

unanimously agrees that such a process is appropriate and feasible, it shall advise the Governor and the Legislature of the selected tool, and it shall post its decision on the Department of Corrections and Rehabilitation's Internet Web site. Sixty days after the decision is posted, the established process shall become effective.

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

CREDIT(S)

(Added by Stats.2006, c. 337 (S.B.1128), § 15, eff. Sept. 20, 2006.)

HISTORICAL AND STATUTORY NOTES

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.

Another § 290.06, added by Stats.2006, c. 336 (S.B.1178), § 3, eff. Sept. 20, 2006, relating to the administration of SARATCO and the definition of eligible person, was repealed by Stats.2006, c. 886 (A.B.1849), § 3, eff. Sept. 30, 2006.

For operative and urgency effective provisions relating to Stats.2006, c. 886 (A.B.1849), see Historical and Statutory Notes following Penal Code § 290.46.

CROSS REFERENCES

Department of Corrections, generally, see Penal Code § 5000 et seq.

Department of Mental Health, generally, see Welfare and Institutions Code § 4000 et seq.

Parolees at high risk of committing sex crimes, intensive and specialized parole supervision, relapse prevention treatment programs and control and containment programming, see Penal Code § 3008.

Probation, SARATSO test results to be included in probation officer's report, see Penal Code §§ 1203, 1203e.

Probationers at high risk for committing sexual offenses, intensive and specialized probation supervision, see Penal Code § 1203e.

Sex offenders on parole, assessment and monitoring, see Penal Code § 3004.

Sex offenders on probation, assessment and monitoring, see Penal Code § 1202.8


LAW REVIEW AND JOURNAL COMMENTARIES

Megan's Law or Sarah's Law? A comparative analysis of public notification statutes in the United States and England. Meghann J. Dugan, 23 Loy.L.A.Int'l & Comp.L.Rev. 617 (2001).

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).

LIBRARY REFERENCES

2008 Main Volume

Mental Health  469(4).
Westlaw Topic No. 257A.

RESEARCH REFERENCES

Treatises and Practice Aids

3 Witkin Cal. Crim. L. 3d Punishment § 504, Supervision of Probationer.

West's Ann. Cal. Penal Code § 290.06, CA PENAL § 290.06

Current with urgency legislation through Ch. 266 of 2008 Reg.Sess. and Ch. 7 of 2007-2008 Third Ex.Sess., and Prop. 99

(C) 2008 Thomson Reuters/West

END OF DOCUMENT



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)

→ § 290.07. Access to sex offender records by persons authorized to administer SARATSO

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

CREDIT(S)

(Added by Stats.2006, c. 337 (S.B.1128), § 16, eff. Sept. 20, 2006.)

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

Megan's Law or Sarah's Law? A comparative analysis of public notification statutes in the United States and England. Meghann J. Dugan, 23 Loy.L.A.Int'l & Comp.L.Rev. 617 (2001).

LIBRARY REFERENCES

2008 Main Volume

Mental Health  469(4).
Westlaw Topic No. 257A.

West's Ann. Cal. Penal Code § 290.07, CA PENAL § 290.07

Current with urgency legislation through Ch. 266 of 2008 Reg.Sess. and Ch. 7 of 2007-2008 Third Ex.Sess., and Prop. 99

(C) 2008 Thomson Reuters/West

END OF DOCUMENT



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)

→ § 290.08. Retention of registered sex offender records; time period

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

CREDIT(S)

(Added by Stats.2006, c. 337 (S.B.1128), § 17, eff. Sept. 20, 2006.)

HISTORICAL AND STATUTORY NOTES

2008 Main Volume

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

Megan's Law or Sarah's Law? A comparative analysis of public notification statutes in the United States and England. Meghann J. Dugan, 23 Loy.L.A.Int'l & Comp.L.Rev. 617 (2001).

LIBRARY REFERENCES

2008 Main Volume

Mental Health 469(4).
Westlaw Topic No. 257A.

West's Ann. Cal. Penal Code § 290.08, CA PENAL § 290.08

Current with urgency legislation through Ch. 266 of 2008 Reg.Sess. and Ch. 7 of 2007-2008 Third Ex.Sess., and Prop. 99



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)

→ **§ 290.46. Sex offender information made available to public via Internet Web site; ongoing updates; information included and restricted; offenses and offenders included; notification; misuse of information; report to legislature**

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

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

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

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

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

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

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

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

(iii) Any state facility that, prior to January 1, 2007, released from incarceration a person who was incarcerated because of a crime for which he or she is required to register as a sex offender pursuant to Section 290 shall provide the year of release for his or her most recent offense requiring registration to the Department of Justice in a manner and format approved by the department. The information provided by the Department of Corrections and Rehabilitation shall be limited to information that is currently maintained in an electronic format.

(iv) Any state facility that, prior to January 1, 2007, released a person who is required to register pursuant to Section 290 from incarceration whose incarceration was for a felony committed subsequently to the offense for which he or she is required to register shall advise the Department of Justice of that fact in a manner and format approved by the department. The information provided by the Department of Corrections and Rehabilitation shall be limited to information that is currently maintained in an electronic format.

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

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

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

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

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

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

(D) Section 264.1.

(E) Section 269.

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

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

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

(I) Section 288.3, provided that the offense is a felony.

(J) Section 288.4, provided that the offense is a felony.

(K) Section 288.5.

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

(M) Section 288.7.

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

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

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

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

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

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

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

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

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

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

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

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

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

(D) Section 266j.

(E) Section 267.

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

(G) Section 288.3, provided that the offense is a misdemeanor.

(H) Section 288.4, provided that the offense is a misdemeanor.

(I) Section 626.81.

(J) Section 647.6.

(K) Section 653c.

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

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

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

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

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

(C)(i) An offense for which the offender successfully completed probation, provided that the offender submits to the department a certified copy of a probation report, presentencing report, report prepared pursuant to Section 288.1, or other official court document that clearly demonstrates that the offender was the victim's parent, stepparent, sibling, or grandparent and that the crime did not involve either oral copulation or penetration of the vagina or rectum of either the victim or the offender by the penis of the other or by any foreign object.

(ii) An offense for which the offender is on probation at the time of his or her application, provided that the offender submits to the department a certified copy of a probation report, presentencing report, report prepared pursuant to Section 288.1, or other official court document that clearly demonstrates that the offender was the victim's parent, stepparent, sibling, or grandparent and that the crime did not involve either oral copulation or penetration of the vagina or rectum of either the victim or the offender by the penis of the other or by any foreign object.

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

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

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

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

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

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

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

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

(h) For purposes of this section, "offense" includes the statutory predecessors of that offense, or any offense committed in another jurisdiction that, if committed or attempted to be committed in this state, would have been punishable in this state as an offense listed in subdivision (c) of Section 290.

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

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

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

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

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

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

(A) Health insurance.

(B) Insurance.

(C) Loans.

(D) Credit.

(E) Employment.

(F) Education, scholarships, or fellowships.

(G) Housing or accommodations.

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

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

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

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

(m) The public notification provisions of this section are applicable to every person described in this section,

without regard to when his or her crimes were committed or his or her duty to register pursuant to Section 290 arose, and to every offense described in this section, regardless of when it was committed.

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

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

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

CREDIT(S)

(Added by Stats.2004, c. 745 (A.B.488), § 1, eff. Sept. 24, 2004. Amended by Stats.2005, c. 721 (A.B.437), § 1; Stats.2005, c. 722 (A.B.1323), § 7, eff. Oct. 7, 2005; Stats.2006, c. 337 (S.B.1128), § 19, eff. Sept. 20, 2006; Stats.2006, c. 886 (A.B.1849), § 4.2, eff. Sept. 30, 2006; Stats.2007, c. 579 (S.B.172), § 36, eff. Oct. 13, 2007.)

HISTORICAL AND STATUTORY NOTES

2008 Main Volume

Sections 2 to 5 of Stats.2004, c. 745 (A.B.488), provide:

“SEC. 2. It is the intent of the Legislature that the Department of Justice continue to maximize all available resources to ensure the highest degree of accuracy in the sex registration database, and that the department assist local agencies in developing strategies to achieve that goal.

“SEC. 3. The sum of six hundred fifty thousand dollars (\$650,000) is hereby appropriated from the General Fund to the Department of Justice for the purpose of implementing this act.

“SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

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

“In order to ensure that members of the public have adequate information about the identities and locations of sex offenders who may put them and their families at risk, it is necessary that this act take effect immediately.”

Governor Schwarzenegger issued the following signing message regarding Stats.2004, c. 745 (A.B.488):

“To the Members of the California State Assembly:

“I am signing Assembly Bill 488.

“This bill represents a good first step in providing the most valuable tool we can give to parents to protect their children from sexual predators -- information. By providing sex offender information on the Internet, California will finally join the majority of other states that make this information accessible to parents and others.

“That being said, we have a long way to go to make California a leader in protecting our children. I encourage the Legislature to work together next year to provide a more comprehensive measure that will ensure more of the Megan's Law database is available to the public with information on their neighbors and neighborhood.

“Sincerely,

“Arnold Schwarzenegger”

Stats.2005, c. 722 (A.B.1323), rewrote this section, which had read:

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

“(b)(1) On or before July 1, 2005, with respect to a person who has been convicted of the commission or the attempted commission of any of the offenses listed in this subdivision or the statutory predecessors of any of these offenses, or any offense which, if committed or attempted to be committed in this state, would have been punishable as one or more of the offenses listed in this subdivision, the Department of Justice shall make available to the public via the Internet Web site his or her names and known aliases, a photograph, a physical description, including gender and race, date of birth, criminal history, the address at which the person resides, and any other information that the Department of Justice deems relevant, but not the information excluded pursuant to subdivision (a).

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

“(A) Subdivision (b) of Section 207.

“(B) Subdivision (b) of Section 209, except kidnapping to commit robbery.

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

“(D) Section 264.1.

“(E) Section 269.

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

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

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

“(I) Section 288.5.

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

“(3) This subdivision shall also apply to any person who has ever been adjudicated a sexually violent predator as defined in Section 6600 of the Welfare and Institutions Code.

“(c)(1) On or before July 1, 2005, with respect to a person who has been convicted of the commission or the attempted commission of any of the offenses listed in paragraph (2) or the statutory predecessors of any of these offenses, or any offense which, if committed or attempted to be committed in this state, would have been punishable as one or more of the offenses listed in this subdivision, the Department of Justice shall make available to the public via the Internet Web site his or her names and known aliases, a photograph, a physical description, including gender and race, date of birth, criminal history, the community of residence and ZIP Code in which the person resides, and any other information that the Department of Justice deems relevant, but not the information excluded pursuant to subdivision (a). However, the address at which the person resides shall not be disclosed until a determination is made that the person is, by virtue of his or her additional prior or subsequent conviction of an offense listed in paragraph (2) of subdivision (a) of Section 290, subject to this subdivision. On or before July 1, 2006, the Department of Justice shall determine whether any person convicted of an offense listed in paragraph (2) also has one or more prior or subsequent convictions of an offense listed in paragraph (2) of subdivision (a) of Section 290, and, for those persons, the Department of Justice shall make available to the public via the Internet Web site the address at which the person resides.

“(2) This subdivision shall apply to the following offenses, provided that the person has one or more prior or subsequent convictions of an offense listed in paragraph (2) of subdivision (a) of Section 290:

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

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

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

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

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

“(d)(1) On or before July 1, 2005, with respect to a person who has been convicted of the commission or the attempted commission of any of the offenses listed in this subdivision or the statutory predecessors of any of these offenses, or of any offense which, if committed or attempted to be committed in this state, would have been punishable as one or more of the offenses listed in this subdivision, the Department of Justice shall make available to the public via the Internet Web site his or her names and known aliases, a photograph, a physical description, including gender and race, date of birth, criminal history, the community of residence and ZIP Code in which the person resides, and any other information that the Department of Justice deems relevant, but not the information excluded pursuant to subdivision (a) or the address at which the person resides.

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

“(A) Section 220, except assault to commit mayhem, with no prior or subsequent conviction of an offense listed in paragraph (2) of subdivision (a) of Section 290.

“(B) Subdivision (a) of Section 243.4, provided that the offense is a felony.

“(C) Paragraph (1), (3), or (4) of subdivision (a) of Section 261, with no prior or subsequent conviction of an offense listed in paragraph (2) of subdivision (a) of Section 290.

“(D) Section 266, provided that the offense is a felony.

“(E) Section 266c, provided that the offense is a felony.

“(F) Section 266j.

“(G) Section 267.

“(H) Paragraph (2) of subdivision (b), or subdivision (f), (g), or (i), of Section 286, with no prior or subsequent conviction of an offense listed in paragraph (2) of subdivision (a) of Section 290.

“(I) Subdivision (c) of Section 288, provided that the offense is a misdemeanor.

“(J) Paragraph (2) of subdivision (b), or subdivision (f), (g), or (i), of Section 288a, with no prior or subsequent conviction of an offense listed in paragraph (2) of subdivision (a) of Section 290.

“(K) Subdivision (b), (d), (e), or (i) of Section 289, with no prior or subsequent conviction of an offense listed in paragraph (2) of subdivision (a) of Section 290.

“(L) Section 647.6.

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

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

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

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

“(C) An offense listed in subdivision (b), (c), or (d) if the offender is eligible for, granted, and successfully completes probation pursuant to Section 1203.066 of the Penal Code.

“(f) The Department of Justice shall make a reasonable effort to provide notification to persons who have been convicted of the commission or attempted commission of an offense specified in subdivision (b), (c), or (d), that on or before July 1, 2005, the department is required to make information about him or her available to the public via an Internet Web site as specified in this section. The Department of Justice shall also make a reasonable effort to provide notice that he or she may be eligible for exclusion from the Internet Web site if he or she may have been convicted of an offense for which exclusion is available pursuant to subdivision (e).

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

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

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

“(i) Any person who is required to register pursuant to Section 290 who enters the Web site is punishable by a fine not exceeding one thousand dollars (\$1,000), imprisonment in a county jail for a period not to exceed six months, or by both that fine and imprisonment.

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

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

“(A) Health insurance.

“(B) Insurance.

“(C) Loans.

“(D) Credit.

“(E) Employment.

“(F) Education, scholarships, or fellowships.

“(G) Housing or accommodations.

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

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

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

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

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

“(l) The Department of Justice and its employees shall be immune from liability for good faith conduct under this section.”

Sections 12 to 15 of Stats.2005, c. 722 (A.B.1323), provide:

“SEC. 12. The Legislature finds and declares the following:

“(a) The findings and declarations made by the Legislature in Section 1 of Chapter 908 of the Statutes of 1996, which enacted California's law relating to public notification regarding registered sex offenders, also apply to public notification made via the Internet Web site mandated by this section.

“(b) Releasing the home addresses and other information pertaining to specified registered sex offenders is not intended to further punish them for their offenses, but to allow the public to be aware of their presence in the community and take appropriate and lawful safety precautions on behalf of themselves and their children.

“(c) The notice concerning sex offender information required by Section 2079.10a of the Civil Code is not expected to change immediately upon the effective date of this act or immediately upon the notification to the Secretary of State pursuant to Section 290.47 of the Penal Code, as added by this act. It is expected that forms accompanying real estate transactions may reflect the notice in the prior law for a reasonable period following those dates.

“SEC. 13. Section 3.5 of this bill incorporates amendments to Section 290 of the Penal Code proposed by both this bill and AB 439 [Stats.2005, c. 704]. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2006, but this bill becomes operative first, (2) each bill amends Section 290 of the Penal Code, and (3) this bill is enacted after AB 439 [Stats.2005, c. 704], in which case Section 290 of the Penal Code, as amended by Section 3 of this bill, shall remain operative only until the operative date of AB 439 [Stats.2005, c. 704], at which time Section 3.5 of this bill shall become operative.

“SEC. 14. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime

within the meaning of Section 6 of Article XIII B of the California Constitution.

“SEC. 15. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

“In order to assure that members of the public have adequate information about the identities and locations of sex offenders who may put them and their families at risk, it is necessary that this act take effect immediately.”

Section affected by two or more acts at the same session of the legislature, see Government Code § 9605.

Stats.2006, c. 337 (S.B.1128), designated subd. (a) as subd. (a)(1) and added par. (2); in subd. (b)(1), inserted “prior adjudication as a sexually violent predator;”, in subd. (b)(2), redesignated subpar. (I) as (J), subpar. (J) as (L), and subpar. (K) as (M), and inserted subpars. (I) and (K); in subd. (d)(2), redesignated subpar. (G) as (I) and subpar. (H) as (K), and inserted subpars. (G), (H), and (J); in subd. (e)(2)(B), substituted “if” for “provided”; in subd. (e)(2)(C), in both clauses (i) and (ii), deleted “both of the following:” following “demonstrates”, and incorporated items (I) and (II) into each clause by deleting the item number and inserting “that” and “and that” preceding “the”; in subd. (e), added pars. (3) and (4); and added subd. (p).

Section 60 of Stats.2006, c. 337 (S.B.1128), provides:

“SEC. 60. Section 19.5 of this bill incorporates amendments to Section 290.46 of the Penal Code proposed by both this bill and Assembly Bill 1849 [Stats.2006, c. 886]. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2007, but this bill becomes operative first, (2) each bill amends Section 290.46 of the Penal Code, and (3) this bill is enacted after Assembly Bill 1849 [Stats.2006, c. 886], in which case Section 290.46 of the Penal Code, as amended by Section 19 of this bill, shall remain operative only until the operative date of Assembly Bill 1849 [Stats.2006, c. 886], at which time Section 19.5 of this bill shall become operative.”

An amendment of this section by § 19.5 of Stats.2006, c. 337 (S.B.1128), failed to become operative under the provisions of § 60 of that Act.

For short title of act, legislative findings and declarations, and appropriations, severability, cost reimbursement, and urgency effective provisions relating to Stats.2006, c. 337 (S.B.1128), see Historical and Statutory Notes under Government Code § 68152.

Stats.2006, c. 886 (A.B.1849), in subd. (a), designated par. (1) and added par. (2); in subd. (b)(1), inserted “prior adjudication as a sexually violent predator;”, inserted. subpars. (I) and (M) and redesignated remaining subparagraphs; in subd. (d)(1), inserted subpars. (G) to (J) and redesignated the remaining subparagraph; in subd. (e)(2)(B), substituted “if” for “provided”; in subd. (e)(2)(C)(i) and (ii), deleted “both of the following:” following “demonstrates”, and incorporated items (I) and (II) into each clause by deleting the item number and inserted “that” and “and that” preceding “the”; added pars. (3) and (4); and added subd. (p).

Section 7 of Stats.2006, c. 886 (A.B.1849), provides:

“SEC. 7. (a) Section 4.1 of this bill incorporates amendments to Section 290.46 of the Penal Code proposed by both this bill and AB 2712 [vetoed]. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2007, but this bill becomes operative first, (2) each bill amends Section 290.46 of the Penal Code, and (3) SB 1128 [c. 337] is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 2712 [vetoed], in which case Section 290.46 of the Penal Code, as amended by Section 4 of this bill, shall

remain operative only until the operative date of AB 2712 [vetoed], at which time Section 4.1 of this bill shall become operative and Sections 4.2 and 4.3 of this bill shall not become operative.

“(b) Section 4.2 of this bill incorporates amendments to Section 290.46 of the Penal Code proposed by both this bill and SB 1128 [c. 337]. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2007, (2) each bill amends Section 290.46 of the Penal Code, (3) AB 2712 [vetoed] is not enacted or as enacted does not amend that section, and (4) this bill is enacted after SB 1128 [c. 337] in which case Section 290.46 of the Penal Code as amended by SB 1128 [c. 337], shall remain operative only until the operative date of this bill, at which time Section 4.2 of this bill shall become operative, and Sections 4, 4.1, and 4.3 of this bill shall not become operative.

“(c) Section 4.3 of this bill incorporates amendments to Section 290.46 of the Penal Code proposed by this bill, AB 2712 [vetoed], and SB 1128 [c. 337]. It shall only become operative if (1) all three bills are enacted and become effective on or before January 1, 2007, (2) all three bills amend Section 290.46 of the Penal Code, and (3) this bill is enacted after AB 2712 [vetoed] and SB 1128 [c. 337], in which case Section 290.46 of the Penal Code as amended by SB 1128 [c. 337], shall remain operative only until the operative date of this bill, at which time Section 4.2 of this bill shall become operative and shall remain operative only until the operative date of AB 2712 [vetoed], at which time Section 4.3 of this bill shall become operative, and Sections 4 and 4.1 of this bill shall not become operative.”

An amendment of this section by §§ 4, 4.1 and 4.3 of Stats.2006, c. 886, failed to become operative under the provisions of § 7 of that Act.

Sections 8 to 11 of Stats.2006, c. 886 (A.B.1849), provide:

“SEC. 8. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

“SEC. 9. This bill shall only become operative if Senate Bill 1128 [c. 337] of the 2005-06 Regular Session is also enacted and becomes effective on or before January 1, 2007.

“SEC. 10. Sections 1, 2, 3, 5, and 6 of this act shall become operative only if Senate Bill No. 1178 [c. 336] is also enacted and this act is enacted after Senate Bill 1178 [c. 336].

“SEC. 11. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

“In order to ensure the public safety of California families and their children and to ensure that the Megan's Law database provides adequate information about registered sex offenders living in California, it is necessary that this act take effect immediately.”

For executive order S-08-06, issued by Governor Schwarzenegger on May 15, 2006, relating to creation of a High Risk Sex Offender Task Force, see Historical and Statutory Notes under Penal Code § 3003.

For executive order S-15-06 issued by Governor Schwarzenegger, see Historical and Statutory Notes under Penal Code § 3003.

Stats.2007, c. 579 (S.B.172), in subd. (a)(3), inserted “State”; in subd. (b)(2), inserted subpar. (J), and redesignated

the remaining subparagraphs as (K) to (N); in subd. (c)(1), substituted “subdivision (c)” for “paragraph (2) of subdivision (a)” in two places; in subd. (d)(1), inserted subpar. (H), redesignated the remaining subparagraphs as (I) to (L), and in subd. (L), substituted “subdivision (c)” for “subparagraph (A) of paragraph (2) of subdivision (a)”; and in subd. (h), substituted “subdivision (c)” for “subparagraph (A) of paragraph (2) of subdivision (a)”.

For legislative intent and urgency effective provisions relating to Stats.2007, c. 579 (S.B.172), see Historical and Statutory Notes under Penal Code § 290.

CROSS REFERENCES

Attorney General, generally, see Government Code § 12500 et seq.

Community care facilities, registration as sex offender, disclosure by community care facility client, operator disclosure, see Health and Safety Code § 1522.01.

Department of Corrections, generally, see Penal Code § 5000 et seq.

Department of Mental Health, generally, see Welfare and Institutions Code § 4000 et seq.

Felonies, definition and penalties, see Penal Code §§ 17 and 18.

Lease or rental agreements for residential real property and contracts for sale of residential real property comprised of one to four dwelling units, notice about registered sex offenders, see Civil Code § 2079.10a.

Misdemeanors, definition and penalties, see Penal Code §§ 17, 19 and 19.2.

Prevention of public funding of erectile dysfunction drugs for sex offenders, information disclosure, see Penal Code § 290.02.

Sex offender registration, compilation of information for specified offenses, “900” telephone number, income deposit, violations and penalties, and report to legislature, see Penal Code § 290.4.

LAW REVIEW AND JOURNAL COMMENTARIES


A better approach to juvenile sex offender registration in California. Christina D. Rule, 42 U.S.F. J., Rev. 497 (2007).

Megan's Law or Sarah's Law? A comparative analysis of public notification statutes in the United States and England. Meghann J. Dugan, 23 Loy.L.A.Int'l & Comp.L.Rev. 617 (2001).

Review of Selected 2005 California Legislation (Chapter 721: Providing sex offenders' conviction and release dates to the public). Laura Friedman, 37 McGeorge L. Rev. 261 (2006).

LIBRARY REFERENCES

2008 Main Volume

Mental Health  469(1).
Westlaw Topic No. 257A.

RESEARCH REFERENCES

Encyclopedias

CA Jur. 3d Criminal Law: Post-Trial Proceedings § 41, Disclosure of Information.

Cal. Civ. Prac. Real Property Litigation § 1:32, Disclosure Statement Regarding Registered Criminal Offenders.

Forms

West's California Code Forms, Civil § 2079.10A Form 1, Disclosure of Registered Sex Offenders.

Treatises and Practice Aids

Cal. Common Interest Devs.: Law and Practice § 24:16, Residential Purchase Agreement and Escrow Instructions.

Rutter, Cal. Practice Guide: Landlord-Tenant Ch. 2C-1, Broad Anti-Discrimination Policies Under California Law.

Employment Coordinator Employment Practices § 33:13, California.

Emp. Discrim. Coord. Analysis of State Law § 8:61, Preemployment Inquiries.

Investigating Employee Conduct § 7:3, Arrest and Criminal Records.

Investigating Employee Conduct App C, Arrest and Conviction Records.

Miller and Starr California Real Estate § 1:144, Duty of Seller of Real Property to Disclose--Statutory Duty of Disclosure.

Miller and Starr California Real Estate § 20:12, California Fair Employment and Housing Act.

Miller and Starr California Real Estate § 19:123, Landlord's Duty to Disclose Defects to a Tenant.

16 NO. 6 Miller & Starr, California Real Estate Newsalert 2, Discrimination.

16 NO. 4 Miller & Starr, California Real Estate Newsalert 5, Contracts.

17 NO. 2 Miller & Starr, California Real Estate Newsalert 1, The "Big Daddy" of Civil Rights Acts Nears Fifty.

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

3 Witkin Cal. Crim. L. 3d Punishment § 190, Public Access.

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


NOTES OF DECISIONS

Construction with federal law 1

Construction with other laws 2

1. Construction with federal law

Imposition of sex offender registration and public notification requirements against defendant who was convicted of false imprisonment and assault did not constitute punishment beyond permissible range that would require jury

findings under Sixth Amendment, and thus judge properly imposed such conditions. People v. Presley (App. 3 Dist. 2007) 67 Cal.Rptr.3d 826, 156 Cal.App.4th 1027, review denied. Jury  34(7)

2. Construction with other laws

The prohibition against the unauthorized use of registered sex offender identifying information obtained from the California “Megan's Law” Web site does not in itself qualify registered sex offenders as a “protected class” for purposes of housing discrimination under the Fair Employment and Housing Act. Op.Atty.Gen. 05-301 (April 27, 2006), 2006 WL 1144373.

West's Ann. Cal. Penal Code § 290.46, CA PENAL § 290.46

Current with urgency legislation through Ch. 266 of 2008 Reg.Sess. and Ch. 7 of 2007-2008 Third Ex.Sess., and Prop. 99

(C) 2008 Thomson Reuters/West

END OF DOCUMENT

SB 172 Senate Bill - CHAPTEREDBILL NUMBER: SB 172 CHAPTERED
BILL TEXT

CHAPTER 579
FILED WITH SECRETARY OF STATE OCTOBER 13, 2007
APPROVED BY GOVERNOR OCTOBER 13, 2007
PASSED THE SENATE SEPTEMBER 12, 2007
PASSED THE ASSEMBLY SEPTEMBER 10, 2007
AMENDED IN ASSEMBLY SEPTEMBER 7, 2007
AMENDED IN ASSEMBLY SEPTEMBER 5, 2007
AMENDED IN ASSEMBLY JUNE 28, 2007
AMENDED IN ASSEMBLY JUNE 19, 2007
AMENDED IN SENATE APRIL 19, 2007

INTRODUCED BY Senator Alquist
(Principal coauthor: Assembly Member Solorio)

FEBRUARY 5, 2007

An act to amend Sections 1522, 1568.09, 1569.17, and 1596.871 of the Health and Safety Code, and to amend Sections 289.5, 290.01, 290.04, 290.05, 290.3, 290.46, 296.2, 311.11, 646.9, 801.1, 803, 1202.7, 1417.8, 3000, 3000.07, 3004, 3060.6, 5054.1, and 5054.2 of, to amend and renumber Sections 288.3 and 3005 of, to add Sections 290.001, 290.002, 290.003, 290.004, 290.005, 290.006, 290.007, 290.008, 290.009, 290.010, 290.011, 290.012, 290.013, 290.014, 290.015, 290.016, 290.017, 290.018, 290.019, 290.020, 290.021, 290.022, and 290.023 to, and to repeal and add Section 290 to, the Penal Code, relating to sex offenders, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 172, Alquist. Crimes: sex offenders.

Existing law provides for various penalty provisions related to sex offenders.

This bill would make nonsubstantive, conforming changes to those provisions. The bill would make clarifying changes to provisions related to the risk assessment tool to be used to identify sex offenders, and would make related technical changes.

Existing law requires persons who have been convicted of specified crimes, and other persons as required by a court, to register as a sex offender. Existing law sets forth the procedure for doing so.

This bill would reorganize and renumber the provisions that set forth that procedure, and would make conforming technical changes in related provisions of law.

This bill would incorporate additional changes in Section 1522 of the Health and Safety Code, proposed by SB 776, to be operative only if SB 776 and this bill are both chaptered and become effective on or before January 1, 2008, and this bill is chaptered last.

This bill would incorporate additional changes in Section 646.9 of the Penal Code, proposed by AB 289, to be operative only if AB 289 and this bill are both chaptered and become effective on or before January 1, 2008, and this bill is chaptered last.

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

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

SECTION 1. Section 1522 of the Health and Safety Code is amended to read:

1522. The Legislature recognizes the need to generate timely and accurate positive fingerprint identification of applicants as a condition of issuing licenses, permits, or certificates of approval for persons to operate or provide direct care services in a community care facility, foster family home, or a certified family home of a licensed foster family agency. Therefore, the Legislature supports the use of the fingerprint live-scan technology, as identified in the long-range plan of the Department of Justice for fully automating the processing of fingerprints and other data by the year 1999, otherwise known as the California Crime Information Intelligence System (CAL-CII), to be used for applicant fingerprints. It is the intent of the Legislature in enacting this section to require the fingerprints of those individuals whose contact with community care clients may pose a risk to the clients' health and safety. An individual shall be required to obtain either a criminal record clearance or a criminal record exemption from the State Department of Social Services before his or her initial presence in a community care facility.

(a) (1) Before issuing a license or special permit to any person or persons to operate or manage a community care facility, the State Department of Social Services shall secure from an appropriate law enforcement agency a criminal record to determine whether the applicant or any other person specified in subdivision (b) has ever been convicted of a crime other than a minor traffic violation or arrested for any crime specified in Section 290 of the Penal Code, for violating Section 245 or 273.5, of the Penal Code, subdivision (b) of Section 273a of the Penal Code, or, prior to January 1, 1994, paragraph (2) of Section 273a of the Penal Code, or for any crime for which the department cannot grant an exemption if the person was convicted and the person has not been exonerated.

(2) The criminal history information shall include the full criminal record, if any, of those persons, and subsequent arrest information pursuant to Section 11105.2 of the Penal Code.

(3) Except during the 2003-04, 2004-05, 2005-06, 2006-07, and 2007-08 fiscal years, neither the Department of Justice nor the State Department of Social Services may charge a fee for the fingerprinting of an applicant for a license or special permit to operate a facility providing nonmedical board, room, and care for six or less children or for obtaining a criminal record of the applicant pursuant to this section.

(4) The following shall apply to the criminal record information:

(A) If the State Department of Social Services finds that the applicant, or any other person specified in subdivision (b), has been convicted of a crime other than a minor traffic violation, the application shall be denied, unless the director grants an exemption pursuant to subdivision (g).

(B) If the State Department of Social Services finds that the applicant, or any other person specified in subdivision (b) is awaiting trial for a crime other than a minor traffic violation, the

State Department of Social Services may cease processing the application until the conclusion of the trial.

(C) If no criminal record information has been recorded, the Department of Justice shall provide the applicant and the State Department of Social Services with a statement of that fact.

(D) If the State Department of Social Services finds after licensure that the licensee, or any other person specified in paragraph (2) of subdivision (b), has been convicted of a crime other than a minor traffic violation, the license may be revoked, unless the director grants an exemption pursuant to subdivision (g).

(E) An applicant and any other person specified in subdivision (b) shall submit fingerprint images and related information to the Department of Justice for the purpose of searching the criminal records of the Federal Bureau of Investigation, in addition to the criminal records search required by this subdivision. If an applicant and all other persons described in subdivision (b) meet all of the conditions for licensure, except receipt of the Federal Bureau of Investigation's criminal offender record information search response for the applicant or any of the persons described in subdivision (b), the department may issue a license if the applicant and each person described in subdivision (b) has signed and submitted a statement that he or she has never been convicted of a crime in the United States, other than a traffic infraction, as defined in paragraph (1) of subdivision (a) of Section 42001 of the Vehicle Code. If, after licensure, the department determines that the licensee or any other person specified in subdivision (b) has a criminal record, the license may be revoked pursuant to Section 1550. The department may also suspend the license pending an administrative hearing pursuant to Section 1550.5.

(F) The State Department of Social Services shall develop procedures to provide the individual's state and federal criminal history information with the written notification of his or her exemption denial or revocation based on the criminal record. Receipt of the criminal history information shall be optional on the part of the individual, as set forth in the agency's procedures. The procedure shall protect the confidentiality and privacy of the individual's record, and the criminal history information shall not be made available to the employer.

(G) Notwithstanding any other provision of law, the department is authorized to provide an individual with a copy of his or her state or federal level criminal offender record information search response as provided to that department by the Department of Justice if the department has denied a criminal background clearance based on this information and the individual makes a written request to the department for a copy specifying an address to which it is to be sent. The state or federal level criminal offender record information search response shall not be modified or altered from its form or content as provided by the Department of Justice and shall be provided to the address specified by the individual in their written request. The department shall retain a copy of the individual's written request and the response and date provided.

(b) (1) In addition to the applicant, this section shall be applicable to criminal convictions of the following persons:

(A) Adults responsible for administration or direct supervision of staff.

(B) Any person, other than a client, residing in the facility.

(C) Any person who provides client assistance in dressing,

grooming, bathing, or personal hygiene. Any nurse assistant or home health aide meeting the requirements of Section 1338.5 or 1736.6, respectively, who is not employed, retained, or contracted by the licensee, and who has been certified or recertified on or after July 1, 1998, shall be deemed to meet the criminal record clearance requirements of this section. A certified nurse assistant and certified home health aide who will be providing client assistance and who falls under this exemption shall provide one copy of his or her current certification, prior to providing care, to the community care facility. The facility shall maintain the copy of the certification on file as long as care is being provided by the certified nurse assistant or certified home health aide at the facility. Nothing in this paragraph restricts the right of the department to exclude a certified nurse assistant or certified home health aide from a licensed community care facility pursuant to Section 1558.

(D) Any staff person, volunteer, or employee who has contact with the clients.

(E) If the applicant is a firm, partnership, association, or corporation, the chief executive officer or other person serving in like capacity.

(F) Additional officers of the governing body of the applicant, or other persons with a financial interest in the applicant, as determined necessary by the department by regulation. The criteria used in the development of these regulations shall be based on the person's capability to exercise substantial influence over the operation of the facility.

(2) The following persons are exempt from the requirements applicable under paragraph (1):

(A) A medical professional as defined in department regulations who holds a valid license or certification from the person's governing California medical care regulatory entity and who is not employed, retained, or contracted by the licensee if all of the following apply:

(i) The criminal record of the person has been cleared as a condition of licensure or certification by the person's governing California medical care regulatory entity.

(ii) The person is providing time-limited specialized clinical care or services.

(iii) The person is providing care or services within the person's scope of practice.

(iv) The person is not a community care facility licensee or an employee of the facility.

(B) A third-party repair person or similar retained contractor if all of the following apply:

(i) The person is hired for a defined, time-limited job.

(ii) The person is not left alone with clients.

(iii) When clients are present in the room in which the repairperson or contractor is working, a staff person who has a criminal record clearance or exemption is also present.

(C) Employees of a licensed home health agency and other members of licensed hospice interdisciplinary teams who have a contract with a client or resident of the facility and are in the facility at the request of that client or resident's legal decisionmaker. The exemption does not apply to a person who is a community care facility licensee or an employee of the facility.

(D) Clergy and other spiritual caregivers who are performing

services in common areas of the community care facility or who are advising an individual client at the request of, or with the permission of, the client or legal decisionmaker, are exempt from fingerprint and criminal background check requirements imposed by community care licensing. This exemption does not apply to a person who is a community care licensee or employee of the facility.

(E) Members of fraternal, service, or similar organizations who conduct group activities for clients if all of the following apply:

(i) Members are not left alone with clients.

(ii) Members do not transport clients off the facility premises.

(iii) The same organization does not conduct group activities for clients more often than defined by the department's regulations.

(3) In addition to the exemptions in paragraph (2), the following persons in foster family homes, certified family homes, and small family homes are exempt from the requirements applicable under paragraph (1):

(A) Adult friends and family of the licensed or certified foster parent, who come into the home to visit for a length of time no longer than defined by the department in regulations, provided that the adult friends and family of the licensee are not left alone with the foster children. However, the licensee, acting as a reasonable and prudent parent, as defined in paragraph (2) of subdivision (a) of Section 362.04 of the Welfare and Institutions Code, may allow his or her adult friends and family to provide short-term care to the foster child and act as an appropriate occasional short-term babysitter for the child.

(B) Parents of a foster child's friends when the foster child is visiting the friend's home and the friend, licensed or certified foster parent, or both are also present. However, the licensee, acting as a reasonable and prudent parent, may allow the parent of the foster child's friends to act as an appropriate short-term babysitter for the child without the friend being present.

(C) Individuals who are engaged by any licensed or certified foster parent to provide short-term care to the child for periods not to exceed 24 hours. Caregivers shall use a reasonable and prudent parent standard in selecting appropriate individuals to act as appropriate occasional short-term babysitters.

(4) In addition to the exemptions specified in paragraph (2), the following persons in adult day care and adult day support centers are exempt from the requirements applicable under paragraph (1):

(A) Unless contraindicated by the client's individualized program plan (IPP) or needs and service plan, a spouse, significant other, relative, or close friend of a client, or an attendant or a facilitator for a client with a developmental disability if the attendant or facilitator is not employed, retained, or contracted by the licensee. This exemption applies only if the person is visiting the client or providing direct care and supervision to the client.

(B) A volunteer if all of the following applies:

(i) The volunteer is supervised by the licensee or a facility employee with a criminal record clearance or exemption.

(ii) The volunteer is never left alone with clients.

(iii) The volunteer does not provide any client assistance with dressing, grooming, bathing, or personal hygiene other than washing of hands.

(5) (A) In addition to the exemptions specified in paragraph (2), the following persons in adult residential and social rehabilitation facilities, unless contraindicated by the client's individualized

program plan (IPP) or needs and services plan, are exempt from the requirements applicable under paragraph (1): a spouse, significant other, relative, or close friend of a client, or an attendant or a facilitator for a client with a developmental disability if the attendant or facilitator is not employed, retained, or contracted by the licensee. This exemption applies only if the person is visiting the client or providing direct care and supervision to that client.

(B) Nothing in this subdivision shall prevent a licensee from requiring a criminal record clearance of any individual exempt from the requirements of this section, provided that the individual has client contact.

(6) Any person similar to those described in this subdivision, as defined by the department in regulations.

(c) (1) Subsequent to initial licensure, any person specified in subdivision (b) and not exempted from fingerprinting shall, as a condition to employment, residence, or presence in a community care facility, be fingerprinted and sign a declaration under penalty of perjury regarding any prior criminal convictions. The licensee shall submit fingerprint images and related information to the Department of Justice and the Federal Bureau of Investigation, through the Department of Justice, for a state and federal level criminal offender record information search, or to comply with paragraph (1) of subdivision (h), prior to the person's employment, residence, or initial presence in the community care facility. These fingerprint images and related information shall be sent by electronic transmission in a manner approved by the State Department of Social Services and the Department of Justice for the purpose of obtaining a permanent set of fingerprints, and shall be submitted to the Department of Justice by the licensee. A licensee's failure to submit fingerprints to the Department of Justice or to comply with paragraph (1) of subdivision (h), as required in this section, shall result in the citation of a deficiency and the immediate assessment of civil penalties in the amount of one hundred dollars (\$100) per violation per day for a maximum of five days, unless the violation is a second or subsequent violation within a 12-month period in which case the civil penalties shall be in the amount of one hundred dollars (\$100) per violation for a maximum of 30 days, and shall be grounds for disciplining the licensee pursuant to Section 1550. The department may assess civil penalties for continued violations as permitted by Section 1548. The fingerprint images and related information shall then be submitted to the Department of Justice for processing. Upon request of the licensee, who shall enclose a self-addressed stamped postcard for this purpose, the Department of Justice shall verify receipt of the fingerprints.

(2) Within 14 calendar days of the receipt of the fingerprint images, the Department of Justice shall notify the State Department of Social Services of the criminal record information, as provided for in subdivision (a). If no criminal record information has been recorded, the Department of Justice shall provide the licensee and the State Department of Social Services with a statement of that fact within 14 calendar days of receipt of the fingerprint images. Documentation of the individual's clearance or exemption shall be maintained by the licensee and be available for inspection. If new fingerprint images are required for processing, the Department of Justice shall, within 14 calendar days from the date of receipt of the fingerprints, notify the licensee that the fingerprints were illegible, the Department of Justice shall notify the State

Department of Social Services, as required by Section 1522.04, and shall also notify the licensee by mail, within 14 days of electronic transmission of the fingerprints to the Department of Justice, if the person has no criminal history recorded. A violation of the regulations adopted pursuant to Section 1522.04 shall result in the citation of a deficiency and an immediate assessment of civil penalties in the amount of one hundred dollars (\$100) per violation per day for a maximum of five days, unless the violation is a second or subsequent violation within a 12-month period in which case the civil penalties shall be in the amount of one hundred dollars (\$100) per violation for a maximum of 30 days, and shall be grounds for disciplining the licensee pursuant to Section 1550. The department may assess civil penalties for continued violations as permitted by Section 1548.

(3) Except for persons specified in paragraph (2) of subdivision (b), the licensee shall endeavor to ascertain the previous employment history of persons required to be fingerprinted under this subdivision. If it is determined by the State Department of Social Services, on the basis of the fingerprint images and related information submitted to the Department of Justice, that the person has been convicted of, or is awaiting trial for, a sex offense against a minor, or has been convicted for an offense specified in Section 243.4, 273a, 273d, 273g, or 368 of the Penal Code, or a felony, the State Department of Social Services shall notify the licensee to act immediately to terminate the person's employment, remove the person from the community care facility, or bar the person from entering the community care facility. The State Department of Social Services may subsequently grant an exemption pursuant to subdivision (g). If the conviction or arrest was for another crime, except a minor traffic violation, the licensee shall, upon notification by the State Department of Social Services, act immediately to either (A) terminate the person's employment, remove the person from the community care facility, or bar the person from entering the community care facility; or (B) seek an exemption pursuant to subdivision (g). The State Department of Social Services shall determine if the person shall be allowed to remain in the facility until a decision on the exemption is rendered. A licensee's failure to comply with the department's prohibition of employment, contact with clients, or presence in the facility as required by this paragraph shall be grounds for disciplining the licensee pursuant to Section 1550.

(4) The department may issue an exemption on its own motion pursuant to subdivision (g) if the person's criminal history indicates that the person is of good character based on the age, seriousness, and frequency of the conviction or convictions. The department, in consultation with interested parties, shall develop regulations to establish the criteria to grant an exemption pursuant to this paragraph.

(5) Concurrently with notifying the licensee pursuant to paragraph (3), the department shall notify the affected individual of his or her right to seek an exemption pursuant to subdivision (g). The individual may seek an exemption only if the licensee terminates the person's employment or removes the person from the facility after receiving notice from the department pursuant to paragraph (3).

(d) (1) Before issuing a license, special permit, or certificate of approval to any person or persons to operate or manage a foster family home or certified family home as described in Section 1506,

the State Department of Social Services or other approving authority shall secure from an appropriate law enforcement agency a criminal record to determine whether the applicant or any person specified in subdivision (b) has ever been convicted of a crime other than a minor traffic violation or arrested for any crime specified in subdivision (c) of Section 290 of the Penal Code, for violating Section 245 or 273.5, subdivision (b) of Section 273a or, prior to January 1, 1994, paragraph (2) of Section 273a of the Penal Code, or for any crime for which the department cannot grant an exemption if the person was convicted and the person has not been exonerated.

(2) The criminal history information shall include the full criminal record, if any, of those persons.

(3) Neither the Department of Justice nor the State Department of Social Services may charge a fee for the fingerprinting of an applicant for a license, special permit, or certificate of approval described in this subdivision. The record, if any, shall be taken into consideration when evaluating a prospective applicant.

(4) The following shall apply to the criminal record information:

(A) If the applicant or other persons specified in subdivision (b) have convictions that would make the applicant's home unfit as a foster family home or a certified family home, the license, special permit, or certificate of approval shall be denied.

(B) If the State Department of Social Services finds that the applicant, or any person specified in subdivision (b) is awaiting trial for a crime other than a minor traffic violation, the State Department of Social Services or other approving authority may cease processing the application until the conclusion of the trial.

(C) For the purposes of this subdivision, a criminal record clearance provided under Section 8712 of the Family Code may be used by the department or other approving agency.

(D) An applicant for a foster family home license or for certification as a family home, and any other person specified in subdivision (b), shall submit a set of fingerprint images and related information to the Department of Justice and the Federal Bureau of Investigation, through the Department of Justice, for a state and federal level criminal offender record information search, in addition to the criminal records search required by subdivision (a). If an applicant meets all other conditions for licensure, except receipt of the Federal Bureau of Investigation's criminal history information for the applicant and all persons described in subdivision (b), the department may issue a license, or the foster family agency may issue a certificate of approval, if the applicant, and each person described in subdivision (b), has signed and submitted a statement that he or she has never been convicted of a crime in the United States, other than a traffic infraction, as defined in paragraph (1) of subdivision (a) of Section 42001 of the Vehicle Code. If, after licensure or certification, the department determines that the licensee, certified foster parent, or any person specified in subdivision (b) has a criminal record, the license may be revoked pursuant to Section 1550 and the certificate of approval revoked pursuant to subdivision (b) of Section 1534. The department may also suspend the license pending an administrative hearing pursuant to Section 1550.5.

(5) Any person specified in this subdivision shall, as a part of the application, be fingerprinted and sign a declaration under penalty of perjury regarding any prior criminal convictions or arrests for any crime against a child, spousal or cohabitant abuse

or, any crime for which the department cannot grant an exemption if the person was convicted and shall submit these fingerprints to the licensing agency or other approving authority.

(6) (A) The foster family agency shall obtain fingerprint images and related information from certified home applicants and from persons specified in subdivision (b) and shall submit them directly to the Department of Justice by electronic transmission in a manner approved by the State Department of Social Services and the Department of Justice. A foster family home licensee or foster family agency shall submit these fingerprint images and related information to the Department of Justice and the Federal Bureau of Investigation, through the Department of Justice, for a state and federal level criminal offender record information search, or to comply with paragraph (1) of subdivision (b) prior to the person's employment, residence, or initial presence in the foster family home or certified family home. A foster family agency's failure to submit fingerprint images and related information to the Department of Justice, or comply with paragraph (1) of subdivision (h), as required in this section, shall result in a citation of a deficiency, and the immediate civil penalties of one hundred dollars (\$100) per violation per day for a maximum of five days, unless the violation is a second or subsequent violation within a 12-month period in which case the civil penalties shall be in the amount of one hundred dollars (\$100) per violation for a maximum of 30 days, and shall be grounds for disciplining the licensee pursuant to Section 1550. A violation of the regulation adopted pursuant to Section 1522.04 shall result in the citation of a deficiency and an immediate assessment of civil penalties in the amount of one hundred dollars (\$100) per violation per day for a maximum of five days, unless the violation is a second or subsequent violation within a 12-month period in which case the civil penalties shall be in the amount of one hundred dollars (\$100) per violation for a maximum of 30 days, and shall be grounds for disciplining the foster family agency pursuant to Section 1550. A licensee's failure to submit fingerprint images and related information to the Department of Justice, or comply with paragraph (1) of subdivision (h), as required in this section, may result in the citation of a deficiency and

immediate civil penalties of one hundred dollars (\$100) per violation. A licensee's violation of regulations adopted pursuant to Section 1522.04 may result in the citation of a deficiency and an immediate assessment of civil penalties in the amount of one hundred dollars (\$100) per violation. The State Department of Social Services may assess penalties for continued violations, as permitted by Section 1548. The fingerprint images shall then be submitted to the Department of Justice for processing.

(B) Upon request of the licensee, who shall enclose a self-addressed envelope for this purpose, the Department of Justice shall verify receipt of the fingerprints. Within five working days of the receipt of the criminal record or information regarding criminal convictions from the Department of Justice, the department shall notify the applicant of any criminal arrests or convictions. If no arrests or convictions are recorded, the Department of Justice shall provide the foster family home licensee or the foster family agency with a statement of that fact concurrent with providing the information to the State Department of Social Services.

(7) If the State Department of Social Services finds that the applicant, or any other person specified in subdivision (b), has been

convicted of a crime other than a minor traffic violation, the application shall be denied, unless the director grants an exemption pursuant to subdivision (g).

(8) If the State Department of Social Services finds after licensure or the granting of the certificate of approval that the licensee, certified foster parent, or any other person specified in paragraph (2) of subdivision (b), has been convicted of a crime other than a minor traffic violation, the license or certificate of approval may be revoked by the department or the foster family agency, whichever is applicable, unless the director grants an exemption pursuant to subdivision (g). A licensee's failure to comply with the department's prohibition of employment, contact with clients, or presence in the facility as required by paragraph (3) of subdivision (c) shall be grounds for disciplining the licensee pursuant to Section 1550.

(e) The State Department of Social Services may not use a record of arrest to deny, revoke, or terminate any application, license, employment, or residence unless the department investigates the incident and secures evidence, whether or not related to the incident of arrest, that is admissible in an administrative hearing to establish conduct by the person that may pose a risk to the health and safety of any person who is or may become a client. The State Department of Social Services is authorized to obtain any arrest or conviction records or reports from any law enforcement agency as necessary to the performance of its duties to inspect, license, and investigate community care facilities and individuals associated with a community care facility.

(f) (1) For purposes of this section or any other provision of this chapter, a conviction means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that the State Department of Social Services is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, when the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, notwithstanding a subsequent order pursuant to Sections 1203.4 and 1203.4a of the Penal Code permitting the person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment. For purposes of this section or any other provision of this chapter, the record of a conviction, or a copy thereof certified by the clerk of the court or by a judge of the court in which the conviction occurred, shall be conclusive evidence of the conviction. For purposes of this section or any other provision of this chapter, the arrest disposition report certified by the Department of Justice, or documents admissible in a criminal action pursuant to Section 969b of the Penal Code, shall be prima facie evidence of the conviction, notwithstanding any other provision of law prohibiting the admission of these documents in a civil or administrative action.

(2) For purposes of this section or any other provision of this chapter, the department shall consider criminal convictions from another state or federal court as if the criminal offense was committed in this state.

(g) (1) After review of the record, the director may grant an exemption from disqualification for a license or special permit as specified in paragraphs (1) and (4) of subdivision (a), or for a license, special permit, or certificate of approval as specified in

paragraphs (4) and (5) of subdivision (d), or for employment, residence, or presence in a community care facility as specified in paragraphs (3), (4), and (5) of subdivision (c), if the director has substantial and convincing evidence to support a reasonable belief that the applicant and the person convicted of the crime, if other than the applicant, are of good character as to justify issuance of the license or special permit or granting an exemption for purposes of subdivision (c). Except as otherwise provided in this subdivision, an exemption may not be granted pursuant to this subdivision if the conviction was for any of the following offenses:

(A) (i) An offense specified in Section 220, 243.4, or 264.1, subdivision (a) of Section 273a or, prior to January 1, 1994, paragraph (1) of Section 273a, Section 273d, 288, or 289, subdivision (c) of Section 290, or Section 368 of the Penal Code, or was a conviction of another crime against an individual specified in subdivision (c) of Section 667.5 of the Penal Code.

(ii) Notwithstanding clause (i), the director may grant an exemption regarding the conviction for an offense described in paragraph (1), (2), (7), or (8) of subdivision (c) of Section 667.5 of the Penal Code, if the employee or prospective employee has been rehabilitated as provided in Section 4852.03 of the Penal Code, has maintained the conduct required in Section 4852.05 of the Penal Code for at least 10 years, and has the recommendation of the district attorney representing the employee's county of residence, or if the employee or prospective employee has received a certificate of rehabilitation pursuant to Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code.

(B) A felony offense specified in Section 729 of the Business and Professions Code or Section 206 or 215, subdivision (a) of Section 347, subdivision (b) of Section 417, or subdivision (a) of Section 451 of the Penal Code.

(2) The department may not prohibit a person from being employed or having contact with clients in a facility on the basis of a denied criminal record exemption request or arrest information unless the department complies with the requirements of Section 1558.

(h) (1) For purposes of compliance with this section, the department may permit an individual to transfer a current criminal record clearance, as defined in subdivision (a), from one facility to another, as long as the criminal record clearance has been processed through a state licensing district office, and is being transferred to another facility licensed by a state licensing district office. The request shall be in writing to the State Department of Social Services, and shall include a copy of the person's driver's license or valid identification card issued by the Department of Motor Vehicles, or a valid photo identification issued by another state or the United States government if the person is not a California resident. Upon request of the licensee, who shall enclose a self-addressed envelope for this purpose, the State Department of Social Services shall verify whether the individual has a clearance that can be transferred.

(2) The State Department of Social Services shall hold criminal record clearances in its active files for a minimum of two years after an employee is no longer employed at a licensed facility in order for the criminal record clearance to be transferred.

(3) The following shall apply to a criminal record clearance or exemption from the department or a county office with department-delegated licensing authority:

(A) A county office with department-delegated licensing authority may accept a clearance or exemption from the department.

(B) The department may accept a clearance or exemption from any county office with department-delegated licensing authority.

(C) A county office with department-delegated licensing authority may accept a clearance or exemption from any other county office with department-delegated licensing authority.

(4) With respect to notifications issued by the Department of Justice pursuant to Section 11105.2 of the Penal Code concerning an individual whose criminal record clearance was originally processed by the department or a county office with department-delegated licensing authority, all of the following shall apply:

(A) The Department of Justice shall process a request from the department or a county office with department-delegated licensing authority to receive the notice only if all of the following conditions are met:

(i) The request shall be submitted to the Department of Justice by the agency to be substituted to receive the notification.

(ii) The request shall be for the same applicant type as the type for which the original clearance was obtained.

(iii) The request shall contain all prescribed data elements and format protocols pursuant to a written agreement between the department and the Department of Justice.

(B) (i) On or before January 7, 2005, the department shall notify the Department of Justice of all county offices that have department-delegated licensing authority.

