

File No. 210550

Committee Item No. _____

Board Item No. 22

COMMITTEE/BOARD OF SUPERVISORS

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Date: _____

Board of Supervisors Meeting

Date: May 18, 2021

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- Assembly Bill No. 812 - 3/18/21
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Prepared by: Lisa Lew

Date: May 14, 2021

Prepared by: _____

Date: _____

1 [Supporting California State Assembly Bill No. 812 (Garcia) - The Repeal of the Spousal Rape
2 Exception Act]

2

3 **Resolution supporting California State Assembly Bill No. 812, The Repeal of the**
4 **Spousal Rape Exception Act, authored by State Assembly Member Cristina Garcia,**
5 **which would eliminate the “spousal rape exception” in the California Penal Code**
6 **(Section 262) to ensure that “spousal rape” is treated and punished as seriously as**
7 **rape of a non-spouse.**

8

9 WHEREAS, California is one of 11 states that distinguish between spousal rape and
10 other forms of sexual assault; and

11 WHEREAS, Under existing law, those convicted of spousal rape may be eligible for
12 probation instead of prison or jail, unlike individuals who are convicted for other forms of
13 sexual assault; and

14 WHEREAS, Although anyone convicted of rape is required to register as a sex
15 offender, those convicted of spousal rape must register only if the act involved the use of force
16 or violence that led to a prison sentence; and

17 WHEREAS, A person accused of raping an unconscious person is not able to plea
18 bargain, however, if the person accused is married to the unconscious person, they may be
19 able to plea bargain; and

20 WHEREAS, According to the National Coalition Against Domestic Violence (NCADV),
21 between 10-14% of married women have been or may experience rape by their spouse; and

22 WHEREAS, State Assembly Bill No. 812, The Repeal of the Spousal Rape Exception
23 Act, authored by State Assembly Member Cristina Garcia, would eliminate the “spousal rape
24 exception” in the California Penal Code (Section 262) to ensure that “spousal rape” is treated
25 and punished as seriously as rape of a non-spouse; and

1 WHEREAS, The “spousal rape exception” is an antiquated law and effectively allows
2 an abuser to violate their non-consenting spouse with minimal accountability; and

3 WHEREAS, Repealing the “spousal rape exception” would ensure that all abusers
4 would be held accountable regardless of marital status; and

5 WHEREAS, Eliminating the distinction between spousal rape and other forms of sexual
6 assault is an urgent matter for victims in their pursuit of justice; now, therefore, be it

7 RESOLVED, That the San Francisco Board of Supervisors supports Assembly Bill No.
8 812, The Repeal of the Spousal Rape Exception Act, which would eliminate the “spousal rape
9 exception” in the California Penal Code (Section 262) to ensure that “spousal rape” is treated
10 and punished as seriously as rape of a non-spouse; and, be it

11 FURTHER RESOLVED, That the Clerk of the Board of Supervisors shall transmit a
12 copy of this Resolution to the Governor, the author of the Bill, and all members of the
13 Legislature representing the City and County of San Francisco.

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AMENDED IN ASSEMBLY MARCH 18, 2021

CALIFORNIA LEGISLATURE—2021–22 REGULAR SESSION

ASSEMBLY BILL

No. 812

**Introduced by Assembly Member Members Cristina Garcia and
Low**

(Principal coauthor: Senator Cortese)

***(Coauthors: Assembly Members Aguiar-Curry, Bauer-Kahan,
Boerner Horvath, Carrillo, Cervantes, Friedman, Petrie-Norris,
Blanca Rubio, Waldron, and Wicks)***

(Coauthors: Senators Eggman, Caballero, and Gonzalez)

February 16, 2021

~~An act to amend Section 485 of the Penal Code, relating to criminal law.~~ *An act to amend Sections 2236.1, 2966, 10186.1, and 11319.2 of the Business and Professions Code, to amend Sections 1946.7 and 1946.8 of the Civil Code, to amend Sections 1036.2, 1103, and 1107 of the Evidence Code, to amend Sections 3044 and 6930 of the Family Code, to amend Sections 13956 and 53165 of the Government Code, to amend Sections 136.2, 136.7, 209, 261, 261.6, 261.7, 264, 264.1, 264.2, 273.7, 290, 292, 667, 667.5, 667.51, 667.6, 667.61, 667.71, 667.8, 667.9, 679.02, 680, 784.7, 799, 868.5, 1048, 1127e, 1170.12, 1192.5, 1202.1, 1203.055, 1203.06, 1203.066, 1203.067, 1203.075, 1203.08, 1203.09, 1270.1, 1346.1, 1387, 1524.1, 1601, 2933.5, 2962, 3000, 3053.8, 3057, 11105.3, 11160, 12022.3, 12022.53, 12022.8, 12022.85, 13701, 13750, 13837, and 14205 of, and to repeal Section 262 of, the Penal Code, to amend Section 5164 of the Public Resources Code, to amend Section 4467 of the Vehicle Code, and to amend Sections 6500 and 15610.63 of the Welfare and Institutions Code, relating to crimes.*

LEGISLATIVE COUNSEL'S DIGEST

AB 812, as amended, Cristina Garcia. ~~Crimes: theft.~~ *Rape of a spouse.*

Existing law defines rape as an act of sexual intercourse accomplished with a person not the spouse of the perpetrator under certain circumstances, including where the victim is incapable of giving legal consent because of a mental disorder or developmental or physical disability, where the victim is not aware of the essential characteristics of the act due to the perpetrator's fraudulent representation that the act serves a professional purpose, and where the victim submits to the act under the belief that the perpetrator is someone known to the victim other than the perpetrator, and the perpetrator intentionally and fraudulently induces that belief.

Existing law separately defines rape of a spouse as an act of sexual intercourse accomplished with the spouse of the perpetrator under similar circumstances as nonspousal rape, except that spousal rape does not include acts of sexual intercourse accomplished under the specific circumstances described above.

This bill would repeal the provisions relating to spousal rape and make conforming changes, thereby making an act of sexual intercourse accomplished with a spouse punishable as rape if the act otherwise meets the definition of rape. By changing the definition of a crime, this bill would impose a state-mandated local program.

Existing law authorizes an employer to request from the Department of Justice records of all convictions or any arrest pending adjudication for specified offenses for a person who applies for a license, employment, or volunteer position, in which the person would have supervisory or disciplinary power over a minor and requires the employer to notify the parent or guardian of a child if a person with specified convictions will have supervisory or disciplinary power over that child. Existing law exempts certain convictions, including spousal rape, from that notification requirement.

This bill would remove the exemption for spousal rape or any other felony conviction and would instead exempt only misdemeanor convictions from that notification.

The bill would make numerous conforming changes.

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

This bill would provide that no reimbursement is required by this act for a specified reason.

~~Existing law provides that a person is guilty of theft if the person finds lost property under circumstances that give them knowledge of or means of inquiry as to the true owner, and if the person appropriates the property to their own use, or to the use of another person not entitled to the property, without first making reasonable and just efforts to find the owner and to restore the property to the owner.~~

~~This bill would make technical, nonsubstantive changes to those provisions:~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~yes.
State-mandated local program: ~~no~~yes.

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

1 SECTION 1. Section 2236.1 of the Business and Professions
2 Code is amended to read:

3 2236.1. (a) A physician and surgeon’s certificate shall be
4 suspended automatically during any time that the holder of the
5 certificate is incarcerated after conviction of a felony, regardless
6 of whether the conviction has been appealed. The Division of
7 Medical Quality shall, immediately upon receipt of the certified
8 copy of the record of conviction, determine whether the certificate
9 of the physician and surgeon has been automatically suspended
10 by virtue of ~~his or her~~ *the physician and surgeon’s* incarceration,
11 and if so, the duration of that suspension. The division shall notify
12 the physician and surgeon of the license suspension and of ~~his or~~
13 ~~her~~ *the* right to elect to have the issue of penalty heard as provided
14 in this section.

15 (b) Upon receipt of the certified copy of the record of conviction,
16 if after a hearing it is determined therefrom that the felony of which
17 the licensee was convicted was substantially related to the
18 qualifications, functions, or duties of a physician and surgeon, the
19 Division of Medical Quality shall suspend the license until the
20 time for appeal has elapsed, if ~~no~~ *an* appeal has *not* been taken, or
21 until the judgment of conviction has been affirmed on appeal or
22 has otherwise become final, and until further order of the division.
23 The issue of substantial relationship shall be heard by an
24 administrative law judge from the Medical Quality Hearing Panel

1 sitting alone or with a panel of the division, in the discretion of
2 the division.

3 (c) Notwithstanding subdivision (b), a conviction of any crime
4 referred to in Section 2237, or a conviction of Section 187, 261,
5 262, 288, or ~~288~~ *former Section 262*, of the Penal Code, shall be
6 conclusively presumed to be substantially related to the
7 qualifications, functions, or duties of a physician and surgeon and
8 ~~no~~ a hearing shall *not* be held on this issue. Upon its own motion
9 or for good cause shown, the division may decline to impose or
10 may set aside the suspension when it appears to be in the interest
11 of justice to do so, with due regard to maintaining the integrity of
12 and confidence in the medical profession.

13 (d) (1) Discipline may be ordered in accordance with Section
14 2227, or the Division of Licensing may order the denial of the
15 license when the time for appeal has elapsed, the judgment of
16 conviction has been affirmed on appeal, or an order granting
17 probation is made suspending the imposition of sentence,
18 irrespective of a subsequent order under Section 1203.4 of the
19 Penal Code allowing the person to withdraw ~~his or her~~ *the* plea of
20 guilty and to enter a plea of not guilty, setting aside the verdict of
21 guilty, or dismissing the accusation, complaint, information, or
22 indictment.

