenders SARATSO

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include a bond counsel opinion to the effect that the interest on the bonds is excluded from gross income for federal tax purposes under designated conditions, the Treasurer may maintain separate accounts for the bond proceeds invested and for the investment earnings on those proceeds, and may use or direct the use of those proceeds or earnings to pay any rebate, penalty, or other payment required under federal law or take any other action with respect to the investment and use of those bond proceeds, as may be required or desirable under federal law in order to maintain the tax-exempt status of those bonds and to obtain any other advantage under federal law on behalf of the funds of this state.

5096.963. For the purposes of carrying out this chapter, the Director of Finance may authorize the withdrawal from the General Fund of an amount or amounts not to exceed the amount of the unsold bonds that have been authorized by the committee to be sold for the purpose of carrying out this chapter. Any amounts withdrawn shall be deposited in the fund. Any money made available under this section shall be returned to the General Fund, with interest at the rate earned by the money in the Pooled Money Investment Account, from proceeds received from the sale of bonds for the purpose of carrying out this chapter.

5096.964. All money deposited in the fund that is derived from premium and accrued interest on bonds sold pursuant to this chapter shall be reserved in the fund and shall be available for transfer to the General Fund as a credit to expenditures for bond interest.

5096.965. Pursuant to Chapter 4 (commencing with Section 16720) of Part 3 of Division 4 of Title 2 of the Government Code, the cost of bond issuance shall be paid out of the bond proceeds. These costs shall be shared proportionally by each program funded through this bond act.

5096.966. The bonds issued and sold pursuant to this chapter may be refunded in accordance with Article 6 (commencing with Section 16780) of Chapter 4 of Part 3 of Division 4 of Title 2 of the Government Code, which is a part of the State General Obligation Bond Law. Approval by the electors of the state for the issuance of the bonds under this chapter shall include approval of the issuance of any bonds issued to refund any bonds originally issued under this chapter or any previously issued refunding bonds.

5096.967. The Legislature hereby finds and declares that, inasmuch as the proceeds from the sale of bonds authorized by this chapter are not "proceeds of taxes" as that term is used in Article XIII B of the California Constitution, the disbursement of these proceeds is not subject to the limitations imposed by that article.

PROPOSITION 83

This initiative measure is submitted to the people in accordance with the provisions of Section 8 of Article II of the California Constitution.

This initiative measure amends and adds sections to the Penal Code and amends sections of the Welfare and Institutions Code; therefore, existing provisions proposed to be deleted are printed in ~~strikeout type~~ and new provisions proposed to be added are printed in *italic type* to indicate that they are new.

PROPOSED LAW

SECTION 1. SHORT TITLE

This Act shall be known and may be cited as "The Sexual Predator Punishment and Control Act: Jessica's Law."

SEC. 2. FINDINGS AND DECLARATIONS

The People find and declare each of the following:

(a) The State of California currently places a high priority on maintaining public safety through a highly skilled and trained law enforcement as well as laws that deter and punish criminal behavior.

(b) Sex offenders have very high recidivism rates. According to a 1998 report by the U.S. Department of Justice, sex offenders are the least likely to be cured and the most likely to reoffend, and they prey on the most innocent members of our society. More than two-thirds of the victims of rape and sexual assault are under the age of 18. Sex offenders have a dramatically higher recidivism rate for their crimes than any other type of violent felon.

(c) Child pornography exploits children and robs them of their innocence. FBI studies have shown that pornography is very influential in the actions of sex offenders. Statistics show that 90% of the predators who molest children have had some type of involvement with pornography. Predators often use child pornography to aid in their molestation.

(d) The universal use of the Internet has also ushered in an era of increased risk to our children by predators using this technology as a tool to lure children away from their homes and into dangerous situations. Therefore, to reflect society's disapproval of this type of activity, adequate penalties must be enacted to ensure predators cannot escape prosecution.

(e) With these changes, Californians will be in a better position to keep themselves, their children, and their communities safe from the threat posed by sex offenders.

(f) It is the intent of the People in enacting this measure to help Californians better protect themselves, their children, and their communities; it is not the intent of the People to embarrass or harass persons convicted of sex offenses.

(g) Californians have a right to know about the presence of sex offenders in their communities, near their schools, and around their children.

(h) California must also take additional steps to monitor sex offenders, to protect the public from them, and to provide adequate penalties for and safeguards against sex offenders, particularly those who prey on children. Existing laws that punish aggravated sexual assault, habitual sexual offenders, and child molesters must be strengthened and improved. In addition, existing laws that provide for the commitment and control of sexually violent predators must be strengthened and improved.

(i) Additional resources are necessary to adequately monitor and supervise sexual predators and offenders. It is vital that the lasting effects of the assault do not further victimize victims of sexual assault.

(j) Global Positioning System technology is an useful tool for monitoring sexual predators and other sex offenders and is a cost effective measure for parole supervision. It is critical to have close supervision of this class of criminals to monitor these offenders and prevent them from committing other crimes.

(k) California is the only state, of the number of states that have enacted laws allowing involuntary civil commitments for persons identified as sexually violent predators, which does not provide for indeterminate commitments. California automatically allows for a jury trial every two years irrespective of whether there is any evidence to suggest or prove that the committed person is no longer a sexually violent predator. As such, this act allows California to protect the civil rights of those persons committed as a sexually violent predator while at the same time protect society and the system from unnecessary or frivolous jury trial actions where there is no competent evidence to suggest a change in the committed person.

SEC. 3. Section 209 of the Penal Code is amended to read:

209. (a) Any person who seizes, confines, inveigles, entices, decoys, abducts, conceals, kidnaps or carries away another person by any means whatsoever with intent to hold or detain, or who holds or detains, that person for ransom, reward or to commit extortion or to exact from another person any money or valuable thing, or any person who aids or abets any such act, is guilty of a felony, and upon conviction thereof, shall be punished by imprisonment in the state prison for life without possibility of parole in cases in which any person subjected to any such act suffers death or bodily harm, or is intentionally confined in a manner which exposes that person to a substantial likelihood of death, or shall be punished by imprisonment in the state prison for life with the possibility of parole in cases where no such person suffers death or bodily harm.

(b)(1) Any person who kidnaps or carries away any individual to commit robbery, rape, spousal rape, oral copulation, sodomy, or ~~sexual penetration in~~ *any* violation of Section *264.1, 288, or* 289, shall be punished by imprisonment in the state prison for life with *the* possibility of parole.

(2) This subdivision shall only apply if the movement of the victim is beyond that merely incidental to the commission of, and increases the risk of harm to the victim over and above that necessarily present in, the intended underlying offense.

(c) In all cases in which probation is granted, the court shall, except in unusual cases where the interests of justice would best be served by a lesser penalty, require as a condition of the probation that the person be confined in the county jail for 12 months. If the court grants probation without requiring the defendant to be confined in the county jail for 12 months, it shall specify its reason or reasons for imposing a lesser penalty.

(d) Subdivision (b) shall not be construed to supersede or affect

Section 667.61. A person may be charged with a violation of subdivision (b) and Section 667.61. However, a person may not be punished under subdivision (b) and Section 667.61 for the same act that constitutes a violation of both subdivision (b) and Section 667.61.

SEC. 4. Section 220 of the Penal Code is amended to read:

220. ~~Every~~ *(a) Except as provided in subdivision (b), any* person who assaults another with intent to commit mayhem, rape, sodomy, oral copulation, or any violation of Section 264.1, 288, or 289 ~~is punishable~~ *shall be punished* by imprisonment in the state prison for two, four, or six years.

(b) Any person who, in the commission of a burglary of the first degree, as defined in subdivision (a) of Section 460, assaults another with intent to commit rape, sodomy, oral copulation, or any violation of Section 264.1, 288, or 289 shall be punished by imprisonment in the state prison for life with the possibility of parole.

SEC. 5. Section 269 of the Penal Code is amended to read:

269. (a) Any person who commits any of the following acts upon a child who is under 14 years of age and ~~10~~ *seven* or more years younger than the person is guilty of aggravated sexual assault of a child:

(1) ~~A~~ *Rape, in* violation of paragraph (2) *or (6)* of subdivision (a) of Section 261.

(2) ~~A~~ *Rape or sexual penetration, in concert, in* violation of Section 264.1.

(3) Sodomy, in violation of *paragraph (2) or (3) of subdivision (c), or subdivision (d), of* Section 286~~, when committed by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person~~.

(4) Oral copulation, in violation of *paragraph (2) or (3) of subdivision (c), or subdivision (d), of* Section 288a~~, when committed by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person~~.

(5) ~~A~~ *Sexual penetration, in* violation of subdivision (a) of Section 289.

(b) Any person who violates this section is guilty of a felony and shall be punished by imprisonment in the state prison for 15 years to life.

(c) The court shall impose a consecutive sentence for each offense that results in a conviction under this section if the crimes involve separate victims or involve the same victim on separate occasions as defined in subdivision (d) of Section 667.6.

SEC. 6. Section 288.3 is added to the Penal Code, to read:

288.3. (a) Every person who contacts or communicates with a minor, or attempts to contact or communicate with a minor, who knows or reasonably should know that the person is a minor, with intent to commit an offense specified in Section 207, 209, 261, 264.1, 273a, 286, 288, 288a, 288.2, 289, 311.1, 311.2, 311.4 or 311.11 involving the minor shall be punished by imprisonment in the state prison for the term prescribed for an attempt to commit the intended offense.

(b) As used in this section, "contacts or communicates with" shall include direct and indirect contact or communication that may be achieved personally or by use of an agent or agency, any print medium, any postal service, a common carrier or communication common carrier, any electronic communications system, or any telecommunications, wire, computer, or radio communications device or system.

(c) A person convicted of a violation of subdivision (a) who has previously been convicted of a violation of subdivision (a) shall be punished by an additional and consecutive term of imprisonment in the state prison for five years.

SEC. 7. Section 290.3 of the Penal Code is amended to read:

290.3. (a) Every person who is convicted of any offense specified in subdivision (a) of Section 290 shall, in addition to any imprisonment or fine, or both, imposed for ~~violation~~ *commission* of the underlying offense, be punished by a fine of ~~two~~ *three* hundred dollars ~~($200)~~ *($300)* upon the first conviction or a fine of ~~three~~ *five* hundred dollars ~~($300)~~ *($500)* upon the second and each subsequent conviction, unless the court determines that the defendant does not have the ability to pay the fine.

An amount equal to all fines collected pursuant to this subdivision during the preceding month upon conviction of, or upon the forfeiture of bail by, any person arrested for, or convicted of, committing an offense specified in subdivision (a) of Section 290, shall be transferred once a month by the county treasurer to the Controller for deposit in the General Fund. Moneys deposited in the General Fund pursuant to this subdivision shall be transferred by the Controller as provided in subdivision (b).

(b) ~~Out~~ *Except as provided in subdivision (d), out* of the moneys deposited pursuant to subdivision (a) as a result of second and subsequent convictions of Section 290, one-third shall first be transferred to the Department of Justice Sexual Habitual Offender Fund, as provided in paragraph (1) of this subdivision. Out of the remainder of all moneys deposited pursuant to subdivision (a), 50 percent shall be transferred to the Department of Justice Sexual Habitual Offender Fund, as provided in paragraph (1), 25 percent shall be transferred to the Department of Justice DNA Testing Fund, as provided in paragraph (2), and 25 percent shall be allocated equally to counties that maintain a local DNA testing laboratory, as provided in paragraph (3).

(1) Those moneys so designated shall be transferred to the Department of Justice Sexual Habitual Offender Fund created pursuant to paragraph (5) of subdivision (b) of Section 11170 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 deoxyribonucleic acid (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 or the Department of the Youth Authority 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 or the Department of the Youth Authority. All moneys collected by the Department of Corrections or the Department of the Youth Authority 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 for every fine imposed pursuant to subdivision (a) in excess of one hundred dollars shall be transferred to the Department of Corrections and Rehabilitation to defray the cost of the global positioning system used to monitor sex offender parolees.

SEC. 8. Section 311.11 of the Penal Code is amended to read:

311.11. (a) Every person who knowingly possesses or controls any matter, 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, the production of which involves the use of a person under the age of 18 years, knowing that the matter depicts a person under the age of 18 years personally engaging in or simulating sexual conduct, as defined in subdivision (d) of Section 311.4, is guilty of a ~~public offense~~ *felony* and shall be punished by imprisonment in the *state prison, or a* county jail for up to one year, or by a fine not exceeding two thousand five hundred dollars ($2,500), or by both the fine and imprisonment.

(b) ~~If a~~ *Every* person *who commits a violation of subdivision (a), and who* has been previously convicted of a violation of this section, ~~or of a violation of subdivision (b) of Section 311.2, or subdivision (b) of Section 311.4, he or she~~ *an offense described in subparagraph (A) of paragraph (2) of subdivision (a) of Section 290, or an attempt to commit any of the above-mentioned offenses,* is guilty of a felony and shall be punished by imprisonment *in the state prison* for two, four, or six years.

(c) It is not necessary to prove that the matter is obscene in order to establish a violation of this section.

(d) This section does not apply to drawings, figurines, statues, or any film rated by the Motion Picture Association of America, nor does it apply to live or recorded telephone messages when transmitted, disseminated, or distributed as part of a commercial transaction.