(ii) The department shall notify the Department of Justice within 15 calendar days of the date on which a new county office receives department-delegated licensing authority or a county's delegated licensing authority is rescinded.

(C) The Department of Justice shall charge the department or a county office with department-delegated licensing authority a fee for each time a request to substitute the recipient agency is received for purposes of this paragraph. This fee shall not exceed the cost of providing the service.

(i) The full criminal record obtained for purposes of this section may be used by the department or by a licensed adoption agency as a clearance required for adoption purposes.

(j) If a licensee or facility is required by law to deny employment or to terminate employment of any employee based on written notification from the state department that the employee has a prior criminal conviction or is determined unsuitable for employment under Section 1558, the licensee or facility shall not incur civil liability or unemployment insurance liability as a result of that denial or termination.

(k) The State Department of Social Services may charge a fee for the costs of processing electronic fingerprint images and related information.

(l) Amendments to this section made in the 1999 portion of the 1999-2000 Regular Session shall be implemented commencing 60 days after the effective date of the act amending this section in the 1999 portion of the 1999-2000 Regular Session, except that those provisions for the submission of fingerprints for searching the records of the Federal Bureau of Investigation shall be implemented 90 days after the effective date of that act.

SEC. 1.5. Section 1522 of the Health and Safety Code is amended to read:

1522. The Legislature recognizes the need to generate timely and accurate positive fingerprint identification of applicants as a condition of issuing licenses, permits, or certificates of approval for persons to operate or provide direct care services in a community care facility, foster family home, or a certified family home of a licensed foster family agency. Therefore, the Legislature supports the use of the fingerprint live-scan technology, as identified in the long-range plan of the Department of Justice for fully automating the processing of fingerprints and other data by the year 1999, otherwise known as the California Crime Information Intelligence System (CAL-CIIS), to be used for applicant fingerprints. It is the intent of the Legislature in enacting this section to require the fingerprints of those individuals whose contact with community care clients may pose a risk to the clients' health and safety. An individual shall be required to obtain either a criminal record clearance or a criminal record exemption from the State Department of Social Services before his or her initial presence in a community care facility.

(a) (1) Before issuing a license or special permit to any person or persons to operate or manage a community care facility, the State Department of Social Services shall secure from an appropriate law enforcement agency a criminal record to determine whether the applicant or any other person specified in subdivision (b) has ever been convicted of a crime other than a minor traffic violation or arrested for any crime specified in Section 290 of the Penal Code, for violating Section 245 or 273.5, of the Penal Code, subdivision (b) of Section 273a of the Penal Code, or, prior to January 1, 1994, paragraph (2) of Section 273a of the Penal Code, or for any crime for which the department cannot grant an exemption if the person was convicted and the person has not been exonerated.

(2) The criminal history information shall include the full criminal record, if any, of those persons, and subsequent arrest information pursuant to Section 11105.2 of the Penal Code.

(3) Except during the 2003-04, 2004-05, 2005-06, 2006-07, and 2007-08 fiscal years, neither the Department of Justice nor the State Department of Social Services may charge a fee for the fingerprinting of an applicant for a license or special permit to operate a facility providing nonmedical board, room, and care for six or less children or for obtaining a criminal record of the applicant pursuant to this section.

(4) The following shall apply to the criminal record information:

(A) If the State Department of Social Services finds that the applicant, or any other person specified in subdivision (b), has been convicted of a crime other than a minor traffic violation, the application shall be denied, unless the director grants an exemption pursuant to subdivision (g).

(B) If the State Department of Social Services finds that the applicant, or any other person specified in subdivision (b) is awaiting trial for a crime other than a minor traffic violation, the State Department of Social Services may cease processing the application until the conclusion of the trial.

(C) If no criminal record information has been recorded, the Department of Justice shall provide the applicant and the State Department of Social Services with a statement of that fact.

(D) If the State Department of Social Services finds after licensure that the licensee, or any other person specified in paragraph (2) of subdivision (b), has been convicted of a crime other

than a minor traffic violation, the license may be revoked, unless the director grants an exemption pursuant to subdivision (g).

(E) An applicant and any other person specified in subdivision (b) shall submit fingerprint images and related information to the Department of Justice for the purpose of searching the criminal records of the Federal Bureau of Investigation, in addition to the criminal records search required by this subdivision. If an applicant and all other persons described in subdivision (b) meet all of the conditions for licensure, except receipt of the Federal Bureau of Investigation's criminal offender record information search response for the applicant or any of the persons described in subdivision (b), the department may issue a license if the applicant and each person described in subdivision (b) has signed and submitted a statement that he or she has never been convicted of a crime in the United States, other than a traffic infraction, as defined in paragraph (1) of subdivision (a) of Section 42001 of the Vehicle Code. If, after licensure, the department determines that the licensee or any other person specified in subdivision (b) has a criminal record, the license may be revoked pursuant to Section 1550. The department may also suspend the license pending an administrative hearing pursuant to Section 1550.5.

(F) The State Department of Social Services shall develop procedures to provide the individual's state and federal criminal history information with the written notification of his or her exemption denial or revocation based on the criminal record. Receipt of the criminal history information shall be optional on the part of the individual, as set forth in the agency's procedures. The procedure shall protect the confidentiality and privacy of the individual's record, and the criminal history information shall not be made available to the employer.

(G) Notwithstanding any other provision of law, the department is authorized to provide an individual with a copy of his or her state or federal level criminal offender record information search response as provided to that department by the Department of Justice if the department has denied a criminal background clearance based on this information and the individual makes a written request to the department for a copy specifying an address to which it is to be sent. The state or federal level criminal offender record information search response shall not be modified or altered from its form or content as provided by the Department of Justice and shall be provided to the address specified by the individual in their written request. The department shall retain a copy of the individual's written request and the response and date provided.

(b) (1) In addition to the applicant, this section shall be applicable to criminal convictions of the following persons:

(A) Adults responsible for administration or direct supervision of staff.

(B) Any person, other than a client, residing in the facility.

(C) Any person who provides client assistance in dressing, grooming, bathing, or personal hygiene. Any nurse assistant or home health aide meeting the requirements of Section 1338.5 or 1736.6, respectively, who is not employed, retained, or contracted by the licensee, and who has been certified or recertified on or after July 1, 1998, shall be deemed to meet the criminal record clearance requirements of this section. A certified nurse assistant and certified home health aide who will be providing client assistance and who falls under this exemption shall provide one copy of his or

her current certification, prior to providing care, to the community care facility. The facility shall maintain the copy of the certification on file as long as care is being provided by the certified nurse assistant or certified home health aide at the facility. Nothing in this paragraph restricts the right of the department to exclude a certified nurse assistant or certified home health aide from a licensed community care facility pursuant to Section 1558.

(D) Any staff person, volunteer, or employee who has contact with the clients.

(E) If the applicant is a firm, partnership, association, or corporation, the chief executive officer or other person serving in like capacity.

(F) Additional officers of the governing body of the applicant, or other persons with a financial interest in the applicant, as determined necessary by the department by regulation. The criteria used in the development of these regulations shall be based on the person's capability to exercise substantial influence over the operation of the facility.

(2) The following persons are exempt from the requirements applicable under paragraph (1):

(A) A medical professional as defined in department regulations who holds a valid license or certification from the person's governing California medical care regulatory entity and who is not employed, retained, or contracted by the licensee if all of the following apply:

(i) The criminal record of the person has been cleared as a condition of licensure or certification by the person's governing California medical care regulatory entity.

(ii) The person is providing time-limited specialized clinical care or services.

(iii) The person is providing care or services within the person's scope of practice.

(iv) The person is not a community care facility licensee or an employee of the facility.

(B) A third-party repair person or similar retained contractor if all of the following apply:

(i) The person is hired for a defined, time-limited job.

(ii) The person is not left alone with clients.

(iii) When clients are present in the room in which the repairperson or contractor is working, a staff person who has a criminal record clearance or exemption is also present.

(C) Employees of a licensed home health agency and other members of licensed hospice interdisciplinary teams who have a contract with a client or resident of the facility and are in the facility at the request of that client or resident's legal decisionmaker. The exemption does not apply to a person who is a community care facility licensee or an employee of the facility.

(D) Clergy and other spiritual caregivers who are performing services in common areas of the community care facility or who are advising an individual client at the request of, or with the permission of, the client or legal decisionmaker, are exempt from fingerprint and criminal background check requirements imposed by community care licensing. This exemption does not apply to a person who is a community care licensee or employee of the facility.

(E) Members of fraternal, service, or similar organizations who conduct group activities for clients if all of the following apply:

(i) Members are not left alone with clients.

(ii) Members do not transport clients off the facility premises.

(iii) The same organization does not conduct group activities for clients more often than defined by the department's regulations.

(3) In addition to the exemptions in paragraph (2), the following persons in foster family homes, certified family homes, and small family homes are exempt from the requirements applicable under paragraph (1):

(A) Adult friends and family of the licensed or certified foster parent, who come into the home to visit for a length of time no longer than defined by the department in regulations, provided that the adult friends and family of the licensee are not left alone with the foster children. However, the licensee, acting as a reasonable and prudent parent, as defined in paragraph (2) of subdivision (a) of Section 362.04 of the Welfare and Institutions Code, may allow his or her adult friends and family to provide short-term care to the foster child and act as an appropriate occasional short-term babysitter for the child.

(B) Parents of a foster child's friends when the foster child is visiting the friend's home and the friend, licensed or certified foster parent, or both are also present. However, the licensee, acting as a reasonable and prudent parent, may allow the parent of the foster child's friends to act as an appropriate short-term babysitter for the child without the friend being present.

(C) Individuals who are engaged by any licensed or certified foster parent to provide short-term care to the child for periods not to exceed 24 hours. Caregivers shall use a reasonable and prudent parent standard in selecting appropriate individuals to act as appropriate occasional short-term babysitters.

(4) In addition to the exemptions specified in paragraph (2), the following persons in adult day care and adult day support centers are exempt from the requirements applicable under paragraph (1):

(A) Unless contraindicated by the client's individualized program plan (IPP) or needs and service plan, a spouse, significant other, relative, or close friend of a client, or an attendant or a facilitator for a client with a developmental disability if the attendant or facilitator is not employed, retained, or contracted by the licensee. This exemption applies only if the person is visiting the client or providing direct care and supervision to the client.

(B) A volunteer if all of the following applies:

(i) The volunteer is supervised by the licensee or a facility employee with a criminal record clearance or exemption.

(ii) The volunteer is never left alone with clients.

(iii) The volunteer does not provide any client assistance with dressing, grooming, bathing, or personal hygiene other than washing of hands.

(5) (A) In addition to the exemptions specified in paragraph (2), the following persons in adult residential and social rehabilitation facilities, unless contraindicated by the client's individualized program plan (IPP) or needs and services plan, are exempt from the requirements applicable under paragraph (1): a spouse, significant other, relative, or close friend of a client, or an attendant or a facilitator for a client with a developmental disability if the attendant or facilitator is not employed, retained, or contracted by the licensee. This exemption applies only if the person is visiting the client or providing direct care and supervision to that client.

(B) Nothing in this subdivision shall prevent a licensee from

requiring a criminal record clearance of any individual exempt from the requirements of this section, provided that the individual has client contact.

(6) Any person similar to those described in this subdivision, as defined by the department in regulations.

(c) (1) Subsequent to initial licensure, any person specified in subdivision (b) and not exempted from fingerprinting shall, as a condition to employment, residence, or presence in a community care facility, be fingerprinted and sign a declaration under penalty of perjury regarding any prior criminal convictions. The licensee shall submit fingerprint images and related information to the Department of Justice and the Federal Bureau of Investigation, through the Department of Justice, for a state and federal level criminal offender record information search, or to comply with paragraph (1) of subdivision (h), prior to the person's employment, residence, or initial presence in the community care facility. These fingerprint images and related information shall be sent by electronic transmission in a manner approved by the State

Department of Social Services and the Department of Justice for the purpose of obtaining a permanent set of fingerprints, and shall be submitted to the Department of Justice by the licensee. A licensee's failure to submit fingerprints to the Department of Justice or to comply with paragraph (1) of subdivision (h), as required in this section, shall result in the citation of a deficiency and the immediate assessment of civil penalties in the amount of one hundred dollars (\$100) per violation per day for a maximum of five days, unless the violation is a second or subsequent violation within a 12-month period in which case the civil penalties shall be in the amount of one hundred dollars (\$100) per violation for a maximum of 30 days, and shall be grounds for disciplining the licensee pursuant to Section 1550. The department may assess civil penalties for continued violations as permitted by Section 1548. The fingerprint images and related information shall then be submitted to the Department of Justice for processing. Upon request of the licensee, who shall enclose a self-addressed stamped postcard for this purpose, the Department of Justice shall verify receipt of the fingerprints.

(2) Within 14 calendar days of the receipt of the fingerprint images, the Department of Justice shall notify the State Department of Social Services of the criminal record information, as provided for in subdivision (a). If no criminal record information has been recorded, the Department of Justice shall provide the licensee and the State Department of Social Services with a statement of that fact within 14 calendar days of receipt of the fingerprint images. Documentation of the individual's clearance or exemption shall be maintained by the licensee and be available for inspection. If new fingerprint images are required for processing, the Department of Justice shall, within 14 calendar days from the date of receipt of the fingerprints, notify the licensee that the fingerprints were illegible, the Department of Justice shall notify the State Department of Social Services, as required by Section 1522.04, and shall also notify the licensee by mail, within 14 days of electronic transmission of the fingerprints to the Department of Justice, if the person has no criminal history recorded. A violation of the regulations adopted pursuant to Section 1522.04 shall result in the citation of a deficiency and an immediate assessment of civil penalties in the amount of one hundred dollars (\$100) per violation

per day for a maximum of five days, unless the violation is a second or subsequent violation within a 12-month period in which case the civil penalties shall be in the amount of one hundred dollars (\$100) per violation for a maximum of 30 days, and shall be grounds for disciplining the licensee pursuant to Section 1550. The department may assess civil penalties for continued violations as permitted by Section 1548.

(3) Except for persons specified in paragraph (2) of subdivision (b), the licensee shall endeavor to ascertain the previous employment history of persons required to be fingerprinted under this subdivision. If it is determined by the State Department of Social Services, on the basis of the fingerprint images and related information submitted to the Department of Justice, that the person has been convicted of, or is awaiting trial for, a sex offense against a minor, or has been convicted for an offense specified in Section 243.4, 273a, 273d, 273g, or 368 of the Penal Code, or a felony, the State Department of Social Services shall notify the licensee to act immediately to terminate the person's employment, remove the person from the community care facility, or bar the person from entering the community care facility. The State Department of Social Services may subsequently grant an exemption pursuant to subdivision (g). If the conviction or arrest was for another crime, except a minor traffic violation, the licensee shall, upon notification by the State Department of Social Services, act immediately to either (A) terminate the person's employment, remove the person from the community care facility, or bar the person from entering the community care facility; or (B) seek an exemption pursuant to subdivision (g). The State Department of Social Services shall determine if the person shall be allowed to remain in the facility until a decision on the exemption is rendered. A licensee's failure to comply with the department's prohibition of employment, contact with clients, or presence in the facility as required by this paragraph shall be grounds for disciplining the licensee pursuant to Section 1550.

(4) The department may issue an exemption on its own motion pursuant to subdivision (g) if the person's criminal history indicates that the person is of good character based on the age, seriousness, and frequency of the conviction or convictions. The department, in consultation with interested parties, shall develop regulations to establish the criteria to grant an exemption pursuant to this paragraph.

(5) Concurrently with notifying the licensee pursuant to paragraph (3), the department shall notify the affected individual of his or her right to seek an exemption pursuant to subdivision (g). The individual may seek an exemption only if the licensee terminates the person's employment or removes the person from the facility after receiving notice from the department pursuant to paragraph (3).

(d) (1) Before issuing a license, special permit, or certificate of approval to any person or persons to operate or manage a foster family home or certified family home as described in Section 1506, the State Department of Social Services or other approving authority shall secure from an appropriate law enforcement agency a criminal record to determine whether the applicant or any person specified in subdivision (b) has ever been convicted of a crime other than a minor traffic violation or arrested for any crime specified in subdivision (c) of Section 290 of the Penal Code, for violating Section 245 or 273.5, subdivision (b) of Section 273a or, prior to January 1, 1994,

paragraph (2) of Section 273a of the Penal Code, or for any crime for which the department cannot grant an exemption if the person was convicted and the person has not been exonerated.

(2) The criminal history information shall include the full criminal record, if any, of those persons.

(3) Neither the Department of Justice nor the State Department of Social Services may charge a fee for the fingerprinting of an applicant for a license, special permit, or certificate of approval described in this subdivision. The record, if any, shall be taken into consideration when evaluating a prospective applicant.

(4) The following shall apply to the criminal record information:

(A) If the applicant or other persons specified in subdivision (b) have convictions that would make the applicant's home unfit as a foster family home or a certified family home, the license, special permit, or certificate of approval shall be denied.

(B) If the State Department of Social Services finds that the applicant, or any person specified in subdivision (b) is awaiting trial for a crime other than a minor traffic violation, the State Department of Social Services or other approving authority may cease processing the application until the conclusion of the trial.

(C) For the purposes of this subdivision, a criminal record clearance provided under Section 8712 of the Family Code may be used by the department or other approving agency.

(D) An applicant for a foster family home license or for certification as a family home, and any other person specified in subdivision (b), shall submit a set of fingerprint images and related information to the Department of Justice and the Federal Bureau of Investigation, through the Department of Justice, for a state and federal level criminal offender record information search, in addition to the criminal records search required by subdivision (a). If an applicant meets all other conditions for licensure, except receipt of the Federal Bureau of Investigation's criminal history information for the applicant and all persons described in subdivision (b), the department may issue a license, or the foster family agency may issue a certificate of approval, if the applicant, and each person described in subdivision (b), has signed and submitted a statement that he or she has never been convicted of a crime in the United States, other than a traffic infraction, as defined in paragraph (1) of subdivision (a) of Section 42001 of the Vehicle Code. If, after licensure or certification, the department determines that the licensee, certified foster parent, or any person specified in subdivision (b) has a criminal record, the license may be revoked pursuant to Section 1550 and the certificate of approval revoked pursuant to subdivision (b) of Section 1534. The department may also suspend the license pending an administrative hearing pursuant to Section 1550.5.

(5) Any person specified in this subdivision shall, as a part of the application, be fingerprinted and sign a declaration under penalty of perjury regarding any prior criminal convictions or arrests for any crime against a child, spousal or cohabitant abuse or, any crime for which the department cannot grant an exemption if the person was convicted and shall submit these fingerprints to the licensing agency or other approving authority.

(6) (A) The foster family agency shall obtain fingerprint images and related information from certified home applicants and from persons specified in subdivision (b) and shall submit them directly to the Department of Justice by electronic transmission in a manner

approved by the State Department of Social Services and the Department of Justice. A foster family home licensee or foster family agency shall submit these fingerprint images and related information to the Department of Justice and the Federal Bureau of Investigation, through the Department of Justice, for a state and federal level criminal offender record information search, or to comply with paragraph (1) of subdivision (b) prior to the person's employment, residence, or initial presence in the foster family home or certified family home. A foster family agency's failure to submit fingerprint images and related information to the Department of Justice, or comply with paragraph (1) of subdivision (h), as required in this section, shall result in a citation of a deficiency, and the immediate civil penalties of one hundred dollars (\$100) per violation per day for a maximum of five days, unless the violation is a second or subsequent violation within a 12-month period in which case the civil penalties shall be in the amount of one hundred dollars (\$100) per violation for a maximum of 30 days, and shall be grounds for disciplining the licensee pursuant to Section 1550. A violation of the regulation adopted pursuant to Section 1522.04 shall result in the citation of a deficiency and an immediate assessment of civil penalties in the amount of one hundred dollars (\$100) per violation per day for a maximum of five days, unless the violation is a second or subsequent violation within a 12-month period in which case the civil penalties shall be in the amount of one hundred dollars (\$100) per violation for a maximum of 30 days, and shall be grounds for disciplining the foster family agency pursuant to Section 1550. A licensee's failure to submit fingerprint images and related information to the Department of Justice, or comply with paragraph (1) of subdivision (h), as required in this section, may result in the citation of a deficiency and immediate civil penalties of one hundred dollars (\$100) per violation. A licensee's violation of regulations adopted pursuant to Section 1522.04 may result in the citation of a deficiency and an immediate assessment of civil penalties in the amount of one hundred dollars (\$100) per violation. The State Department of Social Services may assess penalties for continued violations, as permitted by Section 1548. The fingerprint images shall then be submitted to the Department of Justice for processing.

(B) Upon request of the licensee, who shall enclose a self-addressed envelope for this purpose, the Department of Justice shall verify receipt of the fingerprints. Within five working days of the receipt of the criminal record or information regarding criminal convictions from the Department of Justice, the department shall notify the applicant of any criminal arrests or convictions. If no arrests or convictions are recorded, the Department of Justice shall provide the foster family home licensee or the foster family agency with a statement of that fact concurrent with providing the information to the State Department of Social Services.

(7) If the State Department of Social Services finds that the applicant, or any other person specified in subdivision (b), has been convicted of a crime other than a minor traffic violation, the application shall be denied, unless the director grants an exemption pursuant to subdivision (g).

(8) If the State Department of Social Services finds after licensure or the granting of the certificate of approval that the licensee, certified foster parent, or any other person specified in paragraph (2) of subdivision (b), has been convicted of a crime other

than a minor traffic violation, the license or certificate of approval may be revoked by the department or the foster family agency, whichever is applicable, unless the director grants an exemption pursuant to subdivision (g). A licensee's failure to comply with the department's prohibition of employment, contact with clients, or presence in the facility as required by paragraph (3) of subdivision (c) shall be grounds for disciplining the licensee pursuant to Section 1550.

(e) The State Department of Social Services may not use a record of arrest to deny, revoke, or terminate any application, license, employment, or residence unless the department investigates the incident and secures evidence, whether or not related to the incident of arrest, that is admissible in an administrative hearing to establish conduct by the person that may pose a risk to the health and safety of any person who is or may become a client. The State Department of Social Services is authorized to obtain any arrest or conviction records or reports from any law enforcement agency as necessary to the performance of its duties to inspect, license, and investigate community care facilities and individuals associated with a community care facility.

(f) (1) For purposes of this section or any other provision of this chapter, a conviction means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that the State Department of Social Services is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, when the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, notwithstanding a subsequent order pursuant to Sections 1203.4 and 1203.4a of the Penal Code permitting the person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment. For purposes of this section or any other provision of this chapter, the record of a conviction, or a copy thereof certified by the clerk of the court or by a judge of the court in which the conviction occurred, shall be conclusive evidence of the conviction. For purposes of this section or any other provision of this chapter, the arrest disposition report certified by the Department of Justice, or documents admissible in a criminal action pursuant to Section 969b of the Penal Code, shall be prima facie evidence of the conviction, notwithstanding any other provision of law prohibiting the admission of these documents in a civil or administrative action.

(2) For purposes of this section or any other provision of this chapter, the department shall consider criminal convictions from another state or federal court as if the criminal offense was committed in this state.

(g) (1) After review of the record, the director may grant an exemption from disqualification for a license or special permit as specified in paragraphs (1) and (4) of subdivision (a), or for a license, special permit, or certificate of approval as specified in paragraphs (4) and (5) of subdivision (d), or for employment, residence, or presence in a community care facility as specified in paragraphs (3), (4), and (5) of subdivision (c), if the director has substantial and convincing evidence to support a reasonable belief that the applicant and the person convicted of the crime, if other than the applicant, are of good character as to justify issuance of the license or special permit or granting an exemption for purposes

of subdivision (c). Except as otherwise provided in this subdivision, an exemption may not be granted pursuant to this subdivision if the conviction was for any of the following offenses:

(A) (i) An offense specified in Section 220, 243.4, or 264.1, subdivision (a) of Section 273a or, prior to January 1, 1994, paragraph (1) of Section 273a, Section 273d, 288, or 289, subdivision (c) of Section 290, or Section 368 of the Penal Code, or was a conviction of another crime against an individual specified in subdivision (c) of Section 667.5 of the Penal Code.

(ii) Notwithstanding clause (i), the director may grant an exemption regarding the conviction for an offense described in paragraph (1), (2), (7), or (8) of subdivision (c) of Section 667.5 of the Penal Code, if the employee or prospective employee has been rehabilitated as provided in Section 4852.03 of the Penal Code, has maintained the conduct required in Section 4852.05 of the Penal Code for at least 10 years, and has the recommendation of the district attorney representing the employee's county of residence, or if the employee or prospective employee has received a certificate of rehabilitation pursuant to Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code.

(B) A felony offense specified in Section 729 of the Business and Professions Code or Section 206 or 215, subdivision (a) of Section 347, subdivision (b) of Section 417, or subdivision (a) of Section 451 of the Penal Code.

(2) The department may not prohibit a person from being employed or having contact with clients in a facility on the basis of a denied criminal record exemption request or arrest information unless the department complies with the requirements of Section 1558.

(h) (1) For purposes of compliance with this section, the department may permit an individual to transfer a current criminal record clearance, as defined in subdivision (a), from one facility to another, as long as the criminal record clearance has been processed through a state licensing district office, and is being transferred to another facility licensed by a state licensing district office. The request shall be in writing to the State Department of Social Services, and shall include a copy of the person's driver's license or valid identification card issued by the Department of Motor Vehicles, or a valid photo identification issued by another state or the United States government if the person is not a California resident. Upon request of the licensee, who shall enclose a self-addressed envelope for this purpose, the State Department of Social Services shall verify whether the individual has a clearance that can be transferred.

(2) The State Department of Social Services shall hold criminal record clearances in its active files for a minimum of two years after an employee is no longer employed at a licensed facility in order for the criminal record clearance to be transferred.

(3) The following shall apply to a criminal record clearance or exemption from the department or a county office with department-delegated licensing authority:

(A) A county office with department-delegated licensing authority may accept a clearance or exemption from the department.

(B) The department may accept a clearance or exemption from any county office with department-delegated licensing authority.

(C) A county office with department-delegated licensing authority may accept a clearance or exemption from any other county office with department-delegated licensing authority.

(4) With respect to notifications issued by the Department of Justice pursuant to Section 11105.2 of the Penal Code concerning an individual whose criminal record clearance was originally processed by the department or a county office with department-delegated licensing authority, all of the following shall apply:

(A) The Department of Justice shall process a request from the department or a county office with department-delegated licensing authority to receive the notice only if all of the following conditions are met:

(i) The request shall be submitted to the Department of Justice by the agency to be substituted to receive the notification.

(ii) The request shall be for the same applicant type as the type for which the original clearance was obtained.

(iii) The request shall contain all prescribed data elements and format protocols pursuant to a written agreement between the department and the Department of Justice.

(B) (i) On or before January 7, 2005, the department shall notify the Department of Justice of all county offices that have department-delegated licensing authority.

(ii) The department shall notify the Department of Justice within 15 calendar days of the date on which a new county office receives department-delegated licensing authority or a county's delegated licensing authority is rescinded.

(C) The Department of Justice shall charge the department, a county office with department-delegated licensing authority, or county child welfare agency with criminal record clearance and exemption authority, a fee for each time a request to substitute the recipient agency is received for purposes of this paragraph. This fee shall not exceed the cost of providing the service.

(5) (A) A county child welfare agency with authority to secure clearances pursuant to Section 16504.5 of the Welfare and Institutions Code and to grant exemptions pursuant to Section 361.4 of the Welfare and Institutions Code may accept a clearance or exemption from another county with criminal record and exemption authority pursuant to these sections.

(B) With respect to notifications issued by the Department of Justice pursuant to Section 11105.2 of the Penal Code concerning an individual whose criminal record clearance was originally processed by a county child welfare agency with criminal record clearance and exemption authority, the Department of Justice shall process a request from a county child welfare agency with criminal record and exemption authority to receive the notice only if all of the following conditions are met:

(i) The request shall be submitted to the Department of Justice by the agency to be substituted to receive the notification.

(ii) The request shall be for the same applicant type as the type for which the original clearance was obtained.

(iii) The request shall contain all prescribed data elements and format protocols pursuant to a written agreement between the State Department of Social Services and the Department of Justice.

(i) The full criminal record obtained for purposes of this section may be used by the department or by a licensed adoption agency as a clearance required for adoption purposes.

(j) If a licensee or facility is required by law to deny employment or to terminate employment of any employee based on written notification from the state department that the employee has a prior criminal conviction or is determined unsuitable for

employment under Section 1558, the licensee or facility shall not incur civil liability or unemployment insurance liability as a result of that denial or termination.

(k) The State Department of Social Services may charge a fee for the costs of processing electronic fingerprint images and related information.

(l) Amendments to this section made in the 1999 portion of the 1999-2000 Regular Session shall be implemented commencing 60 days after the effective date of the act amending this section in the 1999 portion of the 1999-2000 Regular Session, except that those provisions for the submission of fingerprints for searching the records of the Federal Bureau of Investigation shall be implemented 90 days after the effective date of that act.

SEC. 2. Section 1568.09 of the Health and Safety Code is amended to read:

1568.09. It is the intent of the Legislature in enacting this section to require the electronic fingerprint images of those individuals whose contact with residents of residential care facilities for persons with a chronic, life-threatening illness may pose a risk to the residents' health and safety.

It is the intent of the Legislature, in enacting this section, to require the electronic fingerprint images of those individuals whose contact with community care clients may pose a risk to the clients' health and safety. An individual shall be required to obtain either a criminal record clearance or a criminal record exemption from the State Department of Social Services before his or her initial presence in a residential care facility for persons with chronic, life-threatening illnesses.

(a) (1) Before issuing a license to any person or persons to operate or manage a residential care facility, the department shall secure from an appropriate law enforcement agency a criminal record to determine whether the applicant or any other person specified in subdivision (b) has ever been convicted of a crime other than a minor traffic violation or arrested for any crime specified in subdivision (c) of Section 290 of the Penal Code, for violating Section 245 or 273.5, subdivision (b) of Section 273a or, prior to January 1, 1994, paragraph (2) of Section 273a of the Penal Code, or for any crime for which the department cannot grant an exemption if the person was convicted and the person has not been exonerated.

(2) The criminal history information shall include the full criminal record if any, of those persons, and subsequent arrest information pursuant to Section 11105.2 of the Penal Code.

(3) The following shall apply to the criminal record information:

(A) If the State Department of Social Services finds that the applicant or any other person specified in subdivision (b) has been convicted of a crime, other than a minor traffic violation, the application shall be denied, unless the director grants an exemption pursuant to subdivision (f).

(B) If the State Department of Social Services finds that the applicant, or any other person specified in subdivision (b) is awaiting trial for a crime other than a minor traffic violation, the State Department of Social Services may cease processing the application until the conclusion of the trial.

(C) If no criminal record information has been recorded, the Department of Justice shall provide the applicant and the State Department of Social Services with a statement of that fact.

(D) If the State Department of Social Services finds after licensure that the licensee, or any other person specified in paragraph (2) of subdivision (b), has been convicted of a crime other than a minor traffic violation, the license may be revoked, unless the director grants an exemption pursuant to subdivision (f).

(E) An applicant and any other person specified in subdivision (b) shall submit fingerprint images and related information to the Department of Justice and the Federal Bureau of Investigation, through the Department of Justice, for a state and federal level criminal offender record information search, in addition to the search required by this subdivision. If an applicant meets all other conditions for licensure, except receipt of the Federal Bureau of Investigation's criminal history information for the applicant and persons listed in subdivision (b), the department may issue a license if the applicant and each person described by subdivision (b) has signed and submitted a statement that he or she has never been convicted of a crime in the United States, other than a traffic infraction as defined in paragraph (1) of subdivision (a) of Section 42001 of the Vehicle Code. If, after licensure, the department determines that the licensee or person specified in subdivision (b) has a criminal record, the license may be revoked pursuant to subdivision (a) of Section 1568.082. The department may also suspend the license pending an administrative hearing pursuant to subdivision (b) of Section 1568.082.

(b) In addition to the applicant, the provisions of this section shall be applicable to criminal convictions of the following persons:

(1) Adults responsible for administration or direct supervision of staff of the facility.

(2) Any person, other than a resident, residing in the facility.

(3) Any person who provides resident assistance in dressing, grooming, bathing, or personal hygiene. Any nurse assistant or home health aide meeting the requirements of Section 1338.5 or 1736.6, respectively, who is not employed, retained, or contracted by the licensee, and who has been certified or recertified on or after July 1, 1998, shall be deemed to meet the criminal record clearance requirements of this section. A certified nurse assistant and certified home health aide who will be providing client assistance and who falls under this exemption shall provide one copy of his or her current certification, prior to providing care, to the residential care facility for persons with chronic, life-threatening illness. The facility shall maintain the copy of the certification on file as long as care is being provided by the certified nurse assistant or certified home health aide at the facility. Nothing in this paragraph restricts the right of the department to exclude a certified nurse assistant or certified home health aide from a licensed residential care facility for persons with chronic, life-threatening illness pursuant to Section 1568.092.

(4) (A) Any staff person, volunteer, or employee who has contact with the residents.

(B) A volunteer shall be exempt from the requirements of this subdivision if he or she is a relative, significant other, or close friend of a client receiving care in the facility and the volunteer does not provide direct care and supervision of residents. A volunteer who provides direct care and supervision shall be exempt if the volunteer is a resident's spouse, significant other, close friend, or family member and provides direct care and supervision to

that resident only at the request of the resident. The department may define in regulations persons similar to those described in this subparagraph who may be exempt from the requirements of this subdivision.

(5) If the applicant is a firm, partnership, association, or corporation, the chief executive officer or other person serving in that capacity.

(6) Additional officers of the governing body of the applicant, or other persons with a financial interest in the applicant, as determined necessary by the department by regulation. The criteria used in the development of these regulations shall be based on the person's capability to exercise substantial influence over the operation of the facility.

(c) (1) (A) Subsequent to initial licensure, any person specified in subdivision (b) and not exempted from fingerprinting shall, as a condition to employment, residence, or presence in a residential care facility, be fingerprinted and sign a declaration under penalty of perjury regarding any prior criminal convictions. The licensee shall submit fingerprint images and related information to the Department of Justice and the Federal Bureau of Investigation, through the Department of Justice, for a state and federal level criminal offender record information search, or to comply with paragraph (1) of subdivision (g), prior to the person's employment, residence, or initial presence in the residential care facility.

(B) These fingerprint images and related information shall be electronically submitted to the Department of Justice in a manner approved by the State Department of Social Services and the Department of Justice, for the purpose of obtaining a permanent set of fingerprints. A licensee's failure to submit fingerprint images and related information to the Department of Justice, or to comply with paragraph (1) of subdivision (g), as required in this section, shall result in the citation of a deficiency and an immediate assessment of civil penalties in the amount of one hundred dollars (\$100) per violation per day for a maximum of five days, unless the violation is a second or subsequent violation within a 12-month period in which case the civil penalties shall be in the amount of one hundred dollars (\$100) per violation for a maximum of 30 days, and shall be grounds for disciplining the licensee pursuant to Section 1568.082. The State Department of Social Services may assess civil penalties for continued violations as allowed in Section 1568.0822. The fingerprint images and related information shall then be submitted to the Department of Justice for processing. The licensee shall maintain and make available for inspection documentation of the individual's clearance or exemption.

(2) A violation of the regulations adopted pursuant to Section 1522.04 shall result in the citation of a deficiency and an immediate assessment of civil penalties in the amount of one hundred dollars (\$100) per violation per day for a maximum of five days, unless the violation is a second or subsequent violation within a 12-month period in which case the civil penalties shall be in the amount of one hundred dollars (\$100) per violation for a maximum of 30 days, and shall be grounds for disciplining the licensee pursuant to Section 1568.082. The department may assess civil penalties for continued violations as permitted by Section 1568.0822.

(3) Within 14 calendar days of the receipt of the fingerprint images, the Department of Justice shall notify the State Department of Social Services of the criminal record information, as provided

for in this subdivision. If no criminal record information has been recorded, the Department of Justice shall provide the licensee and the State Department of Social Services with a statement of that fact within 14 calendar days of receipt of the fingerprint images. If new fingerprint images are required for processing, the Department of Justice shall, within 14 calendar days from the date of receipt of the fingerprint images, notify the licensee that the fingerprint images were illegible. The Department of Justice shall notify the department, as required by Section 1522.04, and shall notify the licensee by mail within 14 days of electronic transmission of the fingerprint images to the Department of Justice, if the person has no criminal history record.

(4) Except for persons specified in paragraph (2) of subdivision (b), the licensee shall endeavor to ascertain the previous employment history of persons required to be fingerprinted under this subdivision. If it is determined by the State Department of Social Services, on the basis of the fingerprint images submitted to the Department of Justice, that the person has been convicted of a sex offense against a minor, an offense specified in Section 243.4, 273a, 273d, 273g, or 368 of the Penal Code, or a felony, the department shall notify the licensee to act immediately to terminate the person's employment, remove the person from the residential care facility, or bar the person from entering the residential care facility. The department may subsequently grant an exemption pursuant to subdivision (f). If the conviction was for another crime, except a minor traffic violation, the licensee shall, upon notification by the department, act immediately to either (1) terminate the person's employment, remove the person from the residential care facility, or bar the person from entering the residential care facility; or (2) seek an exemption pursuant to subdivision (f). The department shall determine if the person shall be allowed to remain in the facility until a decision on the exemption is rendered. A licensee's failure to comply with the department's prohibition of employment, contact with clients, or presence in the facility as required by this paragraph shall result in a citation of deficiency and an immediate assessment of civil penalties by the department against the licensee, in the amount of one hundred dollars (\$100) per violation per day for a maximum of five days, unless the violation is a second or subsequent violation within a 12-month period in which case the civil penalties shall be in the amount of one hundred dollars (\$100) per violation for a maximum of 30 days, and shall be grounds for disciplining the licensee pursuant to Section 1568.082.

(5) The department may issue an exemption on its own motion pursuant to subdivision (f) if the person's criminal history indicates that the person is of good character based on the age, seriousness, and frequency of the conviction or convictions. The department, in consultation with interested parties, shall develop regulations to establish the criteria to grant an exemption pursuant to this paragraph.

(6) Concurrently with notifying the licensee pursuant to paragraph (4), the department shall notify the affected individual of his or her right to seek an exemption pursuant to subdivision (f). The individual may seek an exemption only if the licensee terminates the person's employment or removes the person from the facility after receiving notice from the department pursuant to paragraph (4).

(d) (1) For purposes of this section or any other provision of this chapter, a conviction means a plea or verdict of guilty or a

conviction following a plea of nolo contendere. Any action that the department is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, when the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of the sentence, notwithstanding a subsequent order pursuant to Sections 1203.4 and 1203.4a of the Penal Code permitting that person to withdraw his or her plea of guilty and to enter a plea of not guilty, setting aside the verdict of guilty, or dismissing the accusation, information, or indictment. For purposes of this chapter, the record of a conviction, or a copy thereof certified by the clerk of the court or by a judge of the court in which the conviction occurred, shall be conclusive evidence of the conviction. For purposes of this section or any other provision of this chapter, the arrest disposition report certified by the Department of Justice, or documents admissible in a criminal action pursuant to Section 969b of the Penal Code, shall be prima facie evidence of the conviction, notwithstanding any other provision of law prohibiting the admission of these documents in a civil or administrative action.

(2) For purposes of this section or any other provision of this chapter, the department shall consider criminal convictions from another state or federal court as if the criminal offense was committed in this state.

(e) The State Department of Social Services may not use a record of arrest to deny, revoke, or terminate any application, license, employment, or residence unless the department investigates the incident and secures evidence, whether or not related to the incident of arrest, that is admissible in an administrative hearing to establish conduct by the person that may pose a risk to the health and safety of any person who is or may become a client. The State Department of Social Services is authorized to obtain any arrest or conviction records or reports from any law enforcement agency as necessary to the performance of its duties to inspect, license, and investigate community care facilities and individuals associated with a community care facility.

(f) (1) After review of the record, the director may grant an exemption from disqualification for a license as specified in paragraphs (1) and (4) of subdivision (a), or for employment, residence, or presence in a residential care facility as specified in paragraphs (4), (5), and (6) of subdivision (c) if the director has substantial and convincing evidence to support a reasonable belief that the applicant and the person convicted of the crime, if other than the applicant, are of such good character as to justify issuance of the license or special permit or granting an exemption for purposes of subdivision (c). However, an exemption may not be granted pursuant to this subdivision if the conviction was for any of the following offenses:

(A) An offense specified in Section 220, 243.4, or 264.1, subdivision (a) of Section 273a or, prior to January 1, 1994, paragraph (1) of Section 273a, Section 273d, 288, or 289, subdivision (c) of Section 290, or Section 368 of the Penal Code, or was a conviction of another crime against an individual specified in subdivision (c) of Section 667.5 of the Penal Code.

(B) A felony offense specified in Section 729 of the Business and Professions Code or Section 206 or 215, subdivision (a) of Section 347, subdivision (b) of Section 417, or subdivision (a) of Section 451 of the Penal Code.

(2) The department may not prohibit a person from being employed or having contact with clients in a facility on the basis of a denied criminal record exemption request or arrest information unless the department complies with the requirements of Section 1568.092.

(g) (1) For purposes of compliance with this section, the department may permit an individual to transfer a current criminal record clearance, as defined in subdivision (a), from one facility to another, as long as the criminal record clearance has been processed through a state licensing district office, and is being transferred to another facility licensed by a state licensing district office. The request shall be in writing to the department, and shall include a copy of the person's driver's license or valid identification card issued by the Department of Motor Vehicles, or a valid photo identification issued by another state or the United States government if the person is not a California resident. Upon request of the licensee, who shall enclose a self-addressed stamped envelope for this purpose, the department shall verify whether the individual has a clearance that can be transferred.

(2) The State Department of Social Services shall hold criminal record clearances in its active files for a minimum of two years after an employee is no longer employed at a licensed facility in order for the criminal record clearance to be transferred.

(h) If a licensee or facility is required by law to deny employment or to terminate employment of any employee based on written notification from the state department that the employee has a prior criminal conviction or is determined unsuitable for employment under Section 1568.092, the licensee or facility shall not incur civil liability or unemployment insurance liability as a result of that denial or termination.

(i) (1) The Department of Justice shall charge a fee sufficient to cover its cost in providing services to comply with the 14-day requirement contained in subdivision (c) for provision to the department of criminal record information.

(2) Paragraph (1) shall cease to be implemented when the department adopts emergency regulations pursuant to Section 1522.04, and shall become inoperative when permanent regulations are adopted under that section.

(j) Notwithstanding any other provision of law, the department may provide an individual with a copy of his or her state or federal level criminal offender record information search response as provided to that department by the Department of Justice if the department has denied a criminal background clearance based on this information and the individual makes a written request to the department for a copy specifying an address to which it is to be sent. The state or federal level criminal offender record information search response shall not be modified or altered from its form or content as provided by the Department of Justice and shall be provided to the address specified by the individual in his or her written request. The department shall retain a copy of the individual's written request and the response and date provided.

SEC. 3. Section 1569.17 of the Health and Safety Code is amended to read:

1569.17. The Legislature recognizes the need to generate timely and accurate positive fingerprint identification of applicants as a condition of issuing licenses, permits, or certificates of approval for persons to operate or provide direct care services in a residential care facility for the elderly. It is the intent of the

Legislature in enacting this section to require the fingerprints of those individuals whose contact with clients of residential care facilities for the elderly may pose a risk to the clients' health and safety. An individual shall be required to obtain either a criminal record clearance or a criminal record exemption from the State Department of Social Services before his or her initial presence in a residential care facility for the elderly.

(a) (1) Before issuing a license to any person or persons to operate or manage a residential care facility for the elderly, the department shall secure from an appropriate law enforcement agency a criminal record to determine whether the applicant or any other person specified in subdivision (b) has ever been convicted of a crime other than a minor traffic violation or arrested for any crime specified in subdivision (c) of Section 290 of the Penal Code, for violating Section 245 or 273.5, subdivision (b) of Section 273a or, prior to January 1, 1994, paragraph (2) of Section 273a of the Penal Code, or for any crime for which the department cannot grant an exemption if the person was convicted and the person has not been exonerated.

(2) The criminal history information shall include the full criminal record, if any, of those persons, and subsequent arrest information pursuant to Section 11105.2 of the Penal Code.

(3) The following shall apply to the criminal record information:

(A) If the State Department of Social Services finds that the applicant or any other person specified in subdivision (b) has been convicted of a crime, other than a minor traffic violation, the application shall be denied, unless the director grants an exemption pursuant to subdivision (f).

(B) If the State Department of Social Services finds that the applicant, or any other person specified in subdivision (b) is awaiting trial for a crime other than a minor traffic violation, the State Department of Social Services may cease processing the application until the conclusion of the trial.

(C) If no criminal record information has been recorded, the Department of Justice shall provide the applicant and the State Department of Social Services with a statement of that fact.

(D) If the State Department of Social Services finds after licensure that the licensee, or any other person specified in paragraph (2) of subdivision (b), has been convicted of a crime other than a minor traffic violation, the license may be revoked, unless the director grants an exemption pursuant to subdivision (f).

(E) An applicant and any other person specified in subdivision (b) shall submit fingerprint images and related information to the Department of Justice and the Federal Bureau of Investigation, through the Department of Justice, for a state and federal level criminal offender record information search, in addition to the search required by subdivision (a). If an applicant meets all other conditions for licensure, except receipt of the Federal Bureau of Investigation's criminal history information for the applicant and persons listed in subdivision (b), the department may issue a license if the applicant and each person described by subdivision (b) has signed and submitted a statement that he or she has never been convicted of a crime in the United States, other than a traffic infraction as defined in paragraph (1) of subdivision (a) of Section 42001 of the Vehicle Code. If, after licensure, the department determines that the licensee or person specified in subdivision (b) has a criminal record, the license may be revoked pursuant to Section

1569.50. The department may also suspend the license pending an administrative hearing pursuant to Sections 1569.50 and 1569.51.

(b) In addition to the applicant, the provisions of this section shall apply to criminal convictions of the following persons:

(1) (A) Adults responsible for administration or direct supervision of staff.

(B) Any person, other than a client, residing in the facility. Residents of unlicensed independent senior housing facilities that are located in contiguous buildings on the same property as a residential care facility for the elderly shall be exempt from these requirements.

(C) Any person who provides client assistance in dressing, grooming, bathing, or personal hygiene. Any nurse assistant or home health aide meeting the requirements of Section 1338.5 or 1736.6, respectively, who is not employed, retained, or contracted by the licensee, and who has been certified or recertified on or after July 1, 1998, shall be deemed to meet the criminal record clearance requirements of this section. A certified nurse assistant and certified home health aide who will be providing client assistance and who falls under this exemption shall provide one copy of his or her current certification, prior to providing care, to the residential care facility for the elderly. The facility shall maintain the copy of the certification on file as long as the care is being provided by the certified nurse assistant or certified home health aide at the facility. Nothing in this paragraph restricts the right of the department to exclude a certified nurse assistant or certified home health aide from a licensed residential care facility for the elderly pursuant to Section 1569.58.

(D) Any staff person, volunteer, or employee who has contact with the clients.

(E) If the applicant is a firm, partnership, association, or corporation, the chief executive officer or other person serving in a similar capacity.

(F) Additional officers of the governing body of the applicant or other persons with a financial interest in the applicant, as determined necessary by the department by regulation. The criteria used in the development of these regulations shall be based on the person's capability to exercise substantial influence over the operation of the facility.

(2) The following persons are exempt from requirements applicable under paragraph (1):

(A) A spouse, relative, significant other, or close friend of a client shall be exempt if this person is visiting the client or provides direct care and supervision to that client only.

(B) A volunteer to whom all of the following apply:

(i) The volunteer is at the facility during normal waking hours.

(ii) The volunteer is directly supervised by the licensee or a facility employee with a criminal record clearance or exemption.

(iii) The volunteer spends no more than 16 hours per week at the facility.

(iv) The volunteer does not provide clients with assistance in dressing, grooming, bathing, or personal hygiene.

(v) The volunteer is not left alone with clients in care.

(C) A third-party contractor retained by the facility if the contractor is not left alone with clients in care.

(D) A third-party contractor or other business professional retained by a client and at the facility at the request or by

permission of that client. These individuals may not be left alone with other clients.

(E) Licensed or certified medical professionals are exempt from fingerprint and criminal background check requirements imposed by community care licensing. This exemption does not apply to a person who is a community care facility licensee or an employee of the facility.

(F) Employees of licensed home health agencies and members of licensed hospice interdisciplinary teams who have contact with a resident of a residential care facility at the request of the resident or resident's legal decisionmaker are exempt from fingerprint and criminal background check requirements imposed by community care licensing. This exemption does not apply to a person who is a community care facility licensee or an employee of the facility.

(G) Clergy and other spiritual caregivers who are performing services in common areas of the residential care facility, or who are advising an individual resident at the request of, or with permission of, the resident, are exempt from fingerprint and criminal background check requirements imposed by community care licensing. This exemption does not apply to a person who is a community care facility licensee or an employee of the facility.

(H) Any person similar to those described in this subdivision, as defined by the department in regulations.

(I) Nothing in this paragraph shall prevent a licensee from requiring a criminal record clearance of any individual exempt from the requirements of this section, provided that the individual has client contact.

(c) (1) (A) Subsequent to initial licensure, any person required to be fingerprinted pursuant to subdivision (b) shall, as a condition to employment, residence, or presence in a residential facility for the elderly, be fingerprinted and sign a declaration under penalty of perjury regarding any prior criminal convictions. The licensee shall submit these fingerprint images and related information to the Department of Justice and the Federal Bureau of Investigation, through the Department of Justice, for a state and federal level criminal offender record information search, or to comply with paragraph (1) of subdivision (g) prior to the person's employment, residence, or initial presence in the residential care facility for the elderly.

(B) These fingerprint images and related information shall be electronically transmitted in a manner approved by the State Department of Social Services and the Department of Justice. A licensee's failure to submit fingerprint images and related information to the Department of Justice, or to comply with paragraph (1) of subdivision (g), as required in this section, shall result in the citation of a deficiency and an immediate assessment of civil penalties in the amount of one hundred dollars (\$100) per violation per day for a maximum of five days, unless the violation is a second or subsequent violation within a 12-month period in which case the civil penalties shall be in the amount of one hundred dollars (\$100) per violation for a maximum of 30 days, and shall be grounds for disciplining the licensee pursuant to Section 1569.50. The State Department of Social Services may assess civil penalties for continued violations as permitted by Section 1569.49. The licensee shall then submit these fingerprint images to the State Department of

Social Services for processing. Documentation of the individual's clearance or exemption shall be maintained by the licensee and be available for inspection. The Department of Justice shall notify the department, as required by Section 1522.04, and notify the licensee by mail within 14 days of electronic transmission of the fingerprints to the Department of Justice, if the person has no criminal record. A violation of the regulations adopted pursuant to Section 1522.04 shall result in the citation of a deficiency and an immediate assessment of civil penalties in the amount of one hundred dollars (\$100) per violation per day for a maximum of five days, unless the violation is a second or subsequent violation within a 12-month period in which case the civil penalties shall be in the amount of one hundred dollars (\$100) per violation for a maximum of 30 days, and shall be grounds for disciplining the licensee pursuant to Section 1569.50. The department may assess civil penalties for continued violations as permitted by Section 1569.49.

(2) Within 14 calendar days of the receipt of the fingerprint images, the Department of Justice shall notify the State Department of Social Services of the criminal record information, as provided for in this subdivision. If no criminal record information has been recorded, the Department of Justice shall provide the licensee and the State Department of Social Services with a statement of that fact within 14 calendar days of receipt of the fingerprint images. If new fingerprint images are required for processing, the Department of Justice shall, within 14 calendar days from the date of receipt of the fingerprint images, notify the licensee that the fingerprint images were illegible.

(3) Except for persons specified in paragraph (2) of subdivision (b), the licensee shall endeavor to ascertain the previous employment history of persons required to be fingerprinted under this subdivision. If the State Department of Social Services determines, on the basis of the fingerprint images submitted to the Department of Justice, that the person has been convicted of a sex offense against a minor, an offense specified in Section 243.4, 273a, 273d, 273g, or 368 of the Penal Code, or a felony, the State Department of Social Services shall notify the licensee in writing within 15 calendar days of the receipt of the notification from the Department of Justice to act immediately to terminate the person's employment, remove the person from the residential care facility for the elderly, or bar the person from entering the residential care facility for the elderly. The State Department of Social Services may subsequently grant an exemption pursuant to subdivision (f). If the conviction was for another crime, except a minor traffic violation, the licensee shall, upon notification by the State Department of Social Services, act immediately to either (1) terminate the person's employment, remove the person from the residential care facility for the elderly, or bar the person from entering the residential care facility for the elderly or (2) seek an exemption pursuant to subdivision (f). The department shall determine if the person shall be allowed to remain in the facility until a decision on the exemption is rendered by the department. A licensee's failure to comply with the department's prohibition of employment, contact with clients, or presence in the facility as required by this paragraph shall result in a citation of deficiency and an immediate assessment of civil penalties by the department against the licensee, in the amount of one hundred dollars (\$100) per violation per day for a maximum of five days, unless the violation is a second or subsequent violation within a 12-month

period in which case the civil penalties shall be in the amount of one hundred dollars (\$100) per violation for a maximum of 30 days, and shall be grounds for disciplining the licensee pursuant to Section 1569.50.

(4) The department may issue an exemption on its own motion pursuant to subdivision (f) if the person's criminal history indicates that the person is of good character based on the age, seriousness, and frequency of the conviction or convictions. The department, in consultation with interested parties, shall develop regulations to establish the criteria to grant an exemption pursuant to this paragraph.

(5) Concurrently with notifying the licensee pursuant to paragraph (4), the department shall notify the affected individual of his or her right to seek an exemption pursuant to subdivision (f). The individual may seek an exemption only if the licensee terminates the person's employment or removes the person from the facility after receiving notice from the department pursuant to paragraph (4).

(d) (1) For purposes of this section or any other provision of this chapter, a conviction means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that the department is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, when the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of the sentence, notwithstanding a subsequent order pursuant to the provisions of Sections 1203.4 and 1203.4a of the Penal Code permitting a person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment. For purposes of this section or any other provision of this chapter, the record of a conviction, or a copy thereof certified by the clerk of the court or by a judge of the court in which the conviction occurred, shall be conclusive evidence of the conviction. For purposes of this section or any other provision of this chapter, the arrest disposition report certified by the Department of Justice or documents admissible in a criminal action pursuant to Section 969b of the Penal Code shall be prima facie evidence of the conviction, notwithstanding any other provision of law prohibiting the admission of these documents in a civil or administrative action.

(2) For purposes of this section or any other provision of this chapter, the department shall consider criminal convictions from another state or federal court as if the criminal offense was committed in this state.