23 (2) The issue of penalty shall be heard by an administrative law
24 judge from the Medical Quality Hearing Panel sitting alone or with
25 a panel of the division, in the discretion of the division. The hearing
26 shall not be had until the judgment of conviction has become final
27 or, irrespective of a subsequent order under Section 1203.4 of the
28 Penal Code, an order granting probation has been made suspending
29 the imposition of sentence; except that a licensee may, at ~~his or~~
30 ~~her~~ *the licensee's* option, elect to have the issue of penalty decided
31 before those time periods have elapsed. Where the licensee so
32 elects, the issue of penalty shall be heard in the manner described
33 in this section at the hearing to determine whether the conviction
34 was substantially related to the qualifications, functions, or duties
35 of a physician and surgeon. If the conviction of a licensee who has
36 made this election is overturned on appeal, any discipline ordered
37 pursuant to this section shall automatically cease. ~~Nothing in this~~
38 ~~This~~ *subdivision shall does not* prohibit the division from pursuing
39 disciplinary action based on any cause other than the overturned
40 conviction.

1 (e) The record of the proceedings resulting in the conviction,
2 including a transcript of the testimony therein, may be received in
3 evidence.

4 (f) The other provisions of this article setting forth a procedure
5 for the suspension or revocation of a physician and surgeon's
6 certificate shall not apply to proceedings conducted pursuant to
7 this section.

8 *SEC. 2. Section 2966 of the Business and Professions Code is*
9 *amended to read:*

10 2966. (a) A psychologist's license shall be suspended
11 automatically during any time that the holder of the license is
12 incarcerated after conviction of a felony, regardless of whether the
13 conviction has been appealed. The board shall, immediately upon
14 receipt of the certified copy of the record of conviction, determine
15 whether the license of the psychologist has been automatically
16 suspended by virtue of ~~his or her~~ *the psychologist's* incarceration,
17 and if so, the duration of that suspension. The board shall notify
18 the psychologist of the license suspension and of ~~his or her~~ *the*
19 right to elect to have the issue of penalty heard as provided in this
20 section.

21 (b) Upon receipt of the certified copy of the record of conviction,
22 if after a hearing it is determined therefrom that the felony of which
23 the licensee was convicted was substantially related to the
24 qualifications, functions, or duties of a psychologist, the board
25 shall suspend the license until the time for appeal has elapsed, if
26 ~~no~~ *an* appeal has *not* been taken, or until the judgment of conviction
27 has been affirmed on appeal or has otherwise become final, and
28 until further order of the board. The issue of substantial relationship
29 shall be heard by an administrative law judge sitting alone or with
30 a panel of the board, in the discretion of the board.

31 (c) Notwithstanding subdivision (b), a conviction of any crime
32 referred to in Section 187, 261, ~~262~~, 288, or ~~288~~ *former Section*
33 *262*, of the Penal ~~Code~~, *Code* shall be conclusively presumed to
34 be substantially related to the qualifications, functions, or duties
35 of a psychologist and ~~no~~ *a* hearing shall *not* be held on this issue.
36 Upon its own motion or for good cause shown, the board may
37 decline to impose or may set aside the suspension when it appears
38 to be in the interest of justice to do so, with due regard to
39 maintaining the integrity of and confidence in the psychology
40 profession.

1 (d) (1) Discipline or the denial of the license may be ordered
 2 in accordance with Section 2961, or the board may order the denial
 3 of the license when the time for appeal has elapsed, the judgment
 4 of conviction has been affirmed on appeal, or an order granting
 5 probation is made suspending the imposition of sentence,
 6 irrespective of a subsequent order under Section 1203.4 of the
 7 Penal Code allowing the person to withdraw ~~his or her~~ a plea of
 8 guilty and to enter a plea of not guilty, setting aside the verdict of
 9 guilty, or dismissing the accusation, complaint, information, or
 10 indictment.

11 (2) The issue of penalty shall be heard by an administrative law
 12 judge sitting alone or with a panel of the board, in the discretion
 13 of the board. The hearing shall not be commenced until the
 14 judgment of conviction has become final or, irrespective of a
 15 subsequent order under Section 1203.4 of the Penal Code, an order
 16 granting probation has been made suspending the imposition of
 17 sentence; except that a licensee may, at ~~his or her~~ *the licensee's*
 18 option, elect to have the issue of penalty decided before those time
 19 periods have elapsed. Where the licensee so elects, the issue of
 20 penalty shall be heard in the manner described in this section at
 21 the hearing to determine whether the conviction was substantially
 22 related to the qualifications, functions, or duties of a psychologist.
 23 If the conviction of a licensee who has made this election is
 24 overturned on appeal, any discipline ordered pursuant to this
 25 section shall automatically cease. ~~Nothing in this~~ *This* subdivision
 26 ~~shall~~ *does not* prohibit the board from pursuing disciplinary action
 27 based on any cause other than the overturned conviction.

28 (e) The record of the proceedings resulting in the conviction,
 29 including a transcript of the testimony therein, may be received in
 30 evidence.

31 *SEC. 3. Section 10186.1 of the Business and Professions Code*
 32 *is amended to read:*

33 10186.1. (a) A license or an endorsement of the department
 34 shall be suspended automatically during any time that the licensee
 35 is incarcerated after conviction of a felony, regardless of whether
 36 the conviction has been appealed. The department shall,
 37 immediately upon receipt of the certified copy of the record of
 38 conviction, determine whether the license or endorsement has been
 39 automatically suspended by virtue of the licensee's incarceration,
 40 and if so, the duration of that suspension. The department shall

1 notify the licensee of the suspension and of ~~his or her~~ *the* right to
2 elect to have the issue of penalty heard as provided in subdivision
3 (d).

4 (b) If after a hearing before an administrative law judge from
5 the Office of Administrative Hearings it is determined that the
6 felony for which the licensee was convicted was substantially
7 related to the qualifications, functions, or duties of a licensee, the
8 commissioner upon receipt of the certified copy of the record of
9 conviction, shall suspend the license or endorsement until the time
10 for appeal has elapsed, if ~~no~~ *an* appeal has *not* been taken, or until
11 the judgment of conviction has been affirmed on appeal or has
12 otherwise become final, and until further order of the department.

13 (c) Notwithstanding subdivision (b), a conviction of a charge
14 of violating any federal statute or regulation or any statute or
15 regulation of this state regulating dangerous drugs or controlled
16 substances, or a conviction of Section 187, 261, ~~262~~, 288, or ~~288~~
17 *former Section 262*, of the Penal Code, shall be conclusively
18 presumed to be substantially related to the qualifications, functions,
19 or duties of a licensee and ~~no~~ *a* hearing shall *not* be held on this
20 issue. However, upon its own motion or for good cause shown,
21 the commissioner may decline to impose or may set aside the
22 suspension when it appears to be in the interest of justice to do so,
23 with due regard to maintaining the integrity of, and confidence in,
24 the practice regulated by the department.

25 (d) (1) Discipline may be ordered against a licensee in
26 accordance with the laws and regulations of the department when
27 the time for appeal has elapsed, the judgment of conviction has
28 been affirmed on appeal, or an order granting probation is made
29 suspending the imposition of sentence, irrespective of a subsequent
30 order under Section 1203.4 of the Penal Code allowing the person
31 to withdraw ~~his or her~~ *a* plea of guilty and to enter a plea of not
32 guilty, setting aside the verdict of guilty, or dismissing the
33 accusation, complaint, information, or indictment.

34 (2) The issue of penalty shall be heard by an administrative law
35 judge from the Office of Administrative Hearings. The hearing
36 shall not be held until the judgment of conviction has become final
37 or, irrespective of a subsequent order under Section 1203.4 of the
38 Penal Code, an order granting probation has been made suspending
39 the imposition of sentence, except that a licensee may, at ~~his or~~
40 ~~her~~ *the licensee's* option, elect to have the issue of penalty decided

1 before those time periods have elapsed. Where the licensee so
2 elects, the issue of penalty shall be heard in the manner described
3 in subdivision (b) at the hearing to determine whether the
4 conviction was substantially related to the qualifications, functions,
5 or duties of a licensee. If the conviction of a licensee who has made
6 this election is overturned on appeal, any discipline ordered
7 pursuant to this section shall automatically cease. ~~Nothing in this~~
8 ~~This~~ subdivision ~~shall~~ *does not* prohibit the department from
9 pursuing disciplinary action based on any cause other than the
10 overturned conviction.

11 (e) The record of the proceedings resulting in a conviction,
12 including a transcript of the testimony in those proceedings, may
13 be received in evidence.

14 (f) Any other ~~provision of~~ law setting forth a procedure for the
15 suspension or revocation of a license or endorsement issued by
16 the department shall not apply to proceedings conducted pursuant
17 to this section.

18 *SEC. 4. Section 11319.2 of the Business and Professions Code*
19 *is amended to read:*

20 11319.2. (a) A license of a licensee or a certificate of a
21 registrant shall be suspended automatically during any time that
22 the licensee or registrant is incarcerated after conviction of a felony,
23 regardless of whether the conviction has been appealed. The office
24 shall, immediately upon receipt of the certified copy of the record
25 of conviction, determine whether the license of the licensee or
26 certificate of the registrant has been automatically suspended by
27 virtue of the licensee's or registrant's incarceration, and if so, the
28 duration of that suspension. The office shall notify the licensee or
29 registrant in writing of the license or certificate suspension and of
30 ~~his or her~~ *the* right to elect to have the issue of penalty heard as
31 provided in subdivision (d).

32 (b) If after a hearing before an administrative law judge from
33 the Office of Administrative Hearings it is determined that the
34 felony for which the licensee or registrant was convicted was
35 substantially related to the qualifications, functions, or duties of a
36 licensee or registrant, the director upon receipt of the certified copy
37 of the record of conviction, shall suspend the license or certificate
38 until the time for appeal has elapsed, ~~if no~~ *an* appeal has *not* been
39 taken, or until the judgment of conviction has been affirmed on

1 appeal or has otherwise become final, and until further order of
2 the director.

3 (c) Notwithstanding subdivision (b), a conviction of a charge
4 of violating any federal statute or regulation or any statute or
5 regulation of this state regulating dangerous drugs or controlled
6 substances, or a conviction of Section 187, 261, ~~262~~, 288, or ~~288~~
7 *former Section 262*, of the Penal Code, shall be conclusively
8 presumed to be substantially related to the qualifications, functions,
9 or duties of a licensee or registrant and ~~no~~ a hearing shall *not* be
10 held on this issue. However, upon its own motion or for good cause
11 shown, the director may decline to impose or may set aside the
12 suspension when it appears to be in the interest of justice to do so,
13 with due regard to maintaining the integrity of, and confidence in,
14 the practice regulated by the office.