SEC. 9. Section 667.5 of the Penal Code is amended to read:

667.5. Enhancement of prison terms for new offenses because of prior prison terms shall be imposed as follows:

(a) Where one of the new offenses is one of the violent felonies specified in subdivision (c), in addition to and consecutive to any other prison terms therefor, the court shall impose a three-year term for each prior separate prison term served by the defendant where the prior offense was one of the violent felonies specified in subdivision (c). However, no additional term shall be imposed under this subdivision for any prison term served prior to a period of 10 years in which the defendant remained free of both prison custody and the commission of an offense which results in a felony conviction.

(b) Except where subdivision (a) applies, where the new offense is any felony for which a prison sentence is imposed, in addition and consecutive to any other prison terms therefor, the court shall impose a one-year term for each prior separate prison term served for any felony; provided that no additional term shall be imposed under this subdivision for any prison term served prior to a period of five years in which the defendant remained free of both prison custody and the commission of an offense which results in a felony conviction.

(c) For the purpose of this section, "violent felony" shall mean any of the following:

(1) Murder or voluntary manslaughter.

(2) Mayhem.

(3) Rape as defined in paragraph (2) or (6) of subdivision (a) of Section 261 or paragraph (1) or (4) of subdivision (a) of Section 262.

(4) Sodomy ~~by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person~~ *as defined in subdivision (c) or (d) of Section 286.*

(5) Oral copulation ~~by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person~~ *as defined in subdivision (c) or (d) of Section 288a.*

(6) Lewd ~~acts on a child under the age of 14 years~~ *or lascivious act* as defined in *subdivision (a) or (b) of* Section 288.

(7) Any felony punishable by death or imprisonment in the state prison for life.

(8) Any felony in which the defendant inflicts great bodily injury on any person other than an accomplice which has been charged and proved as provided for in Section 12022.7*, 12022.8,* or 12022.9 on or after July 1, 1977, or as specified prior to July 1, 1977, in Sections 213, 264, and 461, or any felony in which the defendant uses a firearm which use has been charged and proved as provided in *subdivision (a) of Section 12022.3, or* Section 12022.5 or 12022.55.

(9) Any robbery.

(10) Arson, in violation of subdivision (a) or (b) of Section 451.

(11) ~~The offense~~ *Sexual penetration as* defined in subdivision (a) *or (j)* of Section 289 ~~where the act is accomplished against the victim's will by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person~~.

(12) Attempted murder.

(13) A violation of Section 12308, 12309, or 12310.

(14) Kidnapping.

(15) Assault with the intent to commit ~~mayhem, rape, sodomy, or oral copulation~~ *a specified felony*, in violation of Section 220.

(16) Continuous sexual abuse of a child, in violation of Section 288.5.

(17) Carjacking, as defined in subdivision (a) of Section 215.

(18) ~~A~~ *Rape, spousal rape, or sexual penetration, in concert, in* violation of Section 264.1.

(19) Extortion, as defined in Section 518, which would constitute a felony violation of Section 186.22 of the Penal Code.

(20) Threats to victims or witnesses, as defined in Section 136.1, which would constitute a felony violation of Section 186.22 of the Penal Code.

(21) Any burglary of the first degree, as defined in subdivision (a) of Section 460, wherein it is charged and proved that another person, other than an accomplice, was present in the residence during the commission of the burglary.

(22) Any violation of Section 12022.53.

(23) A violation of subdivision (b) or (c) of Section 11418. The Legislature finds and declares that these specified crimes merit special consideration when imposing a sentence to display society's condemnation for these extraordinary crimes of violence against the person.

(d) For the purposes of this section, the defendant shall be deemed to remain in prison custody for an offense until the official discharge from custody or until release on parole, whichever first occurs, including any time during which the defendant remains subject to reimprisonment for escape from custody or is reimprisoned on revocation of parole. The additional penalties provided for prior prison terms shall not be imposed unless they are charged and admitted or found true in the action for the new offense.

(e) The additional penalties provided for prior prison terms shall not be imposed for any felony for which the defendant did not serve a prior separate term in state prison.

(f) A prior conviction of a felony shall include a conviction in another jurisdiction for an offense which, if committed in California, is punishable by imprisonment in the state prison if the defendant served one year or more in prison for the offense in the other jurisdiction. A prior conviction of a particular felony shall include a conviction in another jurisdiction for an offense which includes all of the elements of the particular felony as defined under California law if the defendant served one year or more in prison for the offense in the other jurisdiction.

(g) A prior separate prison term for the purposes of this section shall mean a continuous completed period of prison incarceration imposed for the particular offense alone or in combination with concurrent or consecutive sentences for other crimes, including any reimprisonment on revocation of parole which is not accompanied by a new commitment to prison, and including any reimprisonment after an escape from incarceration.

(h) Serving a prison term includes any confinement time in any state prison or federal penal institution as punishment for commission of an offense, including confinement in a hospital or other institution or facility credited as service of prison time in the jurisdiction of the confinement.

(i) For the purposes of this section, a commitment to the State Department of Mental Health as a mentally disordered sex offender following a conviction of a felony, which commitment exceeds one year in duration, shall be deemed a prior prison term.

(j) For the purposes of this section, when a person subject to the custody, control, and discipline of the Director of Corrections is incarcerated at a facility operated by the Department of the Youth Authority, that incarceration shall be deemed to be a term served in state prison.

(k) Notwithstanding subdivisions (d) and (g) or any other provision of law, where one of the new offenses is committed while the defendant is temporarily removed from prison pursuant to Section 2690 or while the defendant is transferred to a community facility pursuant to Section 3416, 6253, or 6263, or while the defendant is on furlough pursuant to Section 6254, the defendant shall be subject to the full enhancements provided for in this section.

This subdivision shall not apply when a full, separate, and consecutive term is imposed pursuant to any other provision of law.

SEC. 10. Section 667.51 of the Penal Code is amended to read:

667.51. (a) Any person who is ~~found guilty~~ *convicted* of violating Section 288 *or 288.5* shall receive a five-year enhancement for a prior conviction of an offense ~~listed~~ *specified* in subdivision (b)~~, provided that no additional term shall be imposed under this subdivision for any prison term served prior to a period of 10 years in which the defendant remained free of both prison custody and the commission of an offense that results in a felony conviction~~.

(b) Section 261, *262,* 264.1, *269,* 285, 286, 288, 288a, 288.5, or 289, or any offense committed in another jurisdiction that includes all of the elements of any of the offenses ~~set forth~~ *specified* in this subdivision.

(c) ~~Section 261, 264.1, 286, 288, 288a, 288.5, or 289, or any offense committed in another jurisdiction that includes all of the elements of any of the offenses set forth in this subdivision.~~

~~(d)~~ A violation of Section 288 *or 288.5* by a person who has been

previously convicted two or more times of an offense ~~listed~~ *specified* in subdivision ~~(c) is punishable as a felony~~ *(b) shall be punished* by imprisonment in the state prison for 15 years to life. ~~However, if the two or more prior convictions were for violations of Section 288, this subdivision is applicable only if the current violation or at least one of the prior convictions is for an offense other than a violation of subdivision (a) of Section 288. For purposes of this subdivision, a prior conviction is required to have been for charges brought and tried separately. The provisions of Article 2.5 (commencing with Section 2930) of Chapter 7 of Title 1 of Part 3 shall apply to reduce any minimum term in a state prison imposed pursuant to this section, but that person shall not otherwise be released on parole prior to that time.~~

SEC. 11. Section 667.6 of the Penal Code is amended to read:

667.6. (a) Any person who is ~~found guilty of violating paragraph (2), (3), (6), or (7) of subdivision (a) of Section 261, paragraph (1), (4), or (5) of subdivision (a) of Section 262, Section 264.1, subdivision (b) of Section 288, Section 288.5 or subdivision (a) of Section 289, of committing sodomy in violation of subdivision (k) of Section 286, of committing oral copulation in violation of subdivision (k) of Section 288a, or of committing sodomy or oral copulation in violation of Section 286 or 288a by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person~~ *convicted of an offense specified in subdivision (e) and* who has been convicted previously of any of those offenses shall receive a five-year enhancement for each of those prior convictions ~~provided that no enhancement shall be imposed under this subdivision for any conviction occurring prior to a period of 10 years in which the person remained free of both prison custody and the commission of an offense which results in a felony conviction. In addition to the five-year enhancement imposed under this subdivision, the court also may impose a fine not to exceed twenty thousand dollars ($20,000) for anyone sentenced under these 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.~~

(b) Any person *who is* convicted of an offense specified in subdivision ~~(a)~~ *(e) and* who has served two or more prior prison terms as defined in Section 667.5 for any ~~offense specified in subdivision (a),~~ *of those offenses* shall receive a 10-year enhancement for each of those prior terms ~~provided that no additional enhancement shall be imposed under this subdivision for any prison term served prior to a period of 10 years in which the person remained free of both prison custody and the commission of an offense which results in a felony conviction. In addition to the 10-year enhancement imposed under this subdivision, the court also may impose a fine not to exceed twenty thousand dollars ($20,000) for any person sentenced under this subdivision. 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.~~

(c) In lieu of the term provided in Section 1170.1, a full, separate, and consecutive term may be imposed for each violation of ~~Section 220, other than an assault with intent to commit mayhem, provided that the person has been convicted previously of violating Section 220 for an offense other than an assault with intent to commit mayhem, paragraph (2), (3), (6), or (7) of subdivision (a) of Section 261, paragraph (1), (4), or (5) of subdivision (a) of Section 262, Section 264.1, subdivision (b) of Section 288, Section 288.5 or subdivision (a) of Section 289, of committing sodomy in violation of subdivision (k) of Section 286, of committing oral copulation in violation of subdivision (k) of Section 288a, or of committing sodomy or oral copulation in violation of Section 286 or 288a by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person whether or not the crimes were committed during a single transaction~~ *an offense specified in subdivision (e) if the crimes involve the same victim on the same occasion. A term may be imposed consecutively pursuant to this subdivision if a person is convicted of at least one offense specified in subdivision (e).* If the term is imposed consecutively pursuant to this subdivision, it 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.

(d) A full, separate, and consecutive term shall be ~~served~~ *imposed* for each violation of ~~Section 220, other than an assault with intent to commit mayhem, provided that the person has been convicted previously of violating Section 220 for an offense other than an assault with intent to commit mayhem, paragraph (2), (3), (6), or (7) of subdivision (a) of Section 261, paragraph (1), (4), or (5) of subdivision (a) of Section 262, Section 264.1, subdivision (b) of Section 288, subdivision (a) of Section 289, of committing sodomy in violation of subdivision (k) of Section 286, of committing oral copulation in violation of subdivision (k) of Section 288a, or of committing sodomy or oral copulation in violation of Section 286 or 288a by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person~~ *an offense specified in subdivision (e)* if the crimes involve separate victims or involve the same victim on separate occasions.

In determining whether crimes against a single victim were committed on separate occasions under this subdivision, the court shall consider whether, between the commission of one sex crime and another, the defendant had a reasonable opportunity to reflect upon his or her actions and nevertheless resumed sexually assaultive behavior. Neither the duration of time between crimes, nor whether or not the defendant lost or abandoned his or her opportunity to attack, shall be, in and of itself, determinative on the issue of whether the crimes in question occurred on separate occasions.

The term shall be served consecutively to any other term of imprisonment and shall commence from the time the person otherwise would have been released from imprisonment. The term shall not be included in any determination pursuant to Section 1170.1. Any other term imposed subsequent to that term shall not be merged therein but shall commence at the time the person otherwise would have been released from prison.

(e) *This section 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) 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) 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. If the court orders a fine to be imposed pursuant to *this* subdivision ~~(a) or (b)~~, 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. 12. Section 667.61 of the Penal Code is amended to read:

667.61. (a) ~~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 ~~and shall not be eligible for release on parole for 25 years~~

~~except as provided in subdivision (j)~~.

(b) Except as provided in subdivision (a), ~~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 ~~and shall not be eligible for release on parole for 15 years except as provided in subdivision (j)~~.

(c) This section shall apply to any of the following offenses:

(1) ~~A~~ *Rape, in* violation of paragraph (2) *or (6)* of subdivision (a) of Section 261.

(2) ~~A~~ *Spousal rape, in* violation of paragraph (1) *or (4)* of subdivision (a) of Section 262.

(3) ~~A~~ *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) ~~A~~ *Sexual penetration, in* violation of subdivision (a) of Section 289.

(6) ~~Sodomy or oral copulation~~ *Sodomy,* in violation of *paragraph (2) or (3) of subdivision (c), or subdivision (d), of* Section 286~~ or 288a by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person~~.

(7) ~~A~~ *Oral copulation, in violation of paragraph (2) or (3) of subdivision (c), or subdivision (d), of Section 288a.*

(8) Lewd or lascivious act, in violation of subdivision (a) of Section 288~~, unless the defendant qualifies for probation under subdivision (c) of Section 1203.066~~.

(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 another jurisdiction that includes all of the elements of an offense specified in subdivision (c).

(2) The defendant kidnapped the victim of the present offense and the movement of the victim substantially increased the risk of harm to the victim over and above that level of risk necessarily inherent in the underlying offense in subdivision (c).

(3) The defendant inflicted aggravated mayhem or torture on the victim or another person in the commission of the present offense in violation of Section 205 or 206.

(4) The defendant committed the present offense during the commission of a burglary *of the first degree*, as defined in subdivision (a) of Section 460, with intent to commit an offense specified in subdivision (c).

(5) The defendant committed the present offense in violation of Section 264.1, subdivision (d) of Section 286, or subdivision (d) of Section 288a, and, in the commission of that offense, any person committed any act described in paragraph (2), (3), or (4) of this subdivision.