(e) The State Department of Social Services may not use a record of arrest to deny, revoke, or terminate any application, license, employment, or residence unless the department investigates the incident and secures evidence, whether or not related to the incident of arrest, that is admissible in an administrative hearing to establish conduct by the person that may pose a risk to the health and safety of any person who is or may become a client. The State Department of Social Services is authorized to obtain any arrest or conviction records or reports from any law enforcement agency as necessary to the performance of its duties to inspect, license, and investigate community care facilities and individuals associated with a community care facility.

(f) (1) After review of the record, the director may grant an exemption from disqualification for a license as specified in

paragraphs (1) and (4) of subdivision (a), or for employment, residence, or presence in a residential care facility for the elderly as specified in paragraphs (4), (5), and (6) of subdivision (c) if the director has substantial and convincing evidence to support a reasonable belief that the applicant and the person convicted of the crime, if other than the applicant, are of such good character as to justify issuance of the license or special permit or granting an exemption for purposes of subdivision (c). However, an exemption may not be granted pursuant to this subdivision if the conviction was for any of the following offenses:

(A) An offense specified in Section 220, 243.4, or 264.1, subdivision (a) of Section 273a or, prior to January 1, 1994, paragraph (1) of Section 273a, Section 273d, 288, or 289, subdivision (c) of Section 290, or Section 368 of the Penal Code, or was a conviction of another crime against an individual specified in subdivision (c) of Section 667.5 of the Penal Code.

(B) A felony offense specified in Section 729 of the Business and Professions Code or Section 206 or 215, subdivision (a) of Section 347, subdivision (b) of Section 417, or subdivision (a) of Section 451 of the Penal Code.

(2) The director shall notify in writing the licensee or the applicant of his or her decision within 60 days of receipt of all information from the applicant and other sources determined necessary by the director for the rendering of a decision pursuant to this subdivision.

(3) The department may not prohibit a person from being employed or having contact with clients in a facility on the basis of a denied criminal record exemption request or arrest information unless the department complies with the requirements of Section 1569.58.

(g) (1) For purposes of compliance with this section, the department may permit an individual to transfer a current criminal record clearance, as defined in subdivision (a), from one facility to another, as long as the criminal record clearance has been processed through a state licensing district office, and is being transferred to another facility licensed by a state licensing district office. The request shall be submitted in writing to the department, and shall include a copy of the person's driver's license or valid identification card issued by the Department of Motor Vehicles, or a valid photo identification issued by another state or the United States government if the person is not a California resident. Upon request of the licensee, who shall enclose a self-addressed stamped envelope for this purpose, the department shall verify whether the individual has a clearance that can be transferred.

(2) The State Department of Social Services shall hold criminal record clearances in its active files for a minimum of two years after an employee is no longer employed at a licensed facility in order for the criminal record clearances to be transferred under this section.

(h) If a licensee or facility is required by law to deny employment or to terminate employment of any employee based on written notification from the department that the employee has a prior criminal conviction or is determined unsuitable for employment under Section 1569.58, the licensee or facility shall not incur civil liability or unemployment insurance liability as a result of that denial or termination.

(i) Notwithstanding any other provision of law, the department may provide an individual with a copy of his or her state or federal

level criminal offender record information search response as provided to that department by the Department of Justice if the department has denied a criminal background clearance based on this information and the individual makes a written request to the department for a copy specifying an address to which it is to be sent. The state or federal level criminal offender record information search response shall not be modified or altered from its form or content as provided by the Department of Justice and shall be provided to the address specified by the individual in his or her written request. The department shall retain a copy of the individual's written request and the response and date provided.

SEC. 4. Section 1596.871 of the Health and Safety Code is amended to read:

1596.871. The Legislature recognizes the need to generate timely and accurate positive fingerprint identification of applicants as a condition of issuing licenses, permits, or certificates of approval for persons to operate or provide direct care services in a child care center or family child care home. It is the intent of the Legislature in enacting this section to require the fingerprints of those individuals whose contact with child day care facility clients may pose a risk to the children's health and safety. An individual shall be required to obtain either a criminal record clearance or a criminal record exemption from the State Department of Social Services before his or her initial presence in a child day care facility.

(a) (1) Before issuing a license or special permit to any person to operate or manage a day care facility, the department shall secure from an appropriate law enforcement agency a criminal record to determine whether the applicant or any other person specified in subdivision (b) has ever been convicted of a crime other than a minor traffic violation or arrested for any crime specified in subdivision (c) of Section 290 of the Penal Code, for violating Section 245 or 273.5, subdivision (b) of Section 273a or, prior to January 1, 1994, paragraph (2) of Section 273a of the Penal Code, or for any crime for which the department cannot grant an exemption if the person was convicted and the person has not been exonerated.

(2) The criminal history information shall include the full criminal record, if any, of those persons, and subsequent arrest information pursuant to Section 11105.2 of the Penal Code.

(3) Except during the 2003-04, 2004-05, 2005-06, 2006-07, and 2007-08 fiscal years, neither the Department of Justice nor the department may charge a fee for the fingerprinting of an applicant who will serve six or fewer children or any family day care applicant for a license, or for obtaining a criminal record of an applicant pursuant to this section.

(4) The following shall apply to the criminal record information:

(A) If the State Department of Social Services finds that the applicant or any other person specified in subdivision (b) has been convicted of a crime, other than a minor traffic violation, the application shall be denied, unless the director grants an exemption pursuant to subdivision (f).

(B) If the State Department of Social Services finds that the applicant, or any other person specified in subdivision (b), is awaiting trial for a crime other than a minor traffic violation, the State Department of Social Services may cease processing the application until the conclusion of the trial.

(C) If no criminal record information has been recorded, the

Department of Justice shall provide the applicant and the State Department of Social Services with a statement of that fact.

(D) If the State Department of Social Services finds after licensure that the licensee, or any other person specified in paragraph (2) of subdivision (b), has been convicted of a crime other than a minor traffic violation, the license may be revoked, unless the director grants an exemption pursuant to subdivision (f).

(E) An applicant and any other person specified in subdivision (b) shall submit fingerprint images and related information to the Department of Justice and the Federal Bureau of Investigation, through the Department of Justice, for a state and federal level criminal offender record information search, in addition to the search required by subdivision (a). If an applicant meets all other conditions for licensure, except receipt of the Federal Bureau of Investigation's criminal history information for the applicant and persons listed in subdivision (b), the department may issue a license if the applicant and each person described by subdivision (b) has signed and submitted a statement that he or she has never been convicted of a crime in the United States, other than a traffic infraction as defined in paragraph (1) of subdivision (a) of Section 42001 of the Vehicle Code. If, after licensure, the department determines that the licensee or person specified in subdivision (b) has a criminal record, the license may be revoked pursuant to Section 1596.885. The department may also suspend the license pending an administrative hearing pursuant to Section 1596.886.

(b) (1) In addition to the applicant, this section shall be applicable to criminal convictions of the following persons:

(A) Adults responsible for administration or direct supervision of staff.

(B) Any person, other than a child, residing in the facility.

(C) Any person who provides care and supervision to the children.

(D) Any staff person, volunteer, or employee who has contact with the children.

(i) A volunteer providing time-limited specialized services shall be exempt from the requirements of this subdivision if this person is directly supervised by the licensee or a facility employee with a criminal record clearance or exemption, the volunteer spends no more than 16 hours per week at the facility, and the volunteer is not left alone with children in care.

(ii) A student enrolled or participating at an accredited educational institution shall be exempt from the requirements of this subdivision if the student is directly supervised by the licensee or a facility employee with a criminal record clearance or exemption, the facility has an agreement with the educational institution concerning the placement of the student, the student spends no more than 16 hours per week at the facility, and the student is not left alone with children in care.

(iii) A volunteer who is a relative, legal guardian, or foster parent of a client in the facility shall be exempt from the requirements of this subdivision.

(iv) A contracted repair person retained by the facility, if not left alone with children in care, shall be exempt from the requirements of this subdivision.

(v) Any person similar to those described in this subdivision, as defined by the department in regulations.

(E) If the applicant is a firm, partnership, association, or corporation, the chief executive officer, other person serving in

like capacity, or a person designated by the chief executive officer as responsible for the operation of the facility, as designated by the applicant agency.

(F) If the applicant is a local educational agency, the president of the governing board, the school district superintendent, or a person designated to administer the operation of the facility, as designated by the local educational agency.

(G) Additional officers of the governing body of the applicant, or other persons with a financial interest in the applicant, as determined necessary by the department by regulation. The criteria used in the development of these regulations shall be based on the person's capability to exercise substantial influence over the operation of the facility.

(H) This section does not apply to employees of child care and development programs under contract with the State Department of Education who have completed a criminal record clearance as part of an application to the Commission on Teacher Credentialing, and who possess a current credential or permit issued by the commission, including employees of child care and development programs that serve both children subsidized under, and children not subsidized under, a State Department of Education contract. The Commission on Teacher Credentialing shall notify the department upon revocation of a current credential or permit issued to an employee of a child care and development program under contract with the State Department of Education.

(I) This section does not apply to employees of a child care and development program operated by a school district, county office of education, or community college district under contract with the State Department of Education who have completed a criminal record clearance as a condition of employment. The school district, county office of education, or community college district upon receiving information that the status of an employee's criminal record clearance has changed shall submit that information to the department.

(2) Nothing in this subdivision shall prevent a licensee from requiring a criminal record clearance of any individuals exempt from the requirements under this subdivision.

(c) (1) (A) Subsequent to initial licensure, any person specified in subdivision (b) and not exempted from fingerprinting shall, as a condition to employment, residence, or presence in a child day care facility be fingerprinted and sign a declaration under penalty of perjury regarding any prior criminal conviction. The licensee shall submit fingerprint images and related information to the Department of Justice and the Federal Bureau of Investigation, through the Department of Justice, or to comply with paragraph (1) of subdivision (h), prior to the person's employment, residence, or initial presence in the child day care facility.

(B) These fingerprint images for the purpose of obtaining a permanent set of fingerprints shall be electronically submitted to the Department of Justice in a manner approved by the State Department of Social Services and to the Department of Justice, or to comply with paragraph (1) of subdivision (h), as required in this section, shall result in the citation of a deficiency, and an immediate assessment of civil penalties in the amount of one hundred dollars (\$100) per violation per day for a maximum of five days, unless the violation is a second or subsequent violation within a 12-month period in which case the civil penalties shall be in the

amount of one hundred dollars (\$100) per violation for a maximum of 30 days, and shall be grounds for disciplining the licensee pursuant to Section 1596.885 or Section 1596.886. The State Department of Social Services may assess civil penalties for continued violations permitted by Sections 1596.99 and 1597.62. The fingerprint images and related information shall then be submitted to the department for processing. Within 14 calendar days of the receipt of the fingerprint images, the Department of Justice shall notify the State Department of Social Services of the criminal record information, as provided in this subdivision. If no criminal record information has been recorded, the Department of Justice shall provide the licensee and the State Department of Social Services with a statement of that fact within 14 calendar days of receipt of the fingerprint images. If new fingerprint images are required for processing, the Department of Justice shall, within 14 calendar days from the date of receipt of the fingerprint images, notify the licensee that the fingerprints were illegible.

(C) Documentation of the individual's clearance or exemption shall be maintained by the licensee, and shall be available for inspection. When live-scan technology is operational, as defined in Section 1522.04, the Department of Justice shall notify the department, as required by that section, and notify the licensee by mail within 14 days of electronic transmission of the fingerprints to the Department of Justice, if the person has no criminal record. Any violation of the regulations adopted pursuant to Section 1522.04 shall result in the citation of a deficiency and an immediate assessment of civil penalties in the amount of one hundred dollars (\$100) per violation per day for a maximum of five days, unless the violation is a second or subsequent violation within a 12-month period in which case the civil penalties shall be in the amount of one hundred dollars (\$100) per violation for a maximum of 30 days, and shall be grounds for disciplining the licensee pursuant to Section 1596.885 or Section 1596.886. The department may assess civil penalties for continued violations, as permitted by Sections 1596.99 and 1597.62.

(2) Except for persons specified in paragraph (2) of subdivision (b), the licensee shall endeavor to ascertain the previous employment history of persons required to be fingerprinted under this subdivision. If it is determined by the department, on the basis of fingerprints submitted to the Department of Justice, that the person has been convicted of a sex offense against a minor, an offense specified in Section 243.4, 273a, 273d, 273g, or 368 of the Penal Code, or a felony, the State Department of Social Services shall notify the licensee to act immediately to terminate the person's employment, remove the person from the child day care facility, or bar the person from entering the child day care facility. The department may subsequently grant an exemption pursuant to subdivision (f). If the conviction was for another crime except a minor traffic violation, the licensee shall, upon notification by the State Department of Social Services, act immediately to either (1) terminate the person's employment, remove the person from the child day care facility, or bar the person from entering the child day care facility; or (2) seek an exemption pursuant to subdivision (f). The department shall determine if the person shall be allowed to remain in the facility until a decision on the exemption is rendered. A licensee's failure to comply with the department's prohibition of employment, contact with

clients, or presence in the facility as required by this paragraph shall result in a citation of deficiency and an immediate assessment of civil penalties by the department against the licensee, in the amount of one hundred dollars (\$100) per violation per day for a maximum of five days, unless the violation is a second or subsequent violation within a 12-month period in which case the civil penalties shall be in the amount of one hundred dollars (\$100) per violation for a maximum of 30 days, and shall be grounds for disciplining the licensee pursuant to Section 1596.885 or 1596.886.

(3) The department may issue an exemption on its own motion pursuant to subdivision (f) if the person's criminal history indicates that the person is of good character based on the age, seriousness, and frequency of the conviction or convictions. The department, in consultation with interested parties, shall develop regulations to establish the criteria to grant an exemption pursuant to this paragraph.

(4) Concurrently with notifying the licensee pursuant to paragraph (3), the department shall notify the affected individual of his or her right to seek an exemption pursuant to subdivision (f). The individual may seek an exemption only if the licensee terminates the person's employment or removes the person from the facility after receiving notice from the department pursuant to paragraph (3).

(d) (1) For purposes of this section or any other provision of this chapter, a conviction means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that the department is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, when the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, notwithstanding a subsequent order pursuant to Sections 1203.4 and 1203.4a of the Penal Code permitting the person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment. For purposes of this section or any other provision of this chapter, the record of a conviction, or a copy thereof certified by the clerk of the court or by a judge of the court in which the conviction occurred, shall be conclusive evidence of the conviction. For purposes of this section or any other provision of this chapter, the arrest disposition report certified by the Department of Justice, or documents admissible in a criminal action pursuant to Section 969b of the Penal Code, shall be prima facie evidence of conviction, notwithstanding any other provision of law prohibiting the admission of these documents in a civil or administrative action.

(2) For purposes of this section or any other provision of this chapter, the department shall consider criminal convictions from another state or federal court as if the criminal offense was committed in this state.

(e) The State Department of Social Services may not use a record of arrest to deny, revoke, or terminate any application, license, employment, or residence unless the department investigates the incident and secures evidence, whether or not related to the incident of arrest, that is admissible in an administrative hearing to establish conduct by the person that may pose a risk to the health and safety of any person who is or may become a client. The State Department of Social Services is authorized to obtain any arrest or conviction records or reports from any law enforcement agency as

necessary to the performance of its duties to inspect, license, and investigate community care facilities and individuals associated with a community care facility.

(f) (1) After review of the record, the director may grant an exemption from disqualification for a license or special permit as specified in paragraphs (1) and (4) of subdivision (a), or for employment, residence, or presence in a child day care facility as specified in paragraphs (3), (4), and (5) of subdivision (c) if the director has substantial and convincing evidence to support a reasonable belief that the applicant and the person convicted of the crime, if other than the applicant, are of good character so as to justify issuance of the license or special permit or granting an exemption for purposes of subdivision (c). However, an exemption may not be granted pursuant to this subdivision if the conviction was for any of the following offenses:

(A) An offense specified in Section 220, 243.4, or 264.1, subdivision (a) of Section 273a or, prior to January 1, 1994, paragraph (1) of Section 273a, Section 273d, 288, or 289, subdivision (c) of Section 290, or Section 368 of the Penal Code, or was a conviction of another crime against an individual specified in subdivision (c) of Section 667.5 of the Penal Code.

(B) A felony offense specified in Section 729 of the Business and Professions Code or Section 206 or 215, subdivision (a) of Section 347, subdivision (b) of Section 417, or subdivision (a) or (b) of Section 451 of the Penal Code.

(2) The department may not prohibit a person from being employed or having contact with clients in a facility on the basis of a denied criminal record exemption request or arrest information unless the department complies with the requirements of Section 1596.8897.

(g) Upon request of the licensee, who shall enclose a self-addressed stamped postcard for this purpose, the Department of Justice shall verify receipt of the fingerprint images.

(h) (1) For the purposes of compliance with this section, the department may permit an individual to transfer a current criminal record clearance, as defined in subdivision (a), from one facility to another, as long as the criminal record clearance has been processed through a state licensing district office, and is being transferred to another facility licensed by a state licensing district office. The request shall be in writing to the department, and shall include a copy of the person's driver's license or valid identification card issued by the Department of Motor Vehicles, or a valid photo identification issued by another state or the United States government if the person is not a California resident. Upon request of the licensee, who shall enclose a self-addressed stamped envelope for this purpose, the department shall verify whether the individual has a clearance that can be transferred.

(2) The State Department of Social Services shall hold criminal record clearances in its active files for a minimum of two years after an employee is no longer employed at a licensed facility in order for the criminal record clearances to be transferred.

(3) The following shall apply to a criminal record clearance or exemption from the department or a county office with department-delegated licensing authority:

(A) A county office with department-delegated licensing authority may accept a clearance or exemption from the department.

(B) The department may accept a clearance or exemption from any county office with department-delegated licensing authority.

(C) A county office with department-delegated licensing authority may accept a clearance or exemption from any other county office with department-delegated licensing authority.

(4) With respect to notifications issued by the Department of Justice pursuant to Section 11105.2 of the Penal Code concerning an individual whose criminal record clearance was originally processed by the department or a county office with department-delegated licensing authority, all of the following shall apply:

(A) The Department of Justice shall process a request from the department or a county office with department-delegated licensing authority to receive the notice, only if all of the following conditions are met:

(i) The request shall be submitted to the Department of Justice by the agency to be substituted to receive the notification.

(ii) The request shall be for the same applicant type as the type for which the original clearance was obtained.

(iii) The request shall contain all prescribed data elements and format protocols pursuant to a written agreement between the department and the Department of Justice.

(B) (i) On or before January 7, 2005, the department shall notify the Department of Justice of all county offices that have department-delegated licensing authority.

(ii) The department shall notify the Department of Justice within 15 calendar days of the date on which a new county office receives department-delegated licensing authority or a county's delegated licensing authority is rescinded.

(C) The Department of Justice shall charge the department or a county office with department-delegated licensing authority a fee for each time a request to substitute the recipient agency is received for purposes of this paragraph. This fee shall not exceed the cost of providing the service.

(i) Notwithstanding any other provision of law, the department may provide an individual with a copy of his or her state or federal level criminal offender record information search response as provided to that department by the Department of Justice if the department has denied a criminal background clearance based on this information and the individual makes a written request to the department for a copy specifying an address to which it is to be sent. The state or federal level criminal offender record information search response shall not be modified or altered from its form or content as provided by the Department of Justice and shall be provided to the address specified by the individual in his or her written request. The department shall retain a copy of the individual's written request and the response and date provided.

SEC. 5. Section 288.3 of the Penal Code, as added by Section 7 of Chapter 337 of the Statutes of 2006, is amended and renumbered to read:

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

(2) Every person who violates this subdivision after a prior conviction for an offense listed in subdivision (c) of Section 290

shall be punished by imprisonment in the state prison.

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

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

SEC. 6. Section 289.5 of the Penal Code is amended to read:

289.5. (a) Every person who flees to this state with the intent to avoid prosecution for an offense which, if committed or attempted in this state, would have been punishable as one or more of the offenses described in subdivision (c) of Section 290, and who has been charged with that offense under the laws of the jurisdiction from which the person fled, is guilty of a misdemeanor.

(b) Every person who flees to this state with the intent to avoid custody or confinement imposed for conviction of an offense under the laws of the jurisdiction from which the person fled, which offense, if committed or attempted in this state, would have been punishable as one or more of the offenses described in subdivision (c) of Section 290, is guilty of a misdemeanor.

(c) No person shall be charged and prosecuted for an offense under this section unless the prosecutor has requested the other jurisdiction to extradite the person and the other jurisdiction has refused to do so.

(d) Any person who is convicted of any felony sex offense described in subdivision (c) of Section 290, that is committed after fleeing to this state under the circumstances described in subdivision (a) or (b) of this section, shall, in addition and consecutive to the punishment for that conviction, receive an additional term of two years' imprisonment.

SEC. 7. Section 290 of the Penal Code is repealed.

SEC. 8. Section 290 is added to the Penal Code, to read:

290. (a) Sections 290 to 290.023, inclusive, shall be known and may be cited as the Sex Offender Registration Act. All references to "the Act" in those sections are to the Sex Offender Registration Act.

(b) Every person described in subdivision (c), for the rest of his or her life while residing in California, or while attending school or working in California, as described in Sections 290.002 and 290.01, shall be required to register with the chief of police of the city in which he or she is residing, or the sheriff of the county if he or she is residing in an unincorporated area or city that has no police department, and, additionally, with the chief of police of a campus of the University of California, the California State University, or community college if he or she is residing upon the campus or in any of its facilities, within five working days of coming into, or changing his or her residence within, any city, county, or city and county, or campus in which he or she temporarily resides, and shall be required to register thereafter in accordance with the Act.

(c) The following persons shall be required to register:

Any person who, since July 1, 1944, has been or is hereafter convicted in any court in this state or in any federal or military court of a violation of Section 187 committed in the perpetration, or an attempt to perpetrate, rape or any act punishable under Section 286, 288, 288a, or 289, Section 207 or 209 committed with intent to violate Section 261, 286, 288, 288a, or 289, Section 220, except

assault to commit mayhem, Section 243.4, paragraph (1), (2), (3), (4), or (6) of subdivision (a) of Section 261, paragraph (1) of subdivision (a) of Section 262 involving the use of force or violence for which the person is sentenced to the state prison, Section 264.1, 266, or 266c, subdivision (b) of Section 266h, subdivision (b) of Section 266i, Section 266j, 267, 269, 285, 286, 288, 288a, 288.3, 288.4, 288.5, 288.7, 289, or 311.1, subdivision (b), (c), or (d) of Section 311.2, Section 311.3, 311.4, 311.10, 311.11, or 647.6, former Section 647a, subdivision (c) of Section 653f, subdivision 1 or 2 of Section 314, any offense involving lewd or lascivious conduct under Section 272, or any felony violation of Section 288.2; any statutory predecessor that includes all elements of one of the above-mentioned offenses; or any person who since that date has been or is hereafter convicted of the attempt or conspiracy to commit any of the above-mentioned offenses.

SEC. 9. Section 290.001 is added to the Penal Code, to read:

290.001. Every person who has ever been adjudicated a sexually violent predator, as defined in Section 6600 of the Welfare and Institutions Code, shall register in accordance with the Act.

SEC. 10. Section 290.002 is added to the Penal Code, to read:

290.002. Persons required to register in their state of residence who are out-of-state residents employed, or carrying on a vocation in California on a full-time or part-time basis, with or without compensation, for more than 14 days, or for an aggregate period exceeding 30 days in a calendar year, shall register in accordance with the Act. Persons described in the Act who are out-of-state residents enrolled in any educational institution in California, as defined in Section 22129 of the Education Code, on a full-time or part-time basis, shall register in accordance with the Act. The place where the out-of-state resident is located, for purposes of registration, shall be the place where the person is employed, carrying on a vocation, or attending school. The out-of-state resident subject to this section shall, in addition to the information required pursuant to Section 290.015, provide the registering authority with the name of his or her place of employment or the name of the school attended in California, and his or her address or location in his or her state of residence. The registration requirement for persons subject to this section shall become operative on November 25, 2000. The terms "employed or carries on a vocation" include employment whether or not financially compensated, volunteered, or performed for government or educational benefit.

SEC. 11. Section 290.003 is added to the Penal Code, to read:

290.003. Any person who, since July 1, 1944, has been or hereafter is released, discharged, or paroled from a penal institution where he or she was confined because of the commission or attempted commission of one of the offenses described in subdivision (c) of Section 290, shall register in accordance with the Act.

SEC. 12. Section 290.004 is added to the Penal Code, to read:

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

SEC. 13. Section 290.005 is added to the Penal Code, to read:

290.005. The following persons shall register in accordance with the Act:

(a) Any person who, since July 1, 1944, has been, or is hereafter convicted in any other court, including any state, federal, or military court, of any offense that, if committed or attempted in this state, would have been punishable as one or more of the offenses described in subdivision (c) of Section 290, including offenses in which the person was a principal, as defined in Section 31.

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

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

(d) Notwithstanding subdivision (c), a person convicted in another state of an offense similar to one of the following offenses who is required to register in the state of conviction shall not be required to register in California unless the out-of-state offense contains all of the elements of a registerable California offense described in subdivision (c) of Section 290:

(1) Indecent exposure, pursuant to Section 314.

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

(3) Incest, pursuant to Section 285.

(4) Sodomy, pursuant to Section 286, or oral copulation, pursuant to Section 288a, provided that the offender notifies the Department of Justice that the sodomy or oral copulation conviction was for conduct between consenting adults, as described in Section 290.019, and the department is able, upon the exercise of reasonable diligence, to verify that fact.

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

SEC. 14. Section 290.006 is added to the Penal Code, to read:

290.006. Any person ordered by any court to register pursuant to the Act for any offense not included specifically in subdivision (c) of Section 290, shall so register, if the court finds at the time of conviction or sentencing that the person committed the offense as a result of sexual compulsion or for purposes of sexual gratification. The court shall state on the record the reasons for its findings and the reasons for requiring registration.

SEC. 15. Section 290.007 is added to the Penal Code, to read:

290.007. Any person required to register pursuant to any provision of the Act shall register in accordance with the Act, regardless of whether the person's conviction has been dismissed pursuant to Section 1203.4, unless the person obtains a certificate of rehabilitation and is entitled to relief from registration pursuant to Section 290.5.

SEC. 16. Section 290.008 is added to the Penal Code, to read:

290.008. (a) Any person who, on or after January 1, 1986, is discharged or paroled from the Department of Corrections and Rehabilitation to the custody of which he or she was committed after having been adjudicated a ward of the juvenile court pursuant to Section 602 of the Welfare and Institutions Code because of the commission or attempted commission of any offense described in subdivision (c) shall register in accordance with the Act.

(b) Any person who is discharged or paroled from a facility in another state that is equivalent to the Division of Juvenile Justice, to the custody of which he or she was committed because of an offense which, if committed or attempted in this state, would have been punishable as one or more of the offenses described in subdivision (c) shall register in accordance with the Act.

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

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

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

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

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

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

SEC. 17. Section 290.009 is added to the Penal Code, to read:

290.009. Any person required to register under the Act who is enrolled as a student or is an employee or carries on a vocation, with or without compensation, at an institution of higher learning in this state, shall register pursuant to the provisions of the Act.

SEC. 18. Section 290.010 is added to the Penal Code, to read:

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

SEC. 19. Section 290.011 is added to the Penal Code, to read:

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

(a) He or she shall register, or reregister if the person has previously registered, within five working days from release from incarceration, placement or commitment, or release on probation,

pursuant to subdivision (b) of Section 290, except that if the person previously registered as a transient less than 30 days from the date of his or her release from incarceration, he or she does not need to reregister as a transient until his or her next required 30-day update of registration. If a transient is not physically present in any one jurisdiction for five consecutive working days, he or she shall register in the jurisdiction in which he or she is physically present on the fifth working day following release, pursuant to subdivision (b) of Section 290. Beginning on or before the 30th day following initial registration upon release, a transient shall reregister no less than once every 30 days thereafter. A transient shall register with the chief of police of the city in which he or she is physically present within that 30-day period, or the sheriff of the county if he or she is physically present in an unincorporated area or city that has no police department, and additionally, with the chief of police of a campus of the University of California, the California State University, or community college if he or she is physically present upon the campus or in any of its facilities. A transient shall reregister no less than once every 30 days regardless of the length of time he or she has been physically present in the particular jurisdiction in which he or she reregisters. If a transient fails to reregister within any 30-day period, he or she may be prosecuted in any jurisdiction in which he or she is physically present.

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

(c) Beginning on his or her first birthday following registration, a transient shall register annually, within five working days of his or her birthday, to update his

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

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

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

(f) A transient who moves out of state shall inform, in person, the chief of police in the city in which he or she is physically present, or the sheriff of the county if he or she is physically

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

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

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

SEC. 20. Section 290.012 is added to the Penal Code, to read:

290.012. (a) Beginning on his or her first birthday following registration or change of address, the person shall be required to register annually, within five working days of his or her birthday, to update his or her registration with the entities described in subdivision (b) of Section 290. At the annual update, the person shall provide current information as required on the Department of Justice annual update form, including the information described in paragraphs (1) to (3), inclusive of subdivision (a) of Section 290.015. The registering agency shall give the registrant a copy of the registration requirements from the Department of Justice form.

(b) In addition, every person who has ever been adjudicated a sexually violent predator, as defined in Section 6600 of the Welfare and Institutions Code, shall, after his or her release from custody, verify his or her address no less than once every 90 days and place of employment, including the name and address of the employer, in a manner established by the Department of Justice. Every person who, as a sexually violent predator, is required to verify his or her registration every 90 days, shall be notified wherever he or she next registers of his or her increased registration obligations. This notice shall be provided in writing by the registering agency or agencies. Failure to receive this notice shall be a defense to the penalties prescribed in subdivision (f) of Section 290.018.

(c) In addition, every person subject to the Act, while living as a transient in California shall update his or her registration at least every 30 days, in accordance with Section 290.011.

(d) No entity shall require a person to pay a fee to register or update his or her registration pursuant to this section. The registering agency shall submit registrations, including annual updates or changes of address, directly into the Department of Justice Violent Crime Information Network (VCIN).

SEC. 21. Section 290.013 is added to the Penal Code, to read:

290.013. (a) Any person who was last registered at a residence address pursuant to the Act who changes his or her residence address, whether within the jurisdiction in which he or she is currently registered or to a new jurisdiction inside or outside the state,

shall, in person, within five working days of the move, inform the law enforcement agency or agencies with which he or she last registered of the move, the new address or transient location, if known, and any plans he or she has to return to California.

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

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

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

SEC. 22. Section 290.014 is added to the Penal Code, to read:

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

SEC. 23. Section 290.015 is added to the Penal Code, to read:

290.015. (a) A person who is subject to the Act shall register, or reregister if the person has previously registered, upon release from incarceration, placement, commitment, or release on probation pursuant to subdivision (b) of Section 290. This section shall not apply to a person who is incarcerated for less than 30 days if he or she has registered as required by the Act, he or she returns after incarceration to the last registered address, and the annual update of registration that is required to occur within five working days of his or her birthday, pursuant to subdivision (a) of Section 290.012, did not fall within that incarceration period. The registration shall consist of all of the following:

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

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

(3) The license plate number of any vehicle owned by, regularly

driven by, or registered in the name of the person.

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

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

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

SEC. 24. Section 290.016 is added to the Penal Code, to read:

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

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

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

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

(b) Within three days thereafter, the preregistering official shall forward the statement, fingerprints, photograph, and vehicle license plate number, if any, to the Department of Justice.

SEC. 25. Section 290.017 is added to the Penal Code, to read:

290.017. (a) Any person who is released, discharged, or paroled from a jail, state or federal prison, school, road camp, or other institution where he or she was confined, who is required to register pursuant to the Act, shall, prior to discharge, parole, or release, be informed of his or her duty to register under the Act by the official in charge of the place of confinement or hospital, and the official shall require the person to read and sign any form that may be required by the Department of Justice, stating that the duty of the person to register under the Act has been explained to the person. The official in charge of the place of confinement or hospital shall obtain the address where the person expects to reside upon his or her discharge, parole, or release and shall report the address to the Department of Justice. The official shall at the same time forward a current photograph of the person to the Department of Justice.

(b) The official in charge of the place of confinement or hospital

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

(c) Any person who is required to register pursuant to the Act and who is released on probation, shall, prior to release or discharge, be informed of the duty to register under the Act by the probation department, and a probation officer shall require the person to read and sign any form that may be required by the Department of Justice, stating that the duty of the person to register has been explained to him or her. The probation officer shall obtain the address where the person expects to reside upon release or discharge and shall report within three days the address to the Department of Justice. The probation officer shall give one copy of the form to the person, send one copy to the Department of Justice, and forward one copy to the appropriate law enforcement agency or agencies having local jurisdiction where the person expects to reside upon his or her discharge, parole, or release.

(d) Any person who is required to register pursuant to the Act and who is granted conditional release without supervised probation, or discharged upon payment of a fine, shall, prior to release or discharge, be informed of the duty to register under the Act in open court by the court in which the person has been convicted, and the court shall require the person to read and sign any form that may be required by the Department of Justice, stating that the duty of the person to register has been explained to him or her. If the court finds that it is in the interest of the efficiency of the court, the court may assign the bailiff to require the person to read and sign forms under the Act. The court shall obtain the address where the person expects to reside upon release or discharge and shall report within three days the address to the Department of Justice. The court shall give one copy of the form to the person, send one copy to the Department of Justice, and forward one copy to the appropriate law enforcement agency or agencies having local jurisdiction where the person expects to reside upon his or her discharge, parole, or release.

SEC. 26. Section 290.018 is added to the Penal Code, to read:

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

(b) Except as provided in subdivisions (f), (h), and (j), any person who is required to register under the Act based on a felony conviction or juvenile adjudication who willfully violates any requirement of the Act or who has a prior conviction or juvenile adjudication for the offense of failing to register under the Act and who subsequently and willfully violates any requirement of the Act

is guilty of a felony and shall be punished by imprisonment in the state prison for 16 months, or two or three years.

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

(d) Any person determined to be a mentally disordered sex offender or who has been found guilty in the guilt phase of trial for an offense for which registration is required under the Act, but who has been found not guilty by reason of insanity in the sanity phase of the trial, or who has had a petition sustained in a juvenile adjudication for an offense for which registration is required pursuant to Section 290.008, but who has been found not guilty by reason of insanity, who willfully violates any requirement of the Act is guilty of a misdemeanor and shall be punished by imprisonment in a county jail not exceeding one year. For any second or subsequent willful violation of any requirement of the Act, the person is guilty of a felony and shall be punished by imprisonment in the state prison for 16 months, or two or three years.

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

(f) Any person who has ever been adjudicated a sexually violent predator, as defined in Section 6600 of the Welfare and Institutions Code, and who fails to verify his or her registration every 90 days as required pursuant to subdivision (b) of Section 290.012, shall be punished by imprisonment in the state prison, or in a county jail not exceeding one year.

(g) Except as otherwise provided in subdivision (f), any person who is required to register or reregister pursuant to Section 290.011 and willfully fails to comply with the requirement that he or she reregister no less than every 30 days is guilty of a misdemeanor and shall be punished by imprisonment in a county jail for at least 30 days, but not exceeding six months. A person who willfully fails to comply with the requirement that he or she reregister no less than every 30 days shall not be charged with this violation more often than once for a failure to register in any period of 90 days. Any person who willfully commits a third or subsequent violation of the requirements of Section 290.011 that he or she reregister no less than every 30 days shall be punished in accordance with either subdivision (a) or (b).

(h) Any person who fails to provide proof of residence as required by paragraph (5) of subdivision (a) of Section 290.015, regardless of the offense upon which the duty to register is based, is guilty of a misdemeanor punishable by imprisonment in a county jail not exceeding six months.

(i) Any person who is required to register under the Act who willfully violates any requirement of the Act is guilty of a

continuing offense as to each requirement he or she violated.

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

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

SEC. 27. Section 290.019 is added to the Penal Code, to read:

290.019. (a) Notwithstanding any other section in the Act, a person who was convicted before January 1, 1976, under subdivision (a) of Section 286, or Section 288a, shall not be required to register pursuant to the Act for that conviction if the conviction was for conduct between consenting adults that was decriminalized by Chapter 71 of the Statutes of 1975 or Chapter 1139 of the Statutes of 1976. The Department of Justice shall remove that person from the Sex Offender Registry, and the person is discharged from his or her duty to register pursuant to either of the following procedures:

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

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

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

SEC. 28. Section 290.020 is added to the Penal Code, to read:

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

SEC. 29. Section 290.021 is added to the Penal Code, to read:

290.021. Except as otherwise provided by law, the statements, photographs, and fingerprints required by the Act shall not be open to inspection by the public or by any person other than a regularly employed peace officer or other law enforcement officer.

SEC. 30. Section 290.022 is added to the Penal Code, to read:

290.022. On or before July 1, 2010, the Department of Justice shall renovate the VCIN to do the following:

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

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

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

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

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

SEC. 31. Section 290.023 is added to the Penal Code, to read:

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

SEC. 32. Section 290.01 of the Penal Code is amended to read:

290.01. (a) (1) Commencing October 28, 2002, every person required to register pursuant to Sections 290 to 290.009, inclusive, of the Sex Offender Registration Act who is enrolled as a student of any university, college, community college, or other institution of higher learning, or is, with or without compensation, a full-time or part-time employee of that university, college, community college, or other institution of higher learning, or is carrying on a vocation at the university, college, community college, or other institution of higher learning, for more than 14 days, or for an aggregate period exceeding 30 days in a calendar year, shall, in addition to the registration required by the Sex Offender Registration Act, register with the campus police department within five working days of commencing enrollment or employment at that university, college, community college, or other institution of higher learning, on a form as may be required by the Department of Justice. The terms "employed or carries on a vocation" include employment whether or not financially compensated, volunteered, or performed for government or educational benefit. The registrant shall also notify the campus police department within five working days of ceasing to be enrolled or employed, or ceasing to carry on a vocation, at the university, college, community college, or other institution of higher learning.

(2) For purposes of this section, a campus police department is a police department of the University of California, California State University, or California Community College, established pursuant to Section 72330, 89560, or 92600 of the Education Code, or is a police department staffed with deputized or appointed personnel with peace officer status as provided in Section 830.6 of the Penal Code and is the law enforcement agency with the primary responsibility for investigating crimes occurring on the college or university campus on which it is located.

(b) If the university, college, community college, or other institution of higher learning has no campus police department, the registrant shall instead register pursuant to subdivision (a) with the police of the city in which the campus is located or the sheriff of the county in which the campus is located if the campus is located in an unincorporated area or in a city that has no police department, on a form as may be required by the Department of Justice. The requirements of subdivisions (a) and (b) are in addition to the requirements of the Sex Offender Registration Act.

(c) A first violation of this section is a misdemeanor punishable by a fine not to exceed one thousand dollars (\$1,000). A second violation of this section is a misdemeanor punishable by imprisonment in a county jail for not more than six months, by a fine not to exceed one thousand dollars (\$1,000), or by both that imprisonment and fine. A third or subsequent violation of this section is a misdemeanor punishable by imprisonment in a county jail for not more than one year, by a fine not exceeding one thousand dollars (\$1,000), or by both that imprisonment and fine.

(d) (1) (A) The following information regarding a registered sex offender on campus as to whom information shall not be made available to the public via the Internet Web site as provided in Section 290.46 may be released to members of the campus community by any campus police department or, if the university, college, community college, or other institution of higher learning has no police department, the police department or sheriff's department with jurisdiction over the campus, and any employees of those agencies, as required by Section 1092(f)(1)(I) of Title 20 of the United States Code:

- (i) The offender's full name.
- (ii) The offender's known aliases.
- (iii) The offender's gender.
- (iv) The offender's race.
- (v) The offender's physical description.
- (vi) The offender's photograph.
- (vii) The offender's date of birth.
- (viii) Crimes resulting in registration under Section 290.
- (ix) The date of last registration or reregistration.

(B) The authority provided in this subdivision is in addition to the authority of a peace officer or law enforcement agency to provide information about a registered sex offender pursuant to Section 290.45, and exists notwithstanding Section 290.021 or any other provision of law.

(2) Any law enforcement entity and employees of any law enforcement entity listed in paragraph (1) shall be immune from civil or criminal liability for good faith conduct under this subdivision.

(3) Nothing in this subdivision shall be construed to authorize

campus police departments or, if the university, college, community college, or other institution has no police department, the police department or sheriff's department with jurisdiction over the campus, to make disclosures about registrants intended to reach persons beyond the campus community.

(4) (A) Before being provided any information by an agency pursuant to this subdivision, a member of the campus community who requests that information shall sign a statement, on a form provided by the Department of Justice, stating that he or she is not a registered sex offender, that he or she understands the purpose of the release of information is to allow members of the campus community to protect themselves and their children from sex offenders, and that he or she understands it is unlawful to use information obtained pursuant to this subdivision to commit a crime against any registrant or to engage in illegal discrimination or harassment of any registrant. The signed statement shall be maintained in a file in the agency's office for a minimum of five years.

(B) An agency disseminating printed information pursuant to this subdivision shall maintain records of the means and dates of dissemination for a minimum of five years.

(5) For purposes of this subdivision, "campus community" means those persons present at, and those persons regularly frequenting, any place associated with an institution of higher education, including campuses; administrative and educational offices; laboratories; satellite facilities owned or utilized by the institution for educational instruction, business, or institutional events; and public areas contiguous to any campus or facility that are regularly frequented by students, employees, or volunteers of the campus.

SEC. 33. Section 290.04 of the Penal Code is amended to read:

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

(2) A representative of the State Department of Mental Health, in consultation with a representative of the Department of Corrections and Rehabilitation and a representative of the Attorney General's office, shall comprise the SARATSO Review Committee. The purpose of the committee, which shall be staffed by the State Department of Mental Health, shall be to ensure that the SARATSO reflects the most reliable, objective and well-established protocols for predicting sex offender risk of recidivism, has been scientifically validated and cross validated, and is, or is reasonably likely to be, widely accepted by the courts. The committee shall consult with experts in the fields of risk assessment and the use of actuarial instruments in predicting sex offender risk, sex offending, sex offender treatment, mental health, and law, as it deems appropriate.

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

(2) On or before January 1, 2008, the SARATSO Review Committee

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

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

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

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

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

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

SEC. 34. Section 290.05 of the Penal Code is amended to read:

290.05. (a) The SARATSO Training Committee shall be comprised of a representative of the State Department of Mental Health, a representative of the Department of Corrections and Rehabilitation, a representative of the Attorney General's Office, and a representative of the Chief Probation Officers of California.

(b) On or before January 1, 2008, the SARATSO Training Committee, in consultation with the Corrections Standards Authority and the Commission on Peace Officer Standards and Training, shall develop a

training program for persons authorized by this code to administer the SARATSO, as set forth in Section 290.04.

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

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

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

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

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

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

SEC. 35. Section 290.3 of the Penal Code is amended to read:

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

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

(b) Except as provided in subdivision (d), out of the moneys deposited pursuant to subdivision (a) as a result of second and subsequent convictions of Section 290, one-third shall first be transferred to the Department of Justice Sexual Habitual Offender Fund, as provided in paragraph (1) of this subdivision. Out of the remainder of all moneys deposited pursuant to subdivision (a), 50 percent shall be transferred to the Department of Justice Sexual Habitual Offender Fund, as provided in paragraph (1), 25 percent shall be transferred to the Department of Justice DNA Testing Fund, as provided in paragraph (2), and 25 percent shall be allocated

equally to counties that maintain a local DNA testing laboratory, as provided in paragraph (3).

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

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

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

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

(d) An amount equal to one hundred dollars (\$100) for every fine imposed pursuant to subdivision (a) in excess of one hundred dollars (\$100) shall be transferred to the Department of Corrections and Rehabilitation to defray the cost of the global positioning system used to monitor sex offender parolees.

SEC. 36. Section 290.46 of the Penal Code is amended to read:

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

(2) (A) On or before July 1, 2010, the Department of Justice shall make available to the public, via an Internet Web site as specified in this section, as to any person described in subdivisions (b), (c),

or (d), the following information:

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

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

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

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

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

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

(iii) Any state facility that, prior to January 1, 2007, released from incarceration a person who was incarcerated because of a crime for which he or she is required to register as a sex offender pursuant to Section 290 shall provide the year of release for his or her most recent offense requiring registration to the Department of Justice in a manner and format approved by the department. The information provided by the Department of Corrections and Rehabilitation shall be limited to information that is currently maintained in an electronic format.

(iv) Any state facility that, prior to January 1, 2007, released a person who is required to register pursuant to Section 290 from incarceration whose incarceration was for a felony committed subsequently to the offense for which he or she is required to register shall advise the Department of Justice of that fact in a manner and format approved by the department. The information provided by the Department of Corrections and Rehabilitation shall be limited to information that is currently maintained in an electronic format.

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

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

that the Department of Justice deems relevant, but not the information excluded pursuant to subdivision (a).

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

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

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

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

(D) Section 264.1.

(E) Section 269.

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

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

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

(I) Section 288.3, provided that the offense is a felony.

(J) Section 288.4, provided that the offense is a felony.

(K) Section 288.5.

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

(M) Section 288.7.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(D) Section 266j.

(E) Section 267.

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

(G) Section 288.3, provided that the offense is a misdemeanor.

(H) Section 288.4, provided that the offense is a misdemeanor.

(I) Section 626.81.

(J) Section 647.6.

(K) Section 653c.

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

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

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

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

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

(C) (i) An offense for which the offender successfully completed probation, provided that the offender submits to the department a certified copy of a probation report, presentencing report, report prepared pursuant to Section 288.1, or other official court document that clearly demonstrates that the offender was the victim's parent, stepparent, sibling, or grandparent and that the crime did not involve either oral copulation or penetration of the vagina or rectum of either the victim or the offender by the penis of

the other or by any foreign object.

(ii) An offense for which the offender is on probation at the time of his or her application, provided that the offender submits to the department a certified copy of a probation report, presentencing report, report prepared pursuant to Section 288.1, or other official court document that clearly demonstrates that the offender was the victim's parent, stepparent, sibling, or grandparent and that the crime did not involve either oral copulation or penetration of the vagina or rectum of either the victim or the offender by the penis of the other or by any foreign object.

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

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

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

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

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

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

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

(3) The information that may be provided pursuant to this subdivision may include the information specified in subdivision (b) of Section 290.45. However, that offender's address may not be disclosed unless he or she is a person whose address is on the

Department of Justice's Internet Web site pursuant to subdivision (b) or (c).

(h) For purposes of this section, "offense" includes the statutory predecessors of that offense, or any offense committed in another jurisdiction that, if committed or attempted to be committed in this state, would have been punishable in this state as an offense listed in subdivision (c) of Section 290.

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

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

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

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

(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. 37. Section 296.2 of the Penal Code is amended to read:

296.2. (a) Whenever the DNA Laboratory of the Department of Justice notifies the Department of Corrections and Rehabilitation or any law enforcement agency that a biological specimen or sample, or print impression is not usable for any reason, the person who provided the original specimen, sample, or print impression shall submit to collection of additional specimens, samples, or print impressions. The Department of Corrections and Rehabilitation or other responsible law enforcement agency shall collect additional specimens, samples, and print impressions from these persons as necessary to fulfill the requirements of this chapter, and transmit these specimens, samples, and print impressions to the appropriate agencies of the Department of Justice.

(b) If a person, including any juvenile, is convicted of, pleads guilty or no contest to, is found not guilty by reason of insanity of, or is adjudged a ward of the court under Section 602 of the Welfare and Institutions Code for committing, any of the offenses described in subdivision (a) of Section 296, and has given a blood specimen or other biological sample or samples to law enforcement for any purpose, the DNA Laboratory of the Department of Justice is authorized to analyze the blood specimen and other biological sample or samples for forensic identification markers, including DNA markers, and to include the DNA and forensic identification profiles from these specimens and samples in the state's DNA and forensic identification databank and databases.

This subdivision applies whether or not the blood specimen or other biological sample originally was collected from the sexual or

violent offender pursuant to the databank and database program, and whether or not the crime committed predated the enactment of the state's DNA and forensic identification databank program, or any amendments thereto. This subdivision does not relieve a person convicted of a crime described in subdivision (a) of Section 296, or otherwise subject to this chapter, from the requirement to give blood specimens, saliva samples, and thumb and palm print impressions for the DNA and forensic identification databank and database program as described in this chapter.

(c) Any person who is required to register under the Sex Offender Registration Act who has not provided the specimens, samples, and print impressions described in this chapter for any reason including the release of the person prior to the enactment of the state's DNA and forensic identification database and databank program, an oversight or error, or because of the transfer of the person from another state, the person, as an additional requirement of registration or of updating his or her annual registration pursuant to the Sex Offender Registration Act shall give specimens, samples, and print impressions as described in this chapter for inclusion in the state's DNA and forensic identification database and databank.

At the time the person registers or updates his or her registration, he or she shall receive an appointment designating a time and place for the collection of the specimens, samples, and print impressions described in this chapter, if he or she has not already complied with the provisions of this chapter.

As specified in the appointment, the person shall report to a county jail facility in the county where he or she resides or is temporarily located to have specimens, samples, and print impressions collected pursuant to this chapter or other facility approved by the Department of Justice for this collection. The specimens, samples, and print impressions shall be collected in accordance with subdivision (f) of Section 295.

If, prior to the time of the annual registration update, a person is notified by the Department of Justice, a probation or parole officer, other law enforcement officer, or officer of the court, that he or she is subject to this chapter, then the person shall provide the specimens, samples, and print impressions required by this chapter within 10 calendar days of the notification at a county jail facility or other facility approved by the department for this collection.

SEC. 38. Section 311.11 of the Penal Code is amended to read:

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

(b) Every person who commits a violation of subdivision (a), and

who has been previously convicted of a violation of this section, an offense requiring registration under the Sex Offender Registration Act, or an attempt to commit any of the above-mentioned offenses, is guilty of a felony and shall be punished by imprisonment in the state prison for two, four, or six years.

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

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

SEC. 39. Section 646.9 of the Penal Code is amended to read:

646.9. (a) Any person who willfully, maliciously, and repeatedly follows or willfully and maliciously harasses another person and who makes a credible threat with the intent to place that person in reasonable fear for his or her safety, or the safety of his or her immediate family is guilty of the crime of stalking, punishable by imprisonment in a county jail for not more than one year, or by a fine of not more than one thousand dollars (\$1,000), or by both that fine and imprisonment, or by imprisonment in the state prison.

(b) Any person who violates subdivision (a) when there is a temporary restraining order, injunction, or any other court order in effect prohibiting the behavior described in subdivision (a) against the same party, shall be punished by imprisonment in the state prison for two, three, or four years.

(c) (1) Every person who, after having been convicted of a felony under Section 273.5, 273.6, or 422, commits a violation of subdivision (a) shall be punished by imprisonment in a county jail for not more than one year, or by a fine of not more than one thousand dollars (\$1,000), or by both that fine and imprisonment, or by imprisonment in the state prison for two, three, or five years.

(2) Every person who, after having been convicted of a felony under subdivision (a), commits a violation of this section shall be punished by imprisonment in the state prison for two, three, or five years.

(d) In addition to the penalties provided in this section, the sentencing court may order a person convicted of a felony under this section to register as a sex offender pursuant to Section 290.006.

(e) For the purposes of this section, "harasses" means engages in a knowing and willful course of conduct directed at a specific person that seriously alarms, annoys, torments, or terrorizes the person, and that serves no legitimate purpose.

(f) For the purposes of this section, "course of conduct" means two or more acts occurring over a period of time, however short, evidencing a continuity of purpose. Constitutionally protected activity is not included within the meaning of "course of conduct."

(g) For the purposes of this section, "credible threat" means a verbal or written threat, including that performed through the use of an electronic communication device, or a threat implied by a pattern of conduct or a combination of verbal, written, or electronically communicated statements and conduct, made with the intent to place the person that is the target of the threat in reasonable fear for his or her safety or the safety of his or her family, and made with the apparent ability to carry out the threat so as to cause the person who is the target of the threat to reasonably fear for his or her safety or the safety of his or her family. It is not necessary to

prove that the defendant had the intent to actually carry out the threat. The present incarceration of a person making the threat shall not be a bar to prosecution under this section. Constitutionally protected activity is not included within the meaning of "credible threat."

(h) For purposes of this section, the term "electronic communication device" includes, but is not limited to, telephones, cellular phones, computers, video recorders, fax machines, or pagers. "Electronic communication" has the same meaning as the term defined in Subsection 12 of Section 2510 of Title 18 of the United States Code.

(i) This section shall not apply to conduct that occurs during labor picketing.

(j) If probation is granted, or the execution or imposition of a sentence is suspended, for any person convicted under this section, it shall be a condition of probation that the person participate in counseling, as designated by the court. However, the court, upon a showing of good cause, may find that the counseling requirement shall not be imposed.

(k) The sentencing court also shall consider issuing an order restraining the defendant from any contact with the victim, that may be valid for up to 10 years, as determined by the court. It is the intent of the Legislature that the length of any restraining order be based upon the seriousness of the facts before the court, the probability of future violations, and the safety of the victim and his or her immediate family.

(l) For purposes of this section, "immediate family" means any spouse, parent, child, any person related by consanguinity or affinity within the second degree, or any other person who regularly resides in the household, or who, within the prior six months, regularly resided in the household.

(m) The court shall consider whether the defendant would benefit from treatment pursuant to Section 2684. If it is determined to be appropriate, the court shall recommend that the Department of Corrections and Rehabilitation make a certification as provided in Section 2684. Upon the certification, the defendant shall be evaluated and transferred to the appropriate hospital for treatment pursuant to Section 2684.

SEC. 39.5. Section 646.9 of the Penal Code is amended to read:

646.9. (a) Any person who willfully, maliciously, and repeatedly follows or willfully and maliciously harasses another person and who makes a credible threat with the intent to place that person in reasonable fear for his or her safety, or the safety of his or her immediate family is guilty of the crime of stalking, punishable by imprisonment in a county jail for not more than one year, or by a fine of not more than one thousand dollars (\$1,000), or by both that fine and imprisonment, or by imprisonment in the state prison.

(b) Any person who violates subdivision (a) when there is a temporary restraining order, injunction, or any other court order in effect prohibiting the behavior described in subdivision (a) against the same party, shall be punished by imprisonment in the state prison for two, three, or four years.

(c) (1) Every person who, after having been convicted of a felony under Section 273.5, 273.6, or 422, commits a violation of subdivision (a) shall be punished by imprisonment in a county jail for not more than one year, or by a fine of not more than one thousand dollars (\$1,000), or by both that fine and imprisonment, or

by imprisonment in the state prison for two, three, or five years.

(2) Every person who, after having been convicted of a felony under subdivision (a), commits a violation of this section shall be punished by imprisonment in the state prison for two, three, or five years.