15 (d) (1) Discipline may be ordered against a licensee or registrant
16 in accordance with the laws and regulations of the office when the
17 time for appeal has elapsed, the judgment of conviction has been
18 affirmed on appeal, or an order granting probation is made
19 suspending the imposition of sentence, irrespective of a subsequent
20 order under Section 1203.4 of the Penal Code allowing the person
21 to withdraw ~~his or her~~ a plea of guilty and to enter a plea of not
22 guilty, setting aside the verdict of guilty, or dismissing the
23 accusation, complaint, information, or indictment.

24 (2) The issue of penalty shall be heard by an administrative law
25 judge from the Office of Administrative Hearings. The hearing
26 shall not be had until the judgment of conviction has become final
27 or, irrespective of a subsequent order under Section 1203.4 of the
28 Penal Code, an order granting probation has been made suspending
29 the imposition of sentence, except that a licensee or registrant may,
30 ~~at his the licensee's or her registrant's~~ option, elect to have the
31 issue of penalty decided before those time periods have elapsed.
32 Where the licensee or registrant so elects, the issue of penalty shall
33 be heard in the manner described in subdivision (b) at the hearing
34 to determine whether the conviction was substantially related to
35 the qualifications, functions, or duties of a licensee or registrant.
36 If the conviction of a licensee or registrant who has made this
37 election is overturned on appeal, any discipline ordered pursuant
38 to this section shall automatically cease. ~~Nothing in this~~ *This*
39 ~~subdivision shall~~ *does not* prohibit the office from pursuing

1 disciplinary action based on any cause other than the overturned
2 conviction.

3 (e) The record of the proceedings resulting in a conviction,
4 including a transcript of the testimony in those proceedings, may
5 be received in evidence.

6 (f) Any other ~~provision~~ of law setting forth a procedure for the
7 suspension or revocation of a license or certificate issued by the
8 office shall not apply to proceedings conducted pursuant to this
9 section.

10 *SEC. 5. Section 1946.7 of the Civil Code, as Amended by Stats.*
11 *2020, Ch. 205, Sec. 1, is amended to read:*

12 1946.7. (a) A tenant may notify the landlord that the tenant
13 intends to terminate the tenancy if the tenant, a household member,
14 or an immediate family member was the victim of an act that
15 constitutes any of the following:

16 (1) Domestic violence as defined in Section 6211 of the Family
17 Code.

18 (2) Sexual assault as defined in Section 261, 261.5, ~~262~~, 286,
19 287, or 289 of the Penal Code.

20 (3) Stalking as defined in Section 1708.7.

21 (4) Human trafficking as defined in Section 236.1 of the Penal
22 Code.

23 (5) Abuse of an elder or a dependent adult as defined in Section
24 15610.07 of the Welfare and Institutions Code.

25 (6) A crime that caused bodily injury or death.

26 (7) A crime that included the exhibition, drawing, brandishing,
27 or use of a firearm or other deadly weapon or instrument.

28 (8) A crime that included the use of force against the victim or
29 a threat of force against the victim.

30 (b) A notice to terminate a tenancy under this section shall be
31 in writing, with one of the following attached to the notice:

32 (1) A copy of a temporary restraining order, emergency
33 protective order, or protective order lawfully issued pursuant to
34 Part 3 (commencing with Section 6240) or Part 4 (commencing
35 with Section 6300) of Division 10 of the Family Code, Section
36 136.2 of the Penal Code, Section 527.6 of the Code of Civil
37 Procedure, or Section 213.5 or 15657.03 of the Welfare and
38 Institutions Code that protects the tenant, household member, or
39 immediate family member from further domestic violence, sexual

1 assault, stalking, human trafficking, abuse of an elder or a
2 dependent adult, or any act or crime listed in subdivision (a).

3 (2) A copy of a written report by a peace officer employed by
4 a state or local law enforcement agency acting in the peace officer's
5 official capacity stating that the tenant, household member, or
6 immediate family member has filed a report alleging that the tenant,
7 the household member, or the immediate family member is a victim
8 of an act or crime listed in subdivision (a).

9 (3) (A) Documentation from a qualified third party based on
10 information received by that third party while acting in the third
11 party's professional capacity to indicate that the tenant, household
12 member, or immediate family member is seeking assistance for
13 physical or mental injuries or abuse resulting from an act or crime
14 listed in subdivision (a).

15 (B) The documentation shall contain, in substantially the same
16 form, the following:

17

18 **Tenant Statement and Qualified Third Party Statement**
19 **under Civil Code Section 1946.7**

20

21 Part I. Statement By Tenant

22

23 I, [insert name of tenant], state as follows:

24

25 I, or a member of my household or immediate family, have been a victim of:
26 [insert one or more of the following: domestic violence, sexual assault, stalking,
27 human trafficking, elder abuse, dependent adult abuse, or a crime that caused
28 bodily injury or death, a crime that included the exhibition, drawing,
29 brandishing, or use of a firearm or other deadly weapon or instrument, or a
30 crime that included the use of force against the victim or a threat of force
31 against the victim.]

32

33 The most recent incident(s) happened on or about:

34

[insert date or dates.]

35

36 The incident(s) was/were committed by the following person(s), with these
37 physical description(s), if known and safe to provide:

38

[if known and safe to provide, insert name(s) and physical description(s).]

39

1 _____
2 (signature of tenant) (date)

3
4 Part II. Qualified Third Party Statement

5
6 I, [insert name of qualified third party], state as follows:

7
8 My business address and phone number are:
9 [insert business address and phone number.]

10
11 Check and complete one of the following:

12 ___ I meet the requirements for a sexual assault counselor provided in Section
13 1035.2 of the Evidence Code and I am either engaged in an office, hospital,
14 institution, or center commonly known as a rape crisis center described in that
15 section or employed by an organization providing the programs specified in
16 Section 13835.2 of the Penal Code.

17 ___ I meet the requirements for a domestic violence counselor provided in
18 Section 1037.1 of the Evidence Code and I am employed, whether financially
19 compensated or not, by a domestic violence victim service organization, as
20 defined in that section.

21 ___ I meet the requirements for a human trafficking caseworker provided in
22 Section 1038.2 of the Evidence Code and I am employed, whether financially
23 compensated or not, by an organization that provides programs specified in
24 Section 18294 of the Welfare and Institutions Code or in Section 13835.2 of
25 the Penal Code.

26 ___ I meet the definition of “victim of violent crime advocate” provided in
27 Section 1947.6 of the Civil Code and I am employed, whether financially
28 compensated or not, by a reputable agency or organization that has a
29 documented record of providing services to victims of violent crime or provides
30 those services under the auspices or supervision of a court or a law enforcement
31 or prosecution agency.

32 ___ I am licensed by the State of California as a:
33 [insert one of the following: physician and surgeon, osteopathic physician and
34 surgeon, registered nurse, psychiatrist, psychologist, licensed clinical social
35 worker, licensed marriage and family therapist, or licensed professional clinical
36 counselor.] and I am licensed by, and my license number is:
37 [insert name of state licensing entity and license number.]
38

1 The person who signed the Statement By Tenant above stated to me that the
2 person, or a member of the person’s household or immediate family, is a victim
3 of:
4 [insert one or more of the following: domestic violence, sexual assault, stalking,
5 human trafficking, elder abuse, dependent adult abuse, or a crime that caused
6 physical injury, emotional injury and the threat of physical injury, or death.]
7 The person further stated to me the incident(s) occurred on or about the date(s)
8 stated above.

10
11 I understand that the person who made the Statement By Tenant may use this
12 document as a basis for terminating a lease with the person’s landlord.

13
14 _____
15 (signature of qualified third party) (date)

17
18 (C) The documentation may be signed by a person who meets
19 the requirements for a sexual assault counselor, domestic violence
20 counselor, a human trafficking caseworker, or a victim of violent
21 crime advocate only if the documentation displays the letterhead
22 of the office, hospital, institution, center, or organization, as
23 appropriate, that engages or employs, whether financially
24 compensated or not, this counselor, caseworker, or advocate.

25 (4) Any other form of documentation that reasonably verifies
26 that the crime or act listed in subdivision (a) occurred.

27 (c) If the tenant is terminating tenancy pursuant to subdivision
28 (a) because an immediate family member is a victim of an eligible
29 act or crime listed in subdivision (a) and that tenant did not live
30 in the same household as the immediate family member at the time
31 of the act or crime, and no part of the act or crime occurred within
32 the dwelling unit or within 1,000 feet of the dwelling unit of the
33 tenant, the tenant shall attach to the notice and other documentation
34 required by subdivision (b) a written statement stating all of the
35 following:

36 (1) The tenant’s immediate family member was a victim of an
37 act or crime listed in subdivision (a).

38 (2) The tenant intends to relocate as a result of the tenant’s
39 immediate family member being a victim of an act or crime listed
40 in subdivision (a).

1 (3) The tenant is relocating to increase the safety, physical
 2 well-being, emotional well-being, psychological well-being, or
 3 financial security of the tenant or of the tenant’s immediate family
 4 member as a result of the act or crime.

5 (d) The notice to terminate the tenancy shall be given within
 6 180 days of the date that any order described in paragraph (1) of
 7 subdivision (b) was issued, within 180 days of the date that any
 8 written report described in paragraph (2) of subdivision (b) was
 9 made, within 180 days of the date that a crime described in
 10 paragraph (6), (7), or (8) of subdivision (a) occurred, or within the
 11 time period described in Section 1946.

12 (e) If notice to terminate the tenancy is provided to the landlord
 13 under this section, the tenant shall be responsible for payment of
 14 rent for no more than 14 calendar days following the giving of the
 15 notice, or for any shorter appropriate period as described in Section
 16 1946 or the lease or rental agreement. The tenant shall be released
 17 from any rent payment obligation under the lease or rental
 18 agreement without penalty. If the premises are relet to another
 19 party prior to the end of the obligation to pay rent, the rent owed
 20 under this subdivision shall be prorated.