(e) The following circumstances shall apply to the offenses specified in subdivision (c):

(1) Except as provided in paragraph (2) of subdivision (d), the defendant kidnapped the victim of the present offense in violation of Section 207, 209, or 209.5.

(2) Except as provided in paragraph (4) of subdivision (d), the defendant committed the present offense during the commission of a burglary~~, as defined in subdivision (a) of Section 460, or during the commission of a burglary of a building, including any commercial establishment, which was then closed to the public,~~ in violation of Section 459.

(3) The defendant personally inflicted great bodily injury on the victim or another person in the commission of the present offense in violation of Section 12022.53, 12022.7, or 12022.8.

(4) The defendant personally used a dangerous or deadly weapon or *a* firearm in the commission of the present offense in violation of Section 12022, 12022.3, 12022.5, or 12022.53.

(5) The defendant has been convicted in the present case or cases of committing an offense specified in subdivision (c) against more than one victim.

(6) The defendant engaged in the tying or binding of the victim or another person in the commission of the present offense.

(7) The defendant administered a controlled substance to the victim ~~by force, violence, or fear~~ in the commission of the present offense in violation of Section 12022.75.

(8) The defendant committed the present offense in violation of Section 264.1, subdivision (d) of Section 286, or subdivision (d) of Section 288a, and, in the commission of that offense, any person committed any act described in paragraph (1), (2), (3), (4), (6), or (7) of this subdivision.

(f) If only the minimum number of circumstances specified in subdivision (d) or (e) ~~which~~ *that* are required for the punishment provided in subdivision (a) or (b) to apply have been pled and proved, that circumstance or those circumstances shall be used as the basis for imposing the term provided in subdivision (a) or (b)*, whichever is greater,* rather than being used to impose the punishment authorized under any other *provision of* law, unless another *provision of* law provides for a greater penalty *or the punishment under another provision of law can be imposed in addition to the punishment provided by this section.* However, if any additional circumstance or circumstances specified in subdivision (d) or (e) have been pled and proved, the minimum number of circumstances shall be used as the basis for imposing the term provided in subdivision (a), and any other additional circumstance or circumstances shall be used to impose any punishment or enhancement authorized under any other *provision of* law.

(g) Notwithstanding *Section 1385 or* any other *provision of* law, the court shall not strike any *allegation, admission, or finding of any* of the circumstances specified in subdivision (d) or (e) *for any person who is subject to punishment under this section.*

~~(g) The term specified in subdivision (a) or (b) shall be imposed on the defendant once for any offense or offenses committed against a single victim during a single occasion. If there are multiple victims during a single occasion, the term specified in subdivision (a) or (b) shall be imposed on the defendant once for each separate victim. Terms for other offenses committed during a single occasion shall be imposed as authorized under any other law, including Section 667.6, if applicable.~~

(h) ~~Probation~~ *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 ~~for any offense specified in paragraphs (1) to (6), inclusive, of subdivision (c)~~.

(i) For ~~the~~ *any offense specified in paragraphs (1) to (7), inclusive, of subdivision (c), the court shall impose a consecutive sentence for each offense that results in a conviction under this section if the crimes involve separate victims or involve the same victim on separate occasions as defined in subdivision (d) of Section 667.6.*

(j) The penalties provided in this section ~~to~~ *shall* apply~~,~~ *only if* the existence of any ~~fact required under~~ *circumstance specified in* subdivision (d) or (e) ~~shall be~~ *is* alleged in the accusatory pleading *pursuant to this section,* and *is* either admitted by the defendant in open court or found to be true by the trier of fact.

~~(j) Article 2.5 (commencing with Section 2930) of Chapter 7 of Title 1 of Part 3 shall apply to reduce the minimum term of 25 years in the state prison imposed pursuant to subdivision (a) or 15 years in the state prison imposed pursuant to subdivision (b). However, in no case shall the minimum term of 25 or 15 years be reduced by more than 15 percent for credits granted pursuant to Section 2933, 4019, or any other law providing for conduct credit reduction. In no case shall any person who is punished under this section be released on parole prior to serving at least 85 percent of the minimum term of 25 or 15 years in the state prison.~~

SEC. 13. Section 667.71 of the Penal Code amended to read:

667.71. (a) For the purpose of this section, a habitual sexual offender is a person who has been previously convicted of one or more of the offenses ~~listed~~ *specified* in subdivision (c) and who is convicted in the present proceeding of one of those offenses.

(b) A habitual sexual offender ~~is punishable~~ *shall be punished* by imprisonment in the state prison for 25 years to life. ~~Article 2.5 (commencing with Section 2930) of Chapter 7 of Title 1 of Part 3 shall apply to reduce any minimum term of 25 years in the state prison imposed pursuant to this section. However, in no case shall the minimum term of 25 years be reduced by more than 15 percent for credits granted pursuant to Section 2933, 4019, or any other law providing for conduct credit reduction. In no case shall any person who is punished under this section be released on parole prior to serving at least 85 percent of the minimum term of 25~~

~~years in the state prison.~~

(c) This section shall apply to any of the following offenses:

(1) ~~A~~ *Rape, in* violation of paragraph (2) *or (6)* of subdivision (a) of Section 261.

(2) ~~A~~ *Spousal rape, in* violation of paragraph (1) *or (4)* of subdivision (a) of Section 262.

(3) ~~A~~ *Rape, spousal rape, or sexual penetration, in concert, in* violation of Section 264.1.

(4) ~~A~~ *Lewd or lascivious act, in* violation of subdivision (a) or (b) of Section 288.

(5) ~~A~~ *Sexual penetration, in* violation of subdivision (a) *or (j)* of Section 289.

(6) ~~A~~ *Continuous sexual abuse of a child, in* violation of Section 288.5.

(7) ~~A~~ *Sodomy, in* violation of subdivision (c) *or (d)* of Section 286 ~~by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person~~.

(8) ~~A violation of subdivision (d) of Section 286.~~

~~(9) A~~ *Oral copulation, in* violation of subdivision (c) or (d) of Section 288a ~~by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person~~.

~~(10) A~~ *(9) Kidnapping, in* violation of subdivision (b) of Section 207.

~~(11) A~~ *(10) Kidnapping, in* violation of former subdivision (d) of Section 208 (kidnapping to commit specified sex offenses).

~~(12)~~ *(11)* Kidnapping, in violation of *subdivision (b) of* Section 209 with the intent to commit ~~rape, spousal rape, oral copulation, or sodomy or sexual penetration in violation of Section 289~~ *a specified sexual offense.*

~~(13) A~~ *(12) Aggravated sexual assault of a child, in* violation of Section 269.

~~(14)~~ *(13)* An offense committed in another jurisdiction that ~~has~~ *includes* all *of* the elements of an offense specified in ~~paragraphs (1) to (13), inclusive, of~~ this subdivision.

(d) *Notwithstanding Section 1385 or any other provision of law, the court shall not strike any allegation, admission, or finding of any prior conviction specified in subdivision (c) for any person who is subject to punishment under this section.*

(e) 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.

(f) This section shall apply only if the defendant's status as a habitual sexual offender is alleged in the ~~information~~ *accusatory pleading*, and either admitted by the defendant in open court, or found to be true by the ~~jury trying the issue of guilt or by the court where guilt is established by a plea of guilty or nolo contendere or by trial by court sitting without a jury~~ *trier of fact.*

SEC. 14. Section 1203.06 of the Penal Code is amended to read:

1203.06. ~~Notwithstanding Section 1203:~~

(a) ~~Probation~~ *Notwithstanding any other provision of law, probation* shall not be granted to, nor shall the execution or imposition of sentence be suspended for, *nor shall a finding bringing the defendant within this section be stricken pursuant to Section 1385 for,* any of the following persons:

(1) Any person who personally used a firearm during the commission or attempted commission of any of the following crimes:

(A) Murder.

(B) Robbery, in violation of Section 211.

(C) Kidnapping, in violation of Section 207, *209, or 209.5.*

(D) ~~Kidnapping in violation of Section 209~~ *Lewd or lascivious act, in violation of Section 288.*

(E) Burglary of the first degree, as defined in Section 460.

(F) ~~Except as provided in Section 1203.065, rape~~ *Rape,* in violation of ~~paragraph (2) of subdivision (a) of~~ Section 261*, 262, or 264.1.*

(G) Assault with intent to commit ~~rape or sodomy~~ *a specified sexual offense*, in violation of Section 220.

(H) Escape, in violation of Section 4530 or 4532.

(I) Carjacking, in violation of Section 215.

(J) ~~Any person convicted of aggravated~~ *Aggravated* mayhem, in violation of Section 205.

(K) Torture, in violation of Section 206.

(L) ~~Kidnapping, in violation of Section 209.5~~ *Continuous sexual abuse of a child, in violation of Section 288.5.*

(M) A felony violation of Section 136.1 or 137.

(N) Sodomy, in violation of Section 286.

(O) Oral copulation, in violation of Section 288a.

(P) Sexual penetration, in violation of Section 289 or 264.1.

(Q) Aggravated sexual assault of a child, in violation of Section 269.

(2) Any person previously convicted of a felony specified in ~~subparagraphs (A) to (L), inclusive, of~~ paragraph (1), or assault with intent to commit murder under former Section 217, who is convicted of a subsequent felony and who was personally armed with a firearm at any time during its commission or attempted commission or was unlawfully armed with a firearm at the time of his or her arrest for the subsequent felony.

(3) Aggravated arson, in violation of Section 451.5.

(b)(l) The existence of any fact ~~which~~ *that* would make a person ineligible for probation under subdivision (a) shall be alleged in the accusatory pleading, and either admitted by the defendant in open court, or found to be true by the ~~jury trying the issue of guilt, by the court where guilt is established by plea of guilty or nolo contendere, or by trial by the court sitting without a jury~~ *trier of fact.*

(2) ~~This subdivision does not prohibit the adjournment of criminal proceedings pursuant to Division 6 (commencing with Section 6000) of the Welfare and Institutions Code.~~

~~(3)~~ As used in subdivision (a), "used a firearm" means to display a firearm in a menacing manner, to intentionally fire it, ~~or~~ to intentionally strike or hit a human being with it*, or to use it in any manner that qualifies under Section 12022.5.*

~~(4)~~ *(3)* As used in subdivision (a), "armed with a firearm" means to knowingly carry *or have available for use* a firearm as a means of offense or defense.

SEC. 15. Section 1203.065 of the Penal Code is amended to read:

1203.065. (a) Notwithstanding any other *provision of* law, probation shall not be granted to, nor shall the execution or imposition of sentence be suspended for, any person who is convicted of violating paragraph (2) *or (6)* of subdivision (a) of Section 261, Section 264.1, 266h, 266i, ~~or~~ 266j, *or 269, paragraph (2) or (3) of subdivision (c), or subdivision (d), of Section 286, paragraph (2) or (3) of subdivision (c), or subdivision (d), of Section 288a,* subdivision (a) of Section 289, ~~of committing sodomy or oral copulation in violation of Section 286 or 288a by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person,~~ or ~~of violating~~ subdivision (c) of Section 311.4.

(b)*(1)* Except in unusual cases where the interests of justice would best be served if the person is granted probation, probation shall not be granted to any person who is convicted of ~~a violation of~~ *violating* paragraph (7) of subdivision (a) of Section 261, subdivision (k) of Section 286, subdivision (k) of Section 288a, *subdivision (g) of Section 289,* or Section 220 for assault with intent to commit ~~any of the following: rape, sodomy, oral copulation, or any violation of Section 264.1, subdivision (b) of Section 288, or Section 289~~ *a specified sexual offense.*

(2) When probation is granted, the court shall specify on the record and shall enter on the minutes the circumstances indicating that the interests of justice would best be served by the disposition.

SEC. 16. Section 1203.075 of the Penal Code is amended to read:

1203.075. ~~Notwithstanding the provisions of Section 1203:~~

(a) ~~Probation~~ *Notwithstanding any other provision of law, probation* shall not be granted to, nor shall the execution or imposition of sentence be suspended for, nor shall a finding bringing the defendant within this section be stricken pursuant to Section 1385 for, any person who~~, with the intent to inflict the injury,~~ personally inflicts great bodily injury*, as defined in Section 12022.7,* on the person of another in the commission or attempted commission of any of the following crimes:

(1) Murder.

(2) Robbery, in violation of Section 211.

(3) Kidnapping, in violation of Section 207*, 209, or 209.5.*

(4) ~~Kidnapping, in violation of Section 209~~ *Lewd or lascivious act, in violation of Section 288.*

(5) Burglary of the first degree, as defined in Section 460.

(6) Rape, in violation of ~~paragraph (2) or (6) of subdivision (a) of Section 261 or paragraph (1) or (4) of subdivision (a) of~~ Section *261,* 262*, or 264.1.*

(7) Assault with intent to commit ~~rape or sodomy~~ *a specified sexual offense*, in violation of Section 220.

(8) Escape, in violation of Section 4530 or 4532.

(9) ~~A~~ *Sexual penetration, in* violation of ~~subdivision (a) of~~ Section 289 *or 264.1.*

(10) Sodomy, in violation of Section 286.

(11) Oral copulation, in violation of Section 288a.

(12) Carjacking, in violation of Section 215.

(13) ~~Kidnapping, in violation of Section 209.5~~ *Continuous sexual abuse of a child, in violation of Section 288.5.*

(14) Aggravated sexual assault of a child, in violation of Section 269.