(d) In addition to the penalties provided in this section, the sentencing court may order a person convicted of a felony under this section to register as a sex offender pursuant to Section 290.006.

(e) For the purposes of this section, "harasses" means engages in a knowing and willful course of conduct directed at a specific person that seriously alarms, annoys, torments, or terrorizes the person, and that serves no legitimate purpose.

(f) For the purposes of this section, "course of conduct" means two or more acts occurring over a period of time, however short, evidencing a continuity of purpose. Constitutionally protected activity is not included within the meaning of "course of conduct."

(g) For the purposes of this section, "credible threat" means a verbal or written threat, including that performed through the use of an electronic communication device, or a threat implied by a pattern of conduct or a combination of verbal, written, or electronically communicated statements and conduct, made with the intent to place the person that is the target of the threat in reasonable fear for his or her safety or the safety of his or her family, and made with the apparent ability to carry out the threat so as to cause the person who is the target of the threat to reasonably fear for his or her safety or the safety of his or her family. It is not necessary to prove that the defendant had the intent to actually carry out the threat. The present incarceration of a person making the threat shall not be a bar to prosecution under this section. Constitutionally protected activity is not included within the meaning of "credible threat."

(h) For purposes of this section, the term "electronic communication device" includes, but is not limited to, telephones, cellular phones, computers, video recorders, fax machines, or pagers. "Electronic communication" has the same meaning as the term defined in Subsection 12 of Section 2510 of Title 18 of the United States Code.

(i) This section shall not apply to conduct that occurs during labor picketing.

(j) If probation is granted, or the execution or imposition of a sentence is suspended, for any person convicted under this section, it shall be a condition of probation that the person participate in counseling, as designated by the court. However, the court, upon a showing of good cause, may find that the counseling requirement shall not be imposed.

(k) (1) The sentencing court also shall consider issuing an order restraining the defendant from any contact with the victim, that may be valid for up to 10 years, as determined by the court. It is the intent of the Legislature that the length of any restraining order be based upon the seriousness of the facts before the court, the probability of future violations, and the safety of the victim and his or her immediate family.

(2) This protective order may be issued by the court whether the defendant is sentenced to state prison, county jail, or if imposition of sentence is suspended and the defendant is placed on probation.

(l) For purposes of this section, "immediate family" means any spouse, parent, child, any person related by consanguinity or

affinity within the second degree, or any other person who regularly resides in the household, or who, within the prior six months, regularly resided in the household.

(m) The court shall consider whether the defendant would benefit from treatment pursuant to Section 2684. If it is determined to be appropriate, the court shall recommend that the Department of Corrections and Rehabilitation make a certification as provided in Section 2684. Upon the certification, the defendant shall be evaluated and transferred to the appropriate hospital for treatment pursuant to Section 2684.

SEC. 40. Section 801.1 of the Penal Code is amended to read:

801.1. (a) Notwithstanding any other limitation of time described in this chapter, prosecution for a felony offense described in Section 261, 286, 288, 288.5, 288a, or 289, or Section 289.5, as enacted by Chapter 293 of the Statutes of 1991 relating to penetration by an unknown object, that is alleged to have been committed when the victim was under the age of 18 years, may be commenced any time prior to the victim's 28th birthday.

(b) Notwithstanding any other limitation of time described in this chapter, if subdivision (a) does not apply, prosecution for a felony offense described in subdivision (c) of Section 290 shall be commenced within 10 years after commission of the offense.

SEC. 41. Section 803 of the Penal Code is amended to read:

803. (a) Except as provided in this section, a limitation of time prescribed in this chapter is not tolled or extended for any reason.

(b) No time during which prosecution of the same person for the same conduct is pending in a court of this state is a part of a limitation of time prescribed in this chapter.

(c) A limitation of time prescribed in this chapter does not commence to run until the discovery of an offense described in this subdivision. This subdivision applies to an offense punishable by imprisonment in the state prison, a material element of which is fraud or breach of a fiduciary obligation, the commission of the crimes of theft or embezzlement upon an elder or dependent adult, or the basis of which is misconduct in office by a public officer, employee, or appointee, including, but not limited to, the following offenses:

(1) Grand theft of any type, forgery, falsification of public records, or acceptance of a bribe by a public official or a public employee.

(2) A violation of Section 72, 118, 118a, 132, 134, or 186.10.

(3) A violation of Section 25540, of any type, or Section 25541 of the Corporations Code.

(4) A violation of Section 1090 or 27443 of the Government Code.

(5) Felony welfare fraud or Medi-Cal fraud in violation of Section 11483 or 14107 of the Welfare and Institutions Code.

(6) Felony insurance fraud in violation of Section 548 or 550 of this code or former Section 1871.1, or Section 1871.4, of the Insurance Code.

(7) A violation of Section 580, 581, 582, 583, or 584 of the Business and Professions Code.

(8) A violation of Section 22430 of the Business and Professions Code.

(9) A violation of Section 10690 of the Health and Safety Code.

(10) A violation of Section 529a.

(11) A violation of subdivision (d) or (e) of Section 368.

(d) If the defendant is out of the state when or after the offense is committed, the prosecution may be commenced as provided in Section 804 within the limitations of time prescribed by this chapter, and no time up to a maximum of three years during which the defendant is not within the state shall be a part of those limitations.

(e) A limitation of time prescribed in this chapter does not commence to run until the offense has been discovered, or could have reasonably been discovered, with regard to offenses under Division 7 (commencing with Section 13000) of the Water Code, under Chapter 6.5 (commencing with Section 25100) of, Chapter 6.7 (commencing with Section 25280) of, or Chapter 6.8 (commencing with Section 25300) of, Division 20 of, or Part 4 (commencing with Section 41500) of Division 26 of, the Health and Safety Code, or under Section 386, or offenses under Chapter 5 (commencing with Section 2000) of Division 2 of, Chapter 9 (commencing with Section 4000) of Division 2 of, Section 6126 of, Chapter 10 (commencing with Section 7301) of Division 3 of, or Chapter 19.5 (commencing with Section 22440) of Division 8 of, the Business and Professions Code.

(f) (1) Notwithstanding any other limitation of time described in this chapter, a criminal complaint may be filed within one year of the date of a report to a California law enforcement agency by a person of any age alleging that he or she, while under the age of 18 years, was the victim of a crime described in Section 261, 286, 288, 288a, 288.5, or 289, or Section 289.5, as enacted by Chapter 293 of the Statutes of 1991 relating to penetration by an unknown object.

(2) This subdivision applies only if all of the following occur:

(A) The limitation period specified in Section 800, 801, or 801.1, whichever is later, has expired.

(B) The crime involved substantial sexual conduct, as described in subdivision (b) of Section 1203.066, excluding masturbation that is not mutual.

(C) There is independent evidence that corroborates the victim's allegation. If the victim was 21 years of age or older at the time of the report, the independent evidence shall clearly and convincingly corroborate the victim's allegation.

(3) No evidence may be used to corroborate the victim's allegation that otherwise would be inadmissible during trial. Independent evidence does not include the opinions of mental health professionals.

(4) (A) In a criminal investigation involving any of the crimes listed in paragraph (1) committed against a child, when the applicable limitations period has not expired, that period shall be tolled from the time a party initiates litigation challenging a grand jury subpoena until the end of the litigation, including any associated writ or appellate proceeding, or until the final disclosure of evidence to the investigating or prosecuting agency, if that disclosure is ordered pursuant to the subpoena after the litigation.

(B) Nothing in this subdivision affects the definition or applicability of any evidentiary privilege.

(C) This subdivision shall not apply where a court finds that the grand jury subpoena was issued or caused to be issued in bad faith.

(g) (1) Notwithstanding any other limitation of time described in this chapter, a criminal complaint may be filed within one year of the date on which the identity of the suspect is conclusively

established by DNA testing, if both of the following conditions are met:

(A) The crime is one that is described in subdivision (c) of Section 290.

(B) The offense was committed prior to January 1, 2001, and biological evidence collected in connection with the offense is analyzed for DNA type no later than January 1, 2004, or the offense was committed on or after January 1, 2001, and biological evidence collected in connection with the offense is analyzed for DNA type no later than two years from the date of the offense.

(2) For purposes of this section, "DNA" means deoxyribonucleic acid.

(h) For any crime, the proof of which depends substantially upon evidence that was seized under a warrant, but which is unavailable to the prosecuting authority under the procedures described in People v. Superior Court (Laff) (2001) 25 Cal.4th 703, People v. Superior Court (Bauman & Rose) (1995) 37 Cal.App.4th 1757, or subdivision (c) of Section 1524, relating to claims of evidentiary privilege or attorney work product, the limitation of time prescribed in this chapter shall be tolled from the time of the seizure until final disclosure of the evidence to the prosecuting authority. Nothing in this section otherwise affects the definition or applicability of any evidentiary privilege or attorney work product.

SEC. 42. Section 1202.7 of the Penal Code is amended to read:

1202.7. The Legislature finds and declares that the provision of probation services is an essential element in the administration of criminal justice. The safety of the public, which shall be a primary goal through the enforcement of court-ordered conditions of probation; the nature of the offense; the interests of justice, including punishment, reintegration of the offender into the community, and enforcement of conditions of probation; the loss to the victim; and the needs of the defendant shall be the primary considerations in the granting of probation. It is the intent of the Legislature that efforts be made with respect to persons who are subject to Section 290.011 who are on probation to engage them in treatment.

SEC. 43. Section 1417.8 of the Penal Code is amended to read:

1417.8. (a) Notwithstanding any other provision of this chapter, the court shall direct that any photograph of any minor that has been found by the court to be harmful matter, as defined in Section 313, and introduced or filed as an exhibit in any criminal proceeding specified in subdivision (b) be handled as follows:

(1) Prior to the final determination of the action or proceeding, the photograph shall be available only to the parties or to a person named in a court order to receive the photograph.

(2) After the final determination of the action or proceeding, the photograph shall be preserved with the permanent record maintained by the clerk of the court. The photograph may be disposed of or destroyed after preservation through any appropriate photographic or electronic medium. If the photograph is disposed of, it shall be rendered unidentifiable before the disposal. No person shall have access to the photograph unless that person has been named in a court order to receive the photograph. Any copy, negative, reprint, or other duplication of the photograph in the possession of the state, a state agency, the defendant, or an agent of the defendant, shall be delivered to the clerk of the court for disposal whether or not the defendant was convicted of the offense.

(b) The procedure provided by subdivision (a) shall apply to actions listed under subdivision (c) of Section 290, and to acts under the following provisions:

- (1) Section 261.5.
- (2) Section 272.
- (3) Chapter 7.5 (commencing with Section 311) of Title 9 of Part 1.
- (4) Chapter 7.6 (commencing with Section 313) of Title 9 of Part 1.

(c) For the purposes of this section, "photograph" means any photographic image contained in a digital format or on any chemical, mechanical, magnetic, or electronic medium.

SEC. 44. Section 3000 of the Penal Code is amended to read:

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

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

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

(4) The parole period of any person found to be a sexually violent predator shall be tolled until that person is found to no longer be a sexually violent predator, at which time the period of parole, or any remaining portion thereof, shall begin to run.

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

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

(2) In the case of any inmate sentenced under Section 1168, the period of parole shall not exceed five years in the case of an inmate imprisoned for any offense other than first or second degree murder for which the inmate has received a life sentence, and shall not exceed three years in the case of any other inmate, unless in either case the parole authority for good cause waives parole and discharges

the inmate from custody of the department. This subdivision shall also be applicable to inmates who committed crimes prior to July 1, 1977, to the extent specified in Section 1170.2.

(3) Notwithstanding paragraphs (1) and (2), in the case of any offense for which the inmate has received a life sentence pursuant to Section 667.61 or 667.71, the period of parole shall be 10 years.

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

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

(A) Except as provided in Section 3064, in no case may a prisoner subject to three years on parole be retained under parole supervision or in custody for a period longer than four years from the date of his or her initial parole.

(B) Except as provided in Section 3064, in no case may a prisoner subject to five years on parole be retained under parole supervision or in custody for a period longer than seven years from the date of his or her initial parole.

(C) Except as provided in Section 3064, in no case may a prisoner subject to 10 years on parole be retained under parole supervision or in custody for a period longer than 15 years from the date of his or her initial parole.

(6) The Department of Corrections and Rehabilitation shall meet with each inmate at least 30 days prior to his or her good time release date and shall provide, under guidelines specified by the parole authority, the conditions of parole and the length of parole up to the maximum period of time provided by law. The inmate has the right to reconsideration of the length of parole and conditions thereof by the parole authority. The Department of Corrections and Rehabilitation or the Board of Parole Hearings may impose as a condition of parole that a prisoner make payments on the prisoner's outstanding restitution fines or orders imposed pursuant to subdivision (a) or (c) of Section 13967 of the Government Code, as operative prior to September 28, 1994, or subdivision (b) or (f) of Section 1202.4.

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

(8) The sole authority to issue warrants for the return to actual custody of any state prisoner released on parole rests with the Board of Parole Hearings, except for any escaped state prisoner or any state prisoner released prior to his or her scheduled release date who should be returned to custody, and Section 3060 shall apply.

(9) It is the intent of the Legislature that efforts be made with respect to persons who are subject to Section 290.011 who are on parole to engage them in treatment.

SEC. 45. Section 3000.07 of the Penal Code is amended to read:

3000.07. (a) Every inmate who has been convicted for any felony violation of a "registerable sex offense" described in subdivision (c) of Section 290 or any attempt to commit any of the above-mentioned offenses and who is committed to prison and released on parole pursuant to Section 3000 or 3000.1 shall be monitored by a global positioning system for the term of his or her parole, or for the duration or any remaining part thereof, whichever period of time is less.

(b) Any inmate released on parole pursuant to this section shall be required to pay for the costs associated with the monitoring by a global positioning system. However, the Department of Corrections and Rehabilitation shall waive any or all of that payment upon a finding of an inability to pay. The department shall consider any remaining amounts the inmate has been ordered to pay in fines, assessments and restitution fines, fees, and orders, and shall give priority to the payment of those items before requiring that the inmate pay for the global positioning monitoring. No inmate shall be denied parole on the basis of his or her inability to pay for those monitoring costs.

SEC. 46. Section 3004 of the Penal Code is amended to read:

3004. (a) Notwithstanding any other law, the parole authority may require, as a condition of release on parole or reinstatement on parole, or as an intermediate sanction in lieu of return to prison, that an inmate or parolee agree in writing to the use of electronic monitoring or supervising devices for the purpose of helping to verify his or her compliance with all other conditions of parole. The devices shall not be used to eavesdrop or record any conversation, except a conversation between the parolee and the agent supervising the parolee which is to be used solely for the purposes of voice identification.

(b) Every inmate who has been convicted for any felony violation of a "registerable sex offense" described in subdivision (c) of Section 290 or any attempt to commit any of the above-mentioned offenses and who is committed to prison and released on parole pursuant to Section 3000 or 3000.1 shall be monitored by a global positioning system for life.

(c) Any inmate released on parole pursuant to this section shall be required to pay for the costs associated with the monitoring by a global positioning system. However, the Department of Corrections and Rehabilitation shall waive any or all of that payment upon a finding of an inability to pay. The department shall consider any remaining amounts the inmate has been ordered to pay in fines, assessments and restitution fines, fees, and orders, and shall give priority to the payment of those items before requiring that the inmate pay for the global positioning monitoring.

SEC. 47. Section 3005 of the Penal Code is amended and renumbered to read:

3008. (a) The Department of Corrections and Rehabilitation shall ensure that all parolees under active supervision who are deemed to pose a high risk to the public of committing sex crimes, as determined by the State-Authorized Risk Assessment Tool for Sex Offenders (SARATSO), as set forth in Sections 290.04 to 290.06, inclusive, are placed on intensive and specialized parole supervision and are required to report frequently to designated parole officers. The department may place any other parolee convicted of an offense that requires him or her to register as a sex offender pursuant to Section 290 who is on active supervision on intensive and specialized supervision and require him or her to report frequently to

designated parole officers.

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

(c) The department shall develop control and containment programming for sex offenders who have been deemed to pose a high risk to the public of committing a sex crime, as determined by the SARATSO, and shall require participation in appropriate programming as a condition of parole.

SEC. 48. Section 3060.6 of the Penal Code is amended to read:

3060.6. Notwithstanding any other provision of law, on or after January 1, 2001, whenever any paroled person is returned to custody or has his or her parole revoked for conduct described in subdivision

(c) of Section 290, the parole authority shall report the circumstances that were the basis for the return to custody or revocation of parole to the law enforcement agency and the district attorney that has primary jurisdiction over the community in which the circumstances occurred and to the Department of Corrections and Rehabilitation. Upon the release of the paroled person, the Department of Corrections and Rehabilitation shall inform the law enforcement agency and the district attorney that has primary jurisdiction over the community in which the circumstances occurred and, if different, the county in which the person is paroled or discharged, of the circumstances that were the basis for the return to custody or revocation of parole.

SEC. 49. Section 5054.1 of the Penal Code is amended to read:

5054.1. The Secretary of the Department of Corrections and Rehabilitation has full power to order returned to custody any person under the secretary's jurisdiction. The written order of the secretary shall be sufficient warrant for any peace officer to return to actual custody any escaped state prisoner or any state prisoner released prior to his or her scheduled release date who should be returned to custody. All peace officers shall execute an order as otherwise provided by law.

SEC. 50. Section 5054.2 of the Penal Code is amended to read:

5054.2. Whenever a person is incarcerated in a state prison for violating Section 261, 264.1, 266c, 285, 286, 288, 288a, 288.5, or 289, and the victim of one or more of those offenses is a child under the age of 18 years, the Secretary of the Department of Corrections and Rehabilitation shall protect the interest of that child victim by prohibiting visitation between the incarcerated person and the child victim pursuant to Section 1202.05. The secretary shall allow visitation only when the juvenile court, pursuant to Section 362.6 of the Welfare and Institutions Code, finds that visitation between the incarcerated person and his or her child victim is in the best interests of the child victim.

SEC. 51. (a) Section 1.5 of this bill incorporates amendments to Section 1522 of the Health and Safety Code proposed by both this bill and SB 776. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2008, (2) each bill amends Section 1522 of the Health and Safety Code, and (3) this bill is enacted after SB 776, in which case Section 1522 of the

Health and Safety Code, as amended by Section 1 of this bill, shall remain operative only until the operative date of SB 776, at which time Section 1.5 of this bill shall become operative.

(b) Section 39.5 of this bill incorporates amendments to Section 646.9 of the Penal Code proposed by both this bill and AB 289. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2008, (2) each bill amends Section 646.9 of the Penal Code, and (3) this bill is enacted after AB 289, in which case Section 646.9 of the Penal Code, as amended by Section 39 of this bill, shall remain operative only until the operative date of AB 289, at which time Section 39.5 of this bill shall become operative.

SEC. 52. It is the intent of the Legislature that any reference to Section 290 of the Penal Code that appears in any other provision of a bill enacted during the 2007-08 Regular Session be construed to refer to a corresponding provision of Section 290 of the Penal Code as renumbered by this act.

SEC. 53. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to ensure that conforming changes are made to laws relating to sex offenders, it is necessary that this act take effect immediately.

BILL ANALYSIS

SENATE COMMITTEE ON PUBLIC SAFETY
Senator Gloria Romero, Chair
2007-2008 Regular Session

S
B

1
7
2

SB 172 (Alquist)
As Amended April 19, 2007
Hearing date: April 24, 2007
Penal Code; Health & Safety Code (URGENCY)
JM:br

SEX OFFENDERS

HISTORY

Source: Author

Prior Legislation: SB 1128 (Alquist) - Ch. 337, Stats. 2006

Support: California State Sheriffs' Association; California
Probation, Parole and Correctional Association;

Peace

Officers Research Association of California

Opposition:None known

KEY ISSUE

TO THE
(SB
SHOULD SPECIFIED TECHNICAL AND CLARIFYING AMENDMENTS BE MADE
SEX OFFENDER PUNISHMENT, CONTROL AND CONTAINMENT ACT OF 2006
1128 [ALQUIST], CH. 337, STATS. 2006)?

PURPOSE

Containment
The purpose of this bill is to make technical and clarifying
changes to the Sex Offender Punishment, Control and
Act of 2006 (SB 1128 [Alquist]), as specified.

(More)

SB 172

(Alquist)

PageB

Ch. Existing law , through the enactment of SB 1128 (Alquist, 337, Stats. 2006), the Sex Offender Punishment, Control and Containment Act, provides that many if not most convicted sex offenders must be evaluated for risk. (See, Pen. Code 290.04.) This Act enacted many additional provisions concerning sex offenders, as specified.

This bill makes largely technical changes, corrections and conforming changes to sections that were added to the law or amended by SB 1128 and Proposition 83, as approved by the voters in the November 2006 General Election.

distinct, Existing law contains two related, yet separate and sections concerning contacting or arranging a meeting with a minor for purposes of engaging in sexual conduct. These provisions were added to the law by SB 1128 and Proposition 83. (Pen. Code 288.3.)

This bill assigns a new section number - 288.4 - to the new crime defined in SB 1128 of the 2006 legislative session.

This bill corrects numerous cross-references to include new section number 288.4.

This bill makes numerous corrections to statutory references to the Department of Corrections and Rehabilitation.

This bill makes non-substantive, grammatical and composition corrections to statutory provisions.

RECEIVERSHIP/OVERCROWDING CRISIS AGGRAVATION ("ROCA")
IMPLICATIONS

California currently faces an extraordinary and severe prison

is and jail overcrowding crisis. California's prison capacity nearly exhausted as prisons today are being operated with a

(More)

SB 172

(Alquist)

PageC

significant level of overcrowding. In addition, California's jails likewise are significantly overcrowded. Twenty California counties are operating under jail population caps. According to the State Sheriffs' Association, "counties are currently releasing 18,000 pre and post-sentenced inmates every month and many counties are so overcrowded they do not accept misdemeanor bookings in any form," In January of this year the Legislative Analyst's office summarized the trajectory of California's inmate population over the last two decades:

During the past 20 years, jail and prison populations have increased significantly. County jail populations have increased by about 66 percent over that period, an amount that has been limited by court-ordered population caps. The prison population has grown even more dramatically during that period, tripling since the mid-1980s.

The level of overcrowding, and the impact of the population crisis on the day-to-day prison operations, is staggering:

As of December 31, 2006, the California Department of Corrections and Rehabilitation (CDCR) was estimated to have 173,100 inmates in the state prison system, based on CDCR's fall 2006 population projections. However, . . . the department only operates or contracts for a total of 156,500 permanent bed capacity (not including

out-of-state beds, . . .), resulting in a
shortfall of about 16,600 prison beds relative to
the inmate population. The most significant bed
shortfalls are for Level I, II, and IV inmates, as

Analysis of the 2007-08 Budget Bill: Judicial and Criminal
Justice, Legislative Analyst's Office (February 21, 2007).

Memorandum from CSSA President Gary Penrod to Governor,
February 14, 2007.

California's Criminal Justice System: A Primer.
Legislative Analyst's Office (January 2007).

(More)

SB 172

(Alquist)

PageD

well as at reception centers. As a result of the
bed deficits, CDCR houses about 10 percent of the
inmate population in temporary beds, such as in
dayrooms and gyms. In addition, many inmates are
housed in facilities designed for different
security levels. For example, there are currently
about 6,000 high security (Level IV) inmates
housed in beds designed for Level III inmates.

. . . (S)ignificant overcrowding has both
operational and fiscal consequences. Overcrowding
and the use of temporary beds create security
concerns, particularly for medium- and
high-security inmates. Gyms and dayrooms are not
designed to provide security coverage as well as
in permanent housing units, and overcrowding can
contribute to inmate unrest, disturbances, and
assaults. This can result in additional state
costs for medical treatment, workers'
compensation, and staff overtime. In addition,
overcrowding can limit the ability of prisons to
provide rehabilitative, health care, and other
types of programs because prisons were not
designed with sufficient space to provide these
services to the increased population. The
difficulty in providing inmate programs and
services is exacerbated by the use of program
space to house inmates. Also, to the extent that

inmate unrest is caused by overcrowding, rehabilitation programs and other services can be disrupted by the resulting lockdowns.

As a result of numerous lawsuits, the state has entered into several consent decrees agreeing to improve conditions in the state's prisons. As these cases have continued over the past several years, prison conditions nonetheless have failed to improve and, over the last year, the scrutiny of the federal courts over California's prisons has intensified.

Analysis 2007-08 Budget Bill, supra, fn. 1.

(More)

SB 172

(Alquist)

PageE

to In February of 2006, the federal court appointed a receiver
take over the direct management and operation of the prison
medical health care delivery system from the state. Motions
federal filed in December of 2006 are now pending before three
court judges in which plaintiffs are seeking a court-ordered
limit on the prison population pursuant to the federal Prison
Litigation Reform Act. Medical, mental health and dental
care programs at CDCR each are "currently under varying levels of
state federal court supervision based on court rulings that the
has failed to provide inmates with adequate care as required
courts under the Eighth Amendment to the U.S. Constitution. The
found key deficiencies in the state's correctional programs,
health including: (1) an inadequate number of staff to deliver
within care services, (2) an inadequate amount of clinical space
prisons, (3) failures to follow nationally recognized health
care guidelines for treating inmate-patients, and (4) poor
coordination between health care staff and custody staff."

(More)

Primer, supra, fn. 4.

This bill does not appear to aggravate the prison and jail overcrowding crisis outlined above.

COMMENTS

1. Need for This Bill

According to the author:

SB 1128 (Alquist), Chapter 337, Statutes of 2006, made numerous changes to the laws concerning sex crimes and related provisions. The law enacted a system of evaluations for sex offenders for risk. The bill increased penalties for the most dangerous sex offenders. The bill defined a new crime that can be applied against pedophiles who attempt to use the Internet to induce children to engage in sexual conduct.

This bill makes technical changes and corrects numerous statutory references to SB 1128. For example, under existing law, two sections with the same number exist that apply to persons who attempt to use the Internet to lure children to have sex. Both of these sections are valid and enforceable. However, the existence of two separate sections with the same number is confusing. This bill corrects that confusion by denominating the child luring section created by SB 1128 of 2006 as Penal Code Section 288.4.

Distinct
2. Correcting Duplicative Numbering of Two Separate and
Laws on Child Luring

As noted in the author's statement, existing law includes two separate and distinct sections in the Penal Code numbered 288.3.

Each section addresses luring children over the Internet for sexual purposes. Each section is valid and enforceable. However, the existence of two separate and distinct crimes with

(More)

(Alquist)

PageG

for the same Penal Code section number could be very confusing
 the courts, practitioners, law enforcement, corrections
 personnel and the courts. Significant time and effort could
 be required to determine which crime a defendant convicted of a
 violation of Section 288.3 committed.

in Section 288.3, as defined in SB 1128 of 2006, specifically
 includes a provision allowing the use of law enforcement
 "stings" in which a law enforcement officer poses as a child
 over communications with adults who are trying to lure children
 the Internet to engage in sex. This provision is renumbered
 Penal Code Section 288.4 by this bill.

2006 Section 288.3 as defined in Proposition 83 of the November
 adult election is drafted such that the person contacted by an
 provision defendant must be proved to have been a child. This
 shall remain as Penal Code Section 288.3. Cross-references
 throughout the Penal Code have been corrected in this bill to
 reflect the renumbering.

THAT SHOULD THE TWO PENAL CODE PROVISIONS REGARDING CHILD LURING
 TO CURRENTLY CONTAIN THE SAME PENAL CODE SECTION BE RENUMBERED
 TO AVOID CONFUSION?

3. Additional Corrections

changes The bill contains a number of technical changes. These
 to are also non-substantive. For example, numerous references
 new the Department of Corrections are corrected to reflect the
 3008 name of the agency - the Department of Corrections and
 Rehabilitation. Penal Code Section 3005 was renumbered as
 number. to avoid confusion with a repealed section of that same

SHOULD NUMEROUS NON-SUBSTANTIVE CORRECTIONS IN SEX OFFENSE

STATUTES BE MADE?

(Alquist)

SB 172

PageH

SB 172 Senate Bill - Bill Analysis
BILL ANALYSIS

SENATE RULES COMMITTEE	SB 172
Office of Senate Floor Analyses	
1020 N Street, Suite 524	
(916) 651-1520	Fax: (916)
327-4478	

UNFINISHED BUSINESS

Bill No: SB 172
 Author: Alquist (D)
 Amended: 9/7/07
 Vote: 27 - Urgency

SENATE PUBLIC SAFETY COMMITTEE : 5-0, 4/24/07
 AYES: Romero, Cogdill, Cedillo, Margett, Ridley-Thomas

SENATE FLOOR : 38-0, 5/7/07
 AYES: Aanestad, Ackerman, Alquist, Ashburn, Battin,
 Calderon, Cedillo, Cogdill, Corbett, Correa, Cox, Denham,
 Ducheny, Dutton, Florez, Harman, Hollingsworth, Kehoe,
 Kuehl, Lowenthal, Machado, Maldonado, Margett,
 McClintock, Migden, Negrete McLeod, Oropeza, Padilla,
 Perata, Ridley-Thomas, Romero, Runner, Scott, Steinberg,
 Torlakson, Vincent, Wyland, Yee
 NO VOTE RECORDED: Simitian, Wiggins

ASSEMBLY FLOOR : 76-0, 9/10/07 - See last page for vote

SUBJECT : Sex offenders

SOURCE : Author

DIGEST : This bill makes technical and clarifying changes to the Sex Offender Punishment, Control and Containment Act of 2006.

Assembly Amendments (1) make clarifying changes to provisions related to the risk assessment tool to be used
 CONTINUED

2

to identify sex offenders, and make related technical changes, and (2) deleted technical changes made to Section 290.3 of the Penal Code.

ANALYSIS : Existing law provides for various penalty provisions related to sex offenders.

This bill makes nonsubstantive, conforming changes to those provisions. This bill makes clarifying changes to provisions related to the risk assessment tool to be used to identify sex offenders, and makes related technical changes.

Existing law requires persons who have been convicted of specified crimes, and other persons as required by a court, to register as a sex offender. Existing law sets forth the procedure for doing so.

This bill reorganizes and rennumbers the provisions that set forth that procedure, and makes conforming technical changes in related provisions of law.

This bill incorporates additional changes in Section 1522 of the Health and Safety Code, proposed by SB 776, to be operative only if SB 776 and this bill are both chaptered and become effective on or before January 1, 2008, and this bill is chaptered last.

This bill incorporates additional changes in Section 646.9 of the Penal Code, proposed by AB 289, to be operative only if AB 289 and this bill are both chaptered and become effective on or before January 1, 2008, and this bill is chaptered last.

Prior Legislation

SB 1128 (Alquist), Chapter 337, Statutes of 2006, which passed the Senate on 8/31/06 (40-0).

FISCAL EFFECT : Appropriation: No Fiscal Com.: No
Local: No

SUPPORT : (Verified 9/7/07)

California State Sheriffs' Association
California Probation, Parole and Correctional Association
Peace Officers Research Association of California

ARGUMENTS IN SUPPORT : According to the author's office, SB 1128 (Alquist), Chapter 337, Statutes of 2006, made numerous changes to the laws concerning sex crimes and related provisions. The law enacted a system of evaluations for sex offenders for risk. The bill increased penalties for the most dangerous sex offenders. The bill defined a new crime that can be applied against pedophiles who attempt to use the Internet to induce children to engage in sexual conduct.

This bill makes technical changes and corrects numerous statutory references to SB 1128. For example, under existing law, two sections with the same number exist that apply to persons who attempt to use the Internet to lure children to have sex. Both of these sections are valid and enforceable. However, the existence of two separate sections with the same number is confusing. This bill corrects that confusion by denominating the child luring section created by SB 1128 of 2006 as Penal Code Section 288.4.

ASSEMBLY FLOOR :

AYES: Adams, Aghazarian, Anderson, Arambula, Bass, Beall, Benoit, Berg, Berryhill, Blakeslee, Brownley, Caballero, Charles Calderon, Carter, Cook, Coto, Davis, De La Torre, De Leon, DeSaulnier, DeVore, Duvall, Dymally, Emmerson, Eng, Evans, Feuer, Fuentes, Fuller, Gaines, Galgiani, Garcia, Garrick, Hayashi, Hernandez, Horton, Houston, Huff, Huffman, Jeffries, Jones, Karnette, Keene, Krekorian, La Malfa, Laird, Leno, Levine, Lieber, Lieu, Ma, Maze, Mendoza, Mullin, Nakanishi, Nava, Niello, Parra, Plescia, Portantino, Price, Sharon Runner, Ruskin, Salas, Saldana, Silva, Smyth, Solorio, Spitzer, Swanson, Torrico, Tran, Villines, Walters, Wolk, Nunez
NO VOTE RECORDED: Hancock, Soto, Strickland, Vacancy

SB 172
Page

4

SUPPORT/OPPOSITION: SEE ABOVE

**** END ****

SB 172 Senate Bill - Bill Analysis
BILL ANALYSIS

SENATE THIRD READING
SB 172 (Alquist)
As Amended September 7, 2007
2/3 vote. Urgency

SENATE VOTE :38-0

PUBLIC SAFETY 6-0

Ayes:	Solorio, Aghazarian, Anderson, De La Torre, Ma, Portantino		
-------	---	--	--

SUMMARY : Renumbers a provision of law related to communicating with a person under the age of 18 with the intent to commit a specified sex offense, as specified. Specifically, this bill :

- 1) Provides the State Authorized Risk Assessment Tool for Sex Offenders (SARATSO) Review Committee shall research assessment tools for female juvenile offenders, as specified, and if one is agreed upon, SARATSO shall advise the Governor and the Legislature of the selected tool and the Department of Mental Health (DMH) shall post the decision on its Web site. Sixty days after the decision is posted, the selected tool shall become the SARATSO for female juvenile offenders.
- 2) States the SARATSO Training Committee shall be comprised of a chief probation officer selected by the Chief Probation Officers of California, a representative of DMH, and a representative of the Attorney General's Office.
- 3) Requires the Training Committee to consult with the Corrections Standards Authority and the Commission on Peace Officer Standards and Training to develop a training program, as specified for persons to administer the SARATSO, as specified.
- 4) Double-joins this bill with SB 766 (Vincent) and AB 289 (Spitzer) to avoid chaptering problems.

SB 172
Page 2

- 5) Re-organizes and renumbers provisions of law relating to sex offender registration requirements that were contained in AB 1706 (Committee on Public Safety).
- 6) Makes other non-substantive corrections and technical changes.

EXISTING LAW :

- 1) States every person who, motivated by an unnatural or abnormal sexual interest in children, arranges a meeting with a minor or a person he/she believes to be a minor for the purpose of exposing his/her genitals or pubic or rectal area, having the child expose his/her genitals or pubic or rectal area, or engaging in lewd or lascivious behavior, shall be punished by a fine not exceeding \$5,000; by imprisonment in a county jail not exceeding one year; or, by both the fine and imprisonment.
- 2) Provides that every person who violates existing law after a prior conviction for a registered sex offense shall be punished by imprisonment in the state prison.
- 3) States every person described in existing law who goes to the arranged meeting place at or about the arranged time, shall be punished by imprisonment in the state prison for two, three, or four years.
- 4) States every person who contacts or communicates with a minor, or attempts to contact or communicate with a minor, who knows or reasonably should know that the person is a minor, with intent to commit a specified sex offense involving the minor shall be punished by imprisonment in the state prison for the term prescribed for an attempt to commit the intended offense.
- 5) Defines "contacts or communicates with" as direct and indirect contact or communication that may be achieved personally or by use of an agent or agency, any print medium, any postal service, a common carrier or communication common carrier, any electronic communications system, or any telecommunications, wire, computer, or radio communications device or system.

FISCAL EFFECT : None

COMMENTS : According to the author, "This bill will make technical changes and corrections to statutes added or amended by the Sex Offender Punishment, Control and Containment Act of 2006, enacted by SB 1128 (Alquist), Chapter 337, Statutes of 2006, and Proposition 83, Jessica's Law, as approved by the voters in the November 2006 General Election. The law now contains two Penal Code Section 288.3 (one added by SB 1128 and one added by Proposition 83), each of which applies to persons who use the Internet to lure children to have sex, and each of which is valid and enforceable. This bill will renumber one of those sections as 'Penal Code Section 288.4' and correct cross-references to include the new Penal Code Section 288.4.

"In addition, this bill will make changes to a new risk assessment system established by SB 1128. SB 1128 'create[d] a standardized, statewide system to identify, assess, monitor and contain known sex offenders' SB 1128 identified an actuarial risk assessment tool for adult males, and it established the SARATSO Review Committee to research and identify risk assessment tools for females and juveniles. Upon the unanimous recommendation of multiple experts on sex offender risk assessment tools, the SARATSO Review Committee has requested several amendments to the statute that directs them to identify tools to clarify ambiguities and to permit them to exercise their authority in what they believe was the manner intended by SB 1128. For example, according to the expert, requiring multiple cross-validations of a tool (as opposed to one cross-validation) is not necessary to ensure its integrity but will result in delays of selecting a tool for juveniles and women of approximately six years.

"Likewise, according to the experts, requiring that any tool be 'widely accepted by the courts' is not necessary to ensure its integrity; the committee should be able to rely on risk assessment experts who have testified in court about lesser tools that have been widely accepted and who, as experts, believe that a newer tool is reasonably likely to be widely accepted by the courts. And, again, requiring wide acceptance by the courts will result in significant delays in selecting any risk assessment tool. This bill will add a chief probation officer as a member of the committee that will establish training standards a training schedule for those persons who will administer the risk assessment tools.

Please see the policy committee analysis for full discussion of

SB 172
Page 4

this bill.

Analysis Prepared by : Kimberly Horiuchi / PUB. S. / (916)
319-3744

FN: 0003297

SB 172
Page 1

Date of Hearing: July 3, 2007
Counsel: Kimberly A. Horiuchi

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Jose Solorio, Chair

SB 172 (Alquist) - As Amended: June 28, 2007

SUMMARY : Renumbers a provision of law related to communicating with a person under the age of 18 with the intent to commit a specified sex offense, as specified. Specifically, this bill :

- 1) Provides the State Authorized Risk Assessment Tool for Sex Offenders (SARATSO) Review Committee shall research assessment tools for female juvenile offenders, as specified, and if one is agreed upon, SARATSO shall advise the Governor and the Legislature of the selected tool and the Department of Mental Health (DMH) shall post the decision on its Web site. Sixty days after the decision is posted, the selected tool shall become the SARATSO for female juvenile offenders.
- 2) States the SARATSO Training Committee shall be comprised of a chief probation officer selected by the Chief Probation Officers of California, a representative of DMH, and a representative of the Attorney General's Office.
- 3) Requires the Training Committee to consult with the Corrections Standards Authority and the Commission on Peace Officer Standards and Training to develop a training program, as specified for persons to administer the SARATSO, as specified.
- 4) Makes other non-substantive corrections and technical changes.

EXISTING LAW :

- 1) States every person who, motivated by an unnatural or abnormal sexual interest in children, arranges a meeting with a minor or a person he or she believes to be a minor for the purpose of exposing his or her genitals or pubic or rectal area, having the child expose his or her genitals or pubic or rectal area, or engaging in lewd or lascivious behavior, shall be

- punished by a fine not exceeding \$5,000; by imprisonment in a county jail not exceeding one year; or by both the fine and imprisonment. [Penal Code Section 288.3(a)(1).]
- 2) Provides that every person who violates existing law after a prior conviction for a registered sex offense shall be punished by imprisonment in the state prison. [Penal Code Section 288.3(a)(2).]
 - 3) States every person described in existing law who goes to the arranged meeting place at or about the arranged time, shall be punished by imprisonment in the state prison for two, three, or four years. [Penal Code Section 288.3(b).]
 - 4) States every person who contacts or communicates with a minor, or attempts to contact or communicate with a minor, who knows or reasonably should know that the person is a minor, with intent to commit a specified sex offense involving the minor shall be punished by imprisonment in the state prison for the term prescribed for an attempt to commit the intended offense. [Penal Code Section 288.3(a).]
 - 5) Defines "contacts or communicates with" as direct and indirect contact or communication that may be achieved personally or by use of an agent or agency, any print medium, any postal service, a common carrier or communication common carrier, any electronic communications system, or any telecommunications, wire, computer, or radio communications device or system. [Penal Code Section 288.3(b).]

FISCAL EFFECT : Unknown

COMMENTS :

- 1) Author's Statement : According to the author, "This bill will make technical changes and corrections to statutes added or amended by the Sex Offender Punishment, Control and Containment Act of 2006, enacted by SB 1128 (Alquist), Chapter 337, Statutes of 2006, and Proposition 83, Jessica's Law, as approved by the voters in the November 2006 General Election. The law now contains two Penal Code Section 288.3 (one added by SB 1128 and one added by Proposition 83), each of which applies to persons who use the Internet to lure children to have sex, and each of which is valid and enforceable. This bill will renumber one of those sections as 'Penal Code

Section 288.4' and correct cross-references to include the new Penal Code Section 288.4.

"In addition, this bill will make changes to a new risk assessment system established by SB 1128. SB 1128 'create[d] a standardized, statewide system to identify, assess, monitor and contain known sex offenders' [Penal Code Section 290.46(b).] SB 1128 identified an actuarial risk assessment tool for adult males, and it established the SARATSO Review Committee to research and identify risk assessment tools for females and juveniles. (Penal Code Section 290.04.) Upon the unanimous recommendation of multiple experts on sex offender risk assessment tools, the SARATSO Review Committee has requested several amendments to the statute that directs them to identify tools to clarify ambiguities and to permit them to exercise their authority in what they believe was the manner intended by SB 1128. For example, according to the expert, requiring multiple cross-validations of a tool (as opposed to one cross-validation) is not necessary to ensure its integrity but will result in delays of selecting a tool for juveniles and women of approximately six years.

"Likewise, according to the experts, requiring that any tool be 'widely accepted by the courts' is not necessary to ensure its integrity; the committee should be able to rely on risk assessment experts who have testified in court about lesser tools that have been widely accepted and who, as experts, believe that a newer tool is reasonably likely to be widely accepted by the courts. And, again, requiring wide acceptance by the courts will result in significant delays in selecting any risk assessment tool. This bill will add a chief probation officer as a member of the committee that will establish training standards a training schedule for those persons who will administer the risk assessment tools.

2)Background : This bill remedies chaptering problems arising from the enactment of both SB 1128 and Proposition 83 (Jessica's Law) passed by the voters on November 7, 2006. SB 1128 provided that for any person who, motivated by an unnatural or abnormal sexual interest in children, arranges a meeting with a minor for specified sexual purposes shall be sentenced to up to one year in the county jail. Any person who goes to a specified meeting place with the above mentioned intent is guilty of a felony and shall be sentenced to a term of two, three or four years. Proposition 83 created a new

SB 172
Page 4

Penal Code Section 288.3 that punished any person who contacts or communicates with a minor with the intent to commit a specified sex offense as if he or she attempted to commit a specified sex offense. Hence, both versions of Penal Code Section 288.3 are currently existing law. This bill renumbers the version enacted by SB 1128 as Penal Code Section 288.4.

3) Prior Legislation : SB 1128 (Alquist), Chapter 337, Statutes of 2006, among other things, punishes any person who, motivated by an unnatural or abnormal sexual interest in children, arranges a meeting with a minor or a person he or she believes to be a minor for the purpose of exposing his or her genitals or pubic or rectal area, having the child expose his or her genitals or pubic or rectal area, or engaging in lewd or lascivious behavior, by a fine not exceeding 5,000; by imprisonment in a county jail not exceeding one year; or by both the fine and imprisonment.

4) Arguments in Support : According to the Office of Attorney General , "[SB 172], as amended, will renumber a code section applicable to person who use the Internet to lure children to have sex so as to avoid duplicate section numbers; correct statutory references to the Department of Corrections and Rehabilitation at the request of the statutorily created SARATSO Review Committee and, upon unanimous recommendation of experts consulted by the Committee, make changes to the criteria considered by the Committee in selecting risk assessment tools; and add a chief probation officer as a member of the Committee that will establish training standards and a training schedule for those person who will administer the risk assessment tool."

REGISTERED SUPPORT / OPPOSITION :

Support

California Probation, Parole and Correctional Association
California State Sheriffs' Association
Office of the Attorney General
Police Officers Research Association of California

Opposition

None

AB 1849 Assembly Bill - CHAPTEREDBILL NUMBER: AB 1849 CHAPTERED
BILL TEXT

CHAPTER 886
FILED WITH SECRETARY OF STATE SEPTEMBER 30, 2006
APPROVED BY GOVERNOR SEPTEMBER 30, 2006
PASSED THE ASSEMBLY AUGUST 31, 2006
PASSED THE SENATE AUGUST 30, 2006
AMENDED IN SENATE AUGUST 30, 2006
AMENDED IN SENATE AUGUST 29, 2006
AMENDED IN SENATE AUGUST 24, 2006
AMENDED IN SENATE AUGUST 22, 2006
AMENDED IN SENATE AUGUST 7, 2006
AMENDED IN ASSEMBLY MAY 26, 2006
AMENDED IN ASSEMBLY MARCH 15, 2006
AMENDED IN ASSEMBLY FEBRUARY 27, 2006

INTRODUCED BY Assembly Member Leslie
(Coauthors: Assembly Members Benoit, Cogdill, Cohn, Daucher,
DeVore, Emmerson, Garcia, Harman, Haynes, Shirley Horton, Houston,
Huff, Leno, Maze, Mountjoy, Parra, Strickland, Tran, Vargas, and
Wyland)
(Coauthors: Senators Alquist and Cox)

JANUARY 12, 2006

An act to amend Sections 290.46, 1202.8, and 3004 of, and to
repeal Sections 290.04, 290.05, and 290.06 of, the Penal Code,
relating to sex offenders, and declaring the urgency thereof, to take
effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 1849, Leslie Sex offenders.

Existing law requires the Department of Justice to make
information concerning certain persons who are required to register
as sex offenders available to the public via an Internet Web site,
including the offender's criminal history.

This bill would also require that on or before July 1, 2010, the
year of the conviction of the offender's last sexual offense, the
year of release from incarceration for that offense, and whether he
or she was subsequently incarcerated for any other felony, be posted
on the Internet Web site, as specified. This bill would also require
any state facility that releases a sex offender to provide the year
of conviction and year of release for his or her most recent offense
requiring registration as a sex offender to the department, or that
releases a person who is required to register as a sex offender from
incarceration whose incarceration was for a felony committed
subsequently to the offense for which he or she is required to
register to advise the department, as specified.

Senate Bill No, 1178 proposes to enact provisions requiring
certain offenders to be assessed with the State Authorized Risk
Assessment Tool for Sex Offenders for purposes of parole and
probation.

This bill would further revise those provisions to, among other things, make certain requirements applicable commencing January 1, 2009, to become operative only if SB 1178 is also enacted and this bill is enacted last.

This bill would incorporate additional changes in Section 290.46 of the Penal Code proposed by AB 2712 and SB 1128 contingent upon the prior enactment of one or both of those bills.

This bill would provide that it shall only become operative if SB 1128 is enacted.

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

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

SECTION 1. Section 290.04 of the Penal Code, as added by Senate Bill No. 1178, is repealed.

SEC. 2. Section 290.05 of the Penal Code, as added by Senate Bill No. 1178, is repealed.

SEC. 3. Section 290.06 of the Penal Code, as added by Senate Bill No. 1178, is repealed.

SEC. 4. Section 290.46 of the Penal Code is amended to read:

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

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

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

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

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

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

(B) (i) Any state facility that releases from incarceration a person who was incarcerated because of a crime for which he or she is required to register as a sex offender pursuant to Section 290 shall, within 30 days of release, provide the year of release for his or her most recent offense requiring registration to the Department

of Justice in a manner and format approved by the department.

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

(iii) Any state facility that, prior to January 1, 2007, released from incarceration a person who was incarcerated because of a crime for which he or she is required to register as a sex offender pursuant to Section 290 shall provide the year of release for his or her most recent offense requiring registration to the Department of Justice in a manner and format approved by the department. The information provided by the Department of Corrections and Rehabilitation shall be limited to information that is currently maintained in an electronic format.

(iv) Any state facility that, prior to January 1, 2007, released a person who is required to register pursuant to Section 290 from incarceration whose incarceration was for a felony committed subsequently to the offense for which he or she is required to register shall advise the Department of Justice of that fact in a manner and format approved by the department. The information provided by the Department of Corrections and Rehabilitation shall be limited to information that is currently maintained in an electronic format.

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

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

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

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

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

(D) Section 264.1.

(E) Section 269.

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

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

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

(I) Section 288.5.

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

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

(c) (1) On or before July 1, 2005, with respect to a person who has been convicted of the commission or the attempted commission of any of the offenses listed in paragraph (2), the Department of Justice shall make available to the public via the Internet Web site his or her name and known aliases, a photograph, a physical description, including gender and race, date of birth, criminal

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

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

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

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

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

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

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

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

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

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

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

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

(D) Section 266j.

(E) Section 267.

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

(G) Section 647.6.

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

(e) (1) If a person has been convicted of the commission or the

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(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.

SEC. 4.1. Section 290.46 of the Penal Code is amended to read:

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

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

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

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

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

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

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

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

(iii) Any state facility that, prior to January 1, 2007, released from incarceration a person who was incarcerated because of a crime for which he or she is required to register as a sex offender pursuant to Section 290 shall provide the year of release for his or her most recent offense requiring registration to the Department of Justice in a manner and format approved by the department. The information provided by the Department of Corrections and Rehabilitation shall be limited to information that is currently maintained in an electronic format.

(iv) Any state facility that, prior to January 1, 2007, released a person who is required to register pursuant to Section 290 from incarceration whose incarceration was for a felony committed subsequently to the offense for which he or she is required to register shall advise the Department of Justice of that fact in a manner and format approved by the department. The information provided by the Department of Corrections and Rehabilitation shall be limited to information that is currently maintained in an electronic format.

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

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

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

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

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

(D) Section 264.1.

(E) Section 269.

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

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

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

(I) Section 288.5.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(D) Section 266j.

(E) Section 267.

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

(G) Section 647.6.

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

(e) (1) If a person has been convicted of the commission or the attempted commission of any of the offenses listed in this subdivision, and he or she has been convicted of no other offense listed in subdivision (b), (c), or (d) other than those listed in this subdivision, that person may file an application with the Department of Justice, on a form approved by the department, for exclusion from the Internet Web site. If the department determines that the person meets the requirements of this

subdivision, the department shall grant the exclusion and no information concerning the person shall be made available via the Internet Web site described in this section. He or she bears the burden of proving the facts that make him or her eligible for exclusion from the Internet Web site. However, a person who has filed for or been granted an exclusion from the Internet Web site is not relieved of his or her duty to register as a sex offender pursuant to Section 290 nor from any otherwise applicable provision of law.

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

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

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

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

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

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

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

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

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

(iii) If, subsequent to his or her application, the offender commits a violation of probation resulting in his or her incarceration in county jail or state prison, his or her exclusion,

or application for exclusion, from the Internet Web site shall be terminated.

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

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

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

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

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

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

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

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

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

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

six months, or by both that fine and imprisonment.

(1) (1) A person is authorized to use information disclosed pursuant to this section only to protect a person at risk. This authorization does not create a duty to use the information.

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

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

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

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

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

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

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

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

SEC. 4.2. Section 290.46 of the Penal Code is amended to read:

290.46. (a) (1) On or before the dates specified in this section, the Department of Justice shall make available information

concerning persons who are required to register pursuant to Section 290 to the public via an Internet Web site as specified in this section. The department shall update the Internet Web site on an ongoing basis. All information identifying the victim by name, birth date, address, or relationship to the registrant shall be excluded from the Internet Web site. The name or address of the person's employer and the listed person's criminal history other than the specific crimes for which the person is required to register shall not be included on the Internet Web site. The Internet Web site shall be translated into languages other than English as determined by the department.

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

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

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

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

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

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

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

(iii) Any state facility that, prior to January 1, 2007, released from incarceration a person who was incarcerated because of a crime for which he or she is required to register as a sex offender pursuant to Section 290 shall provide the year of release for his or her most recent offense requiring registration to the Department of Justice in a manner and format approved by the department. The information provided by the Department of Corrections and Rehabilitation shall be limited to information that is currently maintained in an electronic format.

(iv) Any state facility that, prior to January 1, 2007, released a person who is required to register pursuant to Section 290 from incarceration whose incarceration was for a felony committed subsequently to the offense for which he or she is required to register shall advise the Department of Justice of that fact in a manner and format approved by the department. The information provided by the Department of Corrections and Rehabilitation shall be limited to information that is currently maintained in an electronic format.

(3) The Department of Mental Health shall provide to the

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

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

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

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

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

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

(D) Section 264.1.

(E) Section 269.

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

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

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

(I) Section 288.3, provided that the offense is a felony.

(J) Section 288.5.

(K) Subdivision (a) or (j) of Section 289.

(L) Section 288.7.

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

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

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

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

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

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

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

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

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

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

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

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

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

(D) Section 266j.

(E) Section 267.

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

(G) Section 288.3, provided that the offense is a misdemeanor.

(H) Section 626.81.

(I) Section 647.6.

(J) Section 653c.

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

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

exclusion from the Internet Web site is not relieved of his or her duty to register as a sex offender pursuant to Section 290 nor from any otherwise applicable provision of law.

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

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

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

(C) (i) An offense for which the offender successfully completed probation, provided that the offender submits to the department a certified copy of a probation report, presentencing report, report prepared pursuant to Section 288.1, or other official court document that clearly demonstrates that the offender was the victim's parent, stepparent, sibling, or grandparent and that the crime did not involve either oral copulation or penetration of the vagina or rectum of either the victim or the offender by the penis of the other or by any foreign object.

(ii) An offense for which the offender is on probation at the time of his or her application, provided that the offender submits to the department a certified copy of a probation report, presentencing report, report prepared pursuant to Section 288.1, or other official court document that clearly demonstrates that the offender was the victim's parent, stepparent, sibling, or grandparent and that the crime did not involve either oral copulation or penetration of the vagina or rectum of either the victim or the offender by the penis of the other or by any foreign object.

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

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

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

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

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

(g) (1) A designated law enforcement entity, as defined in

subdivision (f) of Section 290.45, may make available information concerning persons who are required to register pursuant to Section 290 to the public via an Internet Web site as specified in paragraph (2).

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

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

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

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

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

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

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

(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. 4.3. Section 290.46 of the Penal Code is amended to read:

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

be translated into languages other than English as determined by the department.

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

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

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

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

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

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

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

(iii) Any state facility that, prior to January 1, 2007, released from incarceration a person who was incarcerated because of a crime for which he or she is required to register as a sex offender pursuant to Section 290 shall provide the year of release for his or her most recent offense requiring registration to the Department of Justice in a manner and format approved by the department. The information provided by the Department of Corrections and Rehabilitation shall be limited to information that is currently maintained in an electronic format.