21 (f) Notwithstanding any law, a landlord shall not require a tenant
 22 who terminates a lease or rental agreement pursuant to this section
 23 to forfeit any security deposit money or advance rent paid due to
 24 that termination. A tenant who terminates a rental agreement
 25 pursuant to this section shall not be considered for any purpose,
 26 by reason of the termination, to have breached the lease or rental
 27 agreement. Existing law governing the security deposit shall apply.

28 (g) This section does not relieve a tenant, other than the tenant
 29 who is, or who has a household member or immediate family
 30 member who is, a victim of an act or crime listed in subdivision
 31 (a) and members of that tenant’s household, from their obligations
 32 under the lease or rental agreement.

33 (h) *For purposes of this section, the following definitions apply:*

34 ~~(h) (1) “Household member,” as used in this section, “member”~~
 35 means a member of the tenant’s family who lives in the same
 36 household as the tenant.

37 ~~(2) “Qualified third party,” as used in this section, means a~~
 38 ~~health practitioner, domestic violence counselor, as defined in~~
 39 ~~Section 1037.1 of the Evidence Code, a sexual assault counselor,~~
 40 ~~as defined in Section 1035.2 of the Evidence Code, or a human~~

1 ~~trafficking caseworker, as defined in Section 1038.2 of the~~
2 ~~Evidence Code.~~

3 ~~(3)~~

4 (2) ~~“Health practitioner,” as used in this section, “practitioner”~~
5 means a physician and surgeon, osteopathic physician and surgeon,
6 psychiatrist, psychologist, registered nurse, licensed clinical social
7 worker, licensed marriage and family therapist, or licensed
8 professional clinical counselor.

9 ~~(4)~~

10 (3) ~~“Immediate family member,” as used in this section,~~
11 ~~member”~~ means the parent, stepparent, spouse, child, child-in-law,
12 stepchild, or sibling of the tenant, or any person living in the
13 tenant’s household at the time the crime or act listed in subdivision
14 (a) occurred who has a relationship with the tenant that is
15 substantially similar to that of a family member.

16 (4) *“Qualified third party” means a health practitioner,*
17 *domestic violence counselor, as defined in Section 1037.1 of the*
18 *Evidence Code, a sexual assault counselor, as defined in Section*
19 *1035.2 of the Evidence Code, or a human trafficking caseworker,*
20 *as defined in Section 1038.2 of the Evidence Code.*

21 (5) ~~“Victim of violent crime advocate,” as used in this section,~~
22 ~~advocate”~~ means a person who is employed, whether financially
23 compensated or not, for the purpose of rendering advice or
24 assistance to victims of violent crimes for a reputable agency or
25 organization that has a documented record of providing services
26 to victims of violent crime or provides those services under the
27 auspices or supervision of a court or a law enforcement or
28 prosecution agency.

29 (i) (1) A landlord shall not disclose any information provided
30 by a tenant under this section to a third party unless the disclosure
31 satisfies any one of the following:

32 (A) The tenant consents in writing to the disclosure.

33 (B) The disclosure is required by law or order of the court.

34 (2) A landlord’s communication to a qualified third party who
35 provides documentation under paragraph (3) of subdivision (b) to
36 verify the contents of that documentation is not disclosure for
37 purposes of this subdivision.

38 (j) An owner or an owner’s agent shall not refuse to rent a
39 dwelling unit to an otherwise qualified prospective tenant or refuse
40 to continue to rent to an existing tenant solely on the basis that the

1 tenant has previously exercised the tenant’s rights under this section
2 or has previously terminated a tenancy because of the
3 circumstances described in subdivision (a).

4 *SEC. 6. Section 1946.8 of the Civil Code is amended to read:*

5 1946.8. (a) For purposes of this section:

6 (1) “Individual in an emergency” means a person who believes
7 that immediate action is required to prevent or mitigate the loss or
8 impairment of life, health, or property.

9 (2) “Occupant” means ~~any~~ a person residing in a dwelling unit
10 with the tenant. “Occupant” includes lodgers as defined in Section
11 1946.5.

12 (3) “Penalties” means the following:

13 (A) The actual or threatened assessment of fees, fines, or
14 penalties.

15 (B) The actual or threatened termination of a tenancy or the
16 actual or threatened failure to renew a tenancy.

17 (C) Subjecting a tenant to inferior terms, privileges, and
18 conditions of tenancy in comparison to tenants who have not sought
19 law enforcement assistance or emergency assistance.

20 (4) “Resident” means a member of the tenant’s household or
21 any other occupant living in the dwelling unit with the consent of
22 the tenant.

23 (5) “Victim of abuse” includes:

24 (A) A victim of domestic violence as defined in Section 6211
25 of the Family Code.

26 (B) A victim of elder or dependent adult abuse as defined in
27 Section 15610.07 of the Welfare and Institutions Code.

28 (C) A victim of human trafficking as described in Section 236.1
29 of the Penal Code.

30 (D) A victim of sexual ~~assault~~ means *assault, meaning* a victim
31 of any act made punishable by Section 261, ~~262~~, 264.1, 285, 286,
32 288, 288a, or 289 of the Penal Code.

33 (E) A victim of stalking as described in Section 1708.7 of this
34 code or Section 646.9 of the Penal Code.

35 (6) “Victim of crime” means any victim of a misdemeanor or
36 felony.

37 (b) Any provision in a rental or lease agreement for a dwelling
38 unit that prohibits or limits, or threatens to prohibit or limit, a
39 tenant’s, resident’s, or other person’s right to summon law
40 enforcement assistance or emergency assistance as, or on behalf

1 of, a victim of abuse, a victim of crime, or an individual in an
2 emergency, if the tenant, resident, or other person believes that
3 the law enforcement assistance or emergency assistance is
4 necessary to prevent or address the perpetration, escalation, or
5 exacerbation of the abuse, crime, or emergency, shall be void as
6 contrary to public policy.

7 (c) A landlord shall not impose, or threaten to impose, penalties
8 on a tenant or resident who exercises the tenant's or resident's
9 right to summon law enforcement assistance or emergency
10 assistance as, or on behalf of, a victim of abuse, a victim of crime,
11 or an individual in an emergency, based on the person's belief that
12 the assistance is necessary, as described in subdivision (b). A
13 landlord shall not impose, or threaten to impose, penalties on a
14 tenant or resident as a consequence of a person who is not a resident
15 or tenant summoning law enforcement assistance or emergency
16 assistance on the tenant's, resident's, or other person's behalf,
17 based on the person's belief that the assistance is necessary.

18 (d) Documentation is not required to establish belief for purposes
19 of subdivision (b) or (c), but belief may be established by
20 documents such as those described in Section 1161.3 of the Code
21 of Civil Procedure.

22 (e) Any waiver of the provisions of this section is contrary to
23 public policy and is void and unenforceable.

24 (f) (1) In an action for unlawful detainer, a tenant, resident, or
25 occupant may raise, as an affirmative defense, that the landlord or
26 owner violated this section.

27 (2) There is a rebuttable presumption that a tenant, resident, or
28 occupant has established an affirmative defense under this
29 subdivision if the landlord or owner files a complaint for unlawful
30 detainer within 30 days of a resident, tenant, or other person
31 summoning law enforcement assistance or emergency assistance
32 and the complaint is based upon a notice that alleges that the act
33 of summoning law enforcement assistance or emergency assistance
34 as, or on behalf of, a victim of abuse, a victim of crime, or an
35 individual in an emergency constitutes a rental agreement violation,
36 lease violation, or a nuisance. A reference to a person summoning
37 law enforcement in a notice that is the basis for a complaint for
38 unlawful detainer that is necessary to describe conduct that is
39 alleged to constitute a violation of a rental agreement or lease is
40 not, in itself, an allegation for purposes of this paragraph.

1 (3) A landlord or owner may rebut the presumption described
 2 in paragraph (2) by demonstrating that a reason other than the
 3 summoning of law enforcement or emergency assistance as, or on
 4 behalf of, a victim of abuse, a victim of crime, or an individual in
 5 an emergency was a substantial motivating factor for filing the
 6 complaint.

7 (g) In addition to other remedies provided by law, a violation
 8 of this section entitles a tenant, a resident, or other aggrieved person
 9 to seek injunctive relief prohibiting the landlord from creating or
 10 enforcing policies in violation of this section, or from imposing
 11 or threatening to impose penalties against the tenant, resident, or
 12 other aggrieved person based on summoning law enforcement or
 13 emergency assistance as, or on behalf of, a victim of abuse, a victim
 14 of crime, or an individual in an emergency.

15 ~~(h) Nothing in this~~ *This section shall be construed as permitting*
 16 *does not permit* an injunction to be entered that would prohibit the
 17 filing of an unlawful detainer action.

18 (i) This section does not limit a landlord’s exercise of the
 19 landlord’s other rights under a lease or rental agreement, or under
 20 other law pertaining to the hiring of property, with regard to matters
 21 that are not addressed by this section.

22 *SEC. 7. Section 1036.2 of the Evidence Code is amended to*
 23 *read:*

24 1036.2. As used in this article, “sexual assault” includes all of
 25 the following:

- 26 (a) Rape, as defined in Section 261 of the Penal Code.
- 27 (b) Unlawful sexual intercourse, as defined in Section 261.5 of
 28 the Penal Code.
- 29 (c) Rape in concert with force and violence, as defined in Section
 30 264.1 of the Penal Code.
- 31 ~~(d) Rape of a spouse, as defined in Section 262 of the Penal~~
 32 ~~Code.~~
- 33 (e)
- 34 (d) Sodomy, as defined in Section 286 of the Penal Code, except
 35 a violation of subdivision (e) of that section.
- 36 ~~(f)~~
- 37 (e) A violation of Section 288 of the Penal Code.
- 38 ~~(g)~~

1 (f) Oral copulation, as defined in Section 287 of, or former
2 Section 288a of, the Penal Code, except a violation of subdivision
3 (e) of those sections.

4 ~~(h)~~

5 (g) Sexual penetration, as defined in Section 289 of the Penal
6 Code.