(b)~~(1)~~ The existence of any fact ~~which~~ *that* would make a person ineligible for probation under subdivision (a) shall be alleged in the accusatory pleading, and either admitted by the defendant in open court, or found to be true by the ~~jury trying the issue of guilt or by the court where guilt is established by a plea of guilty or nolo contendere or by a trial by the court sitting without a jury~~ *trier of fact.*

~~(2) This subdivision does not prohibit the adjournment of criminal proceedings pursuant to Division 3 (commencing with Section 3000) or Division 6 (commencing with Section 6000) of the Welfare and Institutions Code.~~

~~(3) As used in subdivision (a), "great bodily injury" means "great bodily injury" as defined in Section 12022.7.~~

SEC. 17. Section 3000 of the Penal Code is amended to read:

3000. (a)(l) The Legislature finds and declares that the period immediately following incarceration is critical to successful reintegration of the offender into society and to positive citizenship. It is in the interest of public safety for the state to provide for the supervision of and surveillance of parolees, including the judicious use of revocation actions, and to provide educational, vocational, family and personal counseling necessary to assist parolees in the transition between imprisonment and discharge. A sentence pursuant to Section 1168 or 1170 shall include a period of parole, unless waived, as provided in this section.

(2) The Legislature finds and declares that it is not the intent of this section to diminish resources allocated to the Department of Corrections 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 Prison Terms 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) ~~Any finding made pursuant to Article 4 (commencing with Section 6600) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code, that a person is~~ *The parole period of any person found to be* a sexually violent predator shall ~~not toll, discharge, or otherwise affect that person's~~ *be tolled until that person is found to no longer be a sexually violent predator, at which time the* period of parole*, or any remaining portion thereof, shall begin to run.*

(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, except that any inmate sentenced for an offense specified in paragraph (3), (4), (5), (6), (11), (16), or (18) of subdivision (c) of Section 667.5 shall be released on parole for a period not exceeding five years, unless in either case the parole authority for good cause waives parole and discharges the inmate from the custody of the department.

(2) In the case of any inmate sentenced under Section 1168, the period of parole shall not exceed five years in the case of an inmate imprisoned for any offense other than first or second degree murder for which the inmate has received a life sentence, and shall not exceed three years in the case of any other inmate, unless in either case the parole authority for good cause waives parole and discharges the inmate from custody of the department. This subdivision shall also be applicable to inmates who committed crimes prior to July 1, 1977, to the extent specified in Section 1170.2.

(3) Notwithstanding paragraphs (1) and (2), in the case of any offense for which the inmate has received a life sentence pursuant to Section 667.61 or 667.71, the period of parole shall be ~~five~~ *10* years. ~~Upon the request of the Department of Corrections, and on the grounds that the paroled inmate may pose a substantial danger to public safety, the Board of Prison Terms shall conduct a hearing to determine if the parolee shall be subject to a single additional five-year period of parole. The board shall conduct the hearing pursuant to the procedures and standards governing parole revocation. The request for parole extension shall be made no less than 180 days prior to the expiration of the initial five-year period of parole.~~

(4) The parole authority shall consider the request of any inmate regarding the length of his or her parole and the conditions thereof.

(5) Upon successful completion of parole, or at the end of the maximum statutory period of parole specified for the inmate under paragraph (1), (2), or (3), as the case may be, whichever is earlier, the inmate shall be discharged from custody. The date of the maximum statutory period of parole under this subdivision and paragraphs (1), (2), and (3) shall be computed from the date of initial parole ~~or from the date of extension of parole pursuant to paragraph (3)~~ and shall be a period chronologically determined. Time during which parole is suspended because the prisoner has absconded or has been returned to custody as a parole violator shall not be credited toward any period of parole unless the prisoner is found not guilty of the parole violation. However, ~~in no case, except~~ *the period of parole is subject to the following:*

(A) Except as provided in Section 3064, *in no case* may a prisoner subject to three years on parole be retained under parole supervision or in custody for a period longer than four years from the date of his or her initial ~~parole, and, except~~ *parole.*

(B) Except as provided in Section 3064, in no case may a prisoner subject to five years on parole be retained under parole supervision or in custody for a period longer than seven years from the date of his or her initial parole ~~or from the date of extension of parole pursuant to paragraph (3)~~.

(C) Except as provided in Section 3064, in no case may a prisoner subject to 10 years on parole be retained under parole supervision or in custody for a period longer than 15 years from the date of his or her initial parole.

(6) The Department of Corrections shall meet with each inmate at least 30 days prior to his or her good time release date and shall provide, under guidelines specified by the parole authority, the conditions of parole and the length of parole up to the maximum period of time provided by law. The inmate has the right to reconsideration of the length of parole and conditions thereof by the parole authority. The Department of Corrections or the Board of Prison Terms may impose as a condition of parole that a prisoner make payments on the prisoner's outstanding restitution fines or orders imposed pursuant to subdivision (a) or (c) of Section 13967 of the Government Code, as operative prior to September 28, 1994, or subdivision (b) or (f) of Section 1202.4.

(7) For purposes of this chapter, the Board of Prison Terms shall be considered the parole authority.

(8) The sole authority to issue warrants for the return to actual custody of any state prisoner released on parole rests with the Board of Prison Terms, except for any escaped state prisoner or any state prisoner released prior to his or her scheduled release date who should be returned to custody, and Section 3060 shall apply.

(9) It is the intent of the Legislature that efforts be made with respect to persons who are subject to subparagraph (C) of paragraph (1) of subdivision (a) of Section 290 who are on parole to engage them in treatment.

SEC. 18. Section 3000.07 is added to the Penal Code, to read:

3000.07. (a) Every inmate who has been convicted for any felony violation of a "registerable sex offense" described in subparagraph (A) of paragraph (2) of subdivision (a) of Section 290 or any attempt to commit any of the above-mentioned offenses and who is committed to prison and released on parole pursuant to Section 3000 or 3000.1 shall be monitored by a global positioning system for the term of his or her parole, or for the duration or any remaining part thereof, whichever period of time is less.

(b) Any inmate released on parole pursuant to this section shall be required to pay for the costs associated with the monitoring by a global positioning system. However, the Department of Corrections shall waive any

or all of that payment upon a finding of an inability to pay. The department shall consider any remaining amounts the inmate has been ordered to pay in fines, assessments and restitution fines, fees, and orders, and shall give priority to the payment of those items before requiring that the inmate pay for the global positioning monitoring. No inmate shall be denied parole on the basis of his or her inability to pay for those monitoring costs.

SEC. 19. Section 3001 of the Penal Code is amended to read:

3001. (a) Notwithstanding any other provision of law, when any person referred to in paragraph (1) of subdivision (b) of Section 3000 who was not imprisoned for committing a violent felony, as defined in subdivision (c) of Section 667.5, has been released on parole from the state prison, and has been on parole continuously for one year since release from confinement, within 30 days, that person shall be discharged from parole, unless the Department of Corrections recommends to the Board of Prison Terms that the person be retained on parole and the board, for good cause, determines that the person will be retained. Notwithstanding any other provision of law, when any person referred to in paragraph (1) of subdivision (b) of Section 3000 who was imprisoned for committing a violent felony, as defined in subdivision (c) of Section 667.5, has been released on parole from the state prison for a period not exceeding three years and has been on parole continuously for two years since release from confinement, or has been released on parole from the state prison for a period not exceeding five years and has been on parole continuously for three years since release from confinement, the department shall discharge, within 30 days, that person from parole, unless the department recommends to the board that the person be retained on parole and the board, for good cause, determines that the person will be retained. The board shall make a written record of its determination and the department shall transmit a copy thereof to the parolee.

(b) Notwithstanding any other provision of law, when any person referred to in paragraph (2) ~~or (3)~~ of subdivision (b) of Section 3000 has been released on parole from the state prison, and has been on parole continuously for three years since release from confinement ~~or since extension of parole~~, the board shall discharge, within 30 days, the person from parole, unless the board, for good cause, determines that the person will be retained on parole. The board shall make a written record of its determination and the department shall transmit a copy thereof to the parolee.

(c) *Notwithstanding any other provision of law, when any person referred to in paragraph (3) of subdivision (b) of Section 3000 has been released on parole from the state prison, and has been on parole continuously for six years since release from confinement, the board shall discharge, within 30 days, the person from parole, unless the board, for good cause, determines that the person will be retained on parole. The board shall make a written record of its determination and the department shall transmit a copy thereof to the parolee.*

(d) In the event of a retention on parole, the parolee shall be entitled to a review by the parole authority each year thereafter until the maximum statutory period of parole has expired.

~~(d)~~ *(e)* The amendments to this section made during the 1987–88 Regular Session of the Legislature shall only be applied prospectively and shall not extend the parole period for any person whose eligibility for discharge from parole was fixed as of the effective date of those amendments.

SEC. 20. Section 3003 of the Penal Code is amended to read:

3003. (a) Except as otherwise provided in this section, an inmate who is released on parole shall be returned to the county that was the last legal residence of the inmate prior to his or her incarceration.

For purposes of this subdivision, "last legal residence" shall not be construed to mean the county wherein the inmate committed an offense while confined in a state prison or local jail facility or while confined for treatment in a state hospital.

(b) Notwithstanding subdivision (a), an inmate may be returned to another county if that would be in the best interests of the public. If the Board of Prison Terms setting the conditions of parole for inmates sentenced pursuant to subdivision (b) of Section 1168, as determined by the parole consideration panel, or the Department of Corrections setting the conditions of parole for inmates sentenced pursuant to Section 1170, decides on a return to another county, it shall place its reasons in writing in the parolee's permanent record and include these reasons in the notice to the sheriff or chief of police pursuant to Section 3058.6. In making its decision, the paroling authority shall consider, among others, the following factors, giving the greatest weight to the protection of the victim and the safety of the community:

(1) The need to protect the life or safety of a victim, the parolee, a witness, or any other person.

(2) Public concern that would reduce the chance that the inmate's parole would be successfully completed.

(3) The verified existence of a work offer, or an educational or vocational training program.

(4) The existence of family in another county with whom the inmate has maintained strong ties and whose support would increase the chance that the inmate's parole would be successfully completed.

(5) The lack of necessary outpatient treatment programs for parolees receiving treatment pursuant to Section 2960.

(c) The Department of Corrections, in determining an out-of-county commitment, shall give priority to the safety of the community and any witnesses and victims.

(d) In making its decision about an inmate who participated in a joint venture program pursuant to Article 1.5 (commencing with Section 2717.1) of Chapter 5, the paroling authority shall give serious consideration to releasing him or her to the county where the joint venture program employer is located if that employer states to the paroling authority that he or she intends to employ the inmate upon release.

(e)(l) The following information, if available, shall be released by the Department of Corrections to local law enforcement agencies regarding a paroled inmate who is released in their jurisdictions:

(A) Last, first, and middle name.

(B) Birth date.

(C) Sex, race, height, weight, and hair and eye color.

(D) Date of parole and discharge.

(E) Registration status, if the inmate is required to register as a result of a controlled substance, sex, or arson offense.

(F) California Criminal Information Number, FBI number, social security number, and driver's license number.

(G) County of commitment.

(H) A description of scars, marks, and tattoos on the inmate.

(I) Offense or offenses for which the inmate was convicted that resulted in parole in this instance.

(J) Address, including all of the following information:

(i) Street name and number. Post office box numbers are not acceptable for purposes of this subparagraph.

(ii) City and ZIP Code.

(iii) Date that the address provided pursuant to this subparagraph was proposed to be effective.

(K) Contact officer and unit, including all of the following information:

(i) Name and telephone number of each contact officer.

(ii) Contact unit type of each contact officer such as units responsible for parole, registration, or county probation.

(L) A digitized image of the photograph and at least a single digit fingerprint of the parolee.

(M) A geographic coordinate for the parolee's residence location for use with a Geographical Information System (GIS) or comparable computer program.

(2) The information required by this subdivision shall come from the statewide parolee database. The information obtained from each source shall be based on the same timeframe.

(3) All of the information required by this subdivision shall be provided utilizing a computer-to-computer transfer in a format usable by a desktop computer system. The transfer of this information shall be continually available to local law enforcement agencies upon request.

(4) The unauthorized release or receipt of the information described in this subdivision is a violation of Section 11143.

(f) Notwithstanding any other provision of law, an inmate who is released on parole shall not be returned to a location within 35 miles of the actual residence of a victim of, or a witness to, a violent felony as defined in paragraphs (1) to (7), inclusive, of subdivision (c) of Section 667.5 or a

felony in which the defendant inflicts great bodily injury on any person other than an accomplice that has been charged and proved as provided for in Section 12022.53, 12022.7, or 12022.9, if the victim or witness has requested additional distance in the placement of the inmate on parole, and if the Board of Prison Terms or the Department of Corrections finds that there is a need to protect the life, safety, or well-being of a victim or witness.

(g)~~(1) Notwithstanding any other law, an inmate who is released on parole for any violation of Section 288 or 288.5 shall not be placed or reside, for the duration of his or her period of parole, within one quarter mile of any public or private school, including any or all of kindergarten and grades 1 to 8, inclusive.~~

Notwithstanding any other law, an inmate who is released on parole for a violation of Section 288 or 288.5 whom the Department of Corrections and Rehabilitation determines poses a high risk to the public shall not be placed or reside, for the duration of his or her parole, within one-half mile of any public or private school including any or all of kindergarten and grades 1 to 12, inclusive.

~~(h)~~ Notwithstanding any other law, an inmate who is released on parole for an offense involving stalking shall not be returned to a location within 35 miles of the victim's actual residence or place of employment if the victim or witness has requested additional distance in the placement of the inmate on parole, and if the Board of Prison Terms or the Department of Corrections finds that there is a need to protect the life, safety, or well-being of the victim.