(iv) Any state facility that, prior to January 1, 2007, released a person who is required to register pursuant to Section 290 from incarceration whose incarceration was for a felony committed subsequently to the offense for which he or she is required to register shall advise the Department of Justice of that fact in a manner and format approved by the department. The information provided by the Department of Corrections and Rehabilitation shall be limited to information that is currently maintained in an electronic format.

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

(b) (1) On or before July 1, 2005, with respect to a person who has been convicted of the commission or the attempted commission of any of the offenses listed in, or who is described in, paragraph (2),

the Department of Justice shall make available to the public via the Internet Web site his or her name and known aliases, a photograph, a physical description, including gender and race, date of birth, criminal history, prior adjudication as a sexually violent predator, the address at which the person resides, and any other information that the Department of Justice deems relevant, but not the information excluded pursuant to subdivision (a).

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

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

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

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

(D) Section 264.1.

(E) Section 269.

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

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

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

(I) Section 288.3, provided that the offense is a felony.

(J) Section 288.5.

(K) Subdivision (a) or (j) of Section 289.

(L) Section 288.7.

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

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

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

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

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

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

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

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

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

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

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

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

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

(D) Section 266j.

(E) Section 267.

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

(G) Section 288.3, provided that the offense is a misdemeanor.

(H) Section 626.81.

(I) Section 647.6.

(J) Section 653c.

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

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

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

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

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

(C) (i) An offense for which the offender successfully completed probation, provided that the offender submits to the department a certified copy of a probation report, presentencing report, report

prepared pursuant to Section 288.1, or other official court document that clearly demonstrates that the offender was the victim's parent, stepparent, sibling, or grandparent and that the crime did not involve either oral copulation or penetration of the vagina or rectum of either the victim or the offender by the penis of the other or by any foreign object.

(ii) An offense for which the offender is on probation at the time of his or her application, provided that the offender submits to the department a certified copy of a probation report, presentencing report, report prepared pursuant to Section 288.1, or other official court document that clearly demonstrates that the offender was the victim's parent, stepparent, sibling, or grandparent and that the crime did not involve either oral copulation or penetration of the vagina or rectum of either the victim or the offender by the penis of the other or by any foreign object.

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

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

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

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

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

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

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

available to the entity concerning that specific offender.

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

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

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

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

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

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

(l) (1) A person is authorized to use information disclosed pursuant to this section only to protect a person at risk. This authorization does not create a duty to use the information.

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

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

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

(4) (A) Any use of information disclosed pursuant to this section for purposes other than those provided by paragraph (1) or in violation of paragraph (2) shall make the user liable for the actual damages, and any amount that may be determined by a jury or a court

sitting without a jury, not exceeding three times the amount of actual damage, and not less than two hundred fifty dollars (\$250), and attorney's fees, exemplary damages, or a civil penalty not exceeding twenty-five thousand dollars (\$25,000).

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

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

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

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

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

SEC. 5. Section 1202.8 of the Penal Code, as amended by Senate Bill No. 1178, is amended to read:

1202.8. (a) Persons placed on probation by a court shall be under the supervision of the county probation officer who shall determine both the level and type of supervision consistent with the court-ordered conditions of probation.

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

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

payments that are not deposited into the Restitution Fund shall be deposited.

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

SEC. 6. Section 3004 of the Penal Code, as amended by Senate Bill No. 1178, is amended to read:

3004. (a) Notwithstanding any other law, the parole authority may require, as a condition of release on parole or reinstatement on parole, or as an intermediate sanction in lieu of return to prison, that an inmate or parolee agree in writing to the use of electronic monitoring or supervising devices for the purpose of helping to verify his or her compliance with all other conditions of parole. The devices shall not be used to eavesdrop or record any conversation, except a conversation between the parolee and the agent supervising the parolee which is to be used solely for the purposes of voice identification.

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

(c) Beginning January 1, 2009, and every two years thereafter through 2017, the Department of Corrections and Rehabilitation shall report to the Legislature and to the Governor all relevant statistics and relevant information regarding the effectiveness of continuous electronic monitoring of offenders pursuant to subdivision (b). The report shall include the costs of monitoring and the recidivism rates of those persons who have been monitored.

SEC. 7. (a) Section 4.1 of this bill incorporates amendments to Section 290.46 of the Penal Code proposed by both this bill and AB 2712. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2007, but this bill becomes operative first, (2) each bill amends Section 290.46 of the Penal Code, and (3) SB 1128 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 2712, in which case Section 290.46 of the Penal Code, as amended by Section 4 of this bill, shall remain operative only until the operative date of AB 2712, at which time Section 4.1 of this bill shall become operative and Sections 4.2 and 4.3 of this bill shall not become operative.

(b) Section 4.2 of this bill incorporates amendments to Section 290.46 of the Penal Code proposed by both this bill and SB 1128. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2007, (2) each bill amends Section

290.46 of the Penal Code, (3) AB 2712 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after SB 1128 in which case Section 290.46 of the Penal Code as amended by SB 1128, shall remain operative only until the operative date of this bill, at which time Section 4.2 of this bill shall become operative, and Sections 4, 4.1, and 4.3 of this bill shall not become operative.

(c) Section 4.3 of this bill incorporates amendments to Section 290.46 of the Penal Code proposed by this bill, AB 2712, and SB 1128. It shall only become operative if (1) all three bills are enacted and become effective on or before January 1, 2007, (2) all three bills amend Section 290.46 of the Penal Code, and (3) this bill is enacted after AB 2712 and SB 1128, in which case Section 290.46 of the Penal Code as amended by SB 1128, shall remain operative only until the operative date of this bill, at which time Section 4.2 of this bill shall become operative and shall remain operative only until the operative date of AB 2712, at which time Section 4.3 of this bill shall become operative, and Sections 4 and 4.1 of this bill shall not become operative.

SEC. 8. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

SEC. 9. This bill shall only become operative if Senate Bill 1128 of the 2005-06 Regular Session is also enacted and becomes effective on or before January 1, 2007.

SEC. 10. Sections 1, 2, 3, 5, and 6 of this act shall become operative only if Senate Bill No. 1178 is also enacted and this act is enacted after Senate Bill 1178.

SEC. 11. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to ensure the public safety of California families and their children and to ensure that the Megan's Law database provides adequate information about registered sex offenders living in California, it is necessary that this act take effect immediately.

AB 1849 Assembly Bill - Bill Analysis
BILL ANALYSIS

SENATE RULES COMMITTEE	AB 1849
Office of Senate Floor Analyses	
1020 N Street, Suite 524	
(916) 651-1520	Fax: (916)
327-4478	

THIRD READING

Bill No: AB 1849
Author: Leslie (R), et al
Amended: 8/30/06 in Senate
Vote: 27 - Urgency

SENATE PUBLIC SAFETY COMMITTEE : 2-2, 6/20/06 (FAIL)
AYES: Poochigian, Margett
NOES: Migden, Romero
NO VOTE RECORDED: Cedillo, Perata

SENATE PUBLIC SAFETY COMMITTEE : 5-0, 6/27/06
AYES: Migden, Cedillo, Margett, Perata, Romero
NO VOTE RECORDED: Poochigian

SENATE APPROPRIATIONS COMMITTEE : 13-0, 8/17/06
AYES: Murray, Aanestad, Alarcon, Alquist, Ashburn, Battin,
Dutton, Escutia, Florez, Ortiz, Poochigian, Romero,
Torlakson

ASSEMBLY FLOOR : 80-0, 5/31/06 - See last page for vote

SUBJECT : Registered sex offenders: disclosure of
conviction and
release dates

SOURCE : Author

DIGEST : This bill requires the Department of Justice
(DOJ) to include the year the registrant was released from
incarceration on the Megans Law web site on or before July

CONTINUED

2

1, 2010, as specified.

Senate Floor Amendments of 8/30/06 clarify and narrow the information required to be provide to DOJ from the Department of corrections and Rehabilitation to require year of release from custody information only, as specified. This bill additionally removes language from the bill distinguishing information about an event that occurred prior to 1978.

Senate Floor Amendments of 8/29/06 (1) exclude local detention facilities from this bill, (2) require state facilities to provide the information if it is "readily accessible t the facility" and is currently maintained in an electronic format, as specified, (3) add an urgency clause, and (4) make additional technical revisions.

Senate Floor Amendments of 8/24/06 add double-jointing language.

ANALYSIS : Existing law requires DOJ to make information concerning certain persons who are required to register as sex offenders available to the public via an Internet web site, including the offender's criminal history.

This bill also requires that on or before July 1, 2010, the year of release for the offender's last sexual offense, and whether he/she was subsequently incarcerated for any other felony, be posted on the Internet web site, as specified. This bill also requires any state facility that releases a sex offender to provide the year of release for his/her most recent offense requiring registration as a sex offender to DOJ. The information provided by the California Department of Corrections and Rehabilitation shall be limited to information that is currently maintained in an electronic format.

This bill is double-jointed with SB 1128 (Alquist) and AB 2712 (Leno).

FISCAL EFFECT : Appropriation: No Fiscal Com.: Yes
Local: Yes

According to the Senate Appropriations Committee:

Fiscal Impact (in thousands)

Major Provisions	2006-07	2007-08	2008-09	Fund
Megan's Law changes beginning				
	General			
	Multimillion dollar costs in 2010-11			

The DOJ projects total costs in excess of \$10 million over the first three years to fund 25 analyst, technician and programmer positions, several consultants to develop and test programs, and purchase equipment for increased storage. Ongoing costs after the first three years of development are complete are estimated at \$760,000 to cover the expenses of five positions and ongoing maintenance.

SUPPORT : (Verified 8/30/06)

- California Association of Health Facilities
- California Coalition Against Sexual Assault
- California District Attorney's Association
- California Peace Officers' Association
- California Police Activities League
- California Police Chiefs' Association
- California State Sheriff's Association
- Los Angeles County District Attorney's Office
- Los Angeles County Sheriff
- Office of the Attorney General
- Taxpayers for Improving Public Safety

OPPOSITION : (Verified 8/29/06)

California Sexual Assault Investigators Association

ARGUMENTS IN SUPPORT : The author states that "Adding the year of conviction and release from incarceration to the DOJ's web site will help the public determine the relative danger of registered sex offenders."

ARGUMENTS IN OPPOSITION : The California Sexual Assault Investigators Association, which opposes this bill, argues this additional information will provide a false sense of

4

security:

"Based on our experience in the field dealing with both sex offenders as well as their victims, we view the listing of the date of conviction on the Megan's Law database as potentially decreasing public safety. Specifically, we believe that when the public views the database online, they will get a false sense of security in some situations by assigning a level of risk to an offender based on these dates. Simply because a conviction for a sex offense occurred a long time ago, is not a good indicator of an offender's dangerousness to the public.

"?(I)t is difficult to predict an offender's likelihood to reoffend; it is especially difficult for someone without the experience and the benefit of all the information about the offender. For example, statistics show that many sex offenses go unreported and therefore an old conviction date may lead one to believe the person no longer poses a risk but in some cases may still be offending. The opposite could also be the case."

ASSEMBLY FLOOR :

AYES: Aghazarian, Arambula, Baca, Bass, Benoit, Berg, Bermudez, Blakeslee, Bogh, Calderon, Canciamilla, Chan, Chavez, Chu, Cogdill, Cohn, Coto, Daucher, De La Torre, DeVore, Dymally, Emmerson, Evans, Frommer, Garcia, Goldberg, Hancock, Harman, Haynes, Jerome Horton, Shirley Horton, Houston, Huff, Jones, Karnette, Keene, Klehs, Koretz, La Malfa, La Suer, Laird, Leno, Leslie, Levine, Lieber, Lieu, Liu, Matthews, Maze, McCarthy, Montanez, Mountjoy, Mullin, Nakanishi, Nation, Nava, Negrete McLeod, Niello, Oropeza, Parra, Pavley, Plescia, Richman, Ridley-Thomas, Sharon Runner, Ruskin, Saldana, Salinas, Spitzer, Strickland, Torrico, Tran, Umberg, Vargas, Villines, Walters, Wolk, Wyland, Yee, Nunez

RJG:mel 8/30/06 Senate Floor Analyses

SUPPORT/OPPOSITION: SEE ABOVE

AB 1849
Page

5

**** END ****

AB 1849 Assembly Bill - Bill Analysis
BILL ANALYSIS
AB 1849

Page 1

CONCURRENCE IN SENATE AMENDMENTS
AB 1849 (Leslie)
As Amended August 30, 2006
2/3 vote. Urgency

ASSEMBLY:	80-0	(May 31, 2006)	SENATE:	40-0	(August 30, 2006)
-----------	------	----------------	---------	------	-------------------

Original Committee Reference: PUB. S.

SUMMARY : Requires that on or before July 1, 2010, the Department of Justice (DOJ) shall add specified additional information to the Megan's Law database of specified sex offenders publicly available on the Internet.

The Senate amendments :

- 1) Require that the year of conviction and the year of release from incarceration for the offender's last sexual offense, and whether the offender was subsequently incarcerated for any other felony be posted on the Internet website, as specified.
- 2) Require any state or local facility that releases a sex offender to provide the year of release for the offender's most recent offense requiring registration as a sex offender to DOJ.
- 3) Require any state or local facility that releases a person required to register as a sex offender registrant from incarceration for a felony committed after the sex offense for which he or she is required to register to advise DOJ within 30 days of release, of that fact.
- 4) Require any state or local facility that, prior to January 1, 2007, released a sex offender registrant from incarceration for a felony committed after the sex offense to advise DOJ of that fact, as specified.
- 5) Require DOJ to note on the Internet website the fact that DOJ has no information about any subsequent felony, if DOJ has no such information.
- 6) Add chaptering amendments to avoid chaptering out AB 2712

(Leno), SB 1128 (Alquist) and SB 1178 (Speier).

7) Add an urgency clause.

EXISTING LAW :

- 1) Establishes a tiered system of public notification via the Internet of the location of registered sex offenders, with specific home addresses provided for some offenses and only the community of residence or zip code for other offenses.
- 2) States that if a sex offender registrant was last registered at a residence address and changes his or her residence, either within California or out of state, shall notify, in person, the last registering agency or agencies that he or she is moving within five working days of the move, and of the new address, if known, or transient location, and any plans to return to California.
- 3) Provides that if the person does not know the new residence address at the time of the move, the registrant shall notify, in person, the last registering agency, within five days of the move, that he or she is moving. Further requires the registrant to later notify the last registering agency, in writing, sent by certified or registered mail, of the new address or location, within five working days of moving into the new residence or location.
- 4) States that the use of any of the information on the Megan's Law Web site shall not be used for purposes related to health insurance; insurance; loans; credit; employment; education, scholarships, or fellowships; housing or accommodations; or, benefits, privileges or services provided by any business establishment.

AS PASSED BY THE ASSEMBLY , this bill:

- 1) Required that the year of the conviction for the most recent crime requiring registration be posted on the Internet.
- 2) Required that the year of release from incarceration for the registrant's most recent crime requiring registration be posted on the Internet.
- 3) Provided that the DOJ shall not provide the year of conviction

AB 1849

Page 3

unless DOJ is also able to make available the year of release from incarceration.

4) Required state or local facilities that release registered sex offenders from incarceration to provide to DOJ the year of conviction and the year of release from incarceration, as specified.

5) Required any state or local facility that, prior to January 1, 2007, released registered sex offenders from incarceration to provide to DOJ the year of conviction and the year of release from incarceration, as specified.

FISCAL EFFECT : DOJ projects total costs in excess of \$10 million over the first three years to fund 25 analyst, technician and programmer positions, several consultants to develop and test programs, and purchase equipment for increased storage. On-going costs after the first three years of development are complete are estimated at \$760,000 to cover the expenses of five positions and ongoing maintenance.

COMMENTS : According to the author: "The Megan's Law database lacks crucial elements that I believe are necessary to allow parents to gain a full perspective of sex offenders living in their neighborhoods. This bill would greatly enhance the database, make it more useful for Californians."

Please see the policy committee analysis for full discussion of this bill.

Analysis Prepared by : Kathleen Ragan / PUB. S. / (916)
319-3744 FN:
0017721

AB 1849 Assembly Bill - Bill Analysis
BILL ANALYSIS

Senate Appropriations Committee Fiscal Summary
Senator Kevin Murray, Chairman

1849 (Leslie)

Hearing Date: 8/17/06 Amended: 8/7/06
Consultant: Nora Lynn Policy Vote: Public Safety 5-0

BILL SUMMARY:

AB 1849 requires the Department of Justice (DOJ) to include additional information about registered sex offenders as specified on its Megan's Law website by July 1, 2010.

Fiscal Impact (in thousands)

Major Provisions	2006-07	2007-08	2008-09	Fund
Megan's Law changes beginning	Multimillion-dollar costs			
General	in 2010-11; see staff comments			

STAFF COMMENTS: SUSPENSE FILE

Current law requires DOJ to include a sex registrant's name, known aliases, a photograph, a physical description, gender, race, date of birth, criminal history, and any other information the department deems relevant unless specifically excluded by statute.

AB 1849 requires the website to show the year of the sex offender's most recent offense requiring sex offender registration; the year the registrant was released from incarceration for that crime; and if the registrant was subsequently incarcerated for any other felony if that fact has been reported to the department and, if not, that fact noted on the website.

DOJ projects total costs in excess of \$10 million over the first three years to fund 25 analyst, technician and programmer positions, several consultants to develop and test programs, and purchase equipment for increased storage. On-going costs after

the first three years of development are complete are estimated at \$760,000 to cover the expenses of five positions and ongoing maintenance.

AB 1849 Assembly Bill - Bill Analysis
BILL ANALYSIS

- 1) Establishes a tiered system of public notification via the Internet of the location of registered sex offenders, with specific home addresses provided for some offenses and only the community of residence or zip code for other offenses.
- 2) Provides that the Internet Web site shall identify the following information about registered sex offenders:
 - a) Name and known aliases;
 - b) A photograph;
 - c) A physical description, including gender and race;
 - d) Criminal history, as specified; and,
 - e) Home address or community of residence and zip code, depending upon the offense requiring registration.
- 3) States that if a sex offender registrant was last registered at a residence address and changes his or her residence, either within California or out of state, shall notify, in person, the last registering agency or agencies that he or she is moving within five working days of the move, and of the new address, if known, or transient location, and any plans to return to California.
- 4) Provides that if the person does not know the new residence address at the time of the move, the registrant shall notify, in person, the last registering agency, within five days of the move, that he or she is moving. Further requires the registrant to later notify the last registering agency, in writing, sent by certified or registered mail, of the new address or location, within five working days of moving into the new residence or location.
- 5) States that the use of any of the information on the Internet Megan's Law Web site shall not be used for purposes related to health insurance; insurance; loans; credit; employment; education, scholarships, or fellowships; housing or accommodations; or benefits, privileges or services provided by any business establishment.

FISCAL EFFECT : According to the Assembly Appropriations

AB 1849
Page 3

Committee, significant one-time and annual General Fund costs, in the range of \$2 million for several years, to create an information system by which DOJ can extract current and accurate inmate release date information from CDCR and from local jails. Ongoing costs, once a system is operational, would likely be in the \$300,000 range. Local costs to provide DOJ the appropriate information would be state-reimbursable.

COMMENTS : According to the author: "The Megan's Law database lacks crucial elements that I believe are necessary to allow parents to gain a full perspective of sex offenders living in their neighborhoods. This bill would greatly enhance the database, make it more useful for Californians."

Please see the policy committee analysis for full discussion of this bill.

Analysis Prepared by : Kathleen Ragan / PUB. S. / (916)
319-3744

FN: 0015015

AB 1849 Assembly Bill - Bill Analysis
BILL ANALYSIS

AB 1849
Page 1

Date of Hearing: April 5, 2006

ASSEMBLY COMMITTEE ON APPROPRIATIONS
Judy Chu, Chair

AB 1849 (Leslie) - As Amended: March 15, 2006

Policy Committee: Public
SafetyVote: 6-0

Urgency: No State Mandated Local Program:
No Reimbursable: No

SUMMARY

This bill requires the Department of Justice (DOJ) to include on its registered sex offender web site the conviction dates for crimes requiring registration and the date the sex offender was released from jail or prison for those offenses.

FISCAL EFFECT

- 1) Significant annual GF costs - in the range of \$8 million - to renovate DOJ's Violent Crime Information Network (VCIN) to enable it to handle the additional information.
- 2) Significant one-time and annual GF costs, in the range of \$2 million for several years, to create an information system by which DOJ can extract current and accurate inmate release date information from the Department of Corrections and Rehabilitation (COCR) and from local jails. Ongoing costs, once a system is operational, would likely be in the \$300,000 range. Local costs to provide DOJ the appropriate information would be state-reimbursable.

COMMENTS

- 1) Rationale . The author contends adding conviction and incarceration release dates to the DOJ's web site will help the public determine the relative danger of registered sex offenders.

Proponents contend that while the type of crime is included on the web site, there is no reference to the date the individual committed the crime or when he or she was released from prison

or jail. Adding such references will help web site users better assess the threat an individual may pose.

2) Current law requires the web site to include the following information:

- a) Name and known aliases.
- b) Photograph.
- c) Physical description, including gender and race.
- d) Criminal history (generally the specific offense for which registration is required).
- e) Home address or community of residence and zip code, depending upon the offense.

3) Practical/Technical Concerns . DOJ, while not opposed to adding this information to the web site, states it has neither the funds nor the ability to accurately include this information. DOJ states that its Violent Crime Information Network (VCIN), the infrastructure behind the registered sex offender website cannot accommodate the increased fields and information this bill proposes to add. VCIN is undergoing a four-year, \$9 million renovation (\$1.8 million is included in the 2005-06 budget and \$1.9 million is proposed in the 2006-07 budget) that would enable the system to handle this information.

The capacity of VCIN to handle additional information, however, is not the only issue. DOJ notes that incarceration release date information is simply not readily available, particularly for the tens of thousands of sex offenders convicted before 1990, as there is no requirement - or system - for the CDCR or local jails to provide release dates.

Also of concern is the requirement that DOJ post "the date of the commission "of the crime; the " year of the conviction " would be more appropriate and manageable, while providing the same degree of public safety.

To acknowledge current fiscal and information limitations, it may be appropriate to amend the bill to add an effective deadline date for provision of the new information, such as the 2009-10 budget year.

4) Related Legislation . AB 437 (Parra) was similar to this measure, but was chaptered out last year. AB 437 passed off of this committee's Suspense File unanimously and received no

AB 1849
Page 3

dissenting votes in the Assembly or the Senate.

Unlike AB 1849, however, AB 437 required DOJ to include the dates of offense and release only when funding for this purpose is available and only when DOJ has access to complete information, neither of which is currently the case. This provision was deleted in the Assembly Public Safety Committee hearing on AB 1849.

SB 1128 (Alquist), pending in the Senate, requires DOJ to upgrade the VCIN, to an extent that would allow for the additional fields proposed by this measure, and similar to the DOJ renovation underway, by January 2010.

Analysis Prepared by : Geoff Long / APPR. / (916) 319-2081



Effective: September 20, 2006

West's Annotated California Codes Currentness

Penal Code (Refs & Annos)

Part 2. Of Criminal Procedure (Refs & Annos)

Title 8. Of Judgment and Execution

Chapter 1. The Judgment (Refs & Annos)

→ § 1203. Probation; conditional sentence; probation officer investigation, report, and recommendations; restitution fine; court determination; misdemeanor conviction; persons ineligible for probation; release to another state; financial evaluation regarding restitution

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (4) Any person who has been previously convicted twice in this state of a felony or in any other place of a public offense which, if committed in this state, would have been punishable as a felony.
- (5) Unless the person has never been previously convicted once in this state of a felony or in any other place of a public offense which, if committed in this state, would have been punishable as a felony, any person who has been convicted of burglary with explosives, rape with force or violence, torture, aggravated mayhem, murder, attempt to commit murder, trainwrecking, extortion, kidnapping, escape from the state prison, a violation of Section 286, 288, 288a, or 288.5, or a conspiracy to commit one or more of those crimes.
- (6) Any person who has been previously convicted once in this state of a felony or in any other place of a public offense which, if committed in this state, would have been punishable as a felony, if he or she committed any of the following acts:
- (A) Unless the person had a lawful right to carry a deadly weapon at the time of the perpetration of the previous crime or his or her arrest for the previous crime, he or she was armed with a weapon at either of those times.
- (B) The person used, or attempted to use, a deadly weapon upon a human being in connection with the perpetration of the previous crime.
- (C) The person willfully inflicted great bodily injury or torture in the perpetration of the previous crime.
- (7) Any public official or peace officer of this state or any city, county, or other political subdivision who, in the discharge of the duties of his or her public office or employment, accepted or gave or offered to accept or give any bribe, embezzled public money, or was guilty of extortion.
- (8) Any person who knowingly furnishes or gives away phencyclidine.
- (9) Any person who intentionally inflicted great bodily injury in the commission of arson under subdivision (a) of Section 451 or who intentionally set fire to, burned, or caused the burning of, an inhabited structure or inhabited property in violation of subdivision (b) of Section 451.
- (10) Any person who, in the commission of a felony, inflicts great bodily injury or causes the death of a human being by the discharge of a firearm from or at an occupied motor vehicle proceeding on a public street or highway.
- (11) Any person who possesses a short-barreled rifle or a short-barreled shotgun under Section 12020, a machinegun under Section 12220, or a silencer under Section 12520.
- (12) Any person who is convicted of violating Section 8101 of the Welfare and Institutions Code.
- (13) Any person who is described in paragraph (2) or (3) of subdivision (g) of Section 12072.
- (f) When probation is granted in a case which comes within subdivision (e), the court shall specify on the record and shall enter on the minutes the circumstances indicating that the interests of justice would best be served by that disposition.
- (g) If a person is not eligible for probation, the judge shall refer the matter to the probation officer for an investigation of the facts relevant to determination of the amount of a restitution fine pursuant to subdivision (b) of Section 1202.4 in all cases where the determination is applicable. The judge, in his or her discretion, may direct the

probation officer to investigate all facts relevant to the sentencing of the person. Upon that referral, the probation officer shall immediately investigate the circumstances surrounding the crime and the prior record and history of the person and make a written report to the court of his or her findings. The findings shall include a recommendation of the amount of the restitution fine as provided in subdivision (b) of Section 1202.4.

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

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

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

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

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

CREDIT(S)

(Enacted 1872. Amended by Stats.1903, c. 34, p. 34, § 1; Stats.1905, c. 166, p. 162, § 1; Stats.1909, c. 232, p. 357, § 1; Stats.1911, c. 381, p. 689, § 1; Stats.1913, c. 137, p. 221, § 1; Stats.1917, c. 732, p. 1409, § 1; Stats.1919, c. 604, p. 1244, § 1; Stats.1921, c. 752, p. 1296, § 1; Stats.1923, c. 144, p. 291, § 1; Stats.1927, c. 770, p. 1493, § 1; Stats.1929, c. 737, p. 1384, § 1; Stats.1931, c. 786, p. 1633, § 1; Stats.1935, c. 604, p. 1706, § 1; Stats.1945, c. 765, p. 1448, § 1; Stats.1947, c. 1178, p. 2660, § 2; Stats.1949, c. 1329, p. 2324, § 1; Stats.1951, c. 1438, p. 3396, § 1; Stats.1955, c. 309, p. 761, § 2; Stats.1957, c. 385, p. 1218, § 1; Stats.1957, c. 2054, p. 3648, § 1; Stats.1965, c. 1720, p. 3867, § 1; Stats.1968, c. 101, p. 311, § 1; Stats.1969, c. 522, p. 1134, § 2; Stats.1971, c. 706, p. 1367, § 1; Stats.1975, c. 1004, p. 2354, § 1; Stats.1977, c. 162, p. 629, § 2, eff. June 29, 1977, operative July 1, 1977; Stats.1977, c. 165, p. 653, § 20, eff. June 29, 1977, operative July 1, 1977; Stats.1977, c. 1122, p. 3599, § 4; Stats.1977, c. 1123, p. 3605, § 5; Stats.1978, c. 581, p. 2000, § 1; Stats.1978, c. 1262, p. 4097, § 2; Stats.1979, c. 1174, p. 4583, § 2; Stats.1979, c. 1175, p. 4593, § 2; Stats.1981, c. 1076, § 1; Stats.1982, c. 247, § 1, eff. June 9, 1982; Stats.1982, c. 1282, p. 4743, § 2; Stats.1983, c. 932, § 2; Stats.1983, c. 1063, § 1; Stats.1984, c. 1340, § 3; Stats.1985, c. 1485, § 3; Stats.1987, c. 134, § 11, eff. July 7, 1987; Stats.1987, c. 828, § 71; Stats.1987, c. 1155, § 2, eff. Sept. 26, 1987; Stats.1987, c. 1379, § 2, eff. Sept. 29, 1987; Stats.1989, c. 936, § 1; Stats.1989, c. 1402, § 11.5; Stats.1993, c. 59 (S.B.399), § 14; Stats.1993, c. 273 (A.B.306), § 1; Stats.1993, c. 610 (A.B.6), § 18, eff. Oct. 1, 1993; Stats.1993, c. 610 (A.B.6), § 18.3, eff. Oct. 1, 1993, operative Jan. 1, 1994; Stats.1993, c. 611 (S.B.60), § 20.

eff. Oct. 1, 1993; Stats.1993, c. 611 (S.B.60), § 20.3, eff. Oct. 1, 1993, operative Jan. 1, 1994; Stats.1994, c. 146 (A.B.3601), § 167; Stats.1994, c. 23 (A.B.482), § 2; Stats.1994, c. 451 (A.B.2470), § 2; Stats.1993-94, 1st Ex.Sess., c. 30 (A.B.141) § 1; Stats.1993-94, 1st Ex.Sess., c. 33 (S.B.36), § 2; Stats.1993-94, 1st Ex.Sess., c. 33 (S.B.36), § 2.5; Stats.1995, c. 313 (A.B.817), § 7, eff. Aug. 3, 1995; Stats.1996, c. 123 (A.B.2376), § 1; Stats.1996, c. 719 (A.B.893), § 1; Stats.2006, c. 337 (S.B.1128), § 38, eff. Sept. 20, 2006.)

OFFICIAL FORMS

2004 Main Volume

<Mandatory and optional Forms adopted and approved by the Judicial Council are set out in West's California Judicial Council Forms Pamphlet.>

HISTORICAL AND STATUTORY NOTES

2008 Electronic Update

2006 Legislation

Stats.2006, c. 337, in subd. (b)(2), inserted subpar. (C) and redesignated former subpars. (C) and (D) as subpars. (D) and (E), and in subpar. (E), in the first sentence, deleted a comma preceding and inserted a comma following “nine days”; in subd. (b)(3), inserted, in the second sentence, “, including the results of the SARATSO, if applicable,” and a comma following “the report”, and in the fourth sentence, “and Rehabilitation”; in subd. (d), inserted the second sentence; and in subd. (e)(11), inserted “machinegun”.

For short title of act, legislative findings and declarations, and appropriations, severability, cost reimbursement, and urgency effective provisions relating to Stats.2006, c. 337 (S.B.1128), see Historical and Statutory Notes under Government Code § 68152.

2004 Main Volume

As enacted in 1872, the section read:

“After a plea or verdict of guilty, where a discretion is conferred upon the Court, as to the extent of the punishment, the Court, upon the oral suggestion of either party that there are circumstances which may be properly taken into view either in aggravation or mitigation of the punishment may, in its discretion, hear the same summarily, at a specified time, and upon such notice to the adverse party as it may direct.”

The 1903 amendment rewrote the section to read:

“After plea or verdict of guilty, where discretion is conferred upon the court as to the extent of the punishment, the court, upon oral suggestions of either party that there are circumstances which may properly be taken into view, either in aggravation or mitigation of the punishment, may, in its discretion, hear the same summarily at a specified time and upon such notice to the adverse party as it may direct. At such specified time, if it shall appear by the record furnished by the probation officer, or otherwise, and from the circumstances, of any person over the age of sixteen years so having plead guilty or having been convicted of the crime, that there are circumstances in mitigation of the punishment, or that the ends of justice will be subserved thereby, the court shall have power, in its discretion, to place the defendant upon probation in the manner following:

“1. The court, judge or justice thereof, may suspend the imposing of sentence and may direct that such suspension may continue for such period of time, not exceeding the maximum possible term of such sentence, and upon such terms and conditions as it shall determine, and shall place such person on probation, under the charge and supervision of the probation officer of said court during such suspension.

“2. If the judgment is to pay a fine, and that the defendant be imprisoned until it be paid the court, judge, or justice, upon imposing sentence, may direct that the execution of the sentence of imprisonment be suspended for such period of time, not exceeding the maximum possible term of such sentence, and on such terms as it shall determine, and shall place the defendant on probation, under the charge and supervision of the probation officer during such suspension, to the end that he may be given the opportunity to pay the fine; provided, however, that upon the payment of the fine being made, judgment shall be satisfied and the probation cease.

“3. At any time during the probationary term of the person released on probation, in accordance with the provisions of this section, any probation officer may, without warrant, or other process, at any time until the final disposition of the case, rearrest any person so placed in his care and bring him before the court, or the court may, in his discretion, issue a warrant for the rearrest of any such person and may thereupon revoke and terminate such probation, if the interest of justice so requires, and if the court, in its judgment, shall have reason to believe from the report of the probation officer, or otherwise, that the person so placed upon probation is violating the conditions of his probation, or engaging in criminal practices, or has become abandoned to improper associates, or a vicious life. Upon such revocation and termination, the court may, if the sentence has been suspended, pronounce judgment at any time after the said suspension of the sentence within the longest period for which the defendant might have been sentenced, but if the judgment has been pronounced and the execution thereof has been suspended, the court may revoke such suspension, whereupon the judgment shall be in full force and effect, and the person shall be delivered over to the proper officer to serve his sentence.

“4. The court shall have power at any time during the term of probation to revoke or modify its order of suspension of imposition or execution of sentence. It may, at any time, when the ends of justice will be subserved thereby, and when the good conduct and reform of the person so held on probation shall warrant it, terminate the period of probation and discharge the person so held, and in all cases, if the court has not seen fit to revoke the order of probation and impose sentence or pronounce judgment, the defendant shall, at the end of the term of probation, be by the court discharged.”

The 1905 amendment, in the introductory paragraph, rewrote the second sentence to read: “In such cases and after the case of the defendant has been investigated by the probation officer and a written report filed of record in the court in accordance with this statute, and in accordance with section 131 of the Code of Civil Procedure, the court shall have power in its discretion to place the defendant upon probation in the manner following, if it shall appear to the judge, by such report so furnished by the probation officer or otherwise, as to any such defendant over the age of sixteen years so having pleaded guilty or having been convicted of crime, that there are circumstances in mitigation of punishment or that the ends of justice and the interest of society and the reform of the defendant will be subserved thereby, viz:”.

At the end of subd. 1, the amendment added provision for placing the defendant under the charge and supervision of the probation officer of the court of another county.

In subd. 3, the former first sentence was divided into two sentences, the second of which contained new provisions for a recommendation by the probation officer. Added considerations were the interest of society or the reform of the defendant. In the former second sentence, which became the third sentence, there was added at the end thereof a provision excluding time during which execution of judgment was suspended from consideration as part of the term of imprisonment.

The 1909 amendment deleted the changes which had been made in 1905 and restored the section to read as it did in 1903 except that the amendment added a new subd. 5, dealing with change of plea and reading as follows: "5. Every defendant who has fulfilled the conditions of his probation for the entire period thereof, or who shall have been discharged from probation prior to the termination of the period thereof, shall at any time prior to the expiration of the maximum period of punishment for the offense of which he has been convicted, dating from said discharge from probation or said termination of said period of probation, be permitted by the court to withdraw his plea of guilty and enter a plea of not guilty; or, if he has been convicted after a plea of not guilty, the court shall set aside the verdict of guilty and the court shall thereupon dismiss the accusation or information against such defendant who shall thereafter be released from all penalties and disabilities resulting from the offense or crime of which he has been convicted."

The 1911 amendment, in the introductory paragraph, provided that upon the oral suggestions of either party, "or of its own motion," that there are circumstances, etc., the court may in its discretion "refer the same to the probation officer, directing said probation officer to investigate, and to report, recommending either for or against release upon probation, at a specified time, and the court shall" hear the same summarily at "such specified times", instead of "a specified time", etc. In the second sentence, it was provided, that if it shall appear "from the report", instead of "by the record", furnished, etc., and reference was made to any person over the age of "eighteen (18) years", instead of "sixteen years".

In subd. 1, the 1911 amendment gave the court, etc., authority to suspend the imposing, "or the execution" of sentence, etc., upon such terms and conditions as it shall determine, "which terms and conditions may include, in the discretion of the court, the requirement of bonds, for the appearance of the person released upon probation before the court, at any time that the court may require such appearance in the investigation of any alleged violation of said terms and conditions of probation, and such bonds may be at any time by the court exonerated without affecting any of the other terms or conditions of such probation; and in case of such suspension of imposition or execution of sentence, the court" shall place such person on probation etc., "or under the charge and supervision of the probation officer of the county in which such probationer is by the court permitted to reside".

In subd. 3, in the second sentence, the court was authorized to pronounce judgment "after the said suspension of the sentence for any time", instead of "at any time after the said suspension of sentence", within the longest period, etc.

In subd. 5, it was provided that "in either case" the court shall thereupon dismiss the accusation, etc.

The 1911 amendment also added subds. 6 to 10 as follows:

"6. The same probation officers and assistant probation officers and deputy probation officers shall serve under this act as are appointed under the act known as the juvenile court law, and entitled "An act concerning dependent and delinquent minor children, providing for their care, custody, and maintenance until twenty-one years of age; providing for their commitment to the Whittier State School and the Preston State School of Industry, and the manner of such commitment and release therefrom, establishing a probation committee and probation officers to deal with such children, and fixing the salaries of probation officers; providing for detention homes for said children; providing for the punishment of persons responsible for, or contributing to, the dependency or delinquency of children; and giving to the superior court jurisdiction of such offenses, and repealing inconsistent acts," approved March 8, 1909, or under any laws amending or superseding the same.

"7. Such probation officers shall serve under this act whenever required to do so by any court having original jurisdiction of criminal actions in this state.

"8. At the time of the plea or verdict of guilty of any crime of any person over eighteen years of age, the probation officer of the county of the jurisdiction of said crime shall, when so directed by the court, inquire into the

antecedents, character, history, family environment, and offense of such person, and must report the same to the court, and file his report in writing in the records of said court. His report shall contain his recommendation for or against the release of such person on probation. If any such person shall be released on probation and committed to the care of the probation officer, such officer shall keep a complete and accurate record in suitable books or other form in writing, of the history of the case in court, and of the name of the probation officer, and his acts in connection with said case; also the age, sex, nativity, residence, education, habits of temperance, whether married or single, and the conduct, employment, and occupation, and parents' occupation, and condition of such person so committed to his care during the term of such probation and the result of such probation. Such record of such probation officer shall be and constitute a part of the records of the court, and shall at all times be open to the inspection of the court, or of any person appointed by the court for that purpose, as well as of all magistrates, and the chief of police, or other head of the police, unless otherwise ordered by the court. Said books of record shall be furnished for the use of said probation officer of said county, and shall be paid for out of the county treasury.

“9. The probation officer shall furnish to each person who has been released on probation, and committed to his care, a written statement of the terms and conditions of his probation, unless such statement has been furnished by the court, and shall report to the court, judge or justice, releasing such person upon probation, any violation or breach of the terms and conditions imposed by such court on the person placed in his care.

“10. Such probation officer shall have, as to the person so committed to the care of said probation officer, the powers of a peace officer.”

The 1913 amendment, in subd. 1, added at the end of the first sentence a proviso fixing the maximum period of suspension of sentence at two years and the maximum possible term of sentence at less than two years. The amendment added a new sentence authorizing suspension of sentence for five years for a violation of §§ 270 or 270a. The provision, which had been added in 1911, relating to the placing of a defendant under the supervision of a probation officer of another county was deleted and the subject matter was covered by new subd. 7.

Former subd. 7, which had been added in 1911, was omitted and a new subd. 7 was added, reading: “7. Whenever any person is released upon probation under the provisions of this act, the case may be transferred to any court of the same rank in any other county, or city and county, of this state in which such person resides, or to which such person may remove, and such court shall thereupon commit such person to the care and custody of the probation officer of the county, or city and county, to which such person has been transferred; such court shall thereafter have entire jurisdiction over such case, with like power to make transfer whenever to such court such transfer may seem proper.”

The 1913 amendment also added subd. 8a reading:

“Every probation officer, within 15 days after the 30th day of June, and within 15 days after the 31st day of December, of each year, shall make in writing and file as a public document with the county clerk a report to the superior court of the county or city and county in which such probation officer is appointed to serve, and shall furnish a copy of such report to each judge in said county or city and county who has released any person on probation who at the time of such report remains on probation; and a further copy to the secretary of the state board of charities and corrections. Such report shall state, without giving names, the exact number of persons, segregating male and female, and segregating misdemeanors and felonies, who have been released on probation to such probation officer, as such number exists, deducting all cases of expiration, discharge, dismissal, and restoration of rights, on said 30th day of June and said 31st day of December; and such report shall further segregate such persons as having been released on probation, as the case may be, in 1903, 1904, 1905, and so on, up to and including the calendar year in which such report is made and filed.”

The 1917 amendment provided lettered subdivisions instead of numbered subdivisions, the subdivisions followed in

the same chronological order, except that a new subd. (g), relating to the adult probation board was added. In subd. (d), the court was given added authority to discharge a probationer but was restricted by a provision that "no such order shall be made without written notice first given by the court or the clerk thereof to the proper probation officer of the intention to revoke or modify its order".

In subd. (f), formerly subd. 6, reference was made to a more recent enactment of the juvenile court law and an exception was added in the case of offenses committed in counties and cities and counties of the second class and counties of the third class.

The 1919 amendment made a series of technical changes.

The 1921 amendment revised subd. (g) to make it applicable in any city and county and in any county having a population of more than 300,000 and not operating under a freeholder's charter, instead of in counties and cities and counties in the second class.

The 1923 amendment, in the introductory paragraph, referred to the "conviction" by plea or verdict of guilty "of a public offense" where discretion is conferred upon the court "or any board or commission or other authority" as to the extent of the punishment. Other references were made to "board or commission or other authority", instead of merely to the court. The vital amendment of the introductory paragraph was the addition of the proviso excluding from the benefits of the section cases of murder, robbery, burglary, rape by force and violence, or where in the perpetration of such crimes a deadly weapon is used.

The 1927 amendment, in the introductory paragraph, changed the proviso excluding certain persons from benefits under the section to exclude any defendant who at the time of the perpetration of the crime or at the time of his arrest was armed with a deadly weapon (unless at the time he had a lawful right to carry the same), and to exclude one who used or attempted to use a deadly weapon in connection with the perpetration of the crime, one who in the perpetration of the crime inflicted great bodily injury or torture, one who is unable to satisfy the court that he had never been previously convicted of a felony, and any public official or employee who in the discharge of his duties accepts or gives or offers to accept or give a bribe or embezzles public money or is guilty of extortion.

The 1927 amendment extensively revised the rest of the section. It returned to the use of numbered subdivisions. The section vastly enlarged the power of the court with respect to punishment which could be imposed as a condition of the probation, permitting imprisonment in the county jail, a fine, or both, or neither, to provide for reparation, or to provide for placement in a county road camp or farm, etc. The provision was inserted that in the event of a violation of probation, time spent in jail or other detention under the conditions of probation should be credited against his sentence.

A series of technical amendments were made to the provisions relating to adult probation officers.

The 1929 amendment, in the introductory paragraph, gave the court authority to summarily deny probation, and it provided that "if probation is not denied, the court must immediately", instead of "or in its discretion the court may", refer the matter to the probation officer.

The 1931 amendment, in the introductory paragraph, provided for the denial of probation to any defendant "who shall have been convicted of robbery, burglary, burglary with explosives, rape with force or violence, arson, murder, assault with intent to commit murder, attempt to commit murder, grand theft, train wrecking, feloniously receiving stolen goods, felonious assault with a deadly weapon, kidnaping, mayhem, escape from a state prison, conspiracy to commit any one or more of the aforementioned felonies, or any of the aforementioned felonies, and" who at the time of the perpetration of said crime "or any of them" or at the time of his arrest was armed, etc. Among others excluded were any public official or "peace officer", instead of "employee", of the state, country, etc.

The 1935 amendment rewrote the section to read as follows:

“After the conviction by plea or verdict of guilty of a public offense in cases where discretion is conferred on the court or any board or commission or other authority as to the extent of the punishment the court, upon application of the defendant or of the people or upon its own motion, may summarily deny probation, or at a time fixed may hear and determine in the presence of the defendant the matter of probation of the defendant and the conditions of such probation, if granted; if probation is not denied, the court must immediately refer the matter to the probation officer to investigate and to report to the court at a specified time, upon the circumstances surrounding the crime and concerning the defendant and his prior record, which may be taken into consideration either in aggravation or mitigation of punishment; the probation officer must thereupon make an investigation of circumstances surrounding the crime and the prior record and history of the defendant and make a written report to the court of the facts found upon such investigation and must accompany said report with his written recommendations as to the granting or withholding of probation to the defendant and as to the conditions of probation if it shall be granted and the report and recommendations must be filed with the clerk of the court as a record in the case. At such time or times fixed by the court, the court must hear and determine such application and in connection therewith must consider any report of the probation officer, and must make a statement that it has considered such report which must be filed with the clerk of the court as a record in the case. And if it shall determine that there are circumstances in mitigation of punishment prescribed by law, or that the ends of justice would be subserved by granting probation to the defendant, the court shall have power in its discretion to place the defendant on probation as hereinafter provided; if probation is denied, the clerk of the court must forthwith send a copy of the report and recommendations to the Board of Prison Directors; further provided, however, that probation shall not be granted to any defendant who shall have been convicted of robbery, burglary, burglary with explosives, rape with force or violence, arson, murder, assault with intent to commit murder, attempt to commit murder, grand theft, train wrecking, feloniously receiving stolen goods, felonious assault with a deadly weapon, kidnapping, mayhem, escape from a State prison, conspiracy to commit any one or more of the aforementioned felonies, or any of the aforementioned felonies, and who at the time of the perpetration of said crime or any of them or at the time of his arrest was armed with a deadly weapon (unless at the time he had a lawful right to carry the same), nor to a defendant who used or attempted to use a deadly weapon in connection with the perpetration of the crime of which he was convicted, nor to one who in the perpetration of the crime of which he was convicted inflicted great bodily injury or torture, nor to any defendant unless the court shall be satisfied that he has never in any place been previously convicted of a felony, nor to any public official or peace officer of the State, county, city, city and county, or other political subdivision who, in the discharge of the duties of his public officer or employment, accepted or gave or offered to accept or give any bribe or embezzled public money or was guilty of extortion.”

The 1935 act, in addition to rewriting the section, to consist primarily of subject matter formerly contained in the introductory paragraph, added new §§ 1203.1 to 1203.12 which embraced the subject matter formerly contained in subs. 1 to 13.

The 1945 amendment, in the list of offenses for which probation cannot be granted, omitted “grand theft” and “feloniously receiving stolen goods.” Following the reference in such list to conspiracy to commit any one or more of the aforementioned felonies, the amendment deleted the additional phrase “or any of the aforementioned felonies”.

The amendment changed the exclusion of one unable to satisfy the court that he had never “in any place” been previously convicted of a felony to exclude a defendant unless the court shall be satisfied that he has never been previously convicted of a felony “in this State nor convicted in any other place of a public offense which would have been a felony if committed in this State”.

The 1947 amendment, at the beginning of the section, referred to a public offense “not amounting to a felony”; later it provided if probation is not denied, “and in every felony case in which the defendant is eligible to probation before

any judgment is pronounced and whether or not an application for probation has been made," the court must immediately refer the matter to the probation officer, etc. It was provided that the probation officer's report may be considered either in aggravation or mitigation of punishment "in those cases in which the defendant is not eligible for probation, the judge may in his discretion refer the matter to the probation officer for an investigation of the fact relevant to sentence". It was provided that if probation is denied the clerk of the court must sign a copy of the report and recommendations to the "Department of Corrections at the prison or other institution to which the defendant is delivered".

At the end of the section, the amendment added "No probationer shall be released to enter another state of the United States, unless and until his case has been referred to the California Administrator, Interstate Parole Compacts, pursuant to the Uniform Act for Out-of-State Parolee Supervision".

The 1949 amendment, in the list of offenses for which probation could not be granted, deleted felonious assault with a deadly weapon and mayhem. The amendment also prohibited probation to one who at the time of the perpetration of the crime or at the time of his arrest was "himself" armed with a deadly weapon. With reference to use of a deadly weapon, the amendment inserted the qualifying phrase "upon a human being". After providing that probation shall not be granted to certain defendants, the amendment continued, nor to one who in the perpetration of the crime of which he was convicted "wilfully" inflict a great bodily injury or torture, nor to any defendant "unless the court shall be satisfied that he has not been twice previously convicted of felony in this State nor twice previously convicted in any other place or places of public offenses which would have been felonies if committed in this State; nor to any defendant convicted of the crime of robbery, burglary of the first degree, burglary with explosives, rape with force or violence, arson, murder, attempt to commit murder, assault with intent to commit murder, train wrecking, extortion, kidnaping, escape from a state prison, violation of §§ 286, 288 or 288a of this code, or conspiracy to commit any one or more of the aforesaid felonies," unless the court shall be satisfied that he has never been previously convicted of a felony in this State nor previously convicted in any other place of a public offense which would have been a felony if convicted in the State; "nor to any defendant unless the court shall be satisfied that he has never been previously convicted of a felony in this State nor convicted in any other place of a public offense which would have been a felony if committed in this State and at the time of the perpetration of said previous offense or at the time of his arrest for said previous offense he was himself armed with a deadly weapon (unless at the time he had a lawful right to carry the same) or he personally used or attempted to use a deadly weapon upon a human being in connection with the perpetration of said previous offense or in the perpetration of said previous offense he wilfully inflicted great bodily injury or torture".

The 1951 amendment divided the former first sentence into four sentences, divided the former single paragraph into two paragraphs, and added a third paragraph, which read:

"In those cases in which the defendant is not eligible for probation, the judge may in his discretion refer the matter to the probation officer for an investigation of the facts relevant to sentence. The probation officer must thereupon make an investigation of circumstances surrounding the crime and the prior record and history of the defendant and make a written report to the court of the facts found upon such investigation."

Reference was made to felony cases in which the defendant is eligible "for", instead of "to", probation and the amendment deleted the following language:

"In every misdemeanor case, the court may, at its option refer the matter to the probation officer for investigation and report or summarily deny probation or summarily grant probation".

The proviso of the former third sentence became the first sentence of the second paragraph.

The 1955 amendment substituted in the last sentence of the second paragraph the words "Interstate Probation and

Parole Compacts, pursuant to the Uniform Act for Out-of-State Probationer and Parolee Supervision”, for the words “Interstate Parole Compacts, pursuant to the Uniform Act for Out-of-State Parolee Supervision.”

The 1957 amendments rewrote the fourth sentence and added the fifth sentence of the first paragraph. These sentences then read: “The report and recommendations must be made available to the court and the prosecuting and defense attorneys at least two days prior to the time fixed by the court for the hearing and determination of such report and must be filed with the clerk of the court as a record in the case at the time of said hearing. By written stipulation of the prosecuting attorney and the defense attorney, filed with the court, or by oral stipulation in open court made and entered upon the minutes of the court, the time within which the report and recommendations must be made available and filed, under the preceding provisions of this section, may be waived”.

The 1957 amendments deleted robbery, burglary and arson from those crimes which, if committed, would affect the granting of probation and added the following provisions:

“In every misdemeanor case, the court may, at its option refer the matter to the probation officer for investigation and report or summarily deny probation or summarily grant probation.

“The Legislature hereby expresses the policy of the people of the State of California to be that, except in unusual cases where the interest of justice demands a departure from the declared policy, no judge shall grant probation to any person who shall have been convicted of robbery, burglary or arson, and who at the time of the perpetration of said crime or any of them or at the time of his arrest was himself armed with a deadly weapon (unless at the time he had a lawful right to carry the same), nor to a defendant who used or attempted to use a deadly weapon upon a human being in connection with the perpetration of the crime of which he was convicted, nor to one who in the perpetration of the crime of which he was convicted wilfully inflicted great bodily injury or torture, nor to any such person unless the court shall be satisfied that he has never been previously convicted of a felony in this State nor previously convicted in any other place of a public offense which would have been a felony if committed in this State.”

The 1965 amendment inserted the phrase “Except as hereafter provided in this section” preceding provisions limiting the granting of probation where specified crimes were permitted and inserted the following paragraph:

“In unusual cases, otherwise subject to the preceding paragraph, in which the interests of justice would best be served thereby, the judge may, with the concurrence of the district attorney, grant probation.”

The 1968 amendment added the following provisions:

“If a misdemeanor case is not referred to the probation officer, the court in sentencing the defendant may consider any information concerning the defendant, his prior record, and the circumstances surrounding the crime that could have been included in a probation report. The court shall inform the defendant of the information considered and permit the defendant to answer or controvert such information. For this purpose the court upon request of the defendant shall grant a continuance before pronouncing sentence.”

The 1969 amendment provided that the report of the probation officer had to be made available to the court and attorneys at least two days “or, upon the request of the defendant, five days” prior to the time fixed for hearing and determination of such report; changed the spelling of the word “kidnapping” in two places; and added the following:

“With respect to a defendant who is not represented by an attorney, the court shall order the probation officer who makes a probation report pursuant to this section to discuss its contents with the defendant.”

Section 4 of Stats.1969, c. 522, p. 1137, provided:

“The Legislature, by this act, does not intend that the preparation or submission of probation reports be accelerated in relation to present law and practice. It is the intention of the Legislature that the courts exercise their discretion in fixing dates for pronouncing judgments five or more days after all the interested parties have received copies of probation reports so that such parties have adequate time to evaluate such reports.”