7 ~~(i)~~

8 (h) Annoying or molesting a child under ~~18~~, 18 years of age,
9 as defined in Section 647a of the Penal Code.

10 ~~(j)~~

11 (i) Any attempt to commit any of the ~~above acts~~; *acts listed in*
12 *this section.*

13 *SEC. 8. Section 1103 of the Evidence Code is amended to read:*

14 1103. (a) In a criminal action, evidence of the character or a
15 trait of character (in the form of an opinion, evidence of reputation,
16 or evidence of specific instances of conduct) of the victim of the
17 crime for which the defendant is being prosecuted is not made
18 inadmissible by Section 1101 if the evidence is:

19 (1) Offered by the defendant to prove conduct of the victim in
20 conformity with the character or trait of character.

21 (2) Offered by the prosecution to rebut evidence adduced by
22 the defendant under paragraph (1).

23 (b) In a criminal action, evidence of the defendant's character
24 for violence or trait of character for violence (in the form of an
25 opinion, evidence of reputation, or evidence of specific instances
26 of conduct) is not made inadmissible by Section 1101 if the
27 evidence is offered by the prosecution to prove conduct of the
28 defendant in conformity with the character or trait of character and
29 is offered after evidence that the victim had a character for violence
30 or a trait of character tending to show violence has been adduced
31 by the defendant under paragraph (1) of subdivision (a).

32 (c) (1) Notwithstanding any other provision of this code to the
33 contrary, and except as provided in this subdivision, in any
34 prosecution under Section ~~261, 262, 261~~ or 264.1 of the Penal
35 Code, or under Section 286, 287, or 289 of, or former Section 288a
36 of, the Penal Code, or for assault with intent to commit, attempt
37 to commit, or conspiracy to commit a crime defined in any of those
38 sections, except where the crime is alleged to have occurred in a
39 local detention facility, as defined in Section 6031.4, or in a state
40 prison, as defined in Section 4504, opinion evidence, reputation

1 evidence, and evidence of specific instances of the complaining
2 witness' sexual conduct, or any of that evidence, is not admissible
3 by the defendant in order to prove consent by the complaining
4 witness.

5 (2) Notwithstanding paragraph (3), evidence of the manner in
6 which the victim was dressed at the time of the commission of the
7 offense ~~shall is not be~~ admissible when offered by either party on
8 the issue of consent in any prosecution for an offense specified in
9 paragraph (1), unless the evidence is determined by the court to
10 be relevant and admissible in the interests of justice. The proponent
11 of the evidence shall make an offer of proof outside the hearing
12 of the jury. The court shall then make its determination and at that
13 time, state the reasons for its ruling on the record. For the purposes
14 of this paragraph, "manner of dress" does not include the condition
15 of the victim's clothing before, during, or after the commission of
16 the offense.

17 (3) Paragraph (1) ~~shall does not be applicable~~ *apply* to evidence
18 of the complaining witness' sexual conduct with the defendant.

19 (4) If the prosecutor introduces evidence, including testimony
20 of a witness, or the complaining witness as a witness gives
21 testimony, and that evidence or testimony relates to the
22 complaining witness' sexual conduct, the defendant may
23 cross-examine the witness who gives the testimony and offer
24 relevant evidence limited specifically to the rebuttal of the evidence
25 introduced by the prosecutor or given by the complaining witness.

26 (5) ~~Nothing in this subdivision shall be construed to~~ *This*
27 *sections does not* make inadmissible any evidence offered to attack
28 the credibility of the complaining witness as provided in Section
29 782.

30 (6) As used in this section, "complaining witness" means the
31 alleged victim of the crime charged, the prosecution of which is
32 subject to this subdivision.

33 *SEC. 9. Section 1107 of the Evidence Code is amended to read:*

34 1107. (a) In a criminal action, expert testimony is admissible
35 by either the prosecution or the defense regarding intimate partner
36 battering and its effects, including the nature and effect of physical,
37 emotional, or mental abuse on the beliefs, perceptions, or behavior
38 of victims of domestic violence, except when offered against a
39 criminal defendant to prove the occurrence of the act or acts of
40 abuse which form the basis of the criminal charge.

1 (b) The foundation shall be sufficient for admission of this expert
2 testimony if the proponent of the evidence establishes its relevancy
3 and the proper qualifications of the expert witness. Expert opinion
4 testimony on intimate partner battering and its effects shall not be
5 considered a new scientific technique whose reliability is unproven.

6 (c) For purposes of this section, “abuse” is defined in Section
7 6203 of the Family Code, and “domestic violence” is defined in
8 Section 6211 of the Family Code and may include acts defined in
9 Section 242, subdivision (e) of Section 243, Section ~~262~~, 261,
10 273.5, 273.6, 422, or 653m of the Penal Code.

11 (d) This section is intended as a rule of evidence only and no
12 substantive change affecting the Penal Code is intended.

13 (e) This section shall be known, and may be cited, as the Expert
14 Witness Testimony on Intimate Partner Battering and Its Effects
15 Section of the Evidence Code.

16 (f) The changes in this section that become effective on January
17 1, 2005, are not intended to impact any existing decisional law
18 regarding this section, and that decisional law should apply equally
19 to this section as it refers to “intimate partner battering and its
20 effects” in place of “battered women’s syndrome.”

21 *SEC. 10. Section 3044 of the Family Code is amended to read:*

22 3044. (a) Upon a finding by the court that a party seeking
23 custody of a child has perpetrated domestic violence within the
24 previous five years against the other party seeking custody of the
25 child, or against the child or the child’s siblings, or against any
26 person in subparagraph (C) of paragraph (1) of subdivision (b) of
27 Section 3011 with whom the party has a relationship, there is a
28 rebuttable presumption that an award of sole or joint physical or
29 legal custody of a child to a person who has perpetrated domestic
30 violence is detrimental to the best interest of the child, pursuant
31 to Sections 3011 and 3020. This presumption may only be rebutted
32 by a preponderance of the evidence.

33 (b) To overcome the presumption set forth in subdivision (a),
34 the court shall find that paragraph (1) is satisfied and shall find
35 that the factors in paragraph (2), on balance, support the legislative
36 findings in Section 3020.

37 (1) The perpetrator of domestic violence has demonstrated that
38 giving sole or joint physical or legal custody of a child to the
39 perpetrator is in the best interest of the child pursuant to Sections
40 3011 and 3020. In determining the best interest of the child, the

1 preference for frequent and continuing contact with both parents,
2 as set forth in subdivision (b) of Section 3020, or with the
3 noncustodial parent, as set forth in paragraph (1) of subdivision
4 (a) of Section 3040, may not be used to rebut the presumption, in
5 whole or in part.

6 (2) Additional factors:

7 (A) The perpetrator has successfully completed a batterer's
8 treatment program that meets the criteria outlined in subdivision
9 (c) of Section 1203.097 of the Penal Code.

10 (B) The perpetrator has successfully completed a program of
11 alcohol or drug abuse counseling, if the court determines that
12 counseling is appropriate.

13 (C) The perpetrator has successfully completed a parenting
14 class, if the court determines the class to be appropriate.

15 (D) The perpetrator is on probation or parole, and has or has
16 not complied with the terms and conditions of probation or parole.

17 (E) The perpetrator is restrained by a protective order or
18 restraining order, and has or has not complied with its terms and
19 conditions.

20 (F) The perpetrator of domestic violence has committed further
21 acts of domestic violence.

22 (c) For purposes of this section, a person has "perpetrated
23 domestic violence" when the person is found by the court to have
24 intentionally or recklessly caused or attempted to cause bodily
25 injury, or sexual assault, or to have placed a person in reasonable
26 apprehension of imminent serious bodily injury to that person or
27 to another, or to have engaged in behavior involving, but not
28 limited to, threatening, striking, harassing, destroying personal
29 property, or disturbing the peace of another, for which a court may
30 issue an ex parte order pursuant to Section 6320 to protect the
31 other party seeking custody of the child or to protect the child and
32 the child's siblings.

33 (d) (1) For purposes of this section, the requirement of a finding
34 by the court shall be satisfied by, among other things, and not
35 limited to, evidence that a party seeking custody has been convicted
36 within the previous five years, after a trial or a plea of guilty or no
37 contest, of a crime against the other party that comes within the
38 definition of domestic violence contained in Section 6211 and of
39 abuse contained in Section 6203, including, but not limited to, a
40 crime described in subdivision (e) of Section 243 of, or Section

1 261, ~~262~~, 273.5, 422, or 646.9 of, *or former Section 262 of*, the
2 Penal Code.

3 (2) The requirement of a finding by the court shall also be
4 satisfied if a court, whether that court hears or has heard the child
5 custody proceedings or not, has made a finding pursuant to
6 subdivision (a) based on conduct occurring within the previous
7 five years.

8 (e) When a court makes a finding that a party has perpetrated
9 domestic violence, the court may not base its findings solely on
10 conclusions reached by a child custody evaluator or on the
11 recommendation of the Family Court Services staff, but shall
12 consider any relevant, admissible evidence submitted by the parties.

13 (f) (1) It is the intent of the Legislature that this subdivision be
14 interpreted consistently with the decision in *Jaime G. v. H.L.* (2018)
15 25 Cal.App.5th 794, which requires that the court, in determining
16 that the presumption in subdivision (a) has been overcome, make
17 specific findings on each of the factors in subdivision (b).

18 (2) If the court determines that the presumption in subdivision
19 (a) has been overcome, the court shall state its reasons in writing
20 or on the record as to why paragraph (1) of subdivision (b) is
21 satisfied and why the factors in paragraph (2) of subdivision (b),
22 on balance, support the legislative findings in Section 3020.

23 (g) In an evidentiary hearing or trial in which custody orders
24 are sought and where there has been an allegation of domestic
25 violence, the court shall make a determination as to whether this
26 section applies prior to issuing a custody order, unless the court
27 finds that a continuance is necessary to determine whether this
28 section applies, in which case the court may issue a temporary
29 custody order for a reasonable period of time, provided the order
30 complies with Section 3011, including, but not limited to,
31 subdivision (e), and Section 3020.