~~(i)~~ *(h)* The authority shall give consideration to the equitable distribution of parolees and the proportion of out-of-county commitments from a county compared to the number of commitments from that county when making parole decisions.

~~(j)~~ *(i)* An inmate may be paroled to another state pursuant to any other law.

~~(k)~~ *(j)*(1) Except as provided in paragraph (2), the Department of Corrections shall be the agency primarily responsible for, and shall have control over, the program, resources, and staff implementing the Law Enforcement Automated Data System (LEADS) in conformance with subdivision (e).

(2) Notwithstanding paragraph (1), the Department of Justice shall be the agency primarily responsible for the proper release of information under LEADS that relates to fingerprint cards.

SEC. 21. Section 3003.5 of the Penal Code is amended to read:

3003.5. *(a)* Notwithstanding any other provision of law, when a person is released on parole after having served a term of imprisonment in state prison for any offense for which registration is required pursuant to Section 290, that person may not, during the period of parole, reside in any single family dwelling with any other person also required to register pursuant to Section 290, unless those persons are legally related by blood, marriage, or adoption. For purposes of this section, "single family dwelling" shall not include a residential facility which serves six or fewer persons.

(b) Notwithstanding any other provision of law, it is unlawful for any person for whom registration is required pursuant to Section 290 to reside within 2000 feet of any public or private school, or park where children regularly gather.

(c) Nothing in this section shall prohibit municipal jurisdictions from enacting local ordinances that further restrict the residency of any person for whom registration is required pursuant to Section 290.

SEC. 22. Section 3004 of the Penal Code is amended to read:

3004. *(a)* Notwithstanding any other law, the parole authority may require, as a condition of release on parole or reinstatement on parole, or as an intermediate sanction in lieu of return to prison, that an inmate or parolee agree in writing to the use of electronic monitoring or supervising devices for the purpose of helping to verify his or her compliance with all other conditions of parole. The devices shall not be used to eavesdrop or record any conversation, except a conversation between the parolee and the agent supervising the parolee which is to be used solely for the purposes of voice identification.

(b) Every inmate who has been convicted for any felony violation of a "registerable sex offense" described in subparagraph (A) of paragraph (2) of subdivision (a) of Section 290 or any attempt to commit any of the above-mentioned offenses and who is committed to prison and released on parole pursuant to Section 3000 or 3000.1 shall be monitored by a global positioning system for life.

(c) Any inmate released on parole pursuant to this section shall be required to pay for the costs associated with the monitoring by a global positioning system. However, the Department of Corrections shall waive any or all of that payment upon a finding of an inability to pay. The department shall consider any remaining amounts the inmate has been ordered to pay in fines, assessments and restitution fines, fees, and orders, and shall give priority to the payment of those items before requiring that the inmate pay for the global positioning monitoring.

SEC. 23. Section 12022.75 of the Penal Code is amended to read:

12022.75. ~~Any~~ *(a) Except as provided in subdivision (b), any* person who, for the purpose of committing a felony, administers by injection, inhalation, ingestion, or any other means, any controlled substance listed in Section 11054, 11055, 11056, 11057, or 11058 of the Health and Safety Code, against the victim's will by means of force, violence, or fear of immediate and unlawful bodily injury to the victim or another person, shall, in addition and consecutive to the penalty provided for the felony or attempted felony of which he or she has been convicted, be punished by an additional term of three years.

(b)(1) Any person who, in the commission or attempted commission of any offense specified in paragraph (2), administers any controlled substance listed in Section 11054, 11055, 11056, 11057, or 11058 of the Health and Safety Code to the victim shall be punished by an additional and consecutive term of imprisonment in the state prison for five years.

(2) This subdivision shall apply to the following offenses:

(A) Rape, in violation of paragraph (3) or (4) of subdivision (a) of Section 261.

(B) Sodomy, in violation of subdivision (f) or (i) of Section 286.

(C) Oral copulation, in violation of subdivision (f) or (i) of Section 288a.

(D) Sexual penetration, in violation of subdivision (d) or (e) of Section 289.

(E) Any offense specified in subdivision (c) of Section 667.61.

SEC. 24. Section 6600 of the Welfare and Institutions Code is amended to read:

6600. As used in this article, the following terms have the following meanings:

(a)(1) "Sexually violent predator" means a person who has been convicted of a sexually violent offense against ~~two~~ *one* or more victims and who has a diagnosed mental disorder that makes the person a danger to the health and safety of others in that it is likely that he or she will engage in sexually violent criminal behavior.

(2) For purposes of this subdivision any of the following shall be considered a conviction for a sexually violent offense:

(A) A prior or current conviction that resulted in a determinate prison sentence for an offense described in subdivision (b).

(B) A conviction for an offense described in subdivision (b) that was committed prior to July 1, 1977, and that resulted in an indeterminate prison sentence.

(C) A prior conviction in another jurisdiction for an offense that includes all of the elements of an offense described in subdivision (b).

(D) A conviction for an offense under a predecessor statute that includes all of the elements of an offense described in subdivision (b).

(E) A prior conviction for which the inmate received a grant of probation for an offense described in subdivision (b).

(F) A prior finding of not guilty by reason of insanity for an offense described in subdivision (b).

(G) A conviction resulting in a finding that the person was a mentally disordered sex offender.

(H) A prior conviction for an offense described in subdivision (b) for which the person was committed to the Department of the Youth Authority pursuant to Section 1731.5.

(I) A prior conviction for an offense described in subdivision (b) that resulted in an indeterminate prison sentence.

(3) Conviction of one or more of the crimes enumerated in this section shall constitute evidence that may support a court or jury determination that a person is a sexually violent predator, but shall not be the sole basis for the determination. The existence of any prior convictions may be shown with documentary evidence. The details underlying the commission of an

offense that led to a prior conviction, including a predatory relationship with the victim, may be shown by documentary evidence, including, but not limited to, preliminary hearing transcripts, trial transcripts, probation and sentencing reports, and evaluations by the State Department of Mental Health. Jurors shall be admonished that they may not find a person a sexually violent predator based on prior offenses absent relevant evidence of a currently diagnosed mental disorder that makes the person a danger to the health and safety of others in that it is likely that he or she will engage in sexually violent criminal behavior.

(4) The provisions of this section shall apply to any person against whom proceedings were initiated for commitment as a sexually violent predator on or after January 1, 1996.

(b) "Sexually violent offense" means the following acts when committed by force, violence, duress, menace, ~~or~~ fear of immediate and unlawful bodily injury on the victim or another person, *or threatening to retaliate in the future against the victim or any other person,* and that are committed on, before, or after the effective date of this article and result in a conviction or a finding of not guilty by reason of insanity, as ~~provided~~ *defined* in subdivision (a): a felony violation of ~~paragraph (2) of subdivision (a) of~~ Section 261, ~~paragraph (1) of subdivision (a) of Section~~ 262, ~~Section~~ 264.1, *269, 286,* ~~subdivision (a) or (b) of Section~~ 288, *288a, 288.5,* or ~~subdivision (a) of Section~~ 289 of the Penal Code, or ~~sodomy or oral copulation in violation of Section 286 or 288a of the Penal Code~~ *any felony violation of Section 207, 209, or 220 of the Penal Code, committed with the intent to commit a violation of Section 261, 262, 264.1, 286, 288, 288a, or 289 of the Penal Code.*

(c) "Diagnosed mental disorder" includes a congenital or acquired condition affecting the emotional or volitional capacity that predisposes the person to the commission of criminal sexual acts in a degree constituting the person a menace to the health and safety of others.

(d) "Danger to the health and safety of others" does not require proof of a recent overt act while the offender is in custody.

(e) "Predatory" means an act is directed toward a stranger, a person of casual acquaintance with whom no substantial relationship exists, or an individual with whom a relationship has been established or promoted for the primary purpose of victimization.

(f) "Recent overt act" means any criminal act that manifests a likelihood that the actor may engage in sexually violent predatory criminal behavior.

(g) Notwithstanding any other provision of law and for purposes of this section, ~~no more than one~~ *a* prior juvenile adjudication of a sexually violent offense may constitute a prior conviction for which the person received a determinate term if all of the following ~~applies~~ *apply*:

(1) The juvenile was 16 years of age or older at the time he or she committed the prior offense.

(2) The prior offense is a sexually violent offense as specified in subdivision (b). ~~Notwithstanding Section 6600.1, only an offense described in subdivision (b) shall constitute a sexually violent offense for purposes of this subdivision.~~

(3) The juvenile was adjudged a ward of the juvenile court within the meaning of Section 602 because of the person's commission of the offense giving rise to the juvenile court adjudication.

(4) The juvenile was committed to the Department of the Youth Authority for the sexually violent offense.

(h) A minor adjudged a ward of the court for commission of an offense that is defined as a sexually violent offense shall be entitled to specific treatment as a sexual offender. The failure of a minor to receive that treatment shall not constitute a defense or bar to a determination that any person is a sexually violent predator within the meaning of this article.

SEC. 25. Section 6600.1 of the Welfare and Institutions Code is amended to read:

6600.1. ~~(a)~~ If the victim of an underlying offense that is specified in subdivision (b) of Section 6600 is a child under the age of 14 ~~and the offending act or acts involved substantial sexual conduct~~, the offense shall constitute a "sexually violent offense" for purposes of Section 6600.

~~(b) "Substantial sexual conduct" means penetration of the vagina or rectum of either the victim or the offender by the penis of the other or by any foreign object, oral copulation, or masturbation of either the victim or the offender.~~

SEC. 26. Section 6601 of the Welfare and Institutions Code is amended to read:

6601. (a)(l) Whenever the Director of Corrections determines that an individual who is in custody under the jurisdiction of the Department of Corrections, and who is either serving a determinate prison sentence or whose parole has been revoked, may be a sexually violent predator, the director shall, at least six months prior to that individual's scheduled date for release from prison, refer the person for evaluation in accordance with this section. However, if the inmate was received by the department with less than nine months of his or her sentence to serve, or if the inmate's release date is modified by judicial or administrative action, the director may refer the person for evaluation in accordance with this section at a date that is less than six months prior to the inmate's scheduled release date.

(2) A petition may be filed under this section if the individual was in custody pursuant to his or her determinate prison term, parole revocation term, or a hold placed pursuant to Section 6601.3, at the time the petition is filed. A petition shall not be dismissed on the basis of a later judicial or administrative determination that the individual's custody was unlawful, if the unlawful custody was the result of a good faith mistake of fact or law. This paragraph shall apply to any petition filed on or after January 1, 1996.

(b) The person shall be screened by the Department of Corrections and the Board of Prison Terms based on whether the person has committed a sexually violent predatory offense and on a review of the person's social, criminal, and institutional history. This screening shall be conducted in accordance with a structured screening instrument developed and updated by the State Department of Mental Health in consultation with the Department of Corrections. If as a result of this screening it is determined that the person is likely to be a sexually violent predator, the Department of Corrections shall refer the person to the State Department of Mental Health for a full evaluation of whether the person meets the criteria in Section 6600.

(c) The State Department of Mental Health shall evaluate the person in accordance with a standardized assessment protocol, developed and updated by the State Department of Mental Health, to determine whether the person is a sexually violent predator as defined in this article. The standardized assessment protocol shall require assessment of diagnosable mental disorders, as well as various factors known to be associated with the risk of reoffense among sex offenders. Risk factors to be considered shall include criminal and psychosexual history, type, degree, and duration of sexual deviance, and severity of mental disorder.

(d) Pursuant to subdivision (c), the person shall be evaluated by two practicing psychiatrists or psychologists, or one practicing psychiatrist and one practicing psychologist, designated by the Director of Mental Health. If both evaluators concur that the person has a diagnosed mental disorder so that he or she is likely to engage in acts of sexual violence without appropriate treatment and custody, the Director of Mental Health shall forward a request for a petition for commitment under Section 6602 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.

(e) If one of the professionals performing the evaluation pursuant to subdivision (d) does not concur that the person meets the criteria specified in subdivision (d), but the other professional concludes that the person meets those criteria, the Director of Mental Health shall arrange for further examination of the person by two independent professionals selected in accordance with subdivision (g).

(f) If an examination by independent professionals pursuant to subdivision (e) is conducted, a petition to request commitment under this article shall only be filed if both independent professionals who evaluate the person pursuant to subdivision (e) concur that the person meets the criteria for commitment specified in subdivision (d). The professionals selected to evaluate the person pursuant to subdivision (g) shall inform the person that the purpose of their examination is not treatment but to determine if the person meets certain criteria to be involuntarily committed pursuant to this article. It is not required that the person appreciate or understand that information.

(g) Any independent professional who is designated by the Director of Corrections or the Director of Mental Health for purposes of this section shall not be a state government employee, shall have at least five years of experience in the diagnosis and treatment of mental disorders, and

shall include psychiatrists and licensed psychologists who have a doctoral degree in psychology. The requirements set forth in this section also shall apply to any professionals appointed by the court to evaluate the person for purposes of any other 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. 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 ~~not~~ toll~~, discharge, or otherwise affect~~ 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.

(*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. 27. 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 unconditionally released at the end of parole, whichever is applicable. If the court or jury determines that the person is a sexually violent predator, the person shall be committed for ~~two years~~ *an indeterminate term* to the custody of the State Department of Mental Health for appropriate treatment and confinement in a secure facility designated by the Director of Mental Health~~, and the person shall not be kept in actual custody longer than two years unless a subsequent extended commitment is obtained from the court incident to the filing of a petition for extended commitment under this article or unless the term of commitment changes pursuant to subdivision (c) of Section 6605. Time spent on conditional release shall not count toward the two-year term of commitment, unless the person is placed in a locked facility by the conditional release program, in which case the time in a locked facility shall count toward the two-year term of commitment~~. The facility shall be located on the grounds of an institution under the jurisdiction of the Department of Corrections.

