

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

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

CHAPTER 337

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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 by 2/3 of the membership of both houses of the Legislature, defines "violent felony" for purposes of various provisions of the Penal Code.

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

Existing law provides for an enhanced prison term of 5 years for a person convicted of committing any of several specified sex offenses who had a prior conviction for any of several other specified sex offenses. The enhanced term for a person with 2 or more previous convictions of any of those sex offenses is 10 years. The enhanced term does not apply if that person has not been in custody for, or committed a felony during, at least 10 years between the instant and prior offense. Existing law requires the person to receive credits for time served or for work, to reduce his or her sentence.

This bill would expand the types of sex crimes to which these provisions apply, delete the 10-year exception, and would eliminate the possibility of the person receiving credit to reduce his or her sentence.

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

This bill would eliminate that eligibility for those persons.

Under existing law, the punishment for a conviction of certain sex

offenses is 25 years to life if the offense was committed in the course of a kidnapping or burglary, the victim was tortured, or the defendant had previously been convicted of one of these sex crimes.

This bill would add continuous sexual abuse of a child to those sex offenses.

Under existing law, a court is prohibited from granting probation to, or suspending the execution or imposition of sentence for, any person who, with the intent to inflict the injury, personally inflicts great bodily injury on another person during the commission of any of several crimes.

This bill would eliminate the intent requirement of that provision.

Under existing law, prosecution for an offense punishable by imprisonment in the state prison for 8 years or more is required to be commenced within 6 years after the commission of the offense.

This bill would extend the statute of limitations for prosecuting possession of child pornography for commercial purposes and for using a minor in the production of a representation of sexual conduct to 10 years from the date of production.

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

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

Existing law establishes a county probation system.

This bill would require probation officers trained in the use of the SARATSO to perform a presentencing risk assessment of every person convicted of an offense that requires him or her to register as a sex offender. The bill would require each probation department to compile a Facts of Offense Sheet for those offenders, as specified. The bill would require each county to designate certain probation officers to be trained to administer the SARATSO. 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.

(1) (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.

(1) (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 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.

(1) (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	SB 1128
Office of Senate Floor Analyses	
1020 N Street, Suite 524	
(916) 651-1520	Fax: (916)
327-4478	

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

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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

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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

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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

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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.

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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,

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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
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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

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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

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 person 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.

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, multimillion dollar range ³ parole		Annual costs in the General		
Megan's Law, registration		\$2,9845	\$2,984	
\$2,984General				
SARATSO training, testing & offender oversight	Unknown costs ³			General
Facts of Offense Sheets ¹	Significant costs beginning in 2010-11			General
DOJ: SVP commitments	\$150	\$300	\$300	General
SAFE Teams	\$6,250 ^{1,4}	\$8,000 ⁴	\$8,000	General
Courts (record retention)		Minor, absorbable costs		General ²
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

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SB 1128 (Alquist)

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

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SB 1128 (Alquist)

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 programming. 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.

SB 1178

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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

SB 1178

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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
Consultant: Nora Lynn

Amended: 4/6/06
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 2008-09	\$50 million range beginning in General*			
Reporting 2008-09	Likely minor costs beginning in 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

Page 2
SB 1178 (Speier)

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.

Page 3
SB 1178 (Speier)

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 for 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.

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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
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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

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Page 6

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	SB 1178
Office of Senate Floor Analyses	
1020 N Street, Suite 524	
(916) 651-1520	Fax: (916)
327-4478	

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

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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.
7. Requires that every adult male who has a risk assessment of moderate-high or high shall be electronically monitored while on parole, unless the court determines that monitoring is inappropriate for a particular person.

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8. 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.
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

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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

7

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,

SB 1178

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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 ****

SENATE RULES COMMITTEE	SB 1178
Office of Senate Floor Analyses	
1020 N Street, Suite 524	
(916) 651-1520	Fax: (916)
327-4478	

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,
Torlaxson

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, Torlaxson,
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.

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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."

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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.

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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

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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.
7. Requires that every adult male who has a risk assessment of moderate-high or high shall be electronically monitored while on parole, unless the court determines that monitoring is inappropriate for a particular person.

5

8. 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.
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.
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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

6

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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

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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,

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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;

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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.

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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.

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County sexual assault felony enforcement team programs, see Penal Code § 13887 et seq.

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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.

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CA Jur. 3d Penal and Correctional Institutions § 238, Residence Restrictions on Sex Offender Registrant Parolees.

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2 Witkin Cal. Crim. L. 3d Crimes Against Peace Welf § 41, Disruptive Persons and Sex Offenders.

2 Witkin Cal. Crim. L. 3d Crimes Against Peace Welf § 47, What Constitutes Lewd or Dissolute Conduct.

2 Witkin Cal. Crim. L. 3d Crimes Against Peace Welf § 49, About Public Toilet.

2 Witkin Cal. Crim. L. 3d Crimes Against Peace Welf § 59, in General.

1 Witkin Cal. Crim. L. 3d Crimes Against the Person § 296, Punishment.

6 Witkin Cal. Crim. L. 3d Criminal Appeal § 93, Power and Procedure.

6 Witkin Cal. Crim. L. 3d Criminal Judgment § 126, Nature of Former Statute.

5 Witkin Cal. Crim. L. 3d Criminal Trial § 633, Words in Common Usage.

5 Witkin Cal. Crim. L. 3d Criminal Trial § 711, in General.

1 Witkin Cal. Crim. L. 3d Defenses § 219, Limitation Periods.

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4 Witkin Cal. Crim. L. 3d Jurisdiction and Venue § 20, Crime Committed in Part Within State.