32 (h) In a custody or restraining order proceeding in which a party
33 has alleged that the other party has perpetrated domestic violence
34 in accordance with the terms of this section, the court shall inform
35 the parties of the existence of this section and shall give them a
36 copy of this section prior to custody mediation in the case.

37 *SEC. 11. Section 6930 of the Family Code is amended to read:*

38 6930. (a) A minor who is 12 years of age or older and who
39 states that the minor is injured as a result of intimate partner
40 violence may consent to medical care related to the diagnosis or

1 treatment of the injury and the collection of medical evidence with
2 regard to the alleged intimate partner violence.

3 (b) (1) For purposes of this section, “intimate partner violence”
4 means an intentional or reckless infliction of bodily harm that is
5 perpetrated by a person with whom the minor has or has had a
6 sexual, dating, or spousal relationship.

7 (2) This section does not apply when a minor is an alleged victim
8 of rape, as defined in Section 261 ~~or 262~~ of the Penal Code, in
9 which case Section 6927 shall apply, and does not apply when a
10 minor is alleged to have been sexually assaulted, as described in
11 Section 6928, in which case that section shall apply.

12 (c) If the health practitioner providing treatment believes that
13 the injuries described in subdivision (a) require a report pursuant
14 to Section 11160 of the Penal Code, the health practitioner shall
15 do both of the following:

16 (1) Inform the minor that the report will be made.

17 (2) Attempt to contact the minor’s parent or guardian and inform
18 them of the report. The health practitioner shall note in the minor’s
19 treatment record the date and time of the attempt to contact the
20 parent or guardian and whether the attempt was successful or
21 unsuccessful. This paragraph does not apply if the health
22 practitioner reasonably believes that the minor’s parent or guardian
23 committed the intimate partner violence on the minor.

24 *SEC. 12. Section 13956 of the Government Code is amended*
25 *to read:*

26 13956. Notwithstanding Section 13955, a person shall not be
27 eligible for compensation under the following conditions:

28 (a) An application may be denied, in whole or in part, if the
29 board finds that denial is appropriate because of the nature of the
30 victim’s or other applicant’s involvement in the events leading to
31 the crime, or the involvement of the person whose injury or death
32 gives rise to the application.

33 (1) Factors that may be considered in determining whether the
34 victim or derivative victim was involved in the events leading to
35 the qualifying crime include, but are not limited to:

36 (A) The victim or derivative victim initiated the qualifying
37 crime, or provoked or aggravated the suspect into initiating the
38 qualifying crime.

39 (B) The qualifying crime was a reasonably foreseeable
40 consequence of the conduct of the victim or derivative victim.

1 (C) The victim or derivative victim was committing a crime
2 that could be charged as a felony and reasonably lead to ~~him or~~
3 ~~her~~ *the victim* being victimized. However, committing a crime
4 shall not be considered involvement if the victim's injury or death
5 occurred as a direct result of a crime committed in violation of
6 Section 261, ~~262~~, 273.5, or ~~273.5~~ *former Section 262* of, or for a
7 crime of unlawful sexual intercourse with a minor in violation of
8 subdivision (d) of Section 261.5 of, the Penal Code.

9 (2) If the victim is determined to have been involved in the
10 events leading to the qualifying crime, factors that may be
11 considered to mitigate or overcome involvement include, but are
12 not limited to:

13 (A) The victim's injuries were significantly more serious than
14 reasonably could have been expected based on the victim's level
15 of involvement.

16 (B) A third party interfered in a manner not reasonably
17 foreseeable by the victim or derivative victim.

18 (C) The board shall consider the victim's age, physical
19 condition, and psychological state, as well as any compelling health
20 and safety concerns, in determining whether the application should
21 be denied pursuant to this section. The application of a derivative
22 victim of domestic violence under 18 years of age or derivative
23 victim of trafficking under 18 years of age shall not be denied on
24 the basis of the denial of the victim's application under this
25 subdivision.

26 (b) (1) An application shall be denied if the board finds that
27 the victim or, if compensation is sought by, or on behalf of, a
28 derivative victim, either the victim or derivative victim failed to
29 cooperate reasonably with a law enforcement agency in the
30 apprehension and conviction of a criminal committing the crime.
31 In determining whether cooperation has been reasonable, the board
32 shall consider the victim's or derivative victim's age, physical
33 condition, and psychological state, cultural or linguistic barriers,
34 any compelling health and safety concerns, including, but not
35 limited to, a reasonable fear of retaliation or harm that would
36 jeopardize the well-being of the victim or the victim's family or
37 the derivative victim or the derivative victim's family, and giving
38 due consideration to the degree of cooperation of which the victim
39 or derivative victim is capable in light of the presence of any of
40 these factors. A victim of domestic violence shall not be determined

1 to have failed to cooperate based on ~~his or her~~ *the victim's* conduct
2 with law enforcement at the scene of the crime. Lack of cooperation
3 shall also not be found solely because a victim of sexual assault,
4 domestic violence, or human trafficking delayed reporting the
5 qualifying crime.

6 (2) An application for a claim based on domestic violence shall
7 not be denied solely because a police report was not made by the
8 victim. The board shall adopt guidelines that allow the board to
9 consider and approve applications for assistance based on domestic
10 violence relying upon evidence other than a police report to
11 establish that a domestic violence crime has occurred. Factors
12 evidencing that a domestic violence crime has occurred may
13 include, but are not limited to, medical records documenting
14 injuries consistent with allegations of domestic violence, mental
15 health records, or that the victim has obtained a permanent
16 restraining order.

17 (3) An application for a claim based on a sexual assault shall
18 not be denied solely because a police report was not made by the
19 victim. The board shall adopt guidelines that allow it to consider
20 and approve applications for assistance based on a sexual assault
21 relying upon evidence other than a police report to establish that
22 a sexual assault crime has occurred. Factors evidencing that a
23 sexual assault crime has occurred may include, but are not limited
24 to, medical records documenting injuries consistent with allegations
25 of sexual assault, mental health records, or that the victim received
26 a sexual assault examination.

27 (4) An application for a claim based on human trafficking as
28 defined in Section 236.1 of the Penal Code shall not be denied
29 solely because ~~no~~ a police report was *not* made by the victim. The
30 board shall adopt guidelines that allow the board to consider and
31 approve applications for assistance based on human trafficking
32 relying upon evidence other than a police report to establish that
33 a human trafficking crime ~~as defined in Section 236.1 of the Penal~~
34 ~~Code~~ has occurred. That evidence may include any reliable
35 corroborating information approved by the board, including, but
36 not limited to, the following:

37 (A) A Law Enforcement Agency Endorsement issued pursuant
38 to Section ~~236.2~~ 236.5 of the Penal Code.

1 (B) A human trafficking caseworker, as identified in Section
2 1038.2 of the Evidence Code, has attested by affidavit that the
3 individual was a victim of human trafficking.

4 (5) (A) An application for a claim by a military personnel victim
5 based on a sexual assault by another military personnel shall not
6 be denied solely because it was not reported to a superior officer
7 or law enforcement at the time of the crime.

8 (B) Factors that the board shall consider for purposes of
9 determining if a claim qualifies for compensation include, but are
10 not limited to, the evidence of the following:

11 (i) Restricted or unrestricted reports to a military victim
12 advocate, sexual assault response coordinator, chaplain, attorney,
13 or other military personnel.

14 (ii) Medical or physical evidence consistent with sexual assault.

15 (iii) A written or oral report from military law enforcement or
16 a civilian law enforcement agency concluding that a sexual assault
17 crime was committed against the victim.

18 (iv) A letter or other written statement from a sexual assault
19 counselor, as defined in Section 1035.2 of the Evidence Code,
20 licensed therapist, or mental health counselor, stating that the
21 victim is seeking services related to the allegation of sexual assault.

22 (v) A credible witness to whom the victim disclosed the details
23 that a sexual assault crime occurred.

24 (vi) A restraining order from a military or civilian court against
25 the perpetrator of the sexual assault.

26 (vii) Other behavior by the victim consistent with sexual assault.

27 (C) For purposes of this subdivision, the sexual assault at issue
28 shall have occurred during military service, including deployment.

29 (D) For purposes of this subdivision, the sexual assault may
30 have been committed off base.

31 (E) For purposes of this subdivision, a “perpetrator” means an
32 individual who is any of the following at the time of the sexual
33 assault:

34 (i) An active duty military personnel from the United States
35 Army, Navy, Marine Corps, Air Force, or Coast Guard.

36 (ii) A civilian employee of any military branch specified in
37 clause (i), military base, or military deployment.

38 (iii) A contractor or agent of a private military or private security
39 company.

40 (iv) A member of the California National Guard.

1 (F) For purposes of this subdivision, “sexual assault” means an
 2 offense included in Section 261,~~262~~; 264.1, 286, 287, formerly
 3 288a, or Section 289 of the Penal Code, as of ~~the date the act that~~
 4 ~~added this paragraph was enacted.~~ *January 1, 2015.*

5 (c) (1) Notwithstanding Section 13955,~~no~~ a person who is
 6 convicted of a violent felony listed in subdivision (c) of Section
 7 667.5 of the Penal Code ~~may~~ *shall not* be granted compensation
 8 until that person has been discharged from probation or has been
 9 released from a correctional institution and has been discharged
 10 from parole, or has been discharged from postrelease community
 11 supervision or mandatory supervision, if any, for that violent crime.
 12 ~~In no case Compensation shall compensation~~ *not* be granted to an
 13 applicant pursuant to this chapter during any period of time the
 14 applicant is held in a correctional ~~institution,~~ *institution* or while
 15 an applicant is required to register as a sex offender pursuant to
 16 Section 290 of the Penal Code.

17 (2) A person who has been convicted of a violent felony listed
 18 in subdivision (c) of Section 667.5 of the Penal Code may apply
 19 for compensation pursuant to this chapter at any time, but the award
 20 of that compensation may not be considered until the applicant
 21 meets the requirements for compensation set forth in paragraph
 22 (1).