SEC. 28. Section 6604.1 of the Welfare and Institutions Code is amended to read:

6604.1. (a) The ~~two-year~~ *indeterminate* term of commitment provided for in Section 6604 shall commence on the date upon which the court issues the initial order of commitment pursuant to that section. ~~The initial two-year term shall not be reduced by any time spent in a secure facility prior to the order of commitment. For any subsequent extended commitments, the term of commitment shall be for two years commencing from the date of the termination of the previous commitment.~~

(b) The person shall be evaluated by two practicing psychologists or psychiatrists, or by one practicing psychologist and one practicing psychiatrist, designated by the State Department of Mental Health. The provisions of subdivisions (c) to (i), inclusive, of Section 6601 shall apply to evaluations performed for purposes of extended commitments. The rights, requirements, and procedures set forth in Section 6603 shall apply to ~~extended~~ *all* commitment proceedings.

SEC. 29. Section 6605 of the Welfare and Institutions Code is amended to read:

6605. (a) A person found to be a sexually violent predator and committed to the custody of the State Department of Mental Health shall have a current examination of his or her mental condition made at least once every year. *The annual report shall include consideration of whether the committed person currently meets the definition of a sexually violent predator and whether conditional release to a less restrictive alternative or an unconditional release is in the best interest of the person and conditions can be imposed that would adequately protect the community. The Department of Mental Health shall file this periodic report with the court that committed the person under this article. The report shall be in the form of a declaration and shall be prepared by a professionally qualified person. A copy of the report shall be served on the prosecuting agency involved in the initial commitment and upon the committed person.* The person may retain, or if he or she is indigent and so requests, the court may appoint, a qualified expert or professional person to examine him or her, and the expert or professional person shall have access to all records concerning the person.

(b) ~~The director shall provide the committed person with an annual written notice of his or her right to petition the court for conditional release under Section 6608. The notice shall contain a waiver of rights. The director shall forward the notice and waiver form to the court with the annual report. If the person does not affirmatively waive his or her right to petition the court for conditional release, the court shall set a show cause hearing to determine whether facts exist that warrant a hearing on whether the person's condition has so changed that he or she would not be a danger to the health and safety of others if discharged. The committed person shall have the right to be present and to have an attorney represent him or her at the show cause hearing.~~ *If the Department of Mental Health determines that either: (1) the person's condition has so changed that the person no longer meets the definition of a sexually violent predator, or (2) conditional release to a less restrictive alternative is in the best interest of the person and conditions can be imposed that adequately protect the community, the director shall authorize the person to petition the court for conditional release to a less restrictive alternative or for an unconditional discharge. The petition shall be filed with the court and served upon the prosecuting agency responsible for the initial commitment. The court, upon receipt of the petition for conditional release to a less restrictive alternative or unconditional discharge, shall order a show cause hearing at which the court can consider the petition and any accompanying documentation provided by the medical director, the prosecuting attorney or the committed person.*

(c) If the court at the show cause hearing determines that probable cause exists to believe that the committed person's diagnosed mental disorder has so changed that he or she is not a danger to the health and safety of others and is not likely to engage in sexually violent criminal behavior if discharged, then the court shall set a hearing on the issue.

(d) At the hearing, the committed person shall have the right to be present and shall be entitled to the benefit of all constitutional protections that were afforded to him or her at the initial commitment proceeding. The attorney designated by the county pursuant to subdivision (i) of Section 6601 shall represent the state and shall have the right to demand a jury trial and to have the committed person evaluated by experts chosen by the state. The committed person also shall have the right to demand a jury trial and to have experts evaluate him or her on his or her behalf. The court shall appoint an expert if the person is indigent and requests an appointment. The burden of proof at the hearing shall be on the state to prove beyond a reasonable doubt that the committed person's diagnosed mental disorder remains such that he or she is a danger to the health and safety of others and is likely to engage in sexually violent criminal behavior if discharged.

(e) If the court or jury rules against the committed person at the hearing conducted pursuant to subdivision (d), the term of commitment of the person shall run for ~~a~~ *an indeterminate* period ~~of two years~~ from the date of this ruling. If the court or jury rules for the committed person, he or she shall be unconditionally released and unconditionally discharged.

(f) In the event that the State Department of Mental Health has reason to believe that a person committed to it as a sexually violent predator is no longer a sexually violent predator, it shall seek judicial review of the person's commitment pursuant to the procedures set forth in Section 7250 in the superior court from which the commitment was made. If the superior court determines that the person is no longer a sexually violent predator, he

or she shall be unconditionally released and unconditionally discharged.

SEC. 30. Section 6608 of the Welfare and Institutions Code is amended to read:

6608. (a) Nothing in this article shall prohibit the person who has been committed as a sexually violent predator from petitioning the court for conditional release ~~and subsequent~~ *or an* unconditional discharge without the recommendation or concurrence of the Director of Mental Health. If a person has previously filed a petition for conditional release without the concurrence of the director and the court determined, either upon review of the petition or following a hearing, that the petition was frivolous or that the committed person's condition had not so changed that he or she would not be a danger to others in that it is not likely that he or she will engage in sexually violent criminal behavior if placed under supervision and treatment in the community, then the court shall deny the subsequent petition unless it contains facts upon which a court could find that the condition of the committed person had so changed that a hearing was warranted. Upon receipt of a first or subsequent petition from a committed person without the concurrence of the director, the court shall endeavor whenever possible to review the petition and determine if it is based upon frivolous grounds and, if so, shall deny the petition without a hearing. The person petitioning for conditional release and unconditional discharge under this subdivision shall be entitled to assistance of counsel.

(b) The court shall give notice of the hearing date to the attorney designated in subdivision (i) of Section 6601, the retained or appointed attorney for the committed person, and the Director of Mental Health at least 15 court days before the hearing date.

(c) No hearing upon the petition shall be held until the person who is committed has been under commitment for confinement and care in a facility designated by the Director of Mental Health for not less than one year from the date of the order of commitment.

(d) The court shall hold a hearing to determine whether the person committed would be a danger to the health and safety of others in that it is likely that he or she will engage in sexually violent criminal behavior due to his or her diagnosed mental disorder if under supervision and treatment in the community. If the court at the hearing determines that the committed person would not be a danger to others due to his or her diagnosed mental disorder while under supervision and treatment in the community, the court shall order the committed person placed with an appropriate forensic conditional release program operated by the state for one year. A substantial portion of the state-operated forensic conditional release program shall include outpatient supervision and treatment. The court shall retain jurisdiction of the person throughout the course of the program. At the end of one year, the court shall hold a hearing to determine if the person should be unconditionally released from commitment on the basis that, by reason of a diagnosed mental disorder, he or she is not a danger to the health and safety of others in that it is not likely that he or she will engage in sexually violent criminal behavior. The court shall not make this determination until the person has completed at least one year in the state-operated forensic conditional release program. The court shall notify the Director of Mental Health of the hearing date.

(e) Before placing a committed person in a state-operated forensic conditional release program, the community program director designated by the State Department of Mental Health shall submit a written recommendation to the court stating which forensic conditional release program is most appropriate for supervising and treating the committed person. If the court does not accept the community program director's recommendation, the court shall specify the reason or reasons for its order on the record. The procedures described in Sections 1605 to 1610, inclusive, of the Penal Code shall apply to the person placed in the forensic conditional release program.

(f) If the court determines that the person should be transferred to a state-operated forensic conditional release program, the community program director, or his or her designee, shall make the necessary placement arrangements and, within 21 days after receiving notice of the court's finding, the person shall be placed in the community in accordance with the treatment and supervision plan unless good cause for not doing so is presented to the court.

(g) If the court rules against the committed person at the trial for unconditional release from commitment, the court may place the committed person on outpatient status in accordance with the procedures described in Title 15 (commencing with Section 1600) of Part 2 of the Penal Code.

(h) If the court denies the petition to place the person in an appropriate forensic conditional release program or if the petition for unconditional discharge is denied, the person may not file a new application until one year has elapsed from the date of the denial.

(i) In any hearing authorized by this section, the petitioner shall have the burden of proof by a preponderance of the evidence.

(j) If the petition for conditional release is not made by the director of the treatment facility to which the person is committed, no action on the petition shall be taken by the court without first obtaining the written recommendation of the director of the treatment facility.

(k) Time spent in a conditional release program pursuant to this section shall not count toward the term of commitment under this article unless the person is confined in a locked facility by the conditional release program, in which case the time spent in a locked facility shall count toward the term of commitment.

SEC. 31. Intent Clause

It is the intent of the People of the State of California in enacting this measure to strengthen and improve the laws that punish and control sexual offenders. It is also the intent of the People of the State of California that if any provision in this act conflicts with any other provision of law that provides for a greater penalty or longer period of imprisonment the latter provision shall apply.

SEC. 32. Severability Clause

If any provision of this act, or part thereof, is for any reason held to be invalid or unconstitutional, the remaining provisions shall not be affected, but shall remain in full force and effect, and to this end the provisions of this act are severable.

SEC. 33. Amendment Clause

The provisions of this act shall not be amended by the Legislature except by a statute passed in each house by rollcall vote entered in the journal, two-thirds of the membership of each house concurring, or by a statute that becomes effective only when approved by the voters. However, the Legislature may amend the provisions of this act to expand the scope of their application or to increase the punishments or penalties provided herein by a statute passed by majority vote of each house thereof.

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PROPOSITION 84

This initiative measure is submitted to the people in accordance with the provisions of Article II, Section 8, of the California Constitution.

This initiative measure adds sections to the Public Resources Code; therefore, new provisions proposed to be added are printed in *italic type* to indicate that they are new.

PROPOSED LAW

SECTION 1. Division 43 is added to the Public Resources Code, to read:

DIVISION 43. THE SAFE DRINKING WATER, WATER QUALITY AND SUPPLY, FLOOD CONTROL, RIVER AND COASTAL PROTECTION BOND ACT OF 2006

CHAPTER 1. GENERAL PROVISIONS

75001. This Division shall be known and may be cited as the Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Bond Act of 2006.

75002. The people of California find and declare that protecting the state's drinking water and water resources is vital to the public health, the state's economy, and the environment.

75002.5. The people of California further find and declare that the state's waters are vulnerable to contamination by dangerous bacteria, polluted runoff, toxic chemicals, damage from catastrophic floods and the demands of a growing population. Therefore, actions must be taken to ensure safe drinking water and a reliable supply of water for farms, cities and businesses, as well as to protect California's rivers, lakes, streams, beaches, bays and coastal waters, for this and future generations.

75003. The people of California further find and declare that it is

Provider-Probation-Parole-DSH Secure Login

Secure Login Information

FAQ's

Calendar

Legal Issues

SARATSO Review Committee

Janet Neeley, California Attorney General's Office

Brenda Crowding, California Department of Corrections and Rehabilitation

Vacant, California Department of State Hospitals

SARATSO Training Committee

SARATSO Review Committee members, and Mack Jenkins, Chief Probation Officer of San Diego

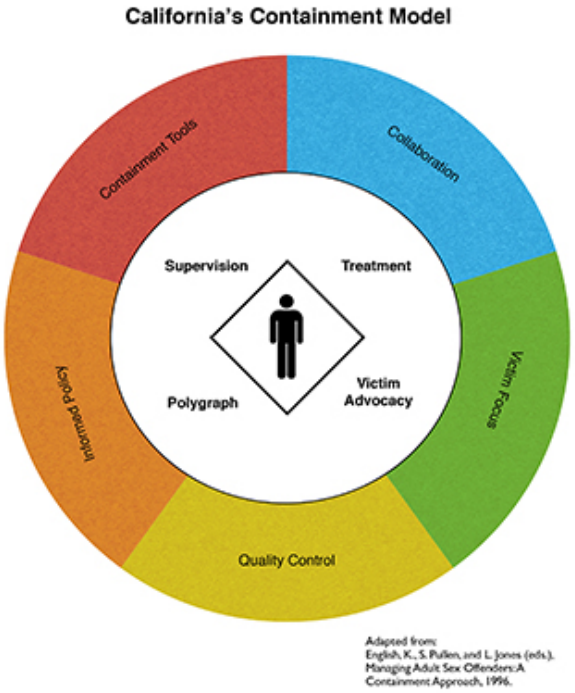
Home

What Is SARATSO?

The term SARATSO refers to evidence-based, state authorized risk assessment tools used for evaluating sex offenders. State law established the SARATSO (State Authorized Risk Assessment Tool for Sex Offenders) Review Committee, to consider the selection of the risk assessment tools for California. Research shows that the most accurate way of predicting whether a sex offender will reoffend is by utilizing a validated risk assessment instrument.

What is the Containment Model?

A collaborative approach to sex offender management, known as the Containment Model, is used in California. Communication and collaboration among the supervising officer, treatment provider, and polygraph examiner are the heart of this model, which relies on ongoing communication about risk.



What's New?

In September 2013 the SARATSO Committee selected a new dynamic risk tool, the Stable-2007/Acute-2007. Certified treatment providers must continue to use the previous dynamic instrument, the SRA-FVL, until being trained by a SARATSO-approved trainer in 2013-2014 on the Stable-2007/Acute-2007.

The SARATSO Committee will do a presentation on the Containment Model for judges, or for stakeholders in the sex offender management community, on request. Click here to see the flyer.