4 Witkin Cal. Crim. L. 3d Pretrial Proceedings § 61, Notification Concerning Particular Offenses.

4 Witkin Cal. Crim. L. 3d Pretrial Proceedings § 279, Direct Consequences.

4 Witkin Cal. Crim. L. 3d Pretrial Proceedings § 331, Misadvisement.

4 Witkin Cal. Crim. L. 3d Pretrial Proceedings § 332, Plea Properly Set Aside.

3 Witkin Cal. Crim. L. 3d Punishment § 89, Probation and Parole.

3 Witkin Cal. Crim. L. 3d Punishment § 114, Application of Lynch: Dillon Case.

3 Witkin Cal. Crim. L. 3d Punishment § 118, Other Offenses.

3 Witkin Cal. Crim. L. 3d Punishment § 120, Sex Offenses.

3 Witkin Cal. Crim. L. 3d Punishment § 164, in General.

3 Witkin Cal. Crim. L. 3d Punishment § 165, Multiple Violations of Same Statute.

3 Witkin Cal. Crim. L. 3d Punishment § 184, Nature and Purpose.

3 Witkin Cal. Crim. L. 3d Punishment § 185, Persons Required to Register.

3 Witkin Cal. Crim. L. 3d Punishment § 186, Exemptions.

3 Witkin Cal. Crim. L. 3d Punishment § 187, Constitutionality.

3 Witkin Cal. Crim. L. 3d Punishment § 188, Violations.

3 Witkin Cal. Crim. L. 3d Punishment § 189, Collection of Information.

3 Witkin Cal. Crim. L. 3d Punishment § 191, Disclosure.

3 Witkin Cal. Crim. L. 3d Punishment § 257, Element of Crime.

3 Witkin Cal. Crim. L. 3d Punishment § 297, Sex Offenses.

3 Witkin Cal. Crim. L. 3d Punishment § 298, Crime Against Sex Offender.

3 Witkin Cal. Crim. L. 3d Punishment § 355, Not Cruel and Unusual Punishment.

3 Witkin Cal. Crim. L. 3d Punishment § 560, in General.

3 Witkin Cal. Crim. L. 3d Punishment § 603, Remaining Effects of Conviction.

3 Witkin Cal. Crim. L. 3d Punishment § 605, in General.

3 Witkin Cal. Crim. L. 3d Punishment § 609, Where Minor was Not Convicted.

3 Witkin Cal. Crim. L. 3d Punishment § 630, Mandatory Conditions.

3 Witkin Cal. Crim. L. 3d Punishment § 641, in General.

3 Witkin Cal. Crim. L. 3d Punishment § 671, in General.

3 Witkin Cal. Crim. L. 3d Punishment § 673, Order, Certificate, and Pardon.

3 Witkin Cal. Crim. L. 3d Punishment § 674, Effect of Certificate and Pardon.

3 Witkin Cal. Crim. L. 3d Punishment § 185A, Transient Offenders.

2 Witkin Cal. Crim. L. 3d Sex Offenses & Crimes § 99, Possession or Control of Child Pornography.

2 Witkin Cal. Crim. L. 3d Sex Offenses & Crimes § 168, in General.

2 Witkin Cal. Crim. L. 3d Sex Offenses & Crimes § 54A, Arranging to Meet With Minor for Immoral Purposes.

3 Witkin Cal. Proc. 4th Actions § 42, Procedure.

10 Witkin, California Summary 10th Parent and Child § 200, Commission of Crime.

10 Witkin, California Summary 10th Parent and Child § 496, Records of Students.

10 Witkin, California Summary 10th Parent and Child § 503, Petition and Order.

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10 Witkin, California Summary 10th Parent and Child § 974, Registration for Sex Offenses.

10 Witkin, California Summary 10th Parent and Child § 253A, Registration as Sex Offender.

5 Witkin, California Summary 10th Torts § 246, Illustrations Finding Liability.

7 Witkin, California Summary 10th Constitutional Law § 589, Sex Crimes.

8 Witkin, California Summary 10th Constitutional Law § 791, Persons Convicted of Crimes.

UNITED STATES CODE ANNOTATED

Child protection,

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.

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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 reregister with 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. Amin (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)

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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 restrained 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 regulatory in 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 register with 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 addition to 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 after and because of a 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 “willfulness” 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 re-registration 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 to 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 result 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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END OF DOCUMENT

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Effective: September 20, 2006

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)

→ § 290.03. 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.

LAW REVIEW AND JOURNAL COMMENTARIES


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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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3 Witkin Cal. Crim. L. 3d Punishment § 184, Nature and Purpose.

West's Ann. Cal. Penal Code § 290.03, CA PENAL § 290.03

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)

→ § 290.04. 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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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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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)

→ § 290.05. 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

2008 Main Volume

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


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West's Ann. Cal. Penal Code § 290.05, CA PENAL § 290.05

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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)

→ § 290.06. 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