23 *SEC. 13. Section 53165 of the Government Code is amended*
 24 *to read:*

25 53165. (a) For purposes of this section:

26 (1) “Individual in an emergency” means a person who believes
 27 that immediate action is required to prevent or mitigate the loss or
 28 impairment of life, health, or property.

29 (2) “Local agency” means a county, city, whether general law
 30 or chartered, city and county, town, housing authority, municipal
 31 corporation, district, political subdivision, or any board,
 32 commission, or agency thereof, or other local public agency.

33 (3) “Occupant” means ~~any~~ a person residing in a dwelling unit
 34 with the tenant. “Occupant” includes a lodger as defined in Section
 35 1946.5 of the Civil Code.

36 (4) “Penalty” means the following:

37 (A) The actual or threatened assessment of fees, fines, or
 38 penalties.

39 (B) The actual or threatened termination of a tenancy or the
 40 actual or threatened failure to renew a tenancy.

- 1 (C) The actual or threatened revocation, suspension, or
2 nonrenewal of a rental certificate, license, or permit.
- 3 (D) The designation or threatened designation as a nuisance
4 property or as a perpetrator of criminal activity under local law,
5 or imposition or threatened imposition of a similar designation.
- 6 (E) Subjecting a tenant to inferior terms, privileges, and
7 conditions of tenancy in comparison to tenants who have not sought
8 law enforcement assistance or emergency assistance.
- 9 (5) “Resident” means a member of the tenant’s household or
10 any other occupant living in the dwelling unit with the consent of
11 the tenant.
- 12 (6) “Tenant” means tenant, subtenant, lessee, or sublessee.
- 13 (7) “Victim of abuse” includes:
- 14 (A) A victim of domestic violence as defined in Section 6211
15 of the Family Code.
- 16 (B) A victim of elder or dependent adult abuse as defined in
17 Section 15610.07 of the Welfare and Institutions Code.
- 18 (C) A victim of human trafficking as described in Section 236.1
19 of the Penal Code.
- 20 (D) A victim of sexual assault means a victim of any act made
21 punishable by Section 261, ~~262~~, 264.1, 285, 286, 288, 288a, or
22 289 of the Penal Code.
- 23 (E) A victim of stalking as described in Section 1708.7 of the
24 Civil Code or Section 646.9 of the Penal Code.
- 25 (8) “Victim of crime” means ~~any~~ a victim of a misdemeanor or
26 felony.
- 27 (b) A local agency shall not promulgate, enforce, or implement
28 any ordinance, rule, policy, or regulation, that authorizes, or
29 requires the imposition, or threatened imposition, of a penalty
30 against a resident, owner, tenant, landlord, or other person as a
31 consequence of law enforcement assistance or emergency
32 assistance being summoned by, or on behalf of, a victim of abuse,
33 a victim of crime, or an individual in an emergency.
- 34 (c) If a local agency violates this section, a resident, tenant,
35 owner, landlord, or other person may obtain the following:
- 36 (1) A court order requiring the local agency to cease and desist
37 the unlawful practice.
- 38 (2) A court order rendering null and void any ordinance, rule,
39 policy, or regulation that violates this section.
- 40 (3) Other equitable relief as the court may deem appropriate.

1 (d) This section preempts any local ordinance, rule, policy, or
2 regulation insofar as it is inconsistent with this section, irrespective
3 of the effective date of the ordinance, rule, policy, or regulation.

4 *SEC. 14. Section 136.2 of the Penal Code is amended to read:*

5 136.2. (a) (1) Upon a good cause belief that harm to, or
6 intimidation or dissuasion of, a victim or witness has occurred or
7 is reasonably likely to occur, a court with jurisdiction over a
8 criminal matter may issue orders, including, but not limited to, the
9 following:

10 (A) An order issued pursuant to Section 6320 of the Family
11 Code.

12 (B) An order that a defendant shall not violate any provision of
13 Section 136.1.

14 (C) An order that a person before the court other than a
15 defendant, including, but not limited to, a subpoenaed witness or
16 other person entering the courtroom of the court, shall not violate
17 any provision of Section 136.1.

18 (D) An order that a person described in this section shall have
19 no communication whatsoever with a specified witness or a victim,
20 except through an attorney under reasonable restrictions that the
21 court may impose.

22 (E) An order calling for a hearing to determine if an order—as
23 described in subparagraphs (A) to (D), inclusive, should be issued.

24 (F) (i) An order that a particular law enforcement agency within
25 the jurisdiction of the court provide protection for a victim, witness,
26 or both, or for immediate family members of a victim or a witness
27 who reside in the same household as the victim or witness or within
28 reasonable proximity of the victim's or witness' household, as
29 determined by the court. The order shall not be made without the
30 consent of the law enforcement agency except for limited and
31 specified periods of time and upon an express finding by the court
32 of a clear and present danger of harm to the victim or witness or
33 immediate family members of the victim or witness.

34 (ii) For purposes of this paragraph, "immediate family members"
35 include the spouse, children, or parents of the victim or witness.

36 (G) (i) An order protecting a victim or witness of violent crime
37 from all contact by the defendant, or contact, with the intent to
38 annoy, harass, threaten, or commit acts of violence, by the
39 defendant. The court or its designee shall transmit orders made
40 under this paragraph to law enforcement personnel within one

1 business day of the issuance, modification, extension, or
2 termination of the order, pursuant to subdivision (a) of Section
3 6380 of the Family Code. It is the responsibility of the court to
4 transmit the modification, extension, or termination orders made
5 under this paragraph to the same agency that entered the original
6 protective order into the California Restraining and Protective
7 Order System.

8 (ii) (I) If a court does not issue an order pursuant to clause (i)
9 ~~in a case in which~~ *when* the defendant is charged with a crime
10 involving domestic violence as defined in Section 13700 of this
11 code or in Section 6211 of the Family Code, the court, on its own
12 motion, shall consider issuing a protective order upon a good cause
13 belief that harm to, or intimidation or dissuasion of, a victim or
14 witness has occurred or is reasonably likely to occur, that provides
15 as follows:

16 (ia) The defendant shall not own, possess, purchase, receive, or
17 attempt to purchase or receive, a firearm while the protective order
18 is in effect.

19 (ib) The defendant shall relinquish ownership or possession of
20 any firearms, pursuant to Section 527.9 of the Code of Civil
21 Procedure.

22 (II) Every person who owns, possesses, purchases, or receives,
23 or attempts to purchase or receive, a firearm while this protective
24 order is in effect is punishable pursuant to Section 29825.

25 (iii) An order issued, modified, extended, or terminated by a
26 court pursuant to this subparagraph shall be issued on forms
27 adopted by the Judicial Council of California that have been
28 approved by the Department of Justice pursuant to subdivision (i)
29 of Section 6380 of the Family Code. However, the fact that an
30 order issued by a court pursuant to this section was not issued on
31 forms adopted by the Judicial Council and approved by the
32 Department of Justice shall not, in and of itself, make the order
33 unenforceable.

34 (iv) A protective order issued under this subparagraph may
35 require the defendant to be placed on electronic monitoring if the
36 local government, with the concurrence of the county sheriff or
37 the chief probation officer with jurisdiction, adopts a policy to
38 authorize electronic monitoring of defendants and specifies the
39 agency with jurisdiction for this purpose. If the court determines
40 that the defendant has the ability to pay for the monitoring program,

1 the court shall order the defendant to pay for the monitoring. If
2 the court determines that the defendant does not have the ability
3 to pay for the electronic monitoring, the court may order electronic
4 monitoring to be paid for by the local government that adopted
5 the policy to authorize electronic monitoring. The duration of
6 electronic monitoring shall not exceed one year from the date the
7 order is issued. The electronic monitoring shall not be in place if
8 the protective order is not in place.

9 (2) For purposes of this subdivision, a minor who was not a
10 victim of, but who was physically present at the time of, an act of
11 domestic violence, is a witness and is deemed to have suffered
12 harm within the meaning of paragraph (1).

13 (b) A person violating an order made pursuant to subparagraphs
14 (A) to (G), inclusive, of paragraph (1) of subdivision (a) may be
15 punished for any substantive offense described in Section 136.1,
16 or for a contempt of the court making the order. A finding of
17 contempt shall not be a bar to prosecution for a violation of Section
18 136.1. However, a person held in contempt shall be entitled to
19 credit for punishment imposed therein against a sentence imposed
20 upon conviction of an offense described in Section 136.1. A
21 conviction or acquittal for a substantive offense under Section
22 136.1 shall be a bar to a subsequent punishment for contempt
23 arising out of the same act.

24 (c) (1) (A) Notwithstanding subdivision (e), an emergency
25 protective order issued pursuant to Chapter 2 (commencing with
26 Section 6250) of Part 3 of Division 10 of the Family Code or
27 Section 646.91 shall have precedence in enforcement over any
28 other restraining or protective order, provided the emergency
29 protective order meets all of the following requirements:

30 (i) The emergency protective order is issued to protect one or
31 more individuals who are already protected persons under another
32 restraining or protective order.

33 (ii) The emergency protective order restrains the individual who
34 is the restrained person in the other restraining or protective order
35 specified in clause (i).

36 (iii) The provisions of the emergency protective order are more
37 restrictive in relation to the restrained person than are the provisions
38 of the other restraining or protective order specified in clause (i).

39 (B) An emergency protective order that meets the requirements
40 of subparagraph (A) shall have precedence in enforcement over

1 the provisions of any other restraining or protective order only
2 with respect to those provisions of the emergency protective order
3 that are more restrictive in relation to the restrained person.

4 (2) Except as described in paragraph (1), a no-contact order, as
5 described in Section 6320 of the Family Code, shall have
6 precedence in enforcement over any other restraining or protective
7 order.

8 (d) (1) A person subject to a protective order issued under this
9 section shall not own, possess, purchase, or receive, or attempt to
10 purchase or receive, a firearm while the protective order is in effect.

11 (2) The court shall order a person subject to a protective order
12 issued under this section to relinquish ownership or possession of
13 any firearms, pursuant to Section 527.9 of the Code of Civil
14 Procedure.

15 (3) A person who owns, possesses, purchases, or receives, or
16 attempts to purchase or receive, a firearm while the protective
17 order is in effect is punishable pursuant to Section 29825.