The 1971 amendment rewrote the section, which previously read:

“After the conviction by plea or verdict of guilty of a public offense not amounting to a felony, in cases where discretion is conferred on the court or any board or commission or other authority as to the extent of the punishment, the court, upon application of the defendant or of the people or upon its own motion, may summarily deny probation, or at a time fixed may hear and determine in the presence of the defendant the matter of probation of the defendant and the conditions of such probation, if granted. If probation is not denied, and in every felony case in which the defendant is eligible for probation, before any judgment is pronounced, and whether or not an application for probation has been made, the court must immediately refer the matter to the probation officer to investigate and to report to the court, at a specified time, upon the circumstances surrounding the crime and concerning the defendant and his prior record, which may be taken into consideration either in aggravation or mitigation of punishment. The probation officer must thereupon make an investigation of the circumstances surrounding the crime and of the prior record and history of the defendant, must make a written report to the court of the facts found upon such investigation, and must accompany said report with his written recommendations, including his recommendations as to the granting or withholding of probation to the defendant and as to the conditions of probation if it shall be granted. The report and recommendations must be made available to the court and the prosecuting and defense attorneys at least two days or, upon the request of the defendant, five days prior to the time fixed by the court for the hearing and determination of such report and must be filed with the clerk of the court as a record in the case at the time of said hearing. By written stipulation of the prosecuting attorney and the defense attorney, filed with the court, or by oral stipulation in open court made and entered upon the minutes of the court, the time within which the report and recommendations must be made available and filed, under the preceding provisions of this section, may be waived. At the time or times fixed by the court, the court must hear and determine such application, if one has been made, or in any case the suitability of probation in the particular case, and in connection therewith must consider any report of the probation officer, and must make a statement that it has considered such report which must be filed with the clerk of the court as a record in the case. If the court shall determine that there are circumstances in mitigation of punishment prescribed by law, or that the ends of justice would be subserved by granting probation to the defendant, the court shall have power in its discretion to place the defendant on probation as hereinafter provided; if probation is denied, the clerk of the court must forthwith send a copy of the report and recommendations to the Department of Corrections at the prison or other institution to which the defendant is delivered.

“With respect to a defendant who is not represented by an attorney, the court shall order the probation officer who makes a probation report pursuant to this section to discuss its contents with the defendant.

“In every misdemeanor case, the court may, at its option refer the matter to the probation officer for investigation and report or summarily deny probation or summarily grant probation. If a misdemeanor case is not referred to the probation officer, the court in sentencing the defendant may consider any information concerning the defendant, his prior record, and the circumstances surrounding the crime that could have been included in a probation report. The court shall inform the defendant of the information considered and permit the defendant to answer or controvert such information. For this purpose the court upon request of the defendant shall grant a continuance before pronouncing sentence.

“The Legislature hereby expresses the policy of the people of the State of California to be that, except in unusual cases where the interest of justice demands a departure from the declared policy, no judge shall grant probation to any person who shall have been convicted of robbery, burglary or arson, and who at the time of the perpetration of

said crime or any of them or at the time of his arrest was himself armed with a deadly weapon (unless at the time he had a lawful right to carry the same), nor to a defendant who used or attempted to use a deadly weapon upon a human being in connection with the perpetration of the crime of which he was convicted, nor to one who in the perpetration of the crime of which he was convicted willfully inflicted great bodily injury or torture, nor to any such person unless the court shall be satisfied that he has never been previously convicted of a felony in this state nor previously convicted in any other place of a public offense which would have been a felony if committed in this state.

“Except as hereafter provided in this section, probation shall not be granted to any person who shall have been convicted of burglary with explosives, rape with force or violence, murder, assault with intent to commit murder, attempt to commit murder, train wrecking, kidnapping, escape from a state prison, conspiracy to commit any one or more of the aforementioned felonies, and who at the time of the perpetration of said crime or any of them or at the time of his arrest was himself armed with a deadly weapon (unless at the time he had a lawful right to carry to same), nor to a defendant who used or attempted to use a deadly weapon upon a human being in connection with the perpetration of the crime of which he was convicted, nor to one who in the perpetration of the crime of which he was convicted willfully inflicted great bodily injury or torture, nor to any defendant unless the court shall be satisfied that he has not been twice previously convicted of felony in this state nor twice previously convicted in any other place or places of public offenses which would have been felonies if committed in this state; nor to any defendant convicted of the crime of burglary with explosives, rape with force or violence, murder, attempt to commit murder, assault with intent to commit murder, train wrecking, extortion, kidnapping escape from a state prison, violation of Sections 286, 288 or 288a of this code, or conspiracy to commit any one or more of the aforesaid felonies, unless the court shall be satisfied that he has never been previously convicted of a felony in this state nor previously convicted in any other place of a public offense which would have been a felony if committed in this state; nor to any defendant unless the court shall be satisfied that he has never been previously convicted of a felony in this state nor convicted in any other place of a public offense which would have been a felony if committed in this state and at the time of the perpetration of said previous offense or at the time of his arrest for said previous offense he was himself armed with a deadly weapon (unless at the time he had a lawful right to carry the same) or he personally used or attempted to use a deadly weapon upon a human being in connection with the perpetration of said previous offense or in the perpetration of said previous offense he willfully inflicted great bodily injury or torture; nor to any public official or peace officer of the state, county, city, city and county, or other political subdivision who, in the discharge of the duties of his public office or employment, accepted or gave or offered to accept or give any bribe or embezzled public money or was guilty of extortion.

“In unusual cases, otherwise subject to the preceding paragraph, in which the interests of justice would best be served thereby, the judge may, with the concurrence of the district attorney, grant probation.

“No probationer shall be released to enter another state of the United States, unless and until his case has been referred to the California Administrator, Interstate Probation and Parole Compacts, pursuant to the Uniform Act for Out-of-State Probationer and Parolee Supervision.

“In those cases in which the defendant is not eligible for probation, the judge may in his discretion refer the matter to the probation officer for an investigation of the facts relevant to sentence. The probation officer must thereupon make an investigation of circumstances surrounding the crime and the prior record and history of the defendant and make a written report to the court of the facts found upon such investigation.”

Supervisory responsibilities over persons convicted of misdemeanors and infractions, see Historical and Statutory Notes under [Penal Code § 1203b](#).

Amendment of this section by § 2 of Stats.1971, c. 706, p. 1372, failed to become operative under the provisions of § 3 of that Act.

The 1975 amendment rewrote subds. (d) and (e) [now subds. (e) and (f)], which previously read:

“(d) Except in unusual cases where the interests of justice demand a departure, probation shall not be granted to any of the following persons:

“(1) Unless he had a lawful right to carry a deadly weapon at the time of the perpetration of the crime or his arrest, any person who has been convicted of robbery, burglary, or arson and was armed with such weapon at either of such times.

“(2) Any person who has been previously convicted once in this state of a felony or in any other place of a public offense which, if committed in this state, would have been punishable as a felony.

“(e) Except in unusual cases where the interests of justice would best be served if the person is granted probation and where the district attorney concurs, probation shall not be granted to any of the following persons:

“(1) Unless he had a lawful right to carry a deadly weapon at the time of the perpetration of the crime or his arrest, any person who has been convicted of burglary with explosives, rape with force or violence, murder, assault with intent to commit murder, attempt to commit murder, train wrecking, kidnapping, escape from the state prison, or a conspiracy to commit one or more of such crimes and was armed with such weapon at either of such times.

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

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

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

“(5) Unless he has never been previously convicted once in this state of a felony or in any other place of a public offense which, if committed in this state, would have been punishable as a felony, any person who has been convicted of burglary with explosives, rape with force or violence, murder, attempt to commit murder, assault with intent to commit murder, train wrecking, extortion, kidnapping, escape from the state prison, a violation of Section 286, 288, or 288a, or a conspiracy to commit one or more of such crimes.

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

“(i) Unless he had a lawful right to carry a deadly weapon at the time of the perpetration of such previous crime or his arrest for such previous crime, he was armed with such weapon at either of such times.

“(ii) He used or attempted to use a deadly weapon upon a human being in connection with the perpetration of such previous crime.

“(iii) He willfully inflicted great bodily injury or torture in the perpetration of such previous crime.

“(7) Any public official or peace officer of this state or any city, county, or other political subdivision who, in the

discharge of the duties of his public office or employment, accepted or gave or offered to accept or give any bribe, embezzled public money, or was guilty of extortion.”

The 1977 amendments inserted, what are now the fourth and fifth sentences of subd. (b) and substituted “nine” days for “two days or, upon the request of the person, five days” as the time in which the probation report shall be made available prior to the time fixed by the court for the hearing and determination of the report.

The 1978 amendments deleted from what is now subd. (e)(2) “other than a firearm” following “deadly weapon”; inserted in what is now subd. (f) the requirement that the circumstances be specified on the record and entered on the minutes; and added what is now subd. (h).

Amendment of this section by § 1 of Stats.1978, c. 581, p. 2000, and by § 1 of Stats.1978, c. 1262, p. 4094, failed to become operative under the terms of § 3 of c. 1262.

The 1979 amendments added subd. (a) and relettered former subds. (a) to (h) as (b) to (i); in subd. (b), sixth sentence, substituted “defense attorney” for “defense attorneys”; in subd. (e) added para. (8); in subd. (f) substituted a reference to subd. (e) in place of a reference to subd. (d); and in subd. (h) substituted a reference to subds. “(a) or (g)” in place of “(a) or (f)”.

Amendment of this section by §§ 2 and 2.5 of Stats.1979, c. 1174, p. 4583, and by § 1 of Stats.1979, c. 1175, p. 4603, failed to become operative under the provisions of § 5 of Stats.1979, c. 1174 and § 3 of Stats.1979, c. 1175.

The 1981 amendment inserted the third sentence in subd. (b).

Amendment of this section by § 2 of Stats.1981, c. 1076, failed to become operative under the provisions of § 4 of that Act.

The 1982 amendment rewrote subd. (a) which had read:

“(a) As used in this code, “probation” shall mean the suspension of the imposition or execution of a sentence and the order of conditional and revocable release in the community. Except as otherwise provided in this code, persons placed on probation by the court shall be under the supervision of the probation officer.”

The 1982 amendment added “under the supervision of the probation officer” in first sentence, deleted former second sentence which read: “Except as otherwise provided in this code, persons placed on probation by the court shall be under the supervision of the probation officer” and added second and third sentences of subd. (a); made pronouns applicable to both sexes throughout section; substituted “pronounce a conditional sentence” for “grant or deny probation” in first sentence, and substituted “such information” for “the information” in third sentence of subd. (d); substituted “furnishes or gives away” for “manufactures” and deleted former second and third sentences which required statement of reasons for order of grant of probation and allowed reversal of order for probation on appeal if no substantial basis in record existed for the reasons in par. (8) of subd. (e); and substituted reference to subdivision “(b)” for “(a)” in first sentence of subd. (h).

The 1983 amendment added paragraph (9) to subd. (e).

Amendment of this section by § 3 of Stats.1983, c. 932, failed to become operative under the provisions of § 6 of that Act.

The 1984 amendment substituted, in the fourth sentence of subd. (b), “recommendation of the amount the defendant

should be required to pay as a restitution fine” for “determination of whether the defendant is a person who is required to pay a fine”; substituted, in the fifth sentence of subd. (b), “a recommendation as to” for “for the court’s consideration” and “Restitution Fund” for “Indemnity Fund if assistance has been granted to the victim pursuant to Article 1 (commencing with Section 13959) of Chapter 5 of Part 4 of Division 3 of Title 2 of the Government Code, a recommendation thereof, and if so, the amount thereof, and the means and manner of payment”; substituted subdivision designations (e)(6)(A) to (C) for subdivision designations (e)(6)(i) to (iii); rewrote the first and second (formerly the first) sentences of subd. (g), which previously read: “If a person is not eligible for probation, the judge may, in his or her discretion, refer the matter to the probation officer for an investigation of the facts relevant to the sentencing of the person.”; added the fourth sentence to subd. (g); and made nonsubstantive grammatical changes.

The 1985 amendment added “Except as provided in subdivision (j),” to the beginning of subd. (b); substituted “his or her arrest” for “his arrest” in subd. (e)(6)(A); and added subd. (j).

Stats.1987, c. 134, § 11, substituted, in subd. (h), “the probation officer may obtain and include in the report” for “the probation officer shall obtain and include in such report”.

Section 170 of Stats.1987, c. 828, provides:

“Sec. 170. Any section of any act enacted by the Legislature during the 1987 calendar year, which takes effect on or before January 1, 1988, and which amends or amends and renumbers any section of the codes, as proposed to be amended by this act, other than the amendments to Sections 241, 1203, and 1203.055 of the Penal Code proposed by this act, shall prevail over this act, whether that act is enacted prior to or subsequent to this act.”

Stats.1987, c. 1155, § 2 added subd. (e)(10); and substituted, in subd. (h), “shall obtain and include in such report” for “may obtain and include in the report”.

The 1987 amendment of this section by c. 1155 explicitly amended the 1987 amendment of this section by c. 134.

Amendment of this section by § 3 of Stats.1987, c. 1155, failed to become operative under the provisions of § 4 of that Act.

Section 1 of Stats.1987, c. 1155, provides:

“The Legislature finds and declares all of the following:

“(a) That it is the right of every person to be secure and protected from the terrorizing activities of violent individuals.

“(b) That the freedom of law-abiding persons to travel upon California's public highways and freeways without fear of intimidation, unreasonable restriction, and endangerment of their own personal safety from violent acts is a basic human right that must be upheld and protected.

“(c) That a safe and secure highway and freeway system is a vital component in the continuance of California's strong economic life and provides the primary means on which millions of Californians depend to travel to and from their workplaces and on which millions of visitors to California depend to travel to those places of interest which have drawn them to our state.

“(d) That, in the summer of 1987, the frequency of violent assaults upon law-abiding motorists on California's public highways and freeways has increased significantly so that, in a two-month period between mid-June and mid-

August of 1987, there were close to 60 incidents of violence on our highways and freeways, in which four people were killed, 19 people injured, and hundreds more were placed in mortal danger.

“(e) That these violent incidents of terror, in many cases, are designed to intimidate, not just specific motorists who somehow gain the ire of these assailants, but the general driving public as well.

“(f) That these acts of terror can and do disrupt the safe operation of the public highway and freeway system and endanger not only the lives of intended victims but the lives of other innocent motorists and bystanders when panic strikes the immediate area.

“(g) That the potential for great bodily injury and death goes far beyond the immediate action, since the behavior of the assailant and the reactions of terrorized motorists can lead to mass confusion and traffic calamities.

“(h) That these freeway terrorists must be adequately punished for the crime they commit against not only innocent individuals but the safety and well-being of the entire motoring public; and that California's highways and freeways must be ridded of this violent element.”

Stats.1987, c. 1379, § 2, incorporated the amendment by c. 1155; changed the period prior to the hearing by which the probation report must be made available to the court and prosecuting and defense attorneys from at least nine days to at least five days, or upon request of the defendant or prosecuting attorney, nine days; and deleted, from subd. (e)(1) and (5), “assault with intent to commit murder”.

The 1987 amendment of this section by c. 1379 explicitly amended the 1987 amendment of this section by c. 134.

Under the provisions of § 3 of Stats.1987, c. 1379, the 1987 amendments of this section by c. 1155 and c. 1379 were given effect and incorporated in the form set forth in § 2 of c. 1379, with the section as amended by c. 1155 remaining operative only until the operative date of c. 1379. An amendment of this section by § 1 of Stats.1987, c. 1379, failed to become operative under the provisions of § 3 of that Act.

The 1989 amendment inserted reference to § 288.5 in subd. (e)(5); substituted, in subd. (e)(6)(A), “armed with a weapon” for “armed with such weapon”; added subd. (e)(11) relating to possession of short-barreled rifle or shotgun, machine gun, or silencer; and made nonsubstantive changes throughout the section.

Legislative findings and intent relating to Stats.1989, c. 1402, and severability of that act, see Historical Note under [Evid. C. § 782](#).

Under the provisions of § 13.7 of Stats.1989, c. 1402, the 1989 amendments of this section by c. 936 and c. 1402 were given effect and incorporated in the form set forth in § 11.5 of c. 1402. An amendment of this section by § 11 of Stats.1989, c. 1402, failed to become operative under the provisions of § 13.7 of that Act.

Amendment of this section by § 1.5 of Stats.1989, c. 936, failed to become operative under the provisions of § 4 of that Act.

The 1993 amendment by c. 611, § 20, in subd. (e)(1), inserted “carjacking”, and inserted “deadly”; and made nonsubstantive changes throughout.

The 1993 amendment by c. 611, § 20.3, in subd. (e)(11), inserted “machine gun”; in subd. (h), in the first sentence, substituted “may” for “shall”; in subd. (i), inserted “and the probationer has reimbursed the county that has jurisdiction over his or her probation case the reasonable cost of processing his or her request for interstate compact

supervision”, and inserted the second sentence relating to amount in method of reimbursement.

Section affected by two or more acts at the same session of the legislature, see Government Code § 9605.

Under the provisions of § 53 of Stats.1993, c. 611, the 1993 amendments of this section by c. 273 and c. 611 were given effect and incorporated in the form set forth in § 20 of c. 611, operative until Jan. 1, 1994, then in the form set forth in § 20.3 of c. 611. Amendments of this section by §§ 20.5, and 20.7 of Stats.1993, c. 611, failed to become operative under the provisions of § 53 of that Act.

Under the provisions of § 48 of Stats.1993, c. 610, the 1993 amendments of this section by c. 273 and c. 610 were given effect and incorporated in the form set forth in § 18 of c. 610, operative until Jan. 1, 1994, then in the form set forth in § 18.3 of c. 610. Amendments of this section by §§ 18.5 and 18.7 of Stats.1993, c. 610, failed to become operative under the provisions of § 48 of that Act.

Legislative findings, declarations and intent relating to Stats.1993, c. 59 (S.B.443), see Historical and Statutory Notes under Education Code § 45452.

The 1994 amendment by § 2.5 of c. 33, in subd. (a), substituted “means” for “shall mean” in two places; in subd. (b), inserted par. and subpar. designations; in subd. (e)(1), inserted “torture, aggravated mayhem” following “rape with force or violence,” inserted “who” following “one or more of those crimes and” and substituted “the” for “a deadly” preceding “weapon”; in subd. (e)(5), inserted “torture, aggravated mayhem,” following “rape with force or violence”; inserted subds. (e)(12) and (e)(13), relating to persons convicted of violating Welfare and Institutions Code § 8101 and persons described in Penal Code § 12072; and made nonsubstantive changes throughout the section.

Section 13 of Stats.1993-94, 1st Ex.Sess., c. 33 (S.B.36), provides:

“Section 2.5 of this bill incorporates amendments to Section 1203 of the Penal Code proposed by both this bill and AB 141 [c. 30] of the 1993-94 First Extraordinary Session. It shall only become operative if (1) both bills are enacted and become effective, (2) each bill amends Section 1203 of the Penal Code, and (3) this bill is enacted after AB 141. In which case, one of the following alternatives shall be applicable:

“(a) If this bill becomes operative before AB 141, Section 2 of this bill shall be operative until the operative date of AB 141, at which time Section 2.5 of this bill shall become operative.

“(b) If this bill becomes operative after AB 141, Section 1203 of the Penal Code, as amended by AB 141, shall remain operative only until the operative date of this bill, at which time Section 2.5 of this bill shall become operative, and Section 2 of this bill shall not become operative [c. 30 and c. 33 are both effective Nov. 30, 1994].”

Subordination of legislation by Stats.1994, c. 146 (A.B.3601), see Historical and Statutory Notes under Business and Professions Code § 166.

Stats.1994 Cal. 451 (A.B.2470), was both approved by the Governor and filed with the Secretary of State on Sept. 9, 1994. Stats.1993-94, 1st Ex.Sess., c. 33 (S.B.36), was both approved by the Governor and filed with the Secretary of State on Sept. 21, 1994.

Amendment of this section by §§ 2, 3 and 4 of Stats.1993-94, 1st Ex.Sess., c. 30 (A.B.141), failed to become operative under the provisions of § 7 of that Act.

Section affected by two or more acts at the same session of the legislature, see Government Code § 9605.

The text of § 1203 as amended by Stats.1994, c. 451 (A.B.2470), § 2 read:

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

“(b) Except as provided in subdivision (j), if a person is convicted of a felony and is eligible for probation, before judgment is pronounced, the court shall immediately refer the matter to a probation officer to investigate and report to the court, at a specified time, upon the circumstances surrounding the crime and the prior history and record of the person, which may be considered either in aggravation or mitigation of the punishment. The probation officer shall immediately investigate and make a written report to the court of his or her findings and recommendations, including his or her recommendations as to the granting or denying of probation and the conditions of probation, if granted. Pursuant to Section 828 of the Welfare and Institutions Code, the probation officer shall include in his or her report any information gathered by a law enforcement agency relating to the taking of the defendant into custody as a minor, which shall be considered for purposes of determining whether adjudications of commissions of crimes as a juvenile warrant a finding that there are circumstances in aggravation pursuant to Section 1170 or to deny probation. The probation officer shall also include in the report his or her recommendation of the amount the defendant should be required to pay as a restitution fine pursuant to Section 13967 of the Government Code. The probation officer shall also include in his or her report a recommendation as to whether the court shall require, as a condition of probation, restitution to the victim or to the Restitution Fund. The report shall be made available to the court and the prosecuting and defense attorneys at least five days, or, upon request of the defendant or prosecuting attorney, nine days, prior to the time fixed by the court for the hearing and determination of the report, and shall be filed with the clerk of the court as a record in the case at the time of the hearing. The time within which the report shall be made available and filed may be waived by written stipulation of the prosecuting and defense attorneys which is filed with the court or an oral stipulation in open court which is made and entered upon the minutes of the court. At a time fixed by the court, the court shall hear and determine the application, if one has been made, or, in any case, the suitability of probation in the particular case. At the hearing, the court shall consider any report of the probation officer and shall make a statement that it has considered the report which shall be filed with the clerk of the court as a record in the case. If the court determines that there are circumstances in mitigation of the punishment prescribed by law or that the ends of justice would be served by granting probation to the person, it may place the person on probation. If probation is denied, the clerk of the court shall immediately send a copy of the report to the Department of Corrections at the prison or other institution to which the person is delivered.

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

“(d) If a person is convicted of a misdemeanor, the court may either refer the matter to the probation officer for an investigation and a report or summarily pronounce a conditional sentence. If the case is not referred to the probation officer, in sentencing the person, the court may consider any information concerning the person which could have been included in a probation report. The court shall inform the person of the information to be considered and permit him or her to answer or controvert the information. For this purpose, upon the request of the person, the court shall grant a continuance before the judgment is pronounced.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“(11) Any person who possesses a short-barreled rifle or a short-barreled shotgun under Section 12020, a machine gun under Section 12220, or a silencer under Section 12520.

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

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

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

“(g) If a person is not eligible for probation, the judge shall refer the matter to the probation officer for an investigation of the facts relevant to determination of the amount of a restitution fine pursuant to Section 13967 of the Government Code in all cases where the determination is applicable. The judge, in his or her discretion, may direct the probation officer to investigate all facts relevant to the sentencing of the person. Upon that referral, the probation officer shall immediately investigate the circumstances surrounding the crime and the prior record and history of the person and make a written report to the court of his or her findings. The findings shall include a recommendation of the amount of the restitution fine as provided in Section 13967 of the Government Code.

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

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

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

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

The 1994 amendment by c. 451 added subd. (e)(12) relating to violation of § 8101 of the Welfare and Institutions Code; and added subd. (e)(13) relating to persons described in § 12072; and made nonsubstantive changes throughout.

Contingent operation of Stats.1994, c. 451 (A.B.2470), see Historical and Statutory Notes under Penal Code § 186.22.

Legislative intent of A.B.482 (Stats.1994, c. 23), contained in letter to Assembly Daily Journal, see Historical and Statutory Notes under Penal Code § 12020.

Governor's signature message regarding Stats.1994, c. 23 (A.B.482), see Historical and Statutory Notes under Penal Code § 12020.

The 1995 amendment, in subd. (c)(i) relating to the report of the probation, substituted "subdivision (b) of Section 1202.4" for "Section 13967 of the Government Code"; in subd. (c)(ii) added "and the amount thereof"; in subd. (g), relating to situations where the person is not eligible for probation, substituted "subdivision (b) of Section 1202.4" for "Section 13967 of the Government Code" in two places; and in the final paragraph relating to enforcement of orders, following "discretion of the court" deleted "and as stated in the order".

The 1996 amendment by c. 123 in subd. (b)(2)(D), made nonsubstantive changes; and added subd. (b)(4), relating to waiver of preparation or consideration of the probation report.

The 1996 amendment by c. 719 added subd. (k) prohibiting probation to persons convicted of specified violent or serious felonies committed while on probation for a felony offense.

The 1996 amendment of this section by c. 719 explicitly amended the 1996 amendment of this section by c. 123.

Section affected by two or more acts at the same session of the legislature, see Government Code § 9605.

CROSS REFERENCES

Confinement as condition of probation or otherwise, see Penal Code § 19.2.

Controlled substance violations, denial of probation, see Health and Safety Code § 11370.

County financial evaluation officer, see Government Code § 27750 et seq.

Defendant's ability to pay cost of legal assistance, hearing, see Penal Code § 987.81.

Department of Corrections, generally, see Penal Code § 5000 et seq.

Destructive devices, denial of probation following conviction, see Penal Code § 12311.

Determinate sentencing law, determination of presentence custody time credit, rules for criminal cases in the Superior Court, see California Rules of Court, Rule 4.472.

Determination of presentence custody time credit, see California Rules of Court, Rule 4.310.

Effect of amendment of section by two or more acts at the same session of the legislature, see Government Code § 9605.

Employment assistance for discharged prisoners, see Penal Code § 5060.

Escape, see Penal Code § 4530 et seq.

Felonies, definition and penalties, see Penal Code §§ 17 and 18.

Jurisdiction on appeal, see Penal Code § 1265.

Juvenile Court Law,

Probation commission, see Welfare and Institutions Code § 240 et seq.

Probation officers, see Welfare and Institutions Code § 270 et seq.

Medical licensees, transmittal of probation reports to licensing board, see Business and Professions Code § 803.6.

Misdemeanors, definition and penalties, see Penal Code §§ 17, 19 and 19.2.

Multiple offenses, punishment on conviction, see Penal Code § 669.

Non-capital felony, plea of guilty or nolo contendere, see Penal Code § 859a.

Paroles, see Penal Code § 3040 et seq.

Petty theft, prior conviction, see Penal Code § 666.

Previous conviction, see Penal Code §§ 666 et seq., 969 et seq., 1025.

Prior foreign conviction, see Penal Code § 668.

Review, see Penal Code §§ 1237 et seq., 1259, 1469.

Supervision of probation, see Penal Code § 1215.

Suspension of physician's license on granting of probation, see Business and Professions Code §§ 2236, 2237.

Victims of sex offense, request that name not become matter of public record, disclosure of victims' name or address, see Penal Code § 293.

Youth Authority, see Welfare and Institutions Code § 1700 et seq.

CODE OF REGULATIONS REFERENCES

Director of corrections, computation of time and pre-prison credit, see 15 Cal. Code of Regs. § 3371.1.

LAW REVIEW AND JOURNAL COMMENTARIES

Adult probation law. 2 Cal.St.B.J. 49 (1927).

Alien criminals: sentencing considerations. Stephen H. Legomsky, 15 San Diego L.Rev. 105 (1977).

Arson, exhaustive consideration of the crime in California. Earl C. Bolton, 22 S.Cal.L.Rev. 221 (1949).

Background and general effect of 1957 amendments. 32 Cal.St.B.J. 612 (1957).

Burglary, exhaustive survey of development of the law of burglary and examination of various elements of the crime. 25 S.Cal.L.Rev. 75 (1941).

California supreme court survey; A review of decisions: December 1982-March 1983. 11 Pepp.L.Rev. 187 (1983).

California supreme court survey a review of decisions: July 1982-November 1982. 10 Pepp.L.Rev. 835 (1983).

Computing a determinate sentence: New math hits the courts. 51 Cal.St.B.J. 604 (1976).

Consenting adult homosexuals; Trial and post-trial disposition. 13 UCLA L.Rev. 763 (1966).

Construction of "convicted"; effect of probation. 27 S.Cal.L.Rev. 327 (1954).

Contraception or incarceration: What's wrong with this picture? Joan Callahan, 7 Stan.L. & Pol'y Rev. 67 (1995-1996).

Criminal practice in municipal court, probation. Evelle J. Younger, 29 Los Angeles B.Bull. 23 (1953).

Criminal procedure; probation costs--determination of defendant's ability to pay. A. James Kachmar, 27 Pac.L.J. 665 (1996).

Decriminalization of convicted: Plea for representation. Rodney R. Jones, 13 San Diego L.Rev. 804 (1976).

Denial of probation. 21 Hastings L.J. 1008 (1970).

Do the different approaches to business and official records found in the CEC and FRE tell the whole story?: Exploring the differences, exposing the expansive hearsay exception hidden in general applicability provisions, and questioning the efficacy of unified evidentiary rules in civil and criminal cases. Myma S. Raeder, 36 Sw. U. L. Rev.

677 (2008).

Domestic relations; domestic violence crimes. Edward A. Bauer and Kelly A. Ryan, 24 Pac.L.J. 809 (1993).

Effects of recent legislation on the California juvenile justice system. 17 U.S.F.L.Rev. 705 (1983).

Eligibility of defendant for probation. 27 Cal.St.B.J. 335 (1952).

Ending chronic homelessness in America's major cities--The justice systems' duty. Robert C. Coates, 42 U.S.F. L. Rev. 427 (2007).

Enjoining the constitution: the use of public nuisance abatement injunctions against urban street gangs. Matthew Mickle Werdegar, 51 Stan.L.Rev. 409 (1999).

Exclusionary rules inapplicable to parole revocation proceedings. 7 San Diego L.Rev. 140 (1970).

Expanding the role of the victim in a criminal action: An overview of issues and problems. Josephine Gittler, 11 Pepp.L.Rev. 117 (1984).

Expungement of records of arrest and conviction from general public access. 3 Cal.W.L.Rev. 121 (1967).

Juvenile court dispositional alternatives: Imposing a defense duty. John L. Roche, 27 Santa Clara L.Rev. 279 (1987).

Lawyer's role in the administration of probation and parole. Richard A. Chapell, 48 A.B.A.J. 742 (1962).

Lost in probation: Contrasting the treatment of probationary search agreements in California and federal courts. Marc R. Lewis, 51 UCLA L. Rev. 1703 (2004).

Meaningful right to counsel on sentencing. Richard H. Kuh, 57 A.B.A.J. 1096 (1971).

Monetary remedies for the victims of crime: Assessing the role of the criminal courts. Alan T. Harland, 30 UCLA L.Rev. 52 (1982).

Parolees no longer walk following serious felonies--incarceration mandatory. Michael J. Daponte, 29 McGeorge L.Rev. 552 (1998).

Physician's license, suspension for unprofessional conduct after superior court discharged physician from probation and dismissed accusations against him. 2 Stan.L.Rev. 221 (1949).

Power of courts to suspend sentence or stay execution. 4 Cal.L.Rev. 144 (1916).

Power to grant probation after commencement of service of sentence. 42 A.B.A.J. 156 (1956).

Probation,

Quiet revolution. Richard J. Hanscom, 50 Cal.St.B.J. 182 (1975).

State-wide. 11 Cal.St.B.J. 138 (1936).

Work of the 1943 legislature. 17 S.Cal.L.Rev. 1 (1943).

Probation and sentence. Evelle J. Younger, 38 Los Angeles B.Bull. 334 (1963).

Probation in California. 50 Cal.L.Rev. 651 (1962).

Prosecutor's role in sentencing: Advocate or informant. 20 UCLA L.Rev. 1379 (1973).

Reform in probation matters, suggestions. 12 Cal.St.B.J. 257 (1937).

Reliability of information in sentencing. 64 A.B.A.J. 759 (1978).

Review of Selected 1989 California Legislation. 21 Pac.L.J. 412, 458 (1990).

Review of Selected 1993 California Legislation. 25 Pac.L.J. 513 (1994).

Review of Selected 2005 California Legislation (Chapter 484: From home detention to GPS monitoring). Patricia L. Eichar, 37 McGeorge L. Rev. 284 (2006).

Revocation of conditional liberty. 28 S.Cal.L.Rev. 158 (1955).

Role of appellate courts in mandatory sentencing schemes. Larry I. Palmer, 26 UCLA L.Rev. 753 (1979).

Sentencing of criminals in California. 13 Stan.L.Rev. 340 (1961).

Sentencing under the proposed California criminal code. 19 UCLA L.Rev. 526 (1972).

Separation the criminal from the delinquent: Due process in certification procedure. 40 S.Cal.L.Rev. 158 (1967).

Soviet law, conditional judgment and probations. 4 S.Cal.L.Rev. 358, 372 (1931).

Submission to search and seizure: Is it a valid condition of probation? 2 U.West L.A.L.Rev. 120.

"Turn em loose": Toward a flexible corrections system. (1969) 42 S.Cal.L.Rev. 682 (1969).

Twelve steps, you're out (of prison): an evaluation of "anonymous programs" as alternative sentences. Ethan G. Kalett, 48 Hastings L.J. 129 (1996).

LIBRARY REFERENCES

2004 Main Volume

Sentencing and Punishment  276, 1836 to 1865, 1886, 1890.

Westlaw Topic No. 350H.

C.J.S. Criminal Law §§ 1458, 1471, 1480, 1502 to 1505, 1507, 1511, 1549 to 1550, 1552 to 1555.

Background and general effect of 1965 amendment. Rev. of 1965 Code Leg. (Cont. Educ. of Bar, 1965) page 187.

Correctional facilities in California. Report of Assembly Interim Committee on Criminal Procedure, 1959 to 1961, vol. 22, No. 2. Vol. 2 of Appendix to Journal of the Assembly, Reg.Sess., 1961.

Parole and probation. Report of Assembly Interim Committee on Criminal Procedure, 1963 to 65, vol. 22, No.

7. Vol. 2 of Appendix to Journal of the Assembly, Reg.Sess., 1965.

Purpose of bill amending this section as explained by the State Bar. Report of Senate Interim Judiciary Committee, 1957, pp. 328, 333. Vol. 1 of Appendix to Journal of the Senate, Reg.Sess., 1957.

Sentencing standards for granting probation and/or committing to local correctional facilities, see Proceedings for the First Sentencing Institute of Superior Court Judges, 45 Cal.Rptr.Appendix 13 et seq.

RESEARCH REFERENCES

ALR Library

99 ALR 5th 557, Validity of Requirement That, as Condition of Probation, Defendant Submit to Warrantless Searches.

92 ALR 5th 35, Persons or Entities Entitled to Restitution as "Victim" Under State Criminal Restitution Statute.

22 ALR 5th 660, Right of Convicted Defendant or Prosecution to Receive Updated Presentence Report at Sentencing Proceedings.

19 ALR 4th 1251, Propriety of Requirement, as Condition of Probation, that Defendant Refrain from Use of Intoxicants.

171 ALR 541, Invalidity of Prior Conviction or Sentence as Ground of Habeas Corpus Where One is Sentenced as Second Offender.

161 ALR 233, Right to Cross-Examine Accused as to Previous Prosecution For, or Conviction Of, Crime, for Purpose of Affecting His Credibility.

146 ALR 369, Relief in Habeas Corpus for Violation of Accused's Right to Assistance of Counsel.

147 ALR 656, Power to Impose Sentence With Direction that After Defendant Shall Have Served Part of Time He be Placed on Probation for the Remainder of Term.

139 ALR 673, Constitutionality and Construction of Statute Enhancing Penalty for Second or Subsequent Offense.

141 ALR 1225, Imposition or Enforcement of Sentence Which Has Been Suspended Without Authority.

132 ALR 659, Suspension of Imposition or Execution of Sentence And/Or Placing Upon Probation as Affecting Grounds for Suspension or Disbarment of Attorney.

83 ALR 1362, Constitutionality of Statute Which Makes Specified Punishment or Penalty Mandatory and Permits No Exercise of Discretion on Part of Court or Jury.

77 ALR 1211, Right of Court to Hear Evidence for Purpose of Determining Sentence to be Imposed.

66 ALR 628, Right to Withdraw Plea of Guilty.

69 ALR 792, Necessity and Sufficiency of Adjudication of Guilt, or of Recital of or Reference to Verdict in Judgment Pronouncing Sentence in Criminal Case.

23 ALR 536, Power of Trial Court to Change Sentence After Affirmance.

Encyclopedias

Cal. Jur. 3d Criminal Law: Crimes Against Justice § 519, Executive Officer, Ministerial Officer, or Employee of State, County, or City--Probation Only in Unusual Cases.

CA Jur. 3d Criminal Law: Post-Trial Proceedings § 151, Evidence and Circumstances to be Considered.

CA Jur. 3d Criminal Law: Post-Trial Proceedings § 276, Placement in Diagnostic Facility.

CA Jur. 3d Criminal Law: Post-Trial Proceedings § 307, Circumstances Specified in Rules of Court--Facts Relating to Crime.

CA Jur. 3d Criminal Law: Post-Trial Proceedings § 315, Determination Made After Sentence Entered; Effect of Failure to Make Determination.

CA Jur. 3d Criminal Law: Post-Trial Proceedings § 338, Rights of Defendants.

CA Jur. 3d Criminal Law: Post-Trial Proceedings § 339, Court's Duty to Entertain Application for Probation.

CA Jur. 3d Criminal Law: Post-Trial Proceedings § 341, Authority of Court in Misdemeanor and Infraction Cases.

CA Jur. 3d Criminal Law: Post-Trial Proceedings § 342, Referral to Probation Officer in Felony Cases.

CA Jur. 3d Criminal Law: Post-Trial Proceedings § 343, Referral to Probation Officer in Felony Cases--When Defendant is Ineligible for Probation.

CA Jur. 3d Criminal Law: Post-Trial Proceedings § 347, Transfer of Case to Another County; Release of Probationer to Another State.

CA Jur. 3d Criminal Law: Post-Trial Proceedings § 355, Availability Before Hearing.

CA Jur. 3d Criminal Law: Post-Trial Proceedings § 359, Statements, Letters, and Other Collateral Information.

CA Jur. 3d Criminal Law: Post-Trial Proceedings § 360, Psychological Evaluation of Person Convicted of Child Abuse or Neglect.

CA Jur. 3d Criminal Law: Post-Trial Proceedings § 362, Criteria Affecting Probation in Unusual Cases.

CA Jur. 3d Criminal Law: Post-Trial Proceedings § 364, Specified Offense Committed While Armed.

CA Jur. 3d Criminal Law: Post-Trial Proceedings § 365, Infliction of Great Bodily Injury or Torture; Intentional Burning of Inhabited Structure or Property.

CA Jur. 3d Criminal Law: Post-Trial Proceedings § 366, Prior Conviction of Crime.

CA Jur. 3d Criminal Law: Post-Trial Proceedings § 367, Prior Conviction of Crime--What Constitutes Previous Conviction; Pleading and Proof.

CA Jur. 3d Criminal Law: Post-Trial Proceedings § 368, Specified Offenses by Public Officers or Peace Officers.

CA Jur. 3d Criminal Law: Post-Trial Proceedings § 375, Specified Controlled Substance Offenses.

CA Jur. 3d Criminal Law: Post-Trial Proceedings § 378, Violent Crimes Involving Firearms.

CA Jur. 3d Criminal Law: Post-Trial Proceedings § 379, Infliction of Great Bodily Injury During Specified Violent Offenses.

CA Jur. 3d Criminal Law: Post-Trial Proceedings § 381, Felony Committed While on Parole or Probation Following Imprisonment for Serious or Violent Felony.

CA Jur. 3d Criminal Law: Post-Trial Proceedings § 384, Lewd Acts With Children; Continuous Sexual Abuse of Child.

CA Jur. 3d Criminal Law: Post-Trial Proceedings § 386, Specified Controlled Substances Offenses.

CA Jur. 3d Criminal Law: Post-Trial Proceedings § 389, Presentation of Circumstances in Aggravation or Mitigation of Punishment.

CA Jur. 3d Criminal Law: Post-Trial Proceedings § 391, Court's Discretion to Grant or Deny Probation.

CA Jur. 3d Criminal Law: Post-Trial Proceedings § 400, Validity.

CA Jur. 3d Criminal Law: Post-Trial Proceedings § 422, Payment of Costs of Probation Services.

CA Jur. 3d Criminal Law: Post-Trial Proceedings § 427, Victims of Crimes Committed on Public Transit Vehicles.

CA Jur. 3d Criminal Law: Post-Trial Proceedings § 432, Determination of Amount and Manner of Payment; Interest.

CA Jur. 3d Criminal Law: Post-Trial Proceedings § 457, Commitment of Defendant.

CA Jur. 3d Criminal Law: Post-Trial Proceedings § 462, Order for Income Deduction.

CA Jur. 3d Criminal Law: Post-Trial Proceedings § 619, Sentence and Punishment.

CA Jur. 3d Criminal Law: Post-Trial Proceedings § 766, Estoppel or Waiver of Right to Allege Error.

Cal. Jur. 3d Criminal Law: Pretrial Proceedings § 629, Effect of Waiver of Examination or Plea of Guilty or Nolo Contendere.

Cal. Jur. 3d Criminal Law: Rights of the Accused § 134, Tactical Decisions--Tactical Decisions Regarding Concession of Defendant's Guilt.

CA Jur. 3d Evidence § 8, Applicability--Courts and Proceedings.

CA Jur. 3d Municipalities § 423, County Financial Evaluation Officer.

Forms

5B West's Federal Forms App. A, Advisory Committee Notes to Federal Rules of Criminal Procedure.

Treatises and Practice Aids

Rutter, Cal. Practice Guide: Enforcing Judgments/Debts Ch. 6A-2, Enforcement of Judgments Law ("Ej")-Background.

Criminal Practice Manual § 102:31, Probation--Eligibility.

6 Criminal Procedure, Second Edition § 26.1(D), Community Release.

2 Witkin Cal. Crim. L. 3d Crimes Against Gov't Auth. § 89, Punishment.

2 Witkin Cal. Crim. L. 3d Crimes Against Peace Welf § 126-I, (New) Non-Drug-Related Violations.

6 Witkin Cal. Crim. L. 3d Criminal Judgment § 144, Information Considered.

6 Witkin Cal. Crim. L. 3d Criminal Judgment § 162, Limitations.

6 Witkin Cal. Crim. L. 3d Criminal Judgment § 163, Correction in 60 Days.

1 Witkin Cal. Crim. L. 3d Criminal Elements § 7, (S 7) Wilfulness.

4 Witkin Cal. Crim. L. 3d Pretrial Proceedings § 335, Modification of Judgment.

3 Witkin Cal. Crim. L. 3d Punishment § 200, Constitutionality.

3 Witkin Cal. Crim. L. 3d Punishment § 279, When Statement is Not Required.

3 Witkin Cal. Crim. L. 3d Punishment § 314, (S 314) Power to Strike Enhancements.

3 Witkin Cal. Crim. L. 3d Punishment § 502, (S 502) Nature and Purpose.

3 Witkin Cal. Crim. L. 3d Punishment § 503, (S 503) Probation Officers and Agencies.

3 Witkin Cal. Crim. L. 3d Punishment § 505, (S 505) Former Statutory Framework.

3 Witkin Cal. Crim. L. 3d Punishment § 515, (S 515) Felony by Person on Parole or Probation.

3 Witkin Cal. Crim. L. 3d Punishment § 517, (S 517) P.C. 1203.

3 Witkin Cal. Crim. L. 3d Punishment § 520, (S 520) Procedure.

3 Witkin Cal. Crim. L. 3d Punishment § 521, (S 521) Mandatory Requirement.

3 Witkin Cal. Crim. L. 3d Punishment § 522, (S 522) Waiver.

3 Witkin Cal. Crim. L. 3d Punishment § 523, (S 523) New Reference After Reversal on Appeal.

3 Witkin Cal. Crim. L. 3d Punishment § 524, (S 524) Effect of Defendant's Ineligibility.

3 Witkin Cal. Crim. L. 3d Punishment § 525, (S 525) in General.

3 Witkin Cal. Crim. L. 3d Punishment § 526, (S 526) Required Contents.

3 Witkin Cal. Crim. L. 3d Punishment § 528, (S 528) Availability of Report.

3 Witkin Cal. Crim. L. 3d Punishment § 529, Hearing and Determination.

3 Witkin Cal. Crim. L. 3d Punishment § 530, Election to Refer.

3 Witkin Cal. Crim. L. 3d Punishment § 531, Conditional Sentence.

3 Witkin Cal. Crim. L. 3d Punishment § 532, Discretion of Trial Judge.

3 Witkin Cal. Crim. L. 3d Punishment § 534, Failure to Determine Merits of Application.

3 Witkin Cal. Crim. L. 3d Punishment § 536, Ex Parte Communications.

3 Witkin Cal. Crim. L. 3d Punishment § 543, (S 543) Misdemeanor Cases.

3 Witkin Cal. Crim. L. 3d Punishment § 547, (S 547) Permissible.

3 Witkin Cal. Crim. L. 3d Punishment § 662, Out-Of-State Supervision of Probationers and Parolees.

1 Witkin Cal. Evid. 4th Introduction § 28, Probation Hearing.

3C Wright & Miller: Federal Prac. & Proc. App. C, Advisory Committee Notes for the Federal Rules of Criminal Procedure for the United States District Courts.

12A Wright & Miller: Federal Prac. & Proc. App. B, Orders of the Supreme Court of the United States Adopting and Amending Rules.

NOTES OF DECISIONS

Accomplices, deadly weapons 50

Adequacy of counsel 100

Admissibility, evidence 88

Admissions of accused, prior convictions 56



Amendment 6
Appealable orders, review 103
Applications for probation 14
Armed offenses, prior convictions 57
Binding effect, reports 37
Certification, reports 38
Character of crime 63
Collateral estoppel 115
Concurrence of district attorney 73
Conditions of probation 26-31
 Conditions of probation - In general 26
 Conditions of probation - Fines 31
 Conditions of probation - Relationship to offense 27
 Conditions of probation - Restitution 30
 Conditions of probation - Searches and seizures 29
 Conditions of probation - Substance abuse 28
Confinement 80
Consideration, reports 36
Constitutional rights 2
Construction and application 4
Construction of orders, suspending sentence or execution 17
Construction, orders 78
Construction with other laws 5
Contempt 97
Contents, reports 34
Continuance 91
Correction of record, prior convictions 60
Counsel, adequacy of 100
Criminal record, discretion of court 9
Deadly weapons 47-53
 Deadly weapons - In general 47
 Deadly weapons - Accomplices 50
 Deadly weapons - Evidence 52
 Deadly weapons - Findings 53
 Deadly weapons - Firearms 48
 Deadly weapons - Knives 49
 Deadly weapons - Time 51
Defendant's rights, determination 19
Determination 18-26
 Determination - In general 18
 Determination - Dismissed counts 23
 Determination - Form 20
 Determination - Merits 21
 Determination - Prior arrests 22
 Determination - Rights of defendant 19
 Determination - Summary grant or denial 24
 Determination - Time 25
Different judges 72
Discretion of court 8-12
 Discretion of court - In general 8
 Discretion of court - Criminal record 9
 Discretion of court - Recommendations of probation officer 10



- Discretion of court - Specific circumstances of case 12
- Discretion of court - Specific crimes 11
- Discretion, review 105
- Dismissal, prior convictions 61
- Dismissed counts, determination 23
- District attorney, concurrence 73
- Due process 3
- Effectiveness of counsel 100
- Enforcing judgment 96
- Evidence 52, 87-89
 - Evidence - In general 87
 - Evidence - Admissibility 88
 - Evidence - Deadly weapons 52
 - Evidence - Weight and sufficiency 89
- Extension, orders 79
- Final judgment 98
- Findings, deadly weapons 53
- Fines, conditions of probation 31
- Firearms, deadly weapons 48
- Foreign jurisdictions, prior convictions 58
- Form, determination 20
- Great bodily injury or torture 54
- Harmless error, review 107
- Hearsay, reports 42
- Indictment and information 83
- Information 83
- Inspection, reports 39
- Interpreters, reports 40
- Judgment, enforcement of 96
- Judicial discretion 8-12
- Judicial immunity 99
- Jurisdiction 84
- Juveniles 64
- Knives, deadly weapons 49
- Legislative intent 7
- Liability, reports 44
- Mandamus, review 110
- Merits, determination 21
- Minors 64
- Misdemeanors 46
- Modification of judgment, review 111
- Modification or extension, orders 79
- Moral turpitude 67
- Multiple counts 71
- Narcotics, generally 68
- Narcotics, conditions of probation 28
- Nature of probation 13
- New trial 101
- Objections, reports 43
- Orders 76-79
 - Orders - In general 76
 - Orders - Construction 78




- Orders - Modification or extension 79
- Orders - Propriety 77
- Pardons, prior convictions 62
- Petit theft 69
- Plea bargains 85
- Powers, suspending sentence or execution 16
- Prejudicial error, review 108
- Presumptions, generally 90
- Presumptions, review 106
- Prior arrests, determination 22
- Prior convictions 55-62
 - Prior convictions - In general 55
 - Prior convictions - Admissions of accused 56
 - Prior convictions - Armed offenses 57
 - Prior convictions - Correction of record 60
 - Prior convictions - Dismissal 61
 - Prior convictions - Foreign jurisdictions 58
 - Prior convictions - Pardons 62
 - Prior convictions - Time 59
- Probation applications 14
- Probation conditions 26-31
- Probation, nature 13
- Probation officer's recommendations, discretion of court 10
- Probation, rejection 82
- Probation, term 81
- Propriety, orders 77
- Public officials 65
- Purpose, generally 7
- Purpose, reports 33
- Recommendations of probation officer, discretion of court 10
- Record, review 114
- Rejection of probation 82
- Relationship to offense, conditions of probation 27
- Remand, resentencing 95
- Remand, review 113
- Reports 32-45
 - Reports - In general 32
 - Reports - Binding effect 37
 - Reports - Certification 38
 - Reports - Contents 34
 - Reports - Consideration 36
 - Reports - Hearsay 42
 - Reports - Inspection 39
 - Reports - Interpreters 40
 - Reports - Liability 44
 - Reports - Objections 43
 - Reports - Purpose 33
 - Reports - Statements in aggravation 41
 - Reports - Supplementation 35
 - Reports - Waiver 45
- Res judicata 115
- Resentencing 94, 95


Resentencing - In general 94
Resentencing - Remand 95
Restitution, conditions of probation 30
Review 102-114
Review - In general 102
Review - Appealable orders 103
Review - Discretion 105
Review - Harmless error 107
Review - Mandamus 110
Review - Modification of judgment 111
Review - Prejudicial error 108
Review - Presumptions 106
Review - Record 114
Review - Remand 113
Review - Scope 104
Review - Time 112
Review - Waiver of objections 109
Rights of defendant, determination 19
Scope, review 104
Searches and seizures, conditions of probation 29
Sentence and punishment 92
Sentencing hearing 93
Sex offenders 66
Specific circumstances of case, discretion of court 12
Specific crimes, discretion of court 11
Statements in aggravation, reports 41
Substance abuse, conditions of probation 28
Sufficiency of evidence 89
Summary grant or denial, determination 24
Supplementation, reports 35
Suspending sentence or execution 15-17
Suspending sentence or execution - In general 15
Suspending sentence or execution - Construction of orders 17
Suspending sentence or execution - Powers 16
Term of probation 81
Time, deadly weapons 51
Time, determination 25
Time of judgment or sentence 74, 75
Time of judgment or sentence - In general 74
Time of judgment or sentence - Waiver 75
Time, prior convictions 59
Time, review 112
Torture 54
Unusual cases 70
Validity 1
Waiver of objections, review 109
Waiver, reports 45
Waiver, time of judgment or sentence 75
Weapon offenses, prior convictions 57
Weight and sufficiency, evidence 89
Withdrawal of plea 86


1. Validity



Provision of this section permitting judge, with district attorney's concurrence, to grant probation did not deny due process or equal protection on ground that California prisoner, allegedly otherwise eligible for probation, was denied probation because of lack of district attorney's concurrence, despite lack of prescribed statutory standard as to concurrence, in absence of showing that this section had been applied. Chromiak v. Field, C.A.9 (Cal.)1969, 406 F.2d 502, certiorari denied 90 S.Ct. 581, 396 U.S. 1017, 24 L.Ed.2d 508. Constitutional Law  3819; Constitutional Law  4731

This section was not unconstitutionally vague where the term "unusual cases" was not used in isolation, but was modified by the requirement that the interests of justice demand or would be best served by the granting of probation. People v. Wilson (App. 2 Dist. 1973) 110 Cal.Rptr. 104, 34 Cal.App.3d 524. Constitutional Law  4731; Sentencing And Punishment  1825

Within this section authorizing grant of probation in "unusual" cases which would otherwise be subject to statutory prohibition of probation, where "the interests of justice would best be served thereby," portion which requires concurrence of the district attorney is invalid as constituting violation of doctrine of separation of powers, despite contentions that the power to grant probation is wholly statutory and not part of the inherent judicial power, and that this section provides definite standard marking arbitrary countywide policy impossible; but the concurrence requirement is severable. People v. Clay (App. 4 Dist. 1971) 96 Cal.Rptr. 213, 18 Cal.App.3d 964. Constitutional Law  2371; Sentencing And Punishment  1825; Statutes  64(6)


Question of constitutionality of this section requiring district attorney's concurrence in grant of probation to a defendant who has used or attempted to use deadly weapon upon human being in connection with perpetration of crime of which he was convicted where defendant's case has been found to be unusual and probation is therefore permitted was prematurely raised where court never asked district attorney's concurrence in the granting of probation to defendant convicted of voluntary manslaughter committed with a deadly weapon and where it was not clear that case had been found to be unusual. People v. Villegas (App. 2 Dist. 1971) 92 Cal.Rptr. 663, 14 Cal.App.3d 700. Constitutional Law  978

Question of constitutionality of this section requiring concurrence of district attorney with views of court before grant of probation may be made to person who is otherwise ineligible was moot and did not require ruling where record did not contain probation report and did not show either directly or by inference that probation was denied because of nonconcurrence of district attorney. People v. Hernandez (App. 5 Dist. 1968) 69 Cal.Rptr. 448, 263 Cal.App.2d 242. Criminal Law  1128(1)


Amendment restricting right of trial judge to grant probation to any defendant who shall have been convicted of robbery or to any public official who, in discharge of duties of his public office of employment, embezzled money, does not violate Constitution by attempting to affect right of courts to issue writs or impair exercise of their trial or appellate jurisdictions. People v. Hess (App. 2 Dist. 1951) 107 Cal.App.2d 407, 237 P.2d 568. Constitutional Law  2371; Sentencing And Punishment  1825


Where court in granting probation fixed confinement in county jail for first six months under this section as amended by Stats.1927, p. 1493, and offense was committed prior to amendment, at which time court had no power to confine defendants, since court in its mercy in endeavoring to reform individuals saw fit to inflict punishment considerably less than that imposed by law for the offense of which they were guilty, defendants were not deprived of substantial right, and therefore amendment could not be said to violate constitutional inhibition against ex post facto laws. In re Nachnaber (App. 2 Dist. 1928) 89 Cal.App. 530, 265 P. 392.


This section, as amended in 1911 was not invalid. Ex parte Giannini (App. 1912) 18 Cal.App. 166, 122 P. 831.