FACTS OF OFFENSE SHEET

Please follow these important instructions:

* **Print or type all required information;**
* **Please complete Side Two of this form for *each* victim;**
* **Fax this form to DOJ, Sexual Habitual Offender Program at (916) 227-3663 or mail this form to the DOJ, Sexual Habitual Offender Program, 4949 Broadway Rm B-216, Sacramento, CA 95820;**
* **Submit a copy to the California Department of Corrections and Rehabilitation if prison sentence imposed;**
* **Include a copy in pre-sentencing report;**
* **Retain a copy in defendant's file;**
* **Attach extra sheets of paper if needed.**

Defendant's Information

Last Name | First Name | Middle Name

DOB _____ CII Number: _____

Probation Officer's Information

Last Name | First Name | Title

Probation Agency _____ Phone Number: _____

Court Information

Court Date: _____ Court Case Number: _____

County of Conviction: _____

SARATSO Information

Current Information (Check One):

☐ *Static-99* ☐ *JSORRAT-II* Score _____ Date Scored _____

Previous Information (Check One:)

☐ *Static-99* ☐ *JSORRAT-II* Score _____ Date Scored _____

☐ *Static-99* ☐ *JSORRAT-II* Score _____ Date Scored _____

SARATSO Dynamic Risk Asessment Instrument

Tool Name: _____ Score _____ Date Scored _____

Tool Name: _____ Score _____ Date Scored _____

Has the defendant ever lived with an intimate partner (either gender) for two or more years? ☐ **Yes** ☐ **No**

(Verify defendant's self report on this factor whenever possible)

Has the defendant ever failed out of a sex-offender specific treatment program? ☐ **Yes** ☐ **No**

If yes, which program? _____ *Date:* _____

Offenders Sexual Practices and Preferences

Fetishes	**Pornography (Offender's Preferences)**	**Paraphernalia** (equipment/toys-owned/used)
(feet, shoes, or non-sexual objects)	Age: ☐ Magazine ☐ Photos ☐ Video Gender: ☐ M ☐ F ☐ Other (Describe): Describe Content:	

Offender Last Name: CII#: Court Case #:

Victim

Age:

Race:

Gender: (Check)

☐ M ☐ F

Victim Vulnerability

☐ Alcohol/Drug Abuser
☐ Babysitter
☐ Bisexual
☐ Child (under 17)
☐ Criminal Activity (Describe)
☐ Drug User/Seller
☐ Elderly
☐ Gambler
☐ Gang Member (Describe):
☐ Heterosexual
☐ Hitchhiker
☐ Homeless/Street Person
☐ Homosexual
☐ Illegal Alien
☐ Internet User
☐ Loner
☐ Mentally Disabled (Describe):
☐ Mentally Ill (Describe):
☐ Physically Disabled (Describe):
☐ Prostitute
☐ Recluse/Introvert
☐ Retired
☐ Runaway
☐ Student
☐ Transient/Drifter
☐ Transvestite
☐ Transexual (check)
☐ *M to F* ☐ *F to M*
☐ Other (Describe):
☐ Unknown

Offender's Relationship to Victim

(e.g., acquaintance, friend, relative (describe relationship), stranger (knew less than 24 hours), etc

Victim's Activity at Time of Offense

(e.g., going to/from work, playing outside, etc.)

Offender's Initial Approach to Victim (Check and describe all that apply)

☐ **By Deception or Grooming**
Describe:

☐ **By Surprise**
Describe:

☐ **By Blitz/Direct Impact**
Describe:

☐ **Other (Describe):**

☐ **Unknown Approach**

Assault Location (e.g., residence, park, mall etc.)

Method of Entry (e.g., forced, let in by victim, lived there,etc.)

Weapons Used in Assault

Describe:

☐ Brought to Scene
☐ Found at Scene

Method of Victim Control

☐ Blindfolds _____
☐ Binds _____
☐ Entire Face Covered
☐ Gagged _____
☐ Hand Over Mouth
☐ Threat of Harm to Family
☐ Other (Describe):

Sexual Assault Details

Penetration: 1) Anal 2)Vaginal

1	2	
☐	☐	Penile
☐	☐	Digital
☐	☐	Hand/fist
☐	☐	Foreign Object (Specify):

1) _____
2) _____
3) _____

☐ ☐ Unknown

Oral Sex:

Offender Performed Oral Sex on Victim ☐ Anus ☐ Vagina ☐ Penis
Victim Performed Oral Sex on Offender ☐ Anus ☐ Vagina ☐ Penis

Masturbation: ☐ Offender masturbated victim ☐ Victim masturbated offender
☐ Offender masturbated self ☐ Victim masturbated self

Sexual Dysfunction: ☐ Unknown
☐ Unable to obtain erection ☐ Unable to maintain erection
☐ Premature ejaculation ☐ Retarded ejaculation
☐ Other (Describe):

Other Sexual Act(s): ☐ Unknown
☐ Ejaculated On/In Victim
☐ Fondled/Grabbed/Hugged
☐ Forced Victim to Swallow Semen
☐ Kissed
☐ Licked
☐ Rubbed Genitalia Against Victim
☐ Simulated Intercourse
☐ Sucked Breasts
☐ Other (Describe):

Level of Force Used

☐ No force (Verbal intimidation)
☐ Minimal force (Mild slapping/hitting)
☐ Moderate force (Repeated hits/painful)
☐ Excessive force (Beats-bruising/cuts)
☐ Brutal (Sadistic torture)
☐ Unknown

Verbal Activity (e.g., specific words/phrases)

Major Trauma Types/Locations

Type: Location on body:

Unusual or Additional Assault

☐ Beats Sexual Areas
☐ Body/Genitalia Mutilated
☐ Body Cavities/Wounds Probed/Explored
☐ Body Set on Fire
☐ Burns
☐ Cannibalism
☐ Carving on Victim
☐ Douche/Enema Given to Victim
☐ Hair Cut/Shaved
☐ Hair Pulled
☐ Hanged/Suspended
☐ Kicked/Stomped
☐ Pinched
☐ Pulled Body Parts
☐ Puncture/Torture Wounds
☐ Ritual/Script/Fantasy (Describe):
☐ Shocked Electrical/Stun Gun
☐ Slapped/Spanked Whipped Paddled
☐ Tickled
☐ Vampirism
☐ Vehicular Assault
☐ Victim Defecated Upon
☐ Victim Urinated Upon
☐ Other (Describe):
☐ Unknown

Crime Scene Altered/Precautions Used to Avoid Apprehension/Identification

☐ Administered Drug to Victim
☐ Altered Lighting
☐ Bleach Used
☐ Burned Scene/Victim's Body
☐ Changes Hair (Facial, Length, Style)
☐ Cleaned Scene/ Self /Victim (Circle)
☐ Destroyed/Removed Evidence
☐ Disabled Phone/Security
☐ Disabled Victim's Vehicle
☐ Forced Victim to Bathe/Douche
☐ Gave False Name (Describe):
☐ Increased/Decreased Temperature
☐ Planted Evidence
☐ Prepared Escape Route Prior to Assault
☐ Ransacked Scene
☐ Told Victim Not to Look at Offender
☐ Told Victim Not to Report to Police
☐ Used a Condom
☐ Used a Lookout
☐ Used a Police Scanner Radio
☐ Vandalized Scene
☐ Wore Makeup
☐ Wore a Disguise/Mask (Describe):
☐ Wore Gloves (Describe):
☐ Other (Describe):
☐ Unknown

Offender's Address at Time of Offense

Street #, Street Name, Unit #, City, State, Zip

Vehicle Used in this Offense? ☐ Yes ☐ No

Make: _____ Year: _____

Model: _____ Color: _____

Vehicle License #: Other:

Any circumstances of the offense not included on this form (Please attach additional sheets if necessary:

987

Spell Check | Save Form | Print Form | Clear Form

BILL ANALYSIS

Date of Hearing: August 16, 2006

ASSEMBLY COMMITTEE ON APPROPRIATIONS
Judy Chu, Chair

SB 1128 (Alquist) - As Amended: June 22, 2006

Policy Committee: Public
SafetyVote: 6-0

Urgency: No State Mandated Local Program:
Yes Reimbursable: Yes

SUMMARY

This bill creates the "Sex Offender Punishment, Control and Containment Act of 2006," which makes dozens of changes to the body of law relating to sex offenders. Specifically, this bill:

1) Increases penalties for numerous sex offenses, including child pornography, continuous sexual abuse of a child, administering a controlled substance to commit a sex offense.

2) Renovates the Department of Justice's (DOJ) Violent Crime Information Network (hardware and software) and expands the Megan's Law database on registered sex offenders by adding the year of conviction and the year the offender was released from incarceration.

3) Increases penalties for luring and enables police to use on-line decoys to catch Internet predators.

4) Increases the period of parole for violent sexual offenses from five to 10 years.

5) Prohibits sex offenders from loitering near schools, parks, and places where children gather.

6) Creates a state and local scheme for assessing the risk presented by convicted sex offenders: the State Authorized

Risk Assessment Tool for Sex Offenders (SARATSO). Requires all registered sex offenders to undergo assessment, and requires training regarding SARATSO for law enforcement personnel and others who may administer the SARATSO.

7) Makes major changes to the Sexually Violent Predator (SVP) program, increasing commitments from two years to indeterminate, tolling parole while a persons is an SVP, and making completion of sex offender treatment programs a condition of release.

8) Requires the state prison system to operate an in-custody sex offender relapse treatment program, using SARATSO.

9) Makes a series of miscellaneous changes increasing fines and changing distribution of fines levied on registered sex offenders; funding Sexual Assault Felony Enforcement (SAFE) teams; and funding child abuse and abduction prevention programs.

FISCAL EFFECT

This bill will result in major annual GF costs, potentially in the range of $200 million. Major costs include:

1) Increasing penalties for various sex offenses . If the numerous penalty-related provisions of this bill result in a 10% increase in the population of sex offenders in state prison, the annual GF cost would eventually exceed $25 million.

2) One-time state capital outlay costs , within a few years, potentially in the low hundreds of millions of dollars for construction of additional state mental hospital and prison beds.

3) Expanding and enhancing the Megan's Law database and enhancing DOJ's VCIN . Annual GF costs of about $3 million per year for three years to update DOJ's VCIN and add information to the Megan's Law website. Ongoing maintenance costs of about $500,000.

4) Increasing the period of parole for violent sexual offenses . Costs in the tens of millions of dollars for more staff and more revocations.

5) SARATSO . Creating a state and local scheme for assessing the risk presented by convicted sex offenders, training state and local authorities in the use of the assessment tool, assessing sex offenders, increasing state and local parole and probation staff to supervise more offenders for longer periods of time, and increasing the scope of probation reports, will result in state costs in the tens of million of dollars.

6) Major changes to the Sexually Violent Predator (SVP) program will eventually result in increased annual costs in the tens of millions of dollars from increasing the number of SVP referrals, hearings, and commitments, and increasing the length of commitments.

7) Increasing fines on persons convicted of registerable sex crimes (from $200 to $300 on the first conviction, and from $300 to $500 on a subsequent conviction), will likely result in a relatively minor increase in revenue, probably less than $1 million.

8) In-custody sex offender relapse treatment program would likely cost tens of millions of dollars. To the extent these programs are effective, and reduce recidivism, there could be corresponding out-year savings.

9) SAFE teams . This bill appropriates $6 million to the Department of Corrections and Rehabilitation's (CDCR's) Correctional Standards Authority for grants to counties.

10) Office of Emergency Services (OES) child abuse and abduction prevention programs . This bill appropriates $495,000 to OES.

COMMENTS

1) Rationale. According to the author, this bill is "a comprehensive, proactive approach to preventing the victimization of Californians by sex offenders. Under current

law, California's tactical methods and infrastructure are insufficient for law enforcement to appropriately assess, convict and monitor sex offenders. This bill is the product of months of discussion with, and input from, experts in the area and incorporates a broad spectrum of approaches recognized by law enforcement and avoids key flaws that have marred other bills on this subject, such as residency requirements that dump offenders into rural communities or provisions that inadvertently tie the hands of police in performing Internet sting operations."

2)Jessica's Law , which will be on the November ballot as Proposition 83, provides for a series of penalty increases for violent and habitual sex offenders and child molesters. It prohibits registered sex offenders from living within 2,000 feet of any school or park, and requires lifetime Global Positioning System (GPS) monitoring of felony registered sex offenders. Prop 83 expands the definition of an SVP, and changes the current two-year involuntary civil commitment for an SVP to an indeterminate commitment.

The Legislative Analyst and Department of Finance estimate the fiscal impact on state and local governments as unknown net costs to the state, within a few years, potentially in the low hundreds of millions of dollars annually due primarily to increased state prison, parole supervision, and mental health program costs. These costs will grow significantly in the long term. Potential one-time state capital outlay costs, within a few years, in the low hundreds of millions of dollars for construction of additional state mental hospital and prison beds. Unknown but potentially significant net operating costs or savings to counties for jail, probation supervision, district attorneys, and public defenders.

3)SB 1128 and Prop 83 . Though the initiative and SB 1128 are similar in many areas (SVPs, many of the penalty changes), in other areas, there are major differences: no GPS, no residential restrictions in SB 1128, and no SAFE team funding

or sex offender assessment (SARATSO) in Prop 83; and in many cases, there are minor to moderate differences that will cause confusion and/or chaptering problems (child pornography, extended parole terms, luring, distribution of fine revenue.)