Sentencing And Punishment  18252. Constitutional rights


Police officer had authority to search defendant's vehicle, after defendant informed him that he had a gun in trunk of car, under Penal Code § 12031, regardless of whether they have probable cause to believe that it was loaded; thus, drugs which police officer found in plain view during search of automobile were admissible; declining to follow People v. Kern, 93 Cal.App.3d 779, 155 Cal.Rptr. 877 (1 Dist.), U.S. v. Brady, C.A.9 (Cal.)1987, 819 F.2d 884, certiorari denied 108 S.Ct. 1032, 484 U.S. 1068, 98 L.Ed.2d 996.


A state may restrict a constitutional right in imposing a probation condition, but only when the restriction is narrowly drawn to serve a compelling state interest. People v. Harrison (App. 3 Dist. 2005) 36 Cal.Rptr.3d 264, 134 Cal.App.4th 637, modified on denial of rehearing, review denied. Sentencing And Punishment  1963



Conditions of probation that impinge on constitutional rights must be tailored carefully and reasonably related to the compelling state interest in reformation and rehabilitation. In re Byron B. (App. 4 Dist. 2004) 14 Cal.Rptr.3d 805, 119 Cal.App.4th 1013. Sentencing And Punishment  1963

An adult probation condition is overbroad if it unduly restricts the exercise of a constitutional right. In re Byron B. (App. 4 Dist. 2004) 14 Cal.Rptr.3d 805, 119 Cal.App.4th 1013. Sentencing And Punishment  1963


A defendant does not have a constitutional right to a jury trial on issues of restitution. People v. Brach (App. 3 Dist. 2002) 115 Cal.Rptr.2d 753, 95 Cal.App.4th 571, as modified. Jury  24

A condition of probation which requires a defendant to give up a constitutional right is not per se unconstitutional. Gilliam v. Los Angeles Municipal Court (App. 2 Dist. 1979) 159 Cal.Rptr. 74, 97 Cal.App.3d 704, certiorari denied 100 S.Ct. 1085, 445 U.S. 907, 63 L.Ed.2d 323. Sentencing And Punishment  1963

Parolees, as well as probationers, although entitled to Fourth and Fifth Amendment constitutional rights, are not entitled to the full panoply of rights possessed by the average citizen. People v. Icenogle (App. 2 Dist. 1977) 139 Cal.Rptr. 637, 71 Cal.App.3d 576. Pardon And Parole  66

Pen.C. §§ 1381.5, 1389 et seq., according constitutional rights to prisoners in federal correctional institutions and elsewhere by interstate compact on detainers were not applicable to defendant who had had complete trials on charges of burglary and attempted burglary, and order revoking probation granted defendant following suspension of sentences on convictions of such charges would not be set aside on theory that 14-months' delay in considering defendant's request for an immediate hearing on revocation of his probation violated his constitutional right to speedy trial. People v. Buccheri (App. 2 Dist. 1969) 83 Cal.Rptr. 221, 2 Cal.App.3d 842. Sentencing And Punishment  2025; Extradition And Detainers  59

3. Due process

Fifty-day delay of sentence after conviction while judge was awaiting probation report or for convenience of counsel was not denial of due process in view of § 1191 and this section which provide that court may extend time for pronouncing judgment until probation officer's report is received and until any proceedings for granting or denying probation have been disposed of and which authorize court to refer matter to probation officer for investigation of facts relevant to sentence even if a defendant is not entitled to or eligible for probation. Bevins v. Klinger, C.A.9 (Cal.)1966, 365 F.2d 752. Constitutional Law  4718

A defendant's due process rights on restitution are protected if he is given notice of the amount of restitution sought and an opportunity to contest that amount; the rigorous procedural safeguards required during the guilt phase, including the right to a jury, are not required. People v. Brach (App. 3 Dist. 2002) 115 Cal.Rptr.2d 753, 95 Cal.App.4th 571, as modified. Constitutional Law 4737

When a probation report has not been timely received and the defense has made a specific objection and requested a continuance, the failure to follow the requirements of the Penal Code constitutes a denial of due process, requiring remand for resentencing. People v. Bohannon (App. 2 Dist. 2000) 98 Cal.Rptr.2d 488, 82 Cal.App.4th 798, review denied. Constitutional Law 4706

Defendant, found to have violated his probation for conviction of drug violations by failing to report to probationary officer for over two years was properly denied further probation and sentenced to three years imprisonment, despite fact he was allegedly in the area; probation officer's failure to try to locate defendant after he found out that defendant had not finished serving weekends in prison, as required by terms of his probation, did not deny defendant due process, where it had recently been brought to defendant's attention that he had to report to his probation officer where defendant knew the authorities were looking for him, making it obvious he was not misled regarding his probationary status. People v. Towe (App. 2 Dist. 1984) 204 Cal.Rptr. 733, 158 Cal.App.3d 368. Sentencing And Punishment 2032

Defendant is entitled to an opportunity to respond to adverse sentencing information. People v. Arbuckle (1978) 150 Cal.Rptr. 778, 22 Cal.3d 749, 587 P.2d 220. Sentencing And Punishment 368

Sentencing court's receipt of information adverse to defendant without his knowledge and without affording him opportunity to respond undermines appearance of fairness of proceeding. In re Hancock (App. 4 Dist. 1977) 136 Cal.Rptr. 901, 67 Cal.App.3d 943. Sentencing And Punishment 244

A defendant is not afforded procedural due process protections in probation hearings when procedures employed are "fundamentally unfair" to him. People v. Edwards (1976) 135 Cal.Rptr. 411, 18 Cal.3d 796, 557 P.2d 995. Constitutional Law 4731


A statement of reasons for denying probation when denial is contrary to a recommendation therefore is a preferred practice, but an unfairness that offends procedural due process concepts does not result by an absence of such a statement. People v. Edwards (1976) 135 Cal.Rptr. 411, 18 Cal.3d 796, 557 P.2d 995. Constitutional Law 4733(2)


It was error for trial court to receive ex parte communication from prosecutor concerning defendant's sentencing, without first allowing defendant opportunity to respond to charges contained in communication. In re Calhoun (1976) 130 Cal.Rptr. 139, 17 Cal.3d 75, 549 P.2d 1235. Sentencing And Punishment 238


The same procedural safeguards are not required at probation hearings as in the case of a trial on the issue of guilt, but an applicant for probation is entitled to relief on due process grounds if the hearing procedures are fundamentally unfair. People v. Peterson (1973) 108 Cal.Rptr. 835, 9 Cal.3d 717, 511 P.2d 1187. Constitutional Law 4733(2); Sentencing And Punishment 1907


4. Construction and application


"Conditional sentence" imposed on defendant for reckless driving in California state court constituted "criminal justice sentence" under federal sentencing guidelines, warranting addition of two points to criminal history computation upon conviction for tax evasion, even though probation office did not supervise defendant under state

sentence, since defendant was supervised by being required to report directly to state court. U.S. v. Collins, N.D.Cal.1998, 28 F.Supp.2d 1114. Sentencing And Punishment  790

Statute requiring defendants to pay presentence probation report costs applied to defendant sentenced to state prison rather than probation; statutory language expressly stated that grant of probation was not condition to payment obligation, and legislative history showed that purpose of statutory amendment was to expand obligation to pay costs to case in which defendant was not granted probation. People v. Robinson (App. 3 Dist. 2002) 128 Cal.Rptr.2d 619, 104 Cal.App.4th 902. Sentencing And Punishment  1975(3)


Summary probation is not authorized in felony cases; grant of informal or summary probation is a conditional sentence, and conditional sentences are authorized only in misdemeanor cases. People v. Glee (App. 2 Dist. 2000) 97 Cal.Rptr.2d 847, 82 Cal.App.4th 99, review denied, appeal after new sentencing hearing 2001 WL 1297488, unpublished. Sentencing And Punishment  1906



Although traditional view that a grant of probation is a privileged act of grace or clemency has been discredited in favor of modern view that such a grant should be deemed an alternative form of punishment in those cases when it can be used as a correctional tool, mechanics of granting or denying probation have not been prescribed by statutory or judicial guidelines nor have they often been tested against procedural process requirements. People v. Edwards (1976) 135 Cal.Rptr. 411, 18 Cal.3d 796, 557 P.2d 995. Sentencing And Punishment  1890


This section applies to municipal courts. In re Herron (1933) 217 Cal. 400, 19 P.2d 4. Sentencing And Punishment  1309


The word "probation" as used in Cal.Stats.1981, c. 940, includes informal as well as formal probation. 64 Op.Atty.Gen. 903, 12-29-81.


5. Construction with other laws


Legislature clearly intended Welf. & Inst.C. § 6301 (repealed) to apply to those ineligible for probation under the penal code, where this section relating to probation did not designate any type of offender who was absolutely ineligible for probation regardless of unusual circumstances, and where distinction between whether those described in subsections of this section relating to unusual circumstances were technically eligible for probation unless the court ruled that the case was not an unusual one, or whether they were ineligible unless the court ruled that the case was an unusual one, was a distinction of semantics and not of substance insofar as was concerned. Welf. & Inst.C. § 6301, People v. Wilson (App. 2 Dist. 1973) 110 Cal.Rptr. 104, 34 Cal.App.3d 524. Mental Health  454



Section 12022.5 imposing increased punishment for person who uses firearm in commission or attempted commission of robbery was inapplicable to conviction for assault with a deadly weapon, and therefore, judgment was modified to provide that defendant was armed within meaning of this section and weapon was specified to be a gun. People v. Cervantes (App. 2 Dist. 1970) 91 Cal.Rptr. 691, 13 Cal.App.3d 587. Criminal Law  1184(1); Sentencing And Punishment  80


Determinations of nature of weapon and its use for purposes of applying §§ 3024 (repealed), 12022 prescribing minimum terms for armed offenders and additional punishment for commission of felony while armed are to be made by properly instructed jury on specific allegation as to each count and to be set forth in special verdict as to each count, but determination as to nature of weapon and its use for purpose of this section providing that probation would not be granted to defendant who was armed with deadly weapon at time of perpetration of crime or at arrest is matter for court's consideration, subsequent to completion by jury of its functions. People v. Harrison (App. 3 Dist. 1970) 85 Cal.Rptr. 302, 5 Cal.App.3d 602. Criminal Law  796

This section authorizing court to grant probation in all misdemeanor cases supersedes restriction upon grant of probation to persons so as to permit probation to one with felony conviction if he is given mere county jail sentence so as to make crime misdemeanor. People v. Bernard (App. 2 Dist. 1965) 48 Cal.Rptr. 490, 239 Cal.App.2d 36. Sentencing And Punishment  1838


The definition of a “deadly weapon” in § 3024 (repealed) dealing with minimum terms for armed or prior offenders, is not applicable to this section, providing that probation shall not be granted to a defendant who used a “deadly weapon” on a human being. People v. Henderson (App. 1957) 151 Cal.App.2d 407, 311 P.2d 594. Sentencing And Punishment  1827


Statutes requiring performance of certain acts in connection with granting of probation, such as ordering that probationer's fingerprints be taken and furnishing him with probation papers, are mandatory. People v. Municipal Court of Oxnard-Port Hueneme Judicial Dist., Ventura County (App. 1956) 145 Cal.App.2d 767, 303 P.2d 375. Sentencing And Punishment  1827


The definition of “deadly weapon” contained in indeterminate sentence statute defines the phrase only for purpose of that statute and has no bearing upon meaning of same words when used in other provisions of the Penal Code. People v. Raner (App. 1 Dist. 1948) 86 Cal.App.2d 107, 194 P.2d 37. Sentencing And Punishment  11; Sentencing And Punishment  78

No constitutional provision forbids trial judge to grant probation without first imposing sentence. In re De Voe (App. 2 Dist. 1931) 114 Cal.App. 730, 300 P. 874. Sentencing And Punishment  1931

6. Amendment

Amendment adopted in 1984 to this section dealing with probation reports makes mandatory a referral to the probation department for investigation of facts relevant to the determination of the amount of restitution fines, but leaves to the court's discretion whether the probation officer must also investigate facts relevant to sentencing. People v. Goldstein (App. 1 Dist. 1990) 272 Cal.Rptr. 881, 223 Cal.App.3d 465, review denied. Sentencing And Punishment  276

Effect of 1957 amendment to this section was to create new area where probation should be denied but where it might be granted in unusual cases in discretion of court and to remove from absolute prohibition of probation crimes of robbery, burglary and arson, and except for those three specified crimes, portion of section absolutely prohibiting probation for enumerated crimes continues to constitute an absolute prohibition of probation for those crimes. People v. Orrante (App. 1 Dist. 1962) 20 Cal.Rptr. 480, 201 Cal.App.2d 553. Sentencing And Punishment  1835

Amendment of this section so as to omit provisions for deducting any time served in jail as a condition of probation from term of confinement imposed upon revocation of probation and failure to otherwise provide by statute for such credit disclosed legislative intent that upon revocation of probation and imposition of sentence defendant should not be given credit for time served in jail as a condition of probation. Ex parte Hays (App. 1 Dist. 1953) 120 Cal.App.2d 308, 260 P.2d 1030. Sentencing And Punishment  2041

Amendment of this section so as to omit provisions for deducting any time served in jail as a condition of probation from term of confinement imposed upon revocation of probation and failure to provide otherwise by statute for such credit disclosed legislative intent that upon revocation of probation and imposition of sentence, defendant should not be given credit for time served in jail as a condition of probation. Ex parte Hays (App. 1 Dist. 1953) 120 Cal.App.2d

308, 260 P.2d 1030. Sentencing And Punishment ↪ 2041

Amendment of this section, providing that probation should not be granted to any public official or “employee” of state who embezzled public money, by which quoted word was omitted and “peace officer” substituted definitely determined that an employee of the state was eligible for probation. Schaefer v. Superior Court in and for Santa Barbara County (App. 1952) 113 Cal.App.2d 428, 248 P.2d 450. Sentencing And Punishment ↪ 1827

The legislature, in amending this section prohibiting probation of one convicted of robbery while armed with deadly weapon by inserting word “himself” before “armed,” is presumed to have known of previous judicial construction of statute as forbidding probation of one acting with companion armed with deadly weapon in commission of robbery, though not personally armed with such a weapon, and to have intended to change law so as to forbid probation only of one convicted of robbery while himself armed with deadly weapon. People v. Perkins (1951) 37 Cal.2d 62, 230 P.2d 353. Sentencing And Punishment ↪ 1824

Amendment of this section after accused had been placed on probation so as to extend time for pronouncement of judgment until any probationary proceeding has been disposed of was procedural in nature, was not ex post facto, and did not deprive accused of a vested right. People v. Williams (1944) 24 Cal.2d 848, 151 P.2d 244. Constitutional Law ↪ 2818; Sentencing And Punishment ↪ 1825

Where 60-day sentence was suspended and defendant was placed on probation for 2 years, commitment after expiration of maximum possible term for defendant's offense, which was 6 months, was within jurisdiction of justice's court as against contention that reenactment of statute authorizing suspension of sentence for period not to exceed maximum possible term and providing exceptions repealed statute under which commitment was had. In re Clausen (App. 1 Dist. 1936) 14 Cal.App.2d 246, 57 P.2d 1353. Sentencing And Punishment ↪ 1826


Amendments concerning indeterminate sentence and probation were ex post facto, and therefore inapplicable to defendant who committed offense before amendments were enacted. People v. Dawson (1930) 210 Cal. 366, 292 P. 267. Sentencing And Punishment ↪ 1006; Sentencing And Punishment ↪ 1828; Constitutional Law ↪ 2818


Amendment adding clause “not amounting to a felony”, without expressly omitting clause “if probation is not denied”, from this section providing that court may summarily deny probation or hear and determine in defendant's presence the matter of probation of defendant on conditions, if granted, and providing that court must immediately refer matter to probation officer for investigation if probation is not denied, did not repeal power granted to the court to summarily grant probation in misdemeanor cases without reference to probation officer. 16 Op.Atty.Gen. 72.


7. Purpose, generally


In enacting statute governing persons ineligible for probation, the legislature intended to eliminate the trial court's discretion to grant probation to a defendant convicted of a violent felony while on probation for a violent felony conviction. People v. Neild (App. 4 Dist. 2002) 121 Cal.Rptr.2d 803, 99 Cal.App.4th 1223, modified on denial of rehearing , review denied. Sentencing And Punishment ↪ 1802


The legislature in enacting statute forbidding grant of probation for those convicted of a violent felony while on probation for a violent felony conviction did not intend its mandatory language to be subject to language of statute giving the sentencing court discretion to strike allegations that would enhance punishment in the furtherance of justice. People v. Neild (App. 4 Dist. 2002) 121 Cal.Rptr.2d 803, 99 Cal.App.4th 1223, modified on denial of rehearing , review denied. Sentencing And Punishment ↪ 1802

Clear intent of probation sections of Penal Code and especially of § 1203.4 providing that upon expiration of period of probation court upon proper motion may set aside felony conviction and dismiss information, thereby releasing defendant from all penalties and disabilities resulting from conviction, is to effect complete rehabilitation of those convicted of crime, and record of one released is wiped clean, subject to reinstatement only when person commits another and subsequent crime or for purposes of certain exceptional situations. People v. Taylor (App. 2 Dist. 1960) 3 Cal.Rptr. 186, 178 Cal.App.2d 472, Sentencing And Punishment  1953

The purpose of amendment in 1957 to this section respecting probation to defendant convicted of robbery was to remove the crime of robbery with a deadly weapon from the list of offenses for which probation is absolutely prohibited. People v. Hollis (App. 2 Dist. 1959) 1 Cal.Rptr. 293, 176 Cal.App.2d 92, Sentencing And Punishment  1824

Legislative branch of government has power to declare that in certain criminal cases probation may not be granted, and it is not province of court to question wisdom of policy behind enactment of such statute. Bennett v. Superior Court of Placer County (App. 1955) 131 Cal.App.2d 841, 281 P.2d 285, Constitutional Law  2507(3)

To justify denial of permission to apply for probation on ground that circumstances of particular case bring defendant within an exception to basic rule with respect to probation, it must appear clearly and with certainty that the legislature intended an exception to such rule to render defendant ineligible for probation. Schaefer v. Superior Court in and for Santa Barbara County (App. 1952) 113 Cal.App.2d 428, 248 P.2d 450, Sentencing And Punishment  1870

The benefits of the probation law are intended for defendants who deny guilt and are convicted, as well as those who plead guilty. People v. Rickson (App. 4 Dist. 1952) 112 Cal.App.2d 475, 246 P.2d 700, Sentencing And Punishment  1883

8. Discretion of court--In general

Probation is a matter solely within the sound, but broad, discretion of the court. People v. Wilson (1973) 110 Cal.Rptr. 104, 34 Cal.App.3d 524; People v. Costa (1930) 290 P. 891, 108 Cal.App. 90.


Probation is act of clemency, the granting or denial of which is within discretion of trial judge. People v. Fernandez (1963) 35 Cal.Rptr. 370, 222 Cal.App.2d 760; People v. Bagley (1963) 32 Cal.Rptr. 663, 218 Cal.App.2d 809.


A petition for probation is addressed to the sound discretion of the trial court. People v. Jennings (1954) 276 P.2d 124, 129 Cal.App.2d 120; People v. Bartges (1954) 273 P.2d 49, 126 Cal.App.2d 763, amended 275 P.2d 518, 128 Cal.App.2d 496; People v. Cooper (1954) 266 P.2d 566, 123 Cal.App.2d 353; People v. Rickson (1952) 246 P.2d 700, 112 Cal.App.2d 475; People v. Dandy (1951) 234 P.2d 61, 106 Cal.App.2d 19; Ex parte Dearo (1950) 214 P.2d 585, 96 Cal.App.2d 141; People v. Jackson (1949) 200 P.2d 204, 89 Cal.App.2d 181; People v. Silverman (1939) 92 P.2d 507, 33 Cal.App.2d 1; People v. Wiley (1939) 91 P.2d 907, 33 Cal.App.2d 424; People v. Yuen (1939) 89 P.2d 438, 32 Cal.App.2d 151, hearing denied 90 P.2d 291, 32 Cal.App.2d 151, certiorari denied 60 S.Ct. 115, 308 U.S. 555, 84 L.Ed. 466; People v. Bill (1934) 35 P.2d 645, 140 Cal.App. 389; People v. Bryant (1929) 281 P. 404, 101 Cal.App. 84.


Whether trial court will grant probation to convicted defendant is within discretion of trial court. People v. Rainey (1954) 271 P.2d 144, 125 Cal.App.2d 739; People v. Adams (1951) 224 P.2d 873, 100 Cal.App.2d 841; People v. Wahrmond (1950) 206 P.2d 56, 91 Cal.App.2d 258; People v. Grijalva (1942) 121 P.2d 32, 48 Cal.App.2d 690; People v. Blankenship (1936) 61 P.2d 352, 16 Cal.App.2d 606; People v. Mortensen (1935) 51 P.2d 450, 10 Cal.App.2d 124; People v. Brahm (1929) 277 P. 896, 98 Cal.App. 733; Svoboda v. Purkitt (1925) 242 P. 81, 75 Cal.App. 148.


Under this section, admission of one convicted of crime to probation rests entirely in trial court's discretion. People v. Frank (1949) 211 P.2d 350, 94 Cal.App.2d 740; People v. Laborwits (1925) 240 P. 802, 74 Cal.App. 401; People v. Dunlop (1915) 150 P. 389, 27 Cal.App. 460; People v. Bartley (1910) 108 P. 868, 12 Cal.App. 773.


Court has wide discretion in admitting persons to probation. People v. Henry (1937) 72 P.2d 915, 23 Cal.App.2d 155; Ex parte McVeity (1929) 277 P. 745, 98 Cal.App. 723.


Under California law, court has discretion to grant or deny probation to one who is eligible. Arketa v. Wilson, C.A.9 (Cal.)1967, 373 F.2d 582. Sentencing And Punishment  1802



Trial court has broad discretion to determine probation conditions. People v. Kwizera (App. 4 Dist. 2000) 93 Cal.Rptr.2d 522, 78 Cal.App.4th 1238, review denied. Sentencing And Punishment  1962



Imposition of mandatory five-year sentence enhancement for a prior serious felony conviction does not deprive trial court of its discretion to grant probation to a defendant who is otherwise eligible. People v. Aubrey (App. 4 Dist. 1998) 76 Cal.Rptr.2d 378, 65 Cal.App.4th 279. Sentencing And Punishment  1872(2)


Grant or denial of probation is within the trial court's discretion, and the defendant bears a heavy burden when attempting to show an abuse of that discretion. People v. Aubrey (App. 4 Dist. 1998) 76 Cal.Rptr.2d 378, 65 Cal.App.4th 279. Sentencing And Punishment  1802



All defendants are eligible for probation, in the discretion of the sentencing court, unless a statute provides otherwise. People v. Aubrey (App. 4 Dist. 1998) 76 Cal.Rptr.2d 378, 65 Cal.App.4th 279. Sentencing And Punishment  1802



Decision to grant probation which simply ignores statutory requirements is abuse of discretion. People v. Superior Court (Dorsey) (App. 4 Dist. 1996) 58 Cal.Rptr.2d 165, 50 Cal.App.4th 1216, review denied. Sentencing And Punishment  1823



Sentencing court has broad discretion to determine whether eligible defendant is suitable for probation and what conditions should be imposed. People v. Welch (1993) 19 Cal.Rptr.2d 520, 5 Cal.4th 228, 851 P.2d 802. Sentencing And Punishment  1802; Sentencing And Punishment  1962


Legislature has placed in trial judge's broad discretion in sentencing process, including determination as to whether probation is appropriate, and if so, conditions thereof. People v. Warnes (Super. 1992) 12 Cal.Rptr.2d 893. Sentencing And Punishment  1802; Sentencing And Punishment  1962



Probation is not a right but an act of clemency in discretion of trial court. People v. Phillips (App. 2 Dist. 1977) 142 Cal.Rptr. 658, 76 Cal.App.3d 207. Sentencing And Punishment  1812


Trial court has broad discretion in the sentencing process, including the determination as to whether probation is appropriate and, if so, the conditions thereof. People v. Lent (1975) 124 Cal.Rptr. 905, 15 Cal.3d 481, 541 P.2d 545. Sentencing And Punishment  1802; Sentencing And Punishment  1962


Granting and continuance of probation is act of grace and clemency, within sound discretion of trial court. People v. Matranga (App. 4 Dist. 1969) 80 Cal.Rptr. 313, 275 Cal.App.2d 328. Sentencing And Punishment  1801; Sentencing And Punishment  1812


Although court has wide range of discretion in imposing or modifying terms of probation, it may not act arbitrarily or capriciously. People v. Wilson (App. 3 Dist. 1962) 25 Cal.Rptr. 97, 208 Cal.App.2d 256. Sentencing And Punishment  1962; Sentencing And Punishment  1985


Vesting of discretion in him gives trial judge latitude to express his own convictions in declaration of rights and application of remedies. People v. Surplice (App. 2 Dist. 1962) 21 Cal.Rptr. 826, 203 Cal.App.2d 784. Courts  26


Probation is not matter of right, but is act of clemency, granting and revocation of which are within discretion of court. People v. Privitier (App. 2 Dist. 1962) 19 Cal.Rptr. 640, 200 Cal.App.2d 725. Sentencing And Punishment  1812; Sentencing And Punishment  2001


While probation is not a matter of right but an act of grace, grant or denial of which is within a court's discretion, where an individual is eligible for probation, the trial court must determine the matter on its merits, and failure to do so constitutes denial of a substantial right. People v. Walters (App. 1 Dist. 1961) 11 Cal.Rptr. 597, 190 Cal.App.2d 98. Sentencing And Punishment  1890



Question of probation is almost solely within discretion of trial court. People v. Walker (App. 1 Dist. 1960) 5 Cal.Rptr. 283, 181 Cal.App.2d 227. Sentencing And Punishment  1802

Probation is power that may be exercised in discretion of court, but it must be impartial, and guided by fixed legal principles, to be exercised in conformity with spirit of law, and it may not be exercised in arbitrary or capricious manner. People v. Wade (1959) 1 Cal.Rptr. 683, 53 Cal.2d 322, 348 P.2d 116. Sentencing And Punishment  1802



When defendant is eligible, the granting of probation is a matter of discretion with the trial court. People v. Johnson (App. 1958) 164 Cal.App.2d 470, 330 P.2d 894. Sentencing And Punishment  1802

The granting or withholding of probation is a matter that rests in the sound discretion of the trial court. People v. Duke (App. 1958) 164 Cal.App.2d 197, 330 P.2d 239. Sentencing And Punishment  1802


A court has power of its own motion to order a probation investigation. People v. Billingsley (Super. 1943) 59 Cal.App.2d Supp. 845, 139 P.2d 362. Sentencing And Punishment  277


A convicted defendant is not entitled to be placed on probation as a matter of right, but power to grant probation may be exercised in discretion of court. People v. Leach (App. 2 Dist. 1937) 22 Cal.App.2d 525, 71 P.2d 594. Sentencing And Punishment  1802; Sentencing And Punishment  1812


9. ---- Criminal record, discretion of court



Sentencing court's denial of probation and imposition of middle term was proper where defendant had numerous prior convictions and adjudications of commissions of crime, had served a prior prison term, was on parole and summary probation when he committed present offense, and prior performance on probation and parole were unsatisfactory. People v. Martinez (App. 5 Dist. 1985) 221 Cal.Rptr. 258, 175 Cal.App.3d 881, review denied. Sentencing And Punishment  1885; Sentencing And Punishment  1872(1)


Denial of defendant's application for probation was not abuse of discretion, in light of his past criminal record.


People v. Dunaway (App. 1 Dist. 1963) 35 Cal.Rptr. 154, 222 Cal.App.2d 322. Sentencing And Punishment 1872(1) 

Action of trial court in denying probation for defendant, who had previously been convicted of two felonies, was within proper discretionary limits. People v. Vanderburg (App. 5 Dist. 1963) 29 Cal.Rptr. 553, 214 Cal.App.2d 455. Sentencing And Punishment 1872(2) 



Where it was shown that defendant had previously been convicted of three crimes, and on cross examination he admitted such convictions, denial of probation was not an abuse of discretion. People v. Bartges (App. 1 Dist. 1954) 126 Cal.App.2d 763, 273 P.2d 49, amended 128 Cal.App.2d 496, 275 P.2d 518. Sentencing And Punishment 1872(1) 


Trial court did not abuse discretion in denying probation to a defendant who was convicted of grand theft and who had committed two burglaries and had admitted committing other minor offenses. People v. Dandy (App. 1951) 106 Cal.App.2d 19, 234 P.2d 61. Sentencing And Punishment 1856; Sentencing And Punishment 1872(3)  


Denial of probation to defendants convicted of grand theft was not abuse of discretion where application was referred to probation officer who reported that defendants had on previous occasions been arrested on charges of disturbing the peace and assault and battery. People v. Hopper (App. 3 Dist. 1937) 20 Cal.App.2d 108, 66 P.2d 459. Sentencing And Punishment 1872(3) 


Probation officer's report showing defendant in forgery prosecution had been arrested 13 times justified denial of application for probation. People v. Payne (App. 4 Dist. 1930) 106 Cal.App. 609, 289 P. 909. Sentencing And Punishment 1872(1) 


10. --- Recommendations of probation officer, discretion of court

Trial court has discretion to reject probation report in whole or in part, and to strike report and order new probation report prepared. People v. Municipal Court, Sutter Municipal Court District of County of Sutter (App. 3 Dist. 1981) 172 Cal.Rptr. 140, 116 Cal.App.3d 456. Sentencing And Punishment 300; Sentencing And Punishment 282  

In prosecution for child abuse, trial court did not abuse its discretion in failing to follow probation officer's recommendation. People v. Hernandez (App. 2 Dist. 1980) 168 Cal.Rptr. 898, 111 Cal.App.3d 888. Sentencing And Punishment 300 

When an abuse of discretion in granting or denying probation is claimed, it is not sufficient to answer that the trial court follow the recommendation made by the probation officer. People v. Warner (1978) 143 Cal.Rptr. 885, 20 Cal.3d 678, 574 P.2d 1237. Sentencing And Punishment 1834 

Trial court's discretion to grant probation is to be exercised after motion therefor and filing of probation officer's report. People v. Beasley (App. 1 Dist. 1970) 85 Cal.Rptr. 501, 5 Cal.App.3d 617. Sentencing And Punishment 1893 

Trial court's refusal to refer the matter of defendant's conviction for second-degree murder to probation department for presentence investigation report was not an abuse of the court's discretion where defendant was not eligible for probation, and the trial judge was required to impose a statutorily prescribed sentence. People v. Ford (App. 2 Dist. 1967) 61 Cal.Rptr. 329, 253 Cal.App.2d 390. Sentencing And Punishment 277 

Trial court's denial of probation officer's recommendation of probation was not an abuse of discretion, where trial court's single allusion to matters outside record concerning defendant's pattern of conduct was merely a brief introduction to his clear statement that order denying probation was based upon weighing of prosecutrix' testimony under oath against defendant's statement to probation officer, both of which were matters in the record. People v. Lichens (1963) 30 Cal.Rptr. 468, 59 Cal.2d 587, 381 P.2d 204. Sentencing And Punishment ☞ 1886

Broad discretion is lodged with trial judge in probation matters, and determination of trial judge in revocation proceedings can be made solely on probation officer's report. People v. Cortez (App. 2 Dist. 1962) 19 Cal.Rptr. 50, 199 Cal.App.2d 839. Sentencing And Punishment ☞ 1802; Sentencing And Punishment ☞ 2021

Denial of probation to defendant convicted of robbery in second degree was not an abuse of discretion although probation officer's report recommended probation. People v. Walker (App. 1 Dist. 1960) 5 Cal.Rptr. 283, 181 Cal.App.2d 227. Sentencing And Punishment ☞ 1886

Trial judge did not act arbitrarily or abuse discretion in revoking probation of one pleading guilty of violating Corporate Securities Act for violation of condition that he reimburse investors, in view of probation officer's unfavorable reports. People v. Lippner (1933) 219 Cal. 395, 26 P.2d 457. Sentencing And Punishment ☞ 2003

Court has discretion to deny probation as well as grant it, regardless of recommendation of probation officer. People v. Martino (App. 4 Dist. 1931) 113 Cal.App. 661, 299 P. 86. Sentencing And Punishment ☞ 1802; Sentencing And Punishment ☞ 1887

Refusal of court to follow recommendation of probation officer that application be granted on condition applicant spend first six months in county jail was not arbitrary. People v. Martino (App. 4 Dist. 1931) 113 Cal.App. 661, 299 P. 86. Sentencing And Punishment ☞ 1886

11. ---- Specific crimes, discretion of court

In view of court's full consideration of many factors argued by both prosecution and defense, and reasonable assessment of their relative weight, trial court did not abuse its discretion by denying probation and imposing middle term upon plea of guilty to first-degree burglary and inflicting great bodily injury, and, absent circumstances in mitigation of additional punishment, court also did not abuse its discretion by failing to strike three-year term for great bodily injury enhancement. People v. Roe (App. 4 Dist. 1983) 195 Cal.Rptr. 802, 148 Cal.App.3d 112. Sentencing And Punishment ☞ 1844; Sentencing And Punishment ☞ 85

Record established that trial court did not fail to exercise discretion in denying probation to defendant convicted of driving automobile without consent of owner, with one prior felony conviction. People v. Owens (App. 1 Dist. 1980) 169 Cal.Rptr. 359, 112 Cal.App.3d 441. Sentencing And Punishment ☞ 1858

Legislature intended that discretion could be exercised by court in case of crimes falling within this section governing probation, but not within § 1203.06 prohibiting probation, for enumerated crimes. People v. Tanner (1979) 156 Cal.Rptr. 450, 24 Cal.3d 514, 596 P.2d 328. Sentencing And Punishment ☞ 1835

Review of record showed that trial court did not abuse discretion in denying probation to defendant convicted of forced oral copulation and kidnapping. People v. Goodson (App. 2 Dist. 1978) 145 Cal.Rptr. 489, 80 Cal.App.3d 290. Sentencing And Punishment ☞ 1862; Sentencing And Punishment ☞ 1855

In prosecution for first-degree robbery, it was the function of the court to determine the facts relevant to the fixing of probation and, in the exercise of its discretion, to determine whether probation should be granted or denied. People

v. Brewster (App. 3 Dist. 1969) 81 Cal.Rptr. 237, 276 Cal.App.2d 750. Sentencing And Punishment 1802

Trial court, after defendant's entry of plea of guilty of contributing to delinquency of minor, did not abuse discretion in failing to grant defendant straight probation instead of imposing as a condition that he serve 90 days in county jail and register as a sexual offender. People v. Troyn (App. 5 Dist. 1964) 39 Cal.Rptr. 924, 229 Cal.App.2d 181. Sentencing And Punishment 1976(2); Sentencing And Punishment 1983(2)

Grant of probation to defendant convicted of misdemeanor was discretionary. People v. Alotis (1964) 36 Cal.Rptr. 443, 60 Cal.2d 698, 388 P.2d 675. Sentencing And Punishment 1838

Denial of application for probation by defendant convicted of assault with a deadly weapon did not constitute an abuse of discretion even though the defendant had no criminal record and was otherwise eligible for probation. People v. Herd (App. 2 Dist. 1963) 34 Cal.Rptr. 141, 220 Cal.App.2d 847. Sentencing And Punishment 1843; Sentencing And Punishment 1871

There was no abuse of discretion in denying probation to one convicted on 22 narcotics counts. People v. Meyer (App. 1 Dist. 1963) 31 Cal.Rptr. 285, 216 Cal.App.2d 618. Sentencing And Punishment 1848

One convicted of murder cannot be granted probation. People v. Superior Court In and For Los Angeles County (Guerrero) (App. 2 Dist. 1962) 18 Cal.Rptr. 557, 199 Cal.App.2d 303. Sentencing And Punishment 1853

In prosecutions resulting in convictions of violation of § 288a, rape and kidnapping, trial court's determination to deny probation to defendants constituted proper exercise of discretion. People v. Hinton (App. 1959) 166 Cal.App.2d 743, 333 P.2d 822. Sentencing And Punishment 1862; Sentencing And Punishment 1855

Where defendant was convicted of second-degree murder as a result of an abortion, denial of probation was not an abuse of discretion. People v. Navarro (App. 1946) 74 Cal.App.2d 544, 169 P.2d 265. Sentencing And Punishment 1853

Under this section the granting of probation to defendant following his conviction of voluntary manslaughter was discretionary with trial court. People v. Pilgrim (App. 3 Dist. 1946) 73 Cal.App.2d 391, 166 P.2d 636. Sentencing And Punishment 1853



"Involuntary manslaughter," which is the taking of life in certain unlawful ways, without any intention of doing so, must be distinguished from "voluntary manslaughter" in considering application for probation following conviction. People v. Pilgrim (App. 3 Dist. 1946) 73 Cal.App.2d 391, 166 P.2d 636. Sentencing And Punishment 1853


Granting or refusing application for probation by defendant convicted of perjury was within trial court's discretion. People v. Keylon (App. 1932) 122 Cal.App. 408, 10 P.2d 86. Sentencing And Punishment 1860



Refusal of application for probation after conviction for driving automobile while intoxicated and for manslaughter was not abuse of discretion. People v. Martin (App. 2 Dist. 1931) 114 Cal.App. 337, 300 P. 108. Sentencing And Punishment 1858



Denying application of defendant, convicted of murder in second degree committed by attempted abortion, for probation was not error. People v. Darrow (1931) 212 Cal. 167, 298 P. 1. Sentencing And Punishment 1853



12. ---- Specific circumstances of case, discretion of court


Denial of probation for defendant convicted of second-degree murder in stabbing death of drinking companion was not abuse of discretion in view of nature and seriousness of crime and prior criminal record of defendant, even without consideration of contents of incriminating letter written by defendant to wife. People v. Rodriguez (App. 2 Dist. 1981) 173 Cal.Rptr. 82, 117 Cal.App.3d 706. Sentencing And Punishment  1853; Sentencing And Punishment  1872(1)


At sentencing hearing, trial court abused its discretion in expounding at length on fact that defendant had several children, all of whom received welfare support and some of whom were born out of wedlock, and in indicating that he was imposing a prison sentence, rather than probation, to punish defendant's conduct in fathering a second or third child out of wedlock, as well as the crime for which defendant had been convicted. People v. Bolton (1979) 152 Cal.Rptr. 141, 23 Cal.3d 208, 589 P.2d 396. Sentencing And Punishment  94


Denial of probation application filed by defendant who was convicted of possession of sizable quantity of marijuana, and who had given deceitful story to probation officer, was not abuse of trial court's discretion. People v. Podesto (App. 5 Dist. 1976) 133 Cal.Rptr. 409, 62 Cal.App.3d 708. Sentencing And Punishment  1848; Sentencing And Punishment  1884




Denial of probation to defendant, who was convicted of committing lewd and lascivious act on child under age of 14, who had actual contact of sexual intercourse with victim with possible resulting psychiatric damage to victim, and diagnostic study of whom revealed, inter alia, that defendant had severe antisocial personality and was sexually deviate, was not abuse of discretion nor arbitrary determination. People v. Kingston (App. 2 Dist. 1974) 118 Cal.Rptr. 896, 44 Cal.App.3d 629. Sentencing And Punishment  1862; Sentencing And Punishment  1877

Where trial court minutely complied with this section directing reference to probation officer for investigation and report and where defendant admitted 11 prior felony convictions including number of narcotics violations and failed to show why probation should not be denied as matter of law, there was no abuse of discretion in denying probation for drug offense. People v. Pijal (App. 1 Dist. 1973) 109 Cal.Rptr. 230, 33 Cal.App.3d 682. Sentencing And Punishment  1872(3); Sentencing And Punishment  1886


Where triers of fact rejected defense testimony that defendant was acting unconsciously in firing at the victim when they returned a verdict of guilty to voluntary manslaughter, a felony, defendant was ineligible for probation. People v. Furber (App. 1 Dist. 1965) 43 Cal.Rptr. 771, 233 Cal.App.2d 678. Sentencing And Punishment  1853


Refusal to grant probation to defendant whose history included numerous examples of antisocial conduct and whose personality characteristics included borderline schizophrenia was not abuse of discretion. People v. Henderson (App. 3 Dist. 1964) 37 Cal.Rptr. 883, 226 Cal.App.2d 160. Sentencing And Punishment  1888


Denial of probation was not, under the record, an abuse of discretion. People v. Ross (App. 2 Dist. 1962) 24 Cal.Rptr. 1, 206 Cal.App.2d 542. Sentencing And Punishment  1830


There was no abuse of discretion in denying probation to defendant convicted on three counts and in imposing sentence running consecutively as to two counts and sentence running concurrently as to third count, where defendant had admitted two prior felony convictions and was given opportunity to be heard and probation officer and district attorney had made recommendations. People v. Armstrong (App. 2 Dist. 1961) 10 Cal.Rptr. 618, 188 Cal.App.2d 745. Sentencing And Punishment  1872(2); Sentencing And Punishment  601; Sentencing And Punishment  1886


Refusal to grant application for probation made by defendant who stipulated, in open court in criminal proceeding,


that he had received stolen gasoline knowing that it was stolen property and had received it for his own gain and to deprive owner thereof was an exercise of sound judicial discretion. People v. Fenton (App. 1956) 141 Cal.App.2d 357, 296 P.2d 829. Sentencing And Punishment  1856




Where court, in probation hearing of one convicted of attempting to have sexual relations with his ten year old stepdaughter, considered report of superintendent of state hospital, along with other matters presented, denial of application for probation was not abuse of discretion. People v. Willey (App. 1 Dist. 1954) 128 Cal.App.2d 148, 275 P.2d 522. Sentencing And Punishment  1862


Where, under the admitted facts, defendant had committed crime of first degree robbery while being armed with a pistol, which defendant purportedly did not display during the robbery, trial court's refusal to grant defendant probation did not constitute an abuse of its discretion. People v. Rainey (App. 1 Dist. 1954) 125 Cal.App.2d 739, 271 P.2d 144. Sentencing And Punishment  1861


Claim that prisoner convicted of vicious crime should be restored to full liberty because he is diseased has no foundation in the law. People v. Cooper (App. 1954) 123 Cal.App.2d 353, 266 P.2d 566. Sentencing And Punishment  1876


Where party pleaded guilty to crime of robbery and was armed with gun at time of offense, but it was uncertain whether gun was loaded, and court found crime was robbery in first degree and that defendant was in possession of a dangerous rather than a deadly weapon, court's denial of probation was not abuse of discretion. People v. Johnson (App. 1951) 106 Cal.App.2d 815, 236 P.2d 190. Robbery  11

Trial court did not abuse discretion in denying probation to one who pleaded guilty to grand theft, even though most of the money defendant took was recovered, and defendant had never been arrested before and had a wife and five children, where deputy probation officer testified that defendant, when questioned, gave different accounts of what took place and why he left the state. People v. Jackson (App. 1 Dist. 1948) 89 Cal.App.2d 181, 200 P.2d 204. Sentencing And Punishment  1884

In burglary prosecution, trial court did not abuse its discretion in denying defendant's motion for probation, notwithstanding that defendant had not been armed, that there was no showing of any prior conviction and that he and his family had resided in city for several years. People v. Wiley (App. 3 Dist. 1939) 33 Cal.App.2d 424, 91 P.2d 907. Sentencing And Punishment  1871; Sentencing And Punishment  1888; Sentencing And Punishment  1844

The trial court did not abuse its discretion in refusing to grant probation to those who were found guilty of riot, where the sentences were not harsh nor excessive, and the record clearly indicated that defendants were guilty and disclosed no valid reason on which they could base a plea for probation. People v. Yuen (App. 3 Dist. 1939) 32 Cal.App.2d 151, 89 P.2d 438, hearing denied 32 Cal.App.2d 151, 90 P.2d 291, certiorari denied 60 S.Ct. 115, 308 U.S. 555, 84 L.Ed. 466. Sentencing And Punishment  1847

Refusing probation was not abuse of discretion where court considered written report of probation officer and also heard oral testimony in defendant's behalf. People v. Roach (App. 1934) 139 Cal.App. 384, 33 P.2d 895. Sentencing And Punishment  1897

Denying defendant, convicted of manslaughter for causing death with pistol, permission to apply for probation, was not abuse of discretion, under circumstances. People v. Williams (App. 1932) 121 Cal.App. 552, 9 P.2d 313. Sentencing And Punishment  1853

13. Nature of probation




See, also, Notes of Decisions under Penal Code § 1203.1.



Probation is not matter of right, but act of grace and clemency. People v. Cortez (1962) 19 Cal.Rptr. 50, 199 Cal.App.2d 839; People v. Brown (1959) 342 P.2d 410, 172 Cal.App.2d 30; Schaefer v. Superior Court in and for Santa Barbara County (1952) 248 P.2d 450, 113 Cal.App.2d 428; People v. Dandy (1951) 234 P.2d 61, 106 Cal.App.2d 19.


Probation is not a matter of right but is an act of clemency. People v. Jennings (1954) 276 P.2d 124, 129 Cal.App.2d 120; People v. Monge (1952) 240 P.2d 432, 109 Cal.App.2d 141; Ex parte Dearo (1950) 214 P.2d 585, 96 Cal.App.2d 141.


Probation is not an absolute right to which the defendant is entitled but is an act of clemency which may be granted. People v. Wahrmond (1949) 206 P.2d 56, 91 Cal.App.2d 258; People v. Jackson (1949) 200 P.2d 204, 89 Cal.App.2d 181.


Probation is not an absolute right to which a convicted person is entitled, but is an act of grace and clemency on the part of the court; it has no constitutional basis, but exists by reason of statutes creating it. Application of Oxidean (1961) 16 Cal.Rptr. 193, 195 Cal.App.2d 814; People v. Miller (1960) 8 Cal.Rptr. 578, 186 Cal.App.2d 34.


Probationers have only conditional liberty, their freedom is at bottom act of clemency, and revocation of probation should not require full-blown adversarial deployment. People v. Perez (App. 4 Dist. 1994) 36 Cal.Rptr.2d 391, 30 Cal.App.4th 900, as modified. Sentencing And Punishment  1812; Sentencing And Punishment  1961; Sentencing And Punishment  2009

Both probation and the availability of the youth authority commitment are privileges granted by legislature and are not rights. People v. Main (App. 5 Dist. 1984) 199 Cal.Rptr. 683, 152 Cal.App.3d 686. Sentencing And Punishment  1812; Infants  69(3.1)

A properly administered probation program not only serves society in effecting desirable rehabilitative goals, but also insures that important rights are not denied any person convicted of a crime. People v. Edwards (1976) 135 Cal.Rptr. 411, 18 Cal.3d 796, 557 P.2d 995. Sentencing And Punishment  1811


Probation has an advantage as an alternative to confinement in that its terms can be tailored by the court to fit the individual defendant. People v. McDowell (App. 2 Dist. 1976) 130 Cal.Rptr. 839, 59 Cal.App.3d 807. Sentencing And Punishment  1811


Probation is not a right but a privilege, and there is neither constitutional nor statutory right to notice of hearing preceding revocation of probation granted after judgment. People v. Buccheri (App. 2 Dist. 1969) 83 Cal.Rptr. 221, 2 Cal.App.3d 842. Sentencing And Punishment  2013


“Probation” is bargain made by people with malefactor that if he complies with requirements he will be rewarded by not having to go to prison. People v. Atwood (App. 1 Dist. 1963) 34 Cal.Rptr. 361, 221 Cal.App.2d 216. Sentencing And Punishment  1811



“Probation” is granted either after a verdict or plea of guilty and before sentencing, or after sentencing but before commitment to prison term, and is available only to those defendants found eligible by the proper authorities and by court having jurisdiction. People v. Taylor (App. 2 Dist. 1960) 3 Cal.Rptr. 186, 178 Cal.App.2d 472. Sentencing


And Punishment  1811


Defendant has no right to be granted probation, but “probation” is a privilege, an act of grace, or clemency. In re Osslo (1958) 51 Cal.2d 371, 334 P.2d 1. Sentencing And Punishment  1812


Probation is not an absolute right to which a defendant is entitled, but is an act of grace and clemency which may be granted to a seemingly deserving defendant. People v. Duke (App. 1958) 164 Cal.App.2d 197, 330 P.2d 239. Sentencing And Punishment  1812


Granting of probation, aside from being an act of clemency extended to one who has committed a crime, is also in substance and effect a bargain made by people, through legislature and courts, with malefactor. People v. Johnson (App. 3 Dist. 1955) 134 Cal.App.2d 140, 285 P.2d 74. Sentencing And Punishment  1811


Grant of probation is an act of grace and clemency and is properly denied where conduct of convict is such that it indicates a depravity that requires exercise of restraint and discipline as means of improving such offender. People v. Cooper (App. 1954) 123 Cal.App.2d 353, 266 P.2d 566. Sentencing And Punishment  1812; Sentencing And Punishment  1841

Probation is not a right but a privilege. People v. Sweeden (App. 4 Dist. 1953) 116 Cal.App.2d 891, 254 P.2d 899. Sentencing And Punishment  1812


Probation is not a matter of right. People v. Johnson (App. 1951) 106 Cal.App.2d 815, 236 P.2d 190. Sentencing And Punishment  1812


“Probation” is not a judgment, but act of grace and clemency, which court may grant seemingly deserving defendant to enable him to escape extreme rigors of legal penalty for offense of which he stands convicted, while “judgment” imposes such rigors. People v. Williams (App. 1 Dist. 1949) 93 Cal.App.2d 777, 209 P.2d 949. Sentencing And Punishment  1812


Granting of probation is not right given to defendant in criminal proceeding, but is an act of clemency. People v. Blankenship (App. 4 Dist. 1936) 16 Cal.App.2d 606, 61 P.2d 352. Sentencing And Punishment  1812

“Probation” is not right of accused, but is act of grace and clemency which may be granted by court whereby seemingly deserving accused may escape penalty imposed by law for offense of which he is convicted. People v. Hainline (1933) 219 Cal. 532, 28 P.2d 16. Sentencing And Punishment  1812

14. Applications for probation


Overruling defendant's oral application to file written application for probation was not error, where oral application embodied request for new trial which had been denied. People v. Roland (App. 2 Dist. 1933) 134 Cal.App. 675, 26 P.2d 517. Sentencing And Punishment  1891


Refusal to permit defendant to file application for probation after trial and conviction because of his failure to admit guilt was erroneous. People v. Osterhelt (App. 1932) 125 Cal.App. 723, 14 P.2d 140. Sentencing And Punishment  1891


Refusal to permit filing of application for probation solely because defendant had not pleaded guilty was error. People v. Jones (App. 2 Dist. 1927) 87 Cal.App. 482, 262 P. 361. Sentencing And Punishment  1883


15. Suspending sentence or execution--In general



See, also, Notes of Decisions under Penal Code § 1203.1.


Court which suspends imposition of sentence and grants probation is not required to specify the constitutionally permissible maximum term to which defendant could be subjected upon revocation. People v. Landers (App. 4 Dist. 1976) 131 Cal.Rptr. 522, 59 Cal.App.3d 846. Sentencing And Punishment  1913


If an order of suspension of sentence of the defendant in prosecution for assault with intent to commit robbery while armed was void because the defendant had previously been convicted in New York state of third-degree robbery allegedly a felony if committed in California and was therefore not entitled to probation, such, would not infect the sentence itself with invalidity but the judgment would remain valid and must be served. People v. Wissenfeld (App. 1959) 169 Cal.App.2d 59, 336 P.2d 959, certiorari denied 80 S.Ct. 104, 361 U.S. 848, 4 L.Ed.2d 86. Sentencing And Punishment  2032


It is not necessary, in order to have information and finding of guilt set aside upon completion of probationary period, that defendant prove total and permanent reformation or rehabilitation. People v. Johnson (App. 3 Dist. 1955) 134 Cal.App.2d 140, 285 P.2d 74. Sentencing And Punishment  1953


Withholding of privilege, after completion of probation, to have information and finding of guilt set aside, not amounting to a constitutionally guaranteed right, does not constitute punishment in sense that it is a penalty exacted by society for commission of a crime. People v. Johnson (App. 3 Dist. 1955) 134 Cal.App.2d 140, 285 P.2d 74. Sentencing And Punishment  1953




Power of court to grant probation may be exercised in either of two ways: (1) by suspending imposition of sentence, in which case there is no judgment of conviction, or (2) by imposing sentence and thereafter suspending its execution. Jones v. Maloney (App. 1951) 106 Cal.App.2d 80, 234 P.2d 666. Sentencing And Punishment  1931; Sentencing And Punishment  1932


Where trial court in prosecution for selling security without permit denied application for probation, but judgments imposing jail sentence recited that court would consider suspension thereof if restitution was made, and it appeared that court and counsel misapprehended effect of denial of probation and that question of probation was considered separate from suspension of sentence, defendants would be entitled to apply for probation on going down of remittitur. People v. Sidwell (1945) 27 Cal.2d 121, 162 P.2d 913. Criminal Law  1192


Instructions that sentence of prisoner to county jail for 90 days should be served from 7 p.m. Monday to 6 p.m. Wednesday of each week were void as an attempt to grant periods of suspension from sentence imposed. Ex parte Taylor (App. 1934) 140 Cal.App. 102, 34 P.2d 1036. Sentencing And Punishment  1804

After suspending execution of judgment by state court pending imprisonment by federal authorities, accused may be compelled to undergo imprisonment in pursuance of sentence by state court. Ex parte Cohen (1926) 198 Cal. 221, 244 P. 359. Sentencing And Punishment  1175

This section, which authorized the court or judge to suspend the imposing or execution of sentence and to direct that such suspension might continue for a time not exceeding the maximum possible term of such sentence, did not require that the court should enter a formal order declaring the imposition of sentence to be suspended. People v. Sapienzo (App. 1 Dist. 1923) 60 Cal.App. 626, 213 P. 274. Sentencing And Punishment  1913




Under this section, suspension of the execution of a sentence is restricted to sentences to pay a fine with imprisonment as an alternative, while suspension of sentence is the general rule in cases in which the defendant is over 16 years of age. Ex parte Collins (App. 1908) 8 Cal.App. 367, 97 P. 188, Sentencing And Punishment  1806; Sentencing And Punishment  1837; Sentencing And Punishment  1875


Suspended sentence is awarded in sound discretion of court. In re Young (App. 1932) 121 Cal.App. 711, 10 P.2d 154, Sentencing And Punishment  1804



Order suspending execution of sentence in burglary prosecution was void, in view of this section, and hence judgment was not satisfied by expiration of period of suspension, where order stated that application for probation was denied and remanded defendant to custody of sheriff for work on roads. In re Clark (App. 1 Dist. 1925) 70 Cal.App. 643, 234 P. 109, Sentencing And Punishment  1948



16. --- Powers, suspending sentence or execution


Trial court has no power to suspend execution of sentence except as incident to granting probation. People v. Victor (1965) 42 Cal.Rptr. 199, 398 P.2d 391, 62 Cal.2d 280; People v. Cravens (1953) 251 P.2d 717, 115 Cal.App.2d 201; U.S. Fidelity & Guaranty Co. v. Justice Court of Vista Tp., San Diego County (1950) 222 P.2d 292, 99 Cal.App.2d 683; People v. Sidwell (1945) 162 P.2d 913, 27 Cal.2d 121; Ex parte Clark (1945) 234 P. 109, 70 Cal.App. 643.



Authority to grant probation and to suspend imposition or execution of sentence is wholly statutory. People v. Howard (1997) 68 Cal.Rptr.2d 870, 16 Cal.4th 1081, 946 P.2d 828, Sentencing And Punishment  1801; Sentencing And Punishment  1805; Sentencing And Punishment  1806


Where execution of sentence is suspended during grant of probation, court retains jurisdiction over defendant during probationary period, and at any time during that period court may, subject to statutory restrictions, modify order suspending imposition or execution of sentence. People v. Howard (1997) 68 Cal.Rptr.2d 870, 16 Cal.4th 1081, 946 P.2d 828, Sentencing And Punishment  1923

The authority of a court to grant probation and to suspend execution of a sentence is wholly statutory, and the statute itself furnishes the measure of the power which may thus be exercised. People v. Brown (App. 1959) 172 Cal.App.2d 30, 342 P.2d 410, Sentencing And Punishment  1801; Sentencing And Punishment  1806


The authority of a court to grant probation and to suspend execution of a sentence is wholly statutory, and the statute itself furnishes the measure of the power which may thus be exercised. People v. Brown (App. 1959) 172 Cal.App.2d 30, 342 P.2d 410, Sentencing And Punishment  1801; Sentencing And Punishment  1806


Court has no power to suspend a sentence except as an incident to granting probation. Oster v. Municipal Court of Los Angeles Judicial Dist., Los Angeles County (1955) 45 Cal.2d 134, 287 P.2d 755, Sentencing And Punishment  1810


Power of court to grant probation may be exercised in either of two ways: (1) by suspending imposition of sentence, in which case there is no judgment of conviction, or (2) by imposing sentence and thereafter suspending its execution Jones v. Maloney (App. 1951) 106 Cal.App.2d 80, 234 P.2d 666, Sentencing And Punishment  1931; Sentencing And Punishment  1932


A court not acting under the probation law has no power to suspend execution of any part of sentence imposed under the Vehicle Code, and order purporting to do so is void. Ellis v. Department of Motor Vehicles (App. 2 Dist. 1942) 51 Cal.App.2d 753, 125 P.2d 521, Sentencing And Punishment  1858


Court had no authority to suspend part of sentence where probation was denied. People v. Lopez (Super. 1941) 43 Cal.App.2d Supp. 854, 110 P.2d 140.


Municipal court on conviction for misdemeanor has power to effect suspension of sentence only by following method prescribed in this section. People v. Wallach (App. 1935) 8 Cal.App.2d 129, 47 P.2d 1071. Sentencing And Punishment  1804


Power to deny probation rests exclusively in trial court. People v. Kirwin (App. 2 Dist. 1927) 87 Cal.App. 783, 262 P. 803. Criminal Law  1147


This section conferring on court authority to place defendant on probation, does not authorize suspension of execution of sentence, except as an incident to granting of probation. In re Clark (App. 1 Dist. 1925) 70 Cal.App. 643, 234 P. 109. Sentencing And Punishment  1810

After judgment of conviction has been affirmed on appeal, the trial court has no power, under this section to suspend execution of sentence, since its power to suspend under such section expires in view of § 1191, with pronouncement of judgment followed or accompanied by no order of suspension, and does not attach anew after affirmance on appeal in view of §§ 1263, 1265. Beggs v. Superior Court of Santa Clara County (1918) 179 Cal. 130, 175 P. 642. Criminal Law  1192


The court cannot suspend sentence for burglary and remand the defendant to the custody of the sheriff, for the latter is required by § 1216, to forthwith deliver the defendant to the warden of the penitentiary, but a sentence may be suspended under this section by allowing the defendant to go at large “under the charge and supervision of the probation officer.” People v. Mendosa (1918) 178 Cal. 509, 173 P. 998. Sentencing And Punishment  1809


The court in exercising its powers to suspend sentence must do so in conformity with this section as amended. Ex parte Slattery (1912) 163 Cal. 176, 124 P. 856. Sentencing And Punishment  1804


Under this section amended by Act April 6, 1911, Stats.1911, p. 689, the court has an absolute power of suspension of sentence; and a failure to place the person released in charge of a probation officer does not invalidate the suspension. Ex parte Giannini (App. 1912) 18 Cal.App. 166, 122 P. 831. Sentencing And Punishment  1804


Unless otherwise provided by law, the court has inherent power to stay execution in a criminal case, and such power, being exercised for the benefit of the defendant, will be presumed to have been with his consent. Ex parte Collins (App. 1908) 8 Cal.App. 367, 97 P. 188. Sentencing And Punishment  476

17. ---- Construction of orders, suspending sentence or execution


California court's action, following conviction for assault with intent to commit robbery, of suspending sentence on condition that defendant be confined to county jail for one year, had the effect of a grant of probation. U. S. ex rel. Wissenfeld v. Fay, 1963, 214 F.Supp. 360. Sentencing And Punishment  1809

Where court after pronouncing judgment and sentence or imprisonment orders all or part of sentence suspended, such order is considered to be an informal grant of probation equivalent to a formal order, unless order of suspension is made after court has already expressly denied probation and it is clear that a grant of probation was not intended. Oster v. Municipal Court of Los Angeles Judicial Dist., Los Angeles County (1955) 45 Cal.2d 134, 287 P.2d 755. Sentencing And Punishment  1809


If court tries to suspend execution of a sentence otherwise than by granting probation, suspension is void; however it is only the suspension that is void, and the sentence remains valid. People v. Cravens (App. 1 Dist. 1953) 115 Cal.App.2d 201, 251 P.2d 717. Sentencing And Punishment  1810


Where defendant who had been convicted of forgery made application for probation and hearing was held thereon, and there was express denial of probation, suspended sentence as to three of six months sentence could not be construed as constituting a probation order. People v. Rickson (App. 4 Dist. 1952) 112 Cal.App.2d 475, 246 P.2d 700. Sentencing And Punishment  1809

Order suspending sentence is in legal effect the equivalent of an order granting probation. U.S. Fidelity & Guaranty Co. v. Justice Court of Vista Tp., San Diego County (App. 1950) 99 Cal.App.2d 683, 222 P.2d 292.


In absence of a denial of probation, the suspension of a sentence or a part thereof is recognized as the "granting of probation" although not accompanied by any other evidence that that was court's purpose. People v. Lopez (Super. 1941) 43 Cal.App.2d Supp. 854, 110 P.2d 140. Sentencing And Punishment  1815

Where probation was denied and hence court had no authority to suspend part of sentences, suspension, as tested on habeas corpus, would be held a nullity and sentences would be regarded as straight jail sentences. People v. Lopez (Super. 1941) 43 Cal.App.2d Supp. 854, 110 P.2d 140.

Order suspending all but 5 days of 6 months' jail sentence was equivalent to placing defendant on probation, and hence was a nullity under this section where defendant pleaded guilty of assault with deadly weapon. In re Sheffield (App. 2 Dist. 1936) 18 Cal.App.2d 177, 63 P.2d 829. Sentencing And Punishment  1843

The effect of an order granting probation to one who had pleaded guilty of an offense and releasing him from custody was to suspend the order of sentence. People v. Sapienzo (App. 1 Dist. 1923) 60 Cal.App. 626, 213 P. 274. Sentencing And Punishment  1815

In the case of People v. Phillips (App. 1 Dist. 1946) 76 Cal.App.2d 515, 173 P.2d 392, the court said: "In the instant case the appellant was sentenced on the conspiracy charge of the first count of the indictment and on the independent violation of section 337b of the Penal Code charged in the second count to 'imprisonment in the County Jail of the City and County of San Francisco, State of California, for the term of One (1) year, One Day suspended on probation, Count No. Two (2) term to run concurrently with term imposed in count No. One (1).' Since a motion for probation was denied by the trial court, for appellant admitted that he had been convicted of a prior felony (sec. 1203, Penal Code) and as the court made no reference of the matter to the probation officer for his investigation and report as required by section 1203 of the Penal Code (People v. Lopez, 43 Cal.App.Supp.2d 854, 861, 110 P.2d 140), it cannot be assumed that the court granted probation on the condition that Phillips serve the sentence to the county jail. Therefore, it must be held that a judgment was actually rendered rather than reserved during a probationary period."

Where execution of sentence for 180 days was "suspended for 3 days," and prisoner remained at liberty from May 13th to Feb. 7th following, without any revocation of suspension of sentence, suspension would not be presumed an admission to probation, under this section and judgment was not satisfied, and was still enforceable. In re Howard (App. 2 Dist. 1925) 72 Cal.App. 374, 237 P. 406. Sentencing And Punishment  1815

18. Determination--In general

It is not punishment but circumstances in mitigation of punishment which must be taken into account by court in granting or denying probation. People v. Pijal (App. 1 Dist. 1973) 109 Cal.Rptr. 230, 33 Cal.App.3d 682.

Sentencing And Punishment 🔑 1830

To determine whether a convicted defendant is a deserving candidate for clemency, trial court may consider the defendant's record and all the facts as disclosed by the evidence and by the probation officer's report, and in determining such matters the court is not bound by findings of fact necessarily implied in a verdict fixing the degree of the crime. People v. Hollis (App. 2 Dist. 1959) 1 Cal.Rptr. 293, 176 Cal.App.2d 92. Sentencing And Punishment 🔑 1838; Sentencing And Punishment 🔑 1870

The formal denial of defendant's petition for probation would not preclude the court from thereafter granting probation. People v. Brandon (App. 1958) 166 Cal.App.2d 96, 332 P.2d 708. Sentencing And Punishment 🔑 1914

A pronouncement by Superior Court that defendant, pleading guilty of burglary, be confined to county jail for one year, but that sentence be suspended on condition that he be turned over to state authorities as parole violator, was nullified by granting of continuance at same hearing, with direction that probation officer ascertain defendant's exact status at state penitentiary, so that later judgment, denying probation and sentencing defendant to state penitentiary, was only judgment in case and hence not void as placing defendant in double jeopardy. People v. Williams (App. 1 Dist. 1949) 93 Cal.App.2d 777, 209 P.2d 949. Double Jeopardy 🔑 31

19. ---- Rights of defendant, determination

All defendants are eligible for probation, in the discretion of the sentencing court, unless a statute provides otherwise. People v. Bruce G. (App. 3 Dist. 2002) 118 Cal.Rptr.2d 890, 97 Cal.App.4th 1233. Sentencing And Punishment 🔑 1830

Defendant did not have fundamental right to file for bankruptcy where condition of probation was that he not attempt to discharge restitution order by any bankruptcy proceedings. People v. Warnes (Super. 1992) 12 Cal.Rptr.2d 893. Bankruptcy 🔑 2222.1; Sentencing And Punishment 🔑 1983(3)

Where individual is eligible for probation the trial court must hear and determine his application therefor on the merits, and failure to do so constitutes denial of substantial right. In re Black (1967) 59 Cal.Rptr. 429, 66 Cal.2d 881, 428 P.2d 293. Sentencing And Punishment 🔑 1906


Applicant for probation has right to have his application considered by court. People v. Hutson (App. 3 Dist. 1963) 34 Cal.Rptr. 790, 221 Cal.App.2d 751. Sentencing And Punishment 🔑 1891


Failure of trial judge to rule upon defendant's application for probation after conviction amounted to a deprivation of a substantial right, entitling defendant to reversal of order of commitment subsequently entered. People v. Means (App. 2 Dist. 1953) 117 Cal.App.2d 29, 254 P.2d 585. Criminal Law 🔑 1186.4(11)


Under this section relating to probation, the granting of probation is within sound discretion of trial court, but it is mandatory that court hear and determine application for probation. People v. Neal (App. 2 Dist. 1951) 108 Cal.App.2d 491, 239 P.2d 38. Sentencing And Punishment 🔑 1802


Defendant is not entitled as matter of right to have application for probation considered after denial of previous application presenting same issues. People v. Sidwell (1945) 27 Cal.2d 121, 162 P.2d 913. Sentencing And Punishment 🔑 1923


Applicant for probation may require that his petition be considered by trial court, but may not demand clemency as

matter of right. People v. Blankenship (App. 4 Dist. 1936) 16 Cal.App.2d 606, 61 P.2d 352. Sentencing And Punishment  1812


Defendant in matter of probation has only right to have his application considered by court, and probation may not be demanded as matter of right. People v. Roach (App. 1934) 139 Cal.App. 384, 33 P.2d 895. Sentencing And Punishment  1812


Trial court should have permitted defendant convicted of perjury to file formal application for probation and proceeded to final determination of same. People v. Keyton (App. 1932) 122 Cal.App. 408, 10 P.2d 86. Sentencing And Punishment  1891


Only right of defendant in matter of probation is to have trial court exercise judicial discretion in lawful manner in granting or refusing probation. People v. Payne (App. 4 Dist. 1930) 106 Cal.App. 609, 289 P. 909. Sentencing And Punishment  1802

Refusal to consider application for probation, after plea of guilty to involuntary manslaughter, was erroneous. People v. Lovelace (App. 2 Dist. 1929) 97 Cal.App. 228, 275 P. 489. Sentencing And Punishment  1853



20. ---- Form, determination


A trial court is without the power to deny probation or impose sentence until it has expressly and in the language of this section stated on the record or in writing that it has read and considered the probation officer's report. People v. Arredondo (App. 5 Dist. 1975) 125 Cal.Rptr. 419, 52 Cal.App.3d 973. Sentencing And Punishment  300

Trial court was without power to deny probation or to impose sentence unless and until the court had expressly and in the language of this section stated on the record or in writing that he had read and considered the probation report; only the signature of the sentencing judge or his statement in open court that he had read and considered the report could comply with the requirement of this section. People v. Williams (App. 2 Dist. 1963) 35 Cal.Rptr. 805, 223 Cal.App.2d 676. Sentencing And Punishment  300


Statement of court, after hearing considerable argument on defendant's application for probation after pleas of guilty to charges of forgery and burglary, that "Well, probation is denied", amounted to a "determination" of the application as required by this section. People v. Escobar (App. 1 Dist. 1953) 122 Cal.App.2d 15, 264 P.2d 571. Sentencing And Punishment  1913


21. ---- Merits, determination


Where an individual is eligible for probation, the trial court must hear and determine his application for probation on the merits, and where a court erroneously concludes that a defendant is not eligible for probation and pronounces judgment without considering the merits, the judgment must be reversed not for a new trial but with directions to consider the application on its merits. People v. Hollis (App. 2 Dist. 1959) 1 Cal.Rptr. 293, 176 Cal.App.2d 92. Sentencing And Punishment  1906; Criminal Law  1188

Where record discloses that trial court, without considering the merits of application for probation, erroneously determined that defendant was not eligible for probation, judgment would have to be reversed with directions to trial court to consider application for probation on its merits. People v. Southack (1952) 39 Cal.2d 578, 248 P.2d 12. Criminal Law  1189


In prosecution for armed robbery under § 211a, failure of court to give jury opportunity to find that defendant may


have been armed with a dangerous weapon rather than with a deadly weapon did not require reversal on theory that under this section, making a robber armed with a deadly weapon ineligible to parole, defendant was deprived of having his application for parole heard on merits, in view of fact that application was denied without comment and could have been denied in discretion of court without reference to type of weapon. People v. Connolly (App. 1951) 103 Cal.App.2d 245, 229 P.2d 112. Criminal Law  1177

Decision of trial judge, after trial on merits, that he would not permit accused, convicted of statutory rape and another statutory offense, to file application for probation, was not abuse of discretion. People v. Roveano (App. 1933) 130 Cal.App. 222, 19 P.2d 506. Sentencing And Punishment  1862


Denial of probation after conviction for manslaughter because not sought before trial was erroneous, requiring reversal for consideration of application for probation on merits. People v. Miller (App. 2 Dist. 1931) 112 Cal.App. 535, 297 P. 40. Sentencing And Punishment  1891

22. ---- Prior arrests, determination


In considering defendant's application for probation, trial court's consideration of prior charge against defendant, which charge had been dismissed on constitutional grounds, was not a denial of defendant's due process rights, since trial court carefully limited its consideration of prior arrest to fact that it put defendant on notice of seriousness and possible consequences of being involved with marijuana. People v. Podesto (App. 5 Dist. 1976) 133 Cal.Rptr. 409, 62 Cal.App.3d 708. Constitutional Law  4731


Fact that defendant's prior arrest did not result in trial and conviction did not mean that trial court could not consider such arrest in deciding whether to place defendant on probation. People v. Podesto (App. 5 Dist. 1976) 133 Cal.Rptr. 409, 62 Cal.App.3d 708. Sentencing And Punishment  1872(1)


23. ---- Dismissed counts, determination


Exception to general rule of *Harvey*, that facts underlying dismissal of counts should not be considered for the purpose of denying probation, existed for defendant who violated prohibition against lewd or lascivious act with child under 14 because Penal Code § 288.1 specifically required a report on defendant's current mental condition to determine defendant's suitability for probation and this necessarily included facts underlying dismissed counts. People v. Franco (App. 5 Dist. 1986) 226 Cal.Rptr. 280, 181 Cal.App.3d 342, review denied. Sentencing And Punishment  1877


24. ---- Summary grant or denial, determination


Under this section, court in its discretion may summarily deny probation. People v. Navarro (App. 1946) 74 Cal.App.2d 544, 169 P.2d 265. Sentencing And Punishment  1802


Trial court did not abuse its discretion in summarily denying without a hearing defendant's petition for probation, following his conviction of manslaughter based upon attacks made by him with his fists upon a 70-year-old Indian. People v. Pilgrim (App. 3 Dist. 1946) 73 Cal.App.2d 391, 166 P.2d 636. Sentencing And Punishment  1853


Whether application for probation will be summarily denied is within the discretion of trial court. People v. Newman (App. 2 Dist. 1942) 56 Cal.App.2d 394, 132 P.2d 539. Sentencing And Punishment  1802



Justice's and police courts on conviction for misdemeanor may grant probation summarily. Ex parte Goetz (App. 4 Dist. 1941) 46 Cal.App.2d 848, 117 P.2d 47. Sentencing And Punishment  1890

While probation may be summarily denied, it is error summarily to grant it. People v. Lopez (Super. 1941) 43 Cal.App.2d Supp. 854, 110 P.2d 140. Sentencing And Punishment  1890


Where defendant's counsel stated, after motion for new trial was denied, that he wished to make application for probation, trial court summarily denied application stating reasons for denial, and counsel stated prior to pronouncement of judgment that he wished to renew application, trial court did not act arbitrarily in denying application with proviso that denial was without prejudice to renewal thereof upon determination of appeal from judgment, since there was no request for permission to file a formal application for probation, and hence no denial of such request. People v. Henry (App. 4 Dist. 1937) 23 Cal.App.2d 155, 72 P.2d 915. Sentencing And Punishment  1891


Summary denial of defendant's oral application for leave to file written application for probation was within trial court's discretion. People v. Krug (App. 1935) 10 Cal.App.2d 172, 51 P.2d 445. Sentencing And Punishment  1891


Summary denial of application for probation is permissible by this section. People v. Howe (App. 1934) 1 Cal.App.2d 518, 36 P.2d 820. Sentencing And Punishment  1891


Summary denial by trial judge of motion for probation by one conviction of felonious possession of a preparation of cocaine without reference to probation officer for investigation and recommendation was not abuse of discretion. People v. Bill (App. 1934) 140 Cal.App. 389, 35 P.2d 645. Sentencing And Punishment  276; Sentencing And Punishment  1848


25. --- Time, determination


Trial court has power to entertain application for probation at any time before execution of sentence, before or after judgment is pronounced, and on going down of remittitur. People v. Nevarez (App. 2 Dist. 1962) 27 Cal.Rptr. 287, 211 Cal.App.2d 347. Sentencing And Punishment  1894


Probation may be granted at any time before execution of sentence is begun and mere pronouncement of sentence or denial of application for probation before judgment does not preclude the granting of probation after judgment is pronounced or has been affirmed on appeal. Oster v. Municipal Court of Los Angeles Judicial Dist., Los Angeles County (1955) 45 Cal.2d 134, 287 P.2d 755. Sentencing And Punishment  1894


Application for probation by accused after conviction may be heard and determined at any time prior to execution of sentence. People v. Forbragd (App. 1932) 127 Cal.App. 768, 16 P.2d 755. Sentencing And Punishment  1894


Trial court was without power to hear probation application after remittitur where no stay of execution was ordered pending appeal. In re Bost (1931) 214 Cal. 150, 4 P.2d 534. Criminal Law  1192

Application for probation may be granted after affirmance of judgment of conviction on appeal. People v. Superior Court of Imperial County (1930) 208 Cal. 692, 284 P. 451. Sentencing And Punishment  1893

Trial court has power to hear and determine probation applications at any time prior to execution of sentence, regardless of appeal. Lloyd v. Superior Court of California, in and for Los Angeles County (1929) 208 Cal. 622, 283 P. 931. Criminal Law  1192



Under this section, trial court has power to hear and determine applications for probation at any time prior to execution of sentence, without regard to whether defendant has in the meantime undertaken to prosecute a vain and unsuccessful appeal. Lloyd v. Superior Court of California, in and for Los Angeles County (1929) 208 Cal. 622, 283 P. 931. Criminal Law  1192


Application for probation can be considered only before judgment. People v. Jones (App. 2 Dist. 1927) 87 Cal.App. 482, 262 P. 361. Sentencing And Punishment  1893


Trial court issuing commitment under which there was actual imprisonment was without right, more than year thereafter, to grant probation. In re Bost (App. 1 Dist. 1931) 113 Cal.App. 237, 298 P. 85. Sentencing And Punishment  1894


26. Conditions of probation--In general


See, also, Notes of Decisions under Penal Code § 1203.1.


California law, like federal law, lodges broad discretion in sentencing judges with regard to probation conditions and does not require that the conditions be directly connected to the crime of conviction. Cisneros-Perez v. Gonzales, C.A.9 (Cal.)2006, 465 F.3d 386. Sentencing And Punishment  1962; Sentencing And Punishment  1963


California prisoner who was granted probation, on condition that he serve time in county jail, was not sentenced both under § 489 relating to imprisonment and this section relating to probation, and could be subjected to imprisonment for offense upon revocation of probation. Howard v. Craven, C.D.Cal.1969, 306 F.Supp. 730. Sentencing And Punishment  2038

An unconstitutionally vague or overbroad probation condition does not come within the narrow exception to the forfeiture rule made for a so-called unauthorized sentence or a sentence entered in excess of jurisdiction. In re Sheena K. (2007) 55 Cal.Rptr.3d 716, 40 Cal.4th 875, 153 P.3d 282. Criminal Law  1042


A probation condition is constitutionally overbroad when it substantially limits a person's rights and those limitations are not closely tailored to the purpose of the condition. People v. Harrison (App. 3 Dist. 2005) 36 Cal.Rptr.3d 264, 134 Cal.App.4th 637, modified on denial of rehearing , review denied. Sentencing And Punishment  1963


A condition of probation which requires or forbids conduct which is not itself criminal is valid if the conduct is reasonably related to the crime of which the defendant was convicted or to future criminality. People v. Harrison (App. 3 Dist. 2005) 36 Cal.Rptr.3d 264, 134 Cal.App.4th 637, modified on denial of rehearing , review denied. Sentencing And Punishment  1963


A condition of probation will not be held invalid unless it (1) has no relationship to the crime of which the offender was convicted, (2) relates to conduct which is not in itself criminal, and (3) requires or forbids conduct which is not reasonably related to future criminality. People v. Harrison (App. 3 Dist. 2005) 36 Cal.Rptr.3d 264, 134 Cal.App.4th 637, modified on denial of rehearing , review denied. Sentencing And Punishment  1963


Under statute authorizing conditions of probation and suspension of sentence, trial courts are granted broad discretion to prescribe conditions of probation. People v. Juarez (App. 1 Dist. 2004) 8 Cal.Rptr.3d 238, 114 Cal.App.4th 1095. Sentencing And Punishment  1962


A condition of probation will not be held invalid unless it (1) has no relationship to the crime of which the offender


was convicted, (2) relates to conduct which is not in itself criminal, and (3) requires or forbids conduct which is not reasonably related to future criminality. People v. Tilehkooh (App. 3 Dist. 2003) 7 Cal.Rptr.3d 226, 113 Cal.App.4th 1433. Sentencing And Punishment  1963


An unreasonable condition of probation is one that is unrelated to the crime of which the offender was convicted, relates to conduct which is not itself criminal, requires or forbids conduct which is not reasonably related to future criminality, or does not serve the statutory ends of probation. In re Justin S. (App. 2 Dist. 2001) 113 Cal.Rptr.2d 466, 93 Cal.App.4th 811. Sentencing And Punishment  1963


A condition of probation will not be held invalid unless it (1) has no relationship to the crime of which the defendant was convicted, (2) relates to conduct which is not in itself criminal, (3) requires or forbids conduct which is not reasonably related to future criminality. People v. Kwizera (App. 4 Dist. 2000) 93 Cal.Rptr.2d 522, 78 Cal.App.4th 1238, review denied. Sentencing And Punishment  1963


Condition of probation, requiring that defendant “follow such course of conduct as the probation officer prescribes,” was reasonable and necessary to enable probation department to supervise compliance with specific conditions of probation. People v. Kwizera (App. 4 Dist. 2000) 93 Cal.Rptr.2d 522, 78 Cal.App.4th 1238, review denied. Sentencing And Punishment  1969(2)


Probation condition which merely directed defendant to cooperate with the probation officer and the court in determining the amount of attorney fees and his ability to pay was valid. People v. Hart (App. 3 Dist. 1998) 76 Cal.Rptr.2d 837, 65 Cal.App.4th 902, modified on denial of rehearing. Sentencing And Punishment  1969(2)

Reimbursement for services of deputy public defender who represented minor in juvenile court proceeding could not be imposed as a condition of probation. In re Elizabeth Anne S. (App. 4 Dist. 1982) 188 Cal.Rptr. 2, 138 Cal.App.3d 450. Infants  225

Condition of probation requiring juvenile to spend not less than five nor more than ten days in juvenile hall was to be eliminated, not because it was improper when the order was made, but because its intended therapeutic effect had evaporated with passage of time pending appeal, during which period juvenile was on probation. In re Demetrus H. (App. 2 Dist. 1981) 173 Cal.Rptr. 627, 118 Cal.App.3d 805. Infants  230.1

Condition of minor's probation following disposition order sustaining charge of unlawful driving and taking of motor vehicle that he “shall promptly notify the probation officer of each absence from a single class, and for each absence from a class that's unexcused, [he] will spend one day in juvenile hall”, was proper provision making regular school attendance a condition of probation, but may have appeared to be self-executing; therefore, the order was modified to delete reference to penalty for nonobservance of the condition. In re Jonathan M. (App. 2 Dist. 1981) 172 Cal.Rptr. 833, 117 Cal.App.3d 530. Infants  225

Trial judge has broad discretion in determining whether statutory conditions under which probation may be granted are satisfied; this discretion, however, is neither arbitrary nor capricious, but is an impartial discretion, guided and controlled by fixed legal principles, to be exercised in conformity with spirit of the law, in any manner to subserve and not to impede or defeat the ends of substantial justice. People v. Warner (1978) 143 Cal.Rptr. 885, 20 Cal.3d 678, 574 P.2d 1237. Sentencing And Punishment  1802

In granting probation, courts have very broad discretion to impose conditions. People v. McDowell (App. 2 Dist. 1976) 130 Cal.Rptr. 839, 59 Cal.App.3d 807. Sentencing And Punishment  1962

If condition of probation that defendant was not to go out of his house unless he was wearing shoes with leather

soles and metal taps on soles and heels meant that defendant was required to wear shoes with taps at all times outside his home, defendant would be precluded from participating in most forms of athletic activity, and if it meant that defendant was only required to wear shoes with taps as he left his house, condition would be virtually ineffective with respect to defendant's budding career as a purse snatcher; accordingly, trial court would be given an opportunity to clarify condition or impose different terms in place of condition. People v. McDowell (App. 2 Dist. 1976) 130 Cal.Rptr. 839, 59 Cal.App.3d 807. Criminal Law 1181.5(8)

Where the jury, upon finding defendant guilty of unlawful sexual intercourse with a female under the age of 18, recommends state prison for the defendant, the trial court must pronounce judgment by sentencing the defendant to state prison, thereby fixing the crime as a felony; but the court may thereafter suspend execution of the judgment and place defendant on probation subject to whatever terms and conditions in its discretion it sees fit to impose. People v. Arredondo (App. 5 Dist. 1975) 125 Cal.Rptr. 419, 52 Cal.App.3d 973. Sentencing And Punishment 1886; Sentencing And Punishment 375

Defendant, who made a plea bargain that contemplated possible probation with some local custody for felony offense of grand theft, was not obliged to accept probation upon onerous terms not expressed in bargain, but could not, absent a request to withdraw his guilty plea, reject probation that imposed no unusual, unreasonable or onerous conditions, with aim of obtaining a misdemeanor sentence, where no specific promise of such a sentence was made. People v. Renzulli (App. 4 Dist. 1974) 114 Cal.Rptr. 321, 39 Cal.App.3d 675. Criminal Law 273.1(2)

Where defendant had been sentenced on prior conviction for possession of marijuana to county jail although Health & S.C. § 11530 (repealed; see, now, Health & S.C. § 11357) required sentence to state prison, and at time of subsequent conviction for possession of marijuana sentence to county jail for a narcotic violation would be authorized and could result in possible benefit to defendant under this section prescribing conditions for probation and would eliminate prior felony conviction which could be used as basis of impeachment, cause would be remanded to trial court for reconsideration of imposition of sentence for prior conviction. People v. Sproul (App. 2 Dist. 1969) 83 Cal.Rptr. 55, 3 Cal.App.3d 154. Criminal Law 1181.5(8)

Probation condition prohibiting defendant from publicly or privately by words or conduct urging others to use or possess any narcotics or psychedelic drugs did not infringe on his freedom of speech, as condition prohibited only advocacy of violation of narcotics laws and it was that advocacy, not political argument, that defendant was found to have made. People v. Wright (App. 2 Dist. 1969) 80 Cal.Rptr. 335, 275 Cal.App.2d 738. Constitutional Law 2104; Sentencing And Punishment 1971(2)

Imposing state penitentiary sentence on defendant and allowing him to serve one year in county jail on that sentence with provision that if he got into further difficulty he would be sent to state penitentiary constituted granting of "probation" and subsequent order revoking probation, reimposing execution of sentence and committing defendant to state prison was final jurisdictional act in execution of outstanding valid judgment. People v. Atwood (App. 1 Dist. 1963) 34 Cal.Rptr. 361, 221 Cal.App.2d 216. Sentencing And Punishment 1935; Sentencing And Punishment 2034

An essential part of probation is a standard of conduct which the probationer is required to follow as a condition of his grant of probation. People v. Rye (Super. 1956) 140 Cal.App.2d Supp. 962, 296 P.2d 126. Sentencing And Punishment 1960

Power to trial court to impose conditions of probation is great. People v. Frank (App. 2 Dist. 1949) 94 Cal.App.2d 740, 211 P.2d 350.

Requirement as prerequisite to probation that 23 year old defendant afflicted with syphilis who had pleaded guilty to rape of 13 year old girl submit to an operation of vasectomy was not invalid as unreasonable. People v. Blankenship

(App. 4 Dist. 1936) 16 Cal.App.2d 606, 61 P.2d 352. Sentencing And Punishment 1978(2)

Prisoner who was sentenced to county jail for two years with six months off for good time earned was not entitled to be released eighteen months after imposition of sentence on ground that reduction of six months on good behavior was condition of probation where prisoner's application for probation filed at time he entered plea of guilty was expressly denied. Ex parte Eyre (App. 1934) 1 Cal.App.2d 451, 36 P.2d 842. Sentencing And Punishment 1960

27. ---- Relationship to offense, conditions of probation

An adult probation condition is unreasonable if it (1) has no relationship to the crime of which the offender was convicted, (2) relates to conduct which is not in itself criminal, and (3) requires or forbids conduct which is not reasonably related to future criminality. In re Byron B. (App. 4 Dist. 2004) 14 Cal.Rptr.3d 805, 119 Cal.App.4th 1013. Sentencing And Punishment 1963

A probation condition is valid as long as it relates to the crime for which the defendant is convicted, relates to other criminal conduct, or requires or forbids conduct which is reasonably related to future criminality. People v. Rugamas (App. 3 Dist. 2001) 113 Cal.Rptr.2d 271, 93 Cal.App.4th 518. Sentencing And Punishment 1963

Condition of probation which requires or forbids conduct which is not itself criminal is valid if that conduct is reasonably related to the crime of which the defendant was convicted or to future criminality. People v. Kwizera (App. 4 Dist. 2000) 93 Cal.Rptr.2d 522, 78 Cal.App.4th 1238, review denied. Sentencing And Punishment 1963

Probation condition must be reasonable in relation to the seriousness of the offense. People v. Kwizera (App. 4 Dist. 2000) 93 Cal.Rptr.2d 522, 78 Cal.App.4th 1238, review denied. Sentencing And Punishment 1963

Standard, that probation conditions which regulate conduct not itself criminal must be reasonably related to crime of which defendant was convicted or to future criminality, is violated by sentencing court when its determination is arbitrary or capricious or exceeds bounds of reason, all circumstances being considered. People v. Welch (1993) 19 Cal.Rptr.2d 520, 5 Cal.4th 228, 851 P.2d 802. Sentencing And Punishment 1963

Condition of probation will not be held invalid unless it has no relationship to crime of which defendant was convicted, relates to conduct which is not in itself criminal, and requires or forbids conduct which is not reasonably related to future criminality. People v. Warnes (Super. 1992) 12 Cal.Rptr.2d 893. Sentencing And Punishment 1963

Condition of probation which requires or forbids conduct which is not itself criminal is valid if that conduct is reasonably related to crime of which defendant was convicted or to future criminality. People v. Warnes (Super. 1992) 12 Cal.Rptr.2d 893. Sentencing And Punishment 1963

Power to impose conditions of probation, while broad, is not boundless; valid condition must either bear relationship to crime of which offender was convicted, or be reasonably related to avoidance of future criminality. In re Bernardino S. (App. 1 Dist. 1992) 5 Cal.Rptr.2d 746, 4 Cal.App.4th 613. Sentencing And Punishment 1963

Conditions of probation imposed upon defendant's conviction of soliciting an act of prostitution, prohibiting defendant from soliciting or accepting a ride from motorists or from approaching male pedestrians or motorists or engaging them in conversation upon a public street or in a public place, were overly broad in the otherwise legal activities proscribed, i.e., accepting a ride from a motorist, and engaging male pedestrians in conversation in a public

place. People v. Norris (Super. 1978) 152 Cal.Rptr. 134, 88 Cal.App.3d Supp. 32. Sentencing And Punishment 1983(2)

Courts will condemn conditions of probation that have no relationship to crime for which a defendant stands convicted, that relate to conduct not itself criminal, and that require or forbid conduct not reasonably related to future criminality. People v. Edwards (1976) 135 Cal.Rptr. 411, 18 Cal.3d 796, 557 P.2d 995. Sentencing And Punishment 1963

A condition of probation will not be held invalid unless it has no relationship to the crime of which the offender was convicted, relates to conduct which is not in itself criminal, and requires or forbids conduct which is not reasonably related to future criminality. People v. Kasinger (App. 1 Dist. 1976) 129 Cal.Rptr. 483, 57 Cal.App.3d 975. Sentencing And Punishment 1963

Condition of probation will not be held invalid unless it has no relationship to the crime of which the offender was convicted and relates to conduct which is not in itself criminal and requires or forbids conduct which is not reasonably related to future criminality; disapproving prior cases which stated the test in the disjunctive rather than the conjunctive. People v. Lent (1975) 124 Cal.Rptr. 905, 15 Cal.3d 481, 541 P.2d 545. Sentencing And Punishment 1963

28. --- Substance abuse, conditions of probation

Condition of defendant's probation that he abstain from the use of alcohol was not improper on basis that his alleged alcoholic disease made him constitutionally unable to abide by such condition where defendant willingly agreed to condition his opportunity for probation on terms rationally related to his criminal activity, which was allegedly based upon his alcoholism. People v. Mitchell (App. 4 Dist. 1981) 178 Cal.Rptr. 188, 125 Cal.App.3d 715. Sentencing And Punishment 1980(2)


Where defendant found himself in court as a direct result of his drinking at home and then going to the store for more beer, and where he stated that he usually drinks a six-pack of beer a day and sometimes drinks half a case of beer, under such facts the probation condition that he abstain from alcohol and stay out of places where it is the chief item of sale, even if intruding on his constitutional rights, was not invalid. Gilliam v. Los Angeles Municipal Court (App. 2 Dist. 1979) 159 Cal.Rptr. 74, 97 Cal.App.3d 704, certiorari denied 100 S.Ct. 1085, 445 U.S. 907, 63 L.Ed.2d 323. Sentencing And Punishment 1980(2)


29. --- Searches and seizures, conditions of probation


Probation condition that defendant refrain from use or possession of drugs, even if prohibiting conduct not criminal in itself, related to future criminality and thus was reasonably related to defendant's conviction for possession of illegal weapon. People v. Beagle (App. 5 Dist. 2004) 22 Cal.Rptr.3d 757, 125 Cal.App.4th 415. Sentencing And Punishment 1980(2)


A probation condition allowing searches was related to possession of contraband and thus was reasonably related to defendant's conviction for possession of illegal weapon. People v. Beagle (App. 5 Dist. 2004) 22 Cal.Rptr.3d 757, 125 Cal.App.4th 415. Sentencing And Punishment 1995

Imposition, as condition of probation, of requirement that defendant submit to warrantless searches by law enforcement officers was reasonable as court imposed such condition to help in ascertaining whether defendant was abiding by other conditions of probation that he only engage in deprogramming of "cult" members on a voluntary basis and considering connection between defendant's vocation and crimes of which he was convicted, kidnapping


and false imprisonment based on abduction of suspected "cult" member. People v. Patrick (App. 4 Dist. 1981) 179 Cal.Rptr. 276, 126 Cal.App.3d 952, Sentencing And Punishment  1993


Provision whereby defendant waives right of service of search warrant at any time of day or night may properly be imposed as condition to probation where defendant is narcotics offender. People v. Giminez (1975) 120 Cal.Rptr. 577, 14 Cal.3d 68, 534 P.2d 65, Sentencing And Punishment  1993


A condition of probation requiring defendant to waive his rights under statutes regarding knock and notice procedures by law enforcement officers is not reasonably related to authority of court to grant probation and is not proper. People v. Freund (App. 4 Dist. 1975) 119 Cal.Rptr. 762, 48 Cal.App.3d 49, Sentencing And Punishment  1990


Condition of probation that defendant submit to search and seizure by probation officer or peace officer during night or day with or without search warrant was not unconstitutional. People v. Fitzpatrick (App. 1 Dist. 1970) 84 Cal.Rptr. 78, 3 Cal.App.3d 824, Sentencing And Punishment  1993

30. ---- Restitution, conditions of probation

While equal protection requires court to grant hearing on defendant's ability to pay restitution, it does not require trial judge to make finding of ability to pay before ordering restitution. People v. Warnes (Super. 1992) 12 Cal.Rptr.2d 893, Constitutional Law  3808

Condition of probation that defendant not attempt to discharge restitution order by any bankruptcy proceedings related to crime of which defendant was convicted as it guaranteed that defendant not profit from his wrongdoing; defendant was convicted of making fraudulent and misleading statements to induce auto sales and restitution order was designed to compensate victims for losses suffered as a result of his criminal conduct. People v. Warnes (Super. 1992) 12 Cal.Rptr.2d 893, Sentencing And Punishment  1973(2)

Restitution order, as condition of probation, requiring defendant, convicted of one embezzlement count, to repay embezzled funds, including funds which were basis of five embezzlement counts which were dismissed as result of plea bargain, was valid, where there was overwhelming evidence that dismissed uncharged instances of embezzlement were committed with same state of mind as that present in count of embezzlement to which she pleaded guilty and where defendant expressly agreed to allow court to consider uncharged instances of embezzlement in determining whether to grant probation. People v. Baumann (App. 4 Dist. 1985) 222 Cal.Rptr. 32, 176 Cal.App.3d 67, review denied, Sentencing And Punishment  1973(2)

County probation department was not liable for failing to warn probationer's employer that probationer was convicted embezzler, thus enabling probationer to embezzle funds from employer, where probation department did not place probationer with employer or direct him in his employment activities and had no other special relationship with employer, notwithstanding fact that probationer was to devote some of his earnings to restitution required by probation. J. A. Meyers & Co. v. Los Angeles County Probation Dept. (App. 2 Dist. 1978) 144 Cal.Rptr. 186, 78 Cal.App.3d 309, Counties  141

Where additional circumstances were developed in probation hearing and where court found that total culpability of defendant was not displayed in the setting of the one case in which he was convicted of grand theft but was reflected in further evidence and that defendant had made false statements in connection with what he had done with other funds which he had been accused and acquitted of stealing, trial court did not err in imposing, as condition of probation, requirement that defendant not only make restitution for the funds which he was convicted of stealing, but also make restitution of other funds which he had been acquitted of stealing. People v. Lent (1975) 124 Cal.Rptr.

905, 15 Cal.3d 481, 541 P.2d 545. Sentencing And Punishment 1973(2)

A defendant of whom reparation is required as a condition of probation may urge, at hearing on probation, that he is being deprived of property without due process of law, and may offer evidence in support of contention. People v. Alexander (App. 1 Dist. 1960) 6 Cal.Rptr. 153, 182 Cal.App.2d 281. Sentencing And Punishment 1897

Order admitting one pleading guilty of violating Corporate Securities Act to probation on condition that he reimburse investors was valid, notwithstanding trial court's remark on subsequent revocation that only purpose of granting probation had been to give defendant opportunity to make reimbursement. People v. Lippner (1933) 219 Cal. 395, 26 P.2d 457. Sentencing And Punishment 1973(2)

31. --- Fines, conditions of probation

Court could impose fine not exceeding \$200 as condition of probation of defendant convicted of bookmaking. People v. Labarbera (App. 1 Dist. 1949) 89 Cal.App.2d 639, 201 P.2d 584.

Court may impose fine as condition to probation of one violating Vehicle Act, provided punishment resulting is not greater than that jury recommends. In re McVeity (App. 2 Dist. 1929) 98 Cal.App. 723, 277 P. 745. Automobiles 359.1

32. Reports--In general

A probation report before sentencing is not necessarily required if defendant is statutorily ineligible for probation, for example, because of a prior strike. People v. Dobbins (App. 3 Dist. 2005) 24 Cal.Rptr.3d 882, 127 Cal.App.4th 176. Sentencing And Punishment 276

Only when a defendant is statutorily ineligible for probation on all counts may a court not order the preparation of a probation report. People v. Bohannon (App. 2 Dist. 2000) 98 Cal.Rptr.2d 488, 82 Cal.App.4th 798, review denied. Sentencing And Punishment 276

There was no abuse of discretion in trial court's failure to obtain probation report for defendant where the court did have before it a probation department "1203c report," a face sheet with a police report attached, and where defendant was ineligible for probation. People v. Goldstein (App. 1 Dist. 1990) 272 Cal.Rptr. 881, 223 Cal.App.3d 465, review denied. Sentencing And Punishment 276

Right to current probation report is not dependent on serving time in custody. People v. Mercant (App. 5 Dist. 1989) 265 Cal.Rptr. 315, 216 Cal.App.3d 1192. Sentencing And Punishment 290

Error from trial court's failure to obtain current probation report for sentencing defendant on guilty plea was harmful; plea bargained sentence was merely the maximum that could be imposed, and court could have withdrawn its approval of plea. People v. Mercant (App. 5 Dist. 1989) 265 Cal.Rptr. 315, 216 Cal.App.3d 1192. Criminal Law 1177

A defendant subjected to a probation report prior to sentence is afforded an opportunity to present probation counselors with out-of-court character testimony and explanations of his guilt and is also afforded benefit of counsel at all stages of proceedings if he so desires, including presence of an attorney at probation and sentencing hearing. People v. Edwards (1976) 135 Cal.Rptr. 411, 18 Cal.3d 796, 557 P.2d 995. Sentencing And Punishment 280; Sentencing And Punishment 1895

Court was not required to refer defendant's case to probation department under this section providing for a referral in every case in which a person is convicted of a felony and is eligible for probation, in light of fact that defendant had been previously placed on probation in 1971. People v. Ham (App. 2 Dist. 1975) 118 Cal.Rptr. 591, 44 Cal.App.3d 288. Sentencing And Punishment 🔑 276

A state prisoner at a hearing to determine whether certain prior narcotics convictions should be struck was entitled to an up-to-date probation report or current report from the director of corrections, and such report should have been obtained by sentencing court before determining whether or not to strike a prior federal conviction. In re Gomez (App. 3 Dist. 1973) 107 Cal.Rptr. 609, 31 Cal.App.3d 728. Sentencing And Punishment 🔑 1311

Fact that court, which adjourned criminal proceedings and initiated addiction hearing after reading report of probation officer as to defendant found guilty of possession of heroin, pronounced no sentence but would have been within its rights to review probation reports and to receive proof of prior convictions had it pronounced sentence refuted defendant's contentions that his sentence was apparently increased by judge's reading of certain records and that defendant had no opportunity to cross-examine concerning them. People v. Garcia (App. 2 Dist. 1970) 91 Cal.Rptr. 671, 13 Cal.App.3d 486. Sentencing And Punishment 🔑 300

Because confusion as to admissibility of statements made to probation officers might have caused defendant to refuse to discuss case, justice would be best served by returning case to trial court for preparation of a new probation report and resentencing. People v. Harrington (1970) 88 Cal.Rptr. 161, 2 Cal.3d 991, 471 P.2d 961, certiorari denied 91 S.Ct. 1384, 402 U.S. 923, 28 L.Ed.2d 662. Criminal Law 🔑 1181.5(8)


Where probation officer had before him defendant's records disclosing convictions in 1957 and 1964 and knew that defendant was in prison, defendant was not entitled to personal interview with probation officer prior to sentencing to prison. People v. Scott (App. 2 Dist. 1968) 69 Cal.Rptr. 901, 263 Cal.App.2d 581. Sentencing And Punishment 🔑 289


Where district court of appeal vacated judgment of conviction of defendant on two counts for selling marijuana for sole purpose of allowing trial court to hear and act on defendant's application for probation, trial court erred in failing to obtain current probation report and to consider behavior of defendant while incarcerated pending disposition of appeal before pronouncing sentence. People v. Keller (App. 1 Dist. 1966) 54 Cal.Rptr. 154, 245 Cal.App.2d 711. Criminal Law 🔑 1192


Where reviewing court ordered a reduction of convictions for receiving stolen property to an attempt to receive stolen property and judgment and probation order were reversed and the cases were remanded, trial court erred in refusing to refer the defendants' cases to probation department for current report before imposing sentence of imprisonment against one defendant and imposing terms of probation as to other defendant. People v. Rojas (1962) 21 Cal.Rptr. 564, 57 Cal.2d 676, 371 P.2d 300. Sentencing And Punishment 🔑 1890


Where case was referred to special officer for report with respect to probation, and at rehearing original probation report, approximately one year old, was used and trial judge stated that she would assume that defendant's conduct had been good during her incarceration and that any report would be favorable as to her progress during confinement, defendant was not prejudiced by not having another or current report before court. People v. Miller (App. 1 Dist. 1960) 8 Cal.Rptr. 578, 186 Cal.App.2d 34. Criminal Law 🔑 1177

Where no copy of probation officer's report was made available to counsel for defendant convicted of sale of heroin until less than 24 hours before hearing on report, but court, after partially hearing the matter, ordered continuance of one week, error in not making copy of report available to defendant's counsel at least two days prior to hearing on such report was cured. People v. Valdivia (App. 1 Dist. 1960) 5 Cal.Rptr. 832, 182 Cal.App.2d 145. Sentencing And Punishment 🔑 295

Where defendant was, because of prior felony convictions, ineligible for probation, trial court acted within its rights in refusing to refer his case to probation officer for report and recommendations. People v. Baker (App. 1958) 164 Cal.App.2d 99, 330 P.2d 240, certiorari denied 79 S.Ct. 745, 359 U.S. 956, 3 L.Ed.2d 763, certiorari denied 80 S.Ct. 112, 361 U.S. 851, 4 L.Ed.2d 90. Sentencing And Punishment  276


Defendant whose admitted prior conviction of a felony rendered him ineligible for probation could not complain on petition for coram nobis of trial court's failure to require a report of probation officer before sentencing defendant for subsequent offense. People v. Tell (App. 1 Dist. 1954) 126 Cal.App.2d 208, 271 P.2d 568. Criminal Law  1556


Probation officer could make a sufficiently comprehensive investigation and report to enable court to pass fairly on application of defendant for probation without officer discussing the offense, which defendant had committed, with the defendant. People v. Wilson (App. 1 Dist. 1954) 123 Cal.App.2d 673, 267 P.2d 27. Sentencing And Punishment  282


Trial court before pronouncing sentence upon police officer convicted of battery properly referred the matter to county probation officer for a report. People v. Giles (Super. 1945) 70 Cal.App.2d Supp. 872, 161 P.2d 623. Sentencing And Punishment  275

33. ---- Purpose, reports


Purpose of probation officer's report is to assist court in determining whether defendant should be granted probation, and, if so, the terms thereof. People v. Lockwood (1967) 61 Cal.Rptr. 131, 253 Cal.App.2d 75; People v. Valdivia (1960) 5 Cal.Rptr. 832, 182 Cal.App.2d 145.

Probation report is advisory only. People v. Llamas (App. 4 Dist. 1998) 78 Cal.Rptr.2d 759, 67 Cal.App.4th 35, rehearing denied, review denied. Sentencing And Punishment  300

Primary function served by probation report required by this section is to assist the court in determining an appropriate disposition after conviction. People v. Edwards (1976) 135 Cal.Rptr. 411, 18 Cal.3d 796, 557 P.2d 995. Sentencing And Punishment  275


Primary purpose of a referral under this section providing that in a case in which a person is convicted of a felony and is eligible for probation, court shall refer matter to probation officer to investigate and report to court is to determine a defendant's eligibility for probation. People v. Ham (App. 2 Dist. 1975) 118 Cal.Rptr. 591, 44 Cal.App.3d 288. Sentencing And Punishment  277


34. ---- Contents, reports


That this section, mandating inclusion of certain information in probation report did not authorize inclusion of victim statements did not mean that sentencing judge was precluded from considering letters from crime victim's family and friends by statutory prohibition against accepting certain verbal or written statements in aggravation or mitigation of punishment. People v. Mockel (App. 5 Dist. 1990) 276 Cal.Rptr. 559, 226 Cal.App.3d 581. Sentencing And Punishment  318


Probation report on defendant convicted of burglary and attempted burglary, while not improper by containing data from district attorney's files rather than from official reports, was improper in containing police contacts not leading to arrests or convictions without full supporting information, but harmful effects were partially ameliorated by probation officer's asking defendant about some of these entries. People v. Santana (App. 2 Dist. 1982) 184


Cal.Rptr. 733, 134 Cal.App.3d 773. Sentencing And Punishment  283



Inclusion in probation report of prior police contacts which did not result in convictions was not violative of due process where report did not contain bare "rap sheet" information, but lengthy supporting factual information and on the whole was adequate and was not misleading. People v. Ratcliffe (App. 1 Dist. 1981) 177 Cal.Rptr. 627, 124 Cal.App.3d 808. Constitutional Law  4706


Fact that court did not follow recommendation of probation officer that high term of four years be imposed, but rather imposed middle term of three years for defendant's conviction for assault by means of force likely to produce great bodily injury and that court advanced several specific reasons, none of which related to the alleged violent pattern of defendant, in articulating its reasons for denying probation, supported a conclusion that defendant was not prejudiced by statement within probation report concerning pattern of violent conduct in the past, which report contained basic factual information relating to events consisting of convictions following arrests of defendant. People v. Lutz (App. 2 Dist. 1980) 167 Cal.Rptr. 309, 109 Cal.App.3d 489. Criminal Law  1177


Certain fingerprint identification developed during defendant's trial and which trial court precluded prosecution from offering and using at trial was properly included in probation report and properly considered as a factor in sentencing where exclusion of such evidence was based on avoidance of trial surprise, not illegality. People v. Lassell (App. 1 Dist. 1980) 166 Cal.Rptr. 678, 108 Cal.App.3d 720. Sentencing And Punishment  289


Defendant was not deprived of adequate time to prepare for sentencing hearing as a result of trial court's reliance on probation report, since inclusion of aggravating factors in probation report gave defendant more time to prepare than if they were included in a statement in aggravation. People v. Pinon (App. 2 Dist. 1979) 158 Cal.Rptr. 425, 96 Cal.App.3d 904. Sentencing And Punishment  338

Under § 1538.5, evidence that was suppressed before trial was inadmissible at defendant's subsequent sentencing hearing and should have been stricken from the presentence report. People v. Belleci (1979) 157 Cal.Rptr. 503, 24 Cal.3d 879, 598 P.2d 473. Sentencing And Punishment  321

A denial of probation is a judicial act rendered with full panoply of procedural protections in that sentencing court is provided with a report of probation officer containing information of defendant's background, his prior involvements, if any, with law enforcement agencies, his propensities and dispositions, his future plans if probation is granted, and is required to verify that it has read and considered such report which often contains communications both favorable and unfavorable to defendant. People v. Edwards (1976) 135 Cal.Rptr. 411, 18 Cal.3d 796, 557 P.2d 995. Sentencing And Punishment  1890; Sentencing And Punishment  300

A probation report need not be limited to the facts or circumstances of the immediate offense and may contain extrajudicial material. People v. Chi Ko Wong (1976) 135 Cal.Rptr. 392, 18 Cal.3d 698, 557 P.2d 976. Sentencing And Punishment  282

Where petitioner let probation report statements, the truth or falsity of which he should have known, be considered without objection at probation and sentencing hearing, he could not thereafter, on petition for writ of habeas corpus, claim that statements in the report were never made to the probation officer. In re Beal (App. 2 Dist. 1975) 120 Cal.Rptr. 11, 46 Cal.App.3d 94. Habeas Corpus  506

Use of presentence probation officer's report by trial court in determining sentence to be imposed on defendant was proper and did not infringe on defendant's constitutional rights even though adverse statements therein had been procured from defendant without an affirmative compliance with rules respecting coerced confessions. People v. Smith (App. 2 Dist. 1968) 66 Cal.Rptr. 551, 259 Cal.App.2d 814. Sentencing And Punishment  287