4)Related Legislation .

a) AB 231 (S. Runner) and SB 558 (G. Runner), virtually identical to Prop 83, failed passage in the Assembly Public Safety Committee and Senate Public Safety respectively.

b) AB 50 (Leno), which creates the Sex Offender Containment and Management Act of 20006, was introduced as a parallel measure to SB 1128. AB 50 has been amended to a different topic.

c) AB 1015 (Chu), which creates a Sex Offender Management Board to assess current management practices for adult sex offenders and report is pending in the Senate Appropriations Committee.

d) AB 1849 (Leslie) requires DOJ to include on the Megan's Law website, the offender's year of conviction and year of release from incarceration, similar to SB 1128. AB 1849 is pending before Senate Appropriations.

e) SB 864 (Poochigian), which lengthens the period of civil commitment for those found to be SVPs from two years to an indeterminate term failed in the Assembly Public Safety Committee.

f) SB 1178 (Speier) requires men convicted of registerable sex offenses to be assessed for risk of re-offending; similar to the requirements in SB 1128. SB 1178 is also before this committee today.

Analysis Prepared by : Geoff Long / APPR. / (916) 319-2081

Official publication of the California SARATSO Review and Training Committees

SEX OFFENDER RISK ASSESSMENT IN CALIFORNIA

Individual sex offender risk assessment in California was mandated by legislation enacted in 2006 as part of the Sex Offender Punishment, Control and Containment Act. (Pen. Code, § 290.03; Stats. 2006, c. 337 (S.B. 1128), § 12, eff. Sept. 20, 2006.) The goal was to create 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. (Pen. Code, § 290.03, subd. (b).) Individual risk assessment pinpoints offenders who are in a group at statistically higher risk of committing another sex crime. Risk assessment is meant to inform appropriate sentencing and monitoring while on supervision, and also identifies those whose score places them in a group that is low risk for reoffending, so that community resources can be more effectively utilized. Additionally, level of risk helps inform decisions by local law enforcement on whether to notify a community about a particular registered offender.

RISK ASSESSMENT INSTRUMENTS IN CALIFORNIA

Starting in 2012, California uses three different evidence-based risk instruments that assess risk of reoffense by adult males, using (1) static (unchanging factors) such as criminal history; (2) dynamic factors in the offender's life affecting reoffending, such as current alcohol abuse; and (3) risk factors which predict future violence. A risk instrument for male juveniles is also being used.

A state committee on risk assessment was established to choose the official risk assessment instruments authorized for use in California. (Pen. Code, § 290.04.) Known as the SARATSO Review Committee (SARATSO stands for "state authorized risk assessment tool for sex offenders"), in 2007 the Review Committee confirmed and adopted the initial legislative choice of the Static-99 as the risk assessment tool to be used for assessing adult male sex offenders. In 2008, the Review Committee chose the JSORRAT-II as the risk assessment instrument for juvenile male sex offenders. In spring 2011, the Review Committee selected the Structured Risk Assessment-Forensic Version (SRA-FV) as the SARATSO dynamic risk assessment instrument. This dynamic instrument can be considered in conjunction with the static-risk assessment score to determine level of risk of reoffense even more accurately than when using the static instrument by itself. The primary use of dynamic risk assessment will be to evaluate offenders on probation or parole. Finally, in spring 2011 the Review Committee selected the Level of Service/Case Management Inventory (LS/CMI) as the risk assessment instrument to predict risk of future violence. The Review Committee determined in 2007 that there was no risk assessment instrument for female sex offenders that meets the statutory criteria. The Committee's official actions are posted on the SARATSO web site at www.saratso.org.

The law requires that a risk assessment instrument chosen by the Review Committee must "reflect(s) the most reliable, objective and well-established protocols for predicting sex offender risk of recidivism, has been scientifically validated and cross-validated, and is, or is reasonably likely to be, widely accepted by the courts." (Pen. Code, § 290.04.) The Review Committee must consult with experts in the field of risk assessment in choosing the instruments mandated for use in California. (Pen. Code, § 290.04.) The Review Committee is required to

periodically evaluate the chosen risk assessment instruments, and if it determines that an instrument should be replaced, it must advise the Governor and Legislature and post the decision on the CDCR web site.

The tier or risk levels on the currently mandated static risk assessment instruments are as follows. As set by the authors' Coding Rules for the Static-99, the levels are low risk, 0-1; moderate risk, 2-3; moderate-high risk, 4-5; and high risk, 6 and above. The tier or risk levels on the JSORRAT-II, set by the Committee after consultation with the author, are low risk, 0-3; moderate risk, 4-7; moderate-high risk, 8 and above. The Review Committee defines tiers of risk for a risk assessment tool. (Pen. Code, § 290.04(f).) Treatment providers who administer the dynamic and violence assessment tools consult the coding rules of each tool for risk levels.

The Review Committee was required to develop a plan for the static risk assessment of registered sex offenders who are not on probation or parole supervision. (Pen. Code, § 290.06(c).) Those eligible under the Static-99 Coding Rules in this group to be assessed can be assessed, beginning in 2010, in the following ways. The local law enforcement agency with jurisdiction over registering a sex offender can elect to have some or all of its registrants assessed, and if it chooses to do so, has two options for assessing its registrants. (Pen. Code, § 290.06.) The first option is to enter into an MOU with Probation to assess the selected registrants. The second option is to send qualified personnel to the official SARATSO trainings, held every two years, and the personnel certified as qualified to do the risk assessments at the SARATSO trainings can formally train others, as specified by SARATSO policies and procedures. Finally, registrants can also fill out a form at the local registering agency requesting risk assessment beginning January 1, 2010. (Pen. Code, § 290.06.) Law enforcement agencies can find a request form for assessments and guidelines on CLEW (http://clew.doj.ca.gov/.)

PRE-SENTENCING RISK ASSESSMENT

Prior to sentencing, every eligible person who will be required to register as a sex offender for a conviction occurring on or after July 1, 2008 requiring registration pursuant to Penal Code section 290, et seq., must be assessed with the appropriate risk assessment instrument. (Pen. Code, § 290.06; 1203.) For adult males, this is the Static-99; for males under age 18, this is the JSORRAT-II.[1] The pre-sentencing risk assessment score must be included in

[1] Under California law it is unknown whether a juvenile will be required to register as a sex offender prior to sentencing, because only those offenders placed at the California Department of Corrections and Rehabilitation, Division of Juvenile Justice (formerly the California Youth Authority) are required to register as sex offenders. (Pen. Code, § 290.008.) Thus, starting January 1, 2010, the law requires Probation to assess, pre-sentencing, only those juvenile sex offenders as to whom they recommend placement at DJJ. (S.B. 325, eff. 1-1-10, amending Welf. & Inst. Code § 706.) Similarly, some adult registrants will be ordered at sentencing to register as a sex offender under the discretionary registration section, Penal Code section 290.006. Since these registrants are not mandated to register under the sentencing order, Probation will be required to score the risk assessment instrument pre-sentencing only if Probation is recommending the person be ordered to register at sentencing. (*Ibid.*, amending Pen. Code, § 1200.)

the pre-sentencing report whenever such a report is prepared for the offender, or otherwise provided to the judge in the absence of a pre-sentencing report. (Pen. Code, § 1203(b)(2)(C), (d).)

Pre-sentencing reports are not mandatory for misdemeanor offenders, so if a pre-sentencing report is not prepared by probation, the score should be submitted to the court prior to sentencing in some other fashion. If the offender is sentenced to prison, the report sent by probation to the California Department of Corrections and Rehabilitation must include the risk assessment score. (Pen. Code, §1203c.) Probation must also prepare a Facts of Offense Sheet, which will include both the risk assessment score and information about the offender and circumstances of the offense. (Pen. Code, § 1203e.) The score must be sent to the judge pre-sentencing, and the Facts of Offense Sheet must be sent to the California Department of Justice (DOJ), for inclusion in the offender's file. DOJ will make it accessible to law enforcement only.

RISK ASSESSMENT ON RELEASE FROM INCARCERATION

OR COMMITMENT TO A MENTAL INSTITUTION

Registrable sex offenders sentenced to prison or a mental institution must be assessed prior to leaving the institution. (Pen. Code, § 290.06(a)(1), (3).) Even though offenders are also assessed pre-sentencing, risk assessment scores can change during incarceration.. For example, scores can go up if the person commits another sex offense or violent offense while incarcerated. A person does not have to be reassessed upon re-release (for example, on a parole revocation) that occurs within five years of the initial release, although reassessment is permissible. (Pen. Code, § 290.06(b).) Conviction for a new registrable sex offense will trigger another risk assessment at the pre-sentencing stage, and on release from custody if the person is sentenced to prison or a mental facility.

For those who were convicted of a registrable sex offense prior to July 1, 2008, and who were not assessed upon release from CDCR, the law requires that they be assessed while they are on parole. (Pen. Code, § 290.06(a)(2).) For a person convicted of a registrable offense and released on probation prior to July 1, 2008, the law requires that they have been assessed if they were still on a probation caseload as of January 1, 2010.

TRAINING AND OVERSIGHT OF RISK ASSESSMENT

The SARATSO Training Committee is responsible for overseeing the training of persons designated by Probation, Parole and DMH to score the risk assessment instruments. The Training Committee consists of the three members on the Review Committee (representing DMH, CDCR, and the Attorney General), plus a member representing the Chief Probation Officers of California. (Pen. Code, § 290.05.) Each agency required to score the risk assessment instruments must designate key persons within their organizations (known informally as the "super-trainers") to attend the trainings sponsored every two years by the SARATSO Training Committee. Experts in the field of risk assessment and the use of actuarial instruments in predicting sex offender risk must conduct these trainings. (Pen. Code, § 290.05.) The persons trained by the experts in turn train persons within their own organizations to score each

SARATSO (official state risk assessment instrument). Any person administering the risk assessment instrument must be trained at least every two years. (Pen. Code, § 290.05(c).)

Dr. Amy Phenix, co-author of the Coding Rules for the Static-99, has conducted the official SARATSO trainings on the Static-99. The trainings are attended by the designated super-trainers from Probation, Parole and DMH. Dr. Douglas Epperson, author of the JSORRAT-II (the state juvenile risk assessment instrument) conducts trainings for Probation and CDCR/DJJ personnel, who will be training those scoring the juvenile risk assessment instrument.

Questions about scoring are first submitted to the super-trainers. If they cannot answer the question, they submit it to the expert retained by the Review Committee. The SARATSO expert has the ability to adjust the risk level if empirical research supports that decision. (Pen. Code, § 290.005.) The decision of the expert is final.

The Training Committee monitors the consistency and quality of risk assessments. To that end, the Training Committee, when funding is made available, will arrange for experts in the field of risk assessment to monitor the scoring of the instruments, to ensure inter-rater reliability. The Review Committee can also retain experts to use data collected from California sex offender risk assessments to conduct validation studies on a California population.

Notwithstanding any other law, persons authorized by statute to score the SARATSOs, or experts retained by the Review Committee to train, monitor or review scoring, must be granted access to all relevant records pertaining to registered sex offenders being scored. These include, but are not limited to, criminal histories, sex offender registration records, police reports, probation and pre-sentencing reports, judicial records and case files, juvenile records, psychological evaluations and psychiatric hospital reports, sexually violent predator treatment program reports, and records that have been sealed by the courts or the Department of Justice. (Pen. Code, § 290.07.)

USE OF RISK ASSESSMENT SCORES

There are four main uses for the risk assessment scores. First, at sentencing the score must be considered by the judge who is imposing sentence on an offender whose offense will require him or her to register as a sex offender. (Pen. Code, 1203(b), (d).) Probation should submit the score to the court whether or not a pre-sentencing report is prepared for the offender.

Second, the score may be considered by local law enforcement in making a decision on whether a registered sex offender poses a current risk to the public, and if a community notification is made on an offender found to be posing a risk to community safety, the score can be disclosed. (Pen. Code, § 290.45(a).)

Third, the risk assessment score determines whether a registered sex offender must be supervised on a high risk case load while on probation or parole. (Pen. Code, § 1202.8, 3008.) All sex offenders on parole supervision scoring high risk on the Static-99 must report frequently to designated parole officers, shall participate in an appropriate sex offender treatment and monitoring program, and are required to wear a GPS monitoring device. (Pen. Code, § 3004,

3010.) Beginning January 1, 2009, all high risk sex offenders on probation must wear a GPS monitoring device unless a court determines that such monitoring is unnecessary for a particular person. (Pen. Code, § 1202.8(b).) High risk sex offenders on probation must also be placed on intensive and specialized probation supervision and required to report frequently to supervising probation officers. (Pen. Code, § 1203f.)

Fourth, the risk assessment score is one factor which may be considered in the placement of a sex offender in a treatment program, and which may help inform the level of treatment.

Risk assessment scores are not displayed on the public Megan's Law Internet web site, although in 2013 the law requires that the static and future violence scores be posted for those offenders on the web site. Beginning in 2012, no one may be granted exclusion from that web site unless the person has a low or moderate-low SARATSO score. (Pen. Code, § 290.46, subd. (e)(4).)

Even though California uses individual risk assessment, California still utilizes an offense-based classification system for sex offenders. Display on the public sex offender web site, and extent of information disclosed on the web site, is governed by the type of sex offense conviction, rather than the individual's risk assessment score. Obtaining relief from the duty to register is not yet tied to individual risk assessment. (Pen. Code, § 290.5.) The frequency of the duty to register as a sex offender is not related to the offender's risk assessment scores. (See Pen. Code, § 290.012.) The California Sex Offender Management Board has recommended that duration of registration, as well as public notification, should be related to the offender's risk level.

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