18 (e) (1) When the defendant is charged with a crime involving
19 domestic violence, as defined in Section 13700 of this code or in
20 Section 6211 of the Family Code, or a violation of Section 261,
21 261.5, or *former Section 262*, or a crime that requires the defendant
22 to register pursuant to subdivision (c) of Section 290, the court
23 shall consider issuing the above-described orders on its own
24 motion. All interested parties shall receive a copy of those orders.
25 In order to facilitate this, the court's records of all criminal cases
26 involving domestic violence or a violation of Section 261, 261.5,
27 or *former Section 262*, or a crime that requires the defendant to
28 register pursuant to subdivision (c) of Section 290, shall be marked
29 to clearly alert the court to this issue.

30 (2) When a complaint, information, or indictment charging a
31 crime involving domestic violence, as defined in Section 13700
32 or in Section 6211 of the Family Code, or a violation of Section
33 261, 261.5, or *former Section 262*, or a crime that requires the
34 defendant to register pursuant to subdivision (c) of Section 290,
35 has been issued, except as described in subdivision (c), a restraining
36 order or protective order against the defendant issued by the
37 criminal court in that case has precedence in enforcement over a
38 civil court order against the defendant.

39 (3) Custody and visitation with respect to the defendant and the
40 defendant's minor children may be ordered by a family or juvenile

1 court consistent with the protocol established pursuant to
2 subdivision (f), but if ordered after a criminal protective order has
3 been issued pursuant to this section, the custody and visitation
4 order shall make reference to, and, if there is not an emergency
5 protective order that has precedence in enforcement pursuant to
6 paragraph (1) of subdivision (c), or a no-contact order, as described
7 in Section 6320 of the Family Code, acknowledge the precedence
8 of enforcement of, an appropriate criminal protective order. On or
9 before July 1, 2014, the Judicial Council shall modify the criminal
10 and civil court forms consistent with this subdivision.

11 (f) On or before January 1, 2003, the Judicial Council shall
12 promulgate a protocol, for adoption by each local court in
13 substantially similar terms, to provide for the timely coordination
14 of all orders against the same defendant and in favor of the same
15 named victim or victims. The protocol shall include, but shall not
16 be limited to, mechanisms for ensuring appropriate communication
17 and information sharing between criminal, family, and juvenile
18 courts concerning orders and cases that involve the same parties,
19 and shall permit a family or juvenile court order to coexist with a
20 criminal court protective order subject to the following conditions:

21 (1) An order that permits contact between the restrained person
22 and the person's children shall provide for the safe exchange of
23 the children and shall not contain ~~language~~ *language*, either printed
24 or ~~handwritten~~ *handwritten*, that violates a "no-contact order"
25 issued by a criminal court.

26 (2) The safety of all parties shall be the courts' paramount
27 concern. The family or juvenile court shall specify the time, day,
28 place, and manner of transfer of the child, as provided in Section
29 3100 of the Family Code.

30 (g) On or before January 1, 2003, the Judicial Council shall
31 modify the criminal and civil court protective order forms
32 consistent with this section.

33 (h) (1) When a complaint, information, or indictment charging
34 a crime involving domestic violence, as defined in Section 13700
35 or in Section 6211 of the Family Code, has been filed, the court
36 may consider, in determining whether good cause exists to issue
37 an order under subparagraph (A) of paragraph (1) of subdivision
38 (a), the underlying nature of the offense charged, and the
39 information provided to the court pursuant to Section 273.75.

1 (2) When a complaint, information, or indictment charging a
2 violation of Section 261, 261.5, or *former Section 262*, or a crime
3 that requires the defendant to register pursuant to subdivision (c)
4 of Section 290, has been filed, the court may consider, in
5 determining whether good cause exists to issue an order under
6 paragraph (1) of subdivision (a), the underlying nature of the
7 offense charged, the defendant's relationship to the victim, the
8 likelihood of continuing harm to the victim, any current restraining
9 order or protective order issued by a civil or criminal court
10 involving the defendant, and the defendant's criminal history,
11 including, but not limited to, prior convictions for a violation of
12 Section 261, 261.5, or *former Section 262*, a crime that requires
13 the defendant to register pursuant to subdivision (c) of Section
14 290, any other forms of violence, or a weapons offense.

15 (i) (1) When a criminal defendant has been convicted of a crime
16 involving domestic violence as defined in Section 13700 or in
17 Section 6211 of the Family Code, a violation of subdivision (a) of
18 Section 236.1, Section 261, 261.5, *former Section 262*, subdivision
19 (a) of Section 266h, or subdivision (a) of Section 266i, a violation
20 of Section 186.22, or a crime that requires the defendant to register
21 pursuant to subdivision (c) of Section 290, the court, at the time
22 of sentencing, shall consider issuing an order restraining the
23 defendant from any contact with a victim of the crime. The order
24 may be valid for up to 10 years, as determined by the court. This
25 protective order may be issued by the court regardless of whether
26 the defendant is sentenced to the state prison or a county jail or
27 subject to mandatory supervision, or whether imposition of
28 sentence is suspended and the defendant is placed on probation.
29 It is the intent of the Legislature in enacting this subdivision that
30 the duration of a restraining order issued by the court be based
31 upon the seriousness of the facts before the court, the probability
32 of future violations, and the safety of a victim and the victim's
33 immediate family.

34 (2) When a criminal defendant has been convicted of a crime
35 involving domestic violence as defined in Section 13700 or in
36 Section 6211 of the Family Code, a violation of Section 261, 261.5,
37 or *former Section 262*, a violation of Section 186.22, or a crime
38 that requires the defendant to register pursuant to subdivision (c)
39 of Section 290, the court, at the time of sentencing, shall consider
40 issuing an order restraining the defendant from any contact with

1 a percipient witness to the crime if it can be established by clear
 2 and convincing evidence that the witness has been harassed, as
 3 defined in paragraph (3) of subdivision (b) of Section 527.6 of the
 4 Code of Civil Procedure, by the defendant.

5 (3) An order under this subdivision may include provisions for
 6 electronic monitoring if the local government, upon receiving the
 7 concurrence of the county sheriff or the chief probation officer
 8 with jurisdiction, adopts a policy authorizing electronic monitoring
 9 of defendants and specifies the agency with jurisdiction for this
 10 purpose. If the court determines that the defendant has the ability
 11 to pay for the monitoring program, the court shall order the
 12 defendant to pay for the monitoring. If the court determines that
 13 the defendant does not have the ability to pay for the electronic
 14 monitoring, the court may order the electronic monitoring to be
 15 paid for by the local government that adopted the policy authorizing
 16 electronic monitoring. The duration of the electronic monitoring
 17 shall not exceed one year from the date the order is issued.

18 (j) For purposes of this section, “local government” means the
 19 county that has jurisdiction over the protective order.

20 *SEC. 15. Section 136.7 of the Penal Code is amended to read:*

21 136.7. (a) Every person imprisoned in a county jail or the
 22 state prison who has been convicted of a sexual offense, including,
 23 but not limited to, a violation of Section 243.4, 261, 261.5, ~~262,~~
 24 264.1, 266, 266a, 266b, 266c, 266f, 285, 286, 287, 288, or 289, or
 25 former Section 262 or 288a, who knowingly reveals the name and
 26 address of ~~any~~ a witness or victim to that offense to any other
 27 prisoner with the intent that the other prisoner will intimidate or
 28 harass the witness or victim through the initiation of unauthorized
 29 correspondence with the witness or victim, is guilty of a public
 30 offense, punishable by imprisonment in the county jail not to
 31 exceed one year, or by imprisonment pursuant to subdivision (h)
 32 of Section 1170.

33 ~~Nothing in this~~

34 (b) *This* section shall *not* prevent the interviewing of witnesses.

35 *SEC. 16. Section 209 of the Penal Code is amended to read:*

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

1 valuable thing, or ~~any~~ a person who aids or abets any such act, is
2 guilty of a ~~felony, and~~ felony. *When a person subjected to that act*
3 *suffers death or bodily harm, or is intentionally confined in a*
4 *manner that exposes that person to a substantial likelihood of*
5 *death, the person, upon conviction thereof, conviction, shall be*
6 *punished by imprisonment in the state prison for life without*
7 *possibility of parole in cases in which any parole. When no person*
8 *subjected to any such that act suffers death or bodily harm, or is*
9 *intentionally confined in a manner which exposes that person to*
10 *a substantial likelihood of death, or the person, upon conviction,*
11 *shall be punished by imprisonment in the state prison for life with*
12 *the possibility of parole in cases where no such person suffers*
13 *death or bodily harm. parole.*

14 (b) (1) ~~Any~~ A person who kidnaps or carries away ~~any~~ an
15 individual to commit robbery, rape, ~~spousal rape,~~ oral copulation,
16 sodomy, or any violation of Section 264.1, 288, 289, or ~~289,~~ former
17 Section 262, shall be punished by imprisonment in the state prison
18 for life with the possibility of parole.

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

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

30 (d) Subdivision (b) ~~shall does not be construed to~~ supersede or
31 affect Section 667.61. A person may be charged with a violation
32 of subdivision (b) and Section 667.61. However, a person may not
33 be punished under subdivision (b) and Section 667.61 for the same
34 act that constitutes a violation of both subdivision (b) and Section
35 667.61.

36 SEC. 17. Section 261 of the Penal Code is amended to read:

37 261. (a) Rape is an act of sexual intercourse accomplished
38 with a person not the spouse of the perpetrator, under any of the
39 following circumstances:

1 (1) ~~Where~~*If* a person is incapable, because of a mental disorder
2 or developmental or physical disability, of giving legal consent,
3 and this is known or reasonably should be known to the person
4 committing the act. Notwithstanding the existence of a
5 conservatorship pursuant to the provisions of the
6 Lanterman-Petris-Short Act (Part 1 (commencing with Section
7 5000) of Division 5 of the Welfare and Institutions Code), the
8 prosecuting attorney shall prove, as an element of the crime, that
9 a mental disorder or developmental or physical disability rendered
10 the alleged victim incapable of giving consent.

11 (2) ~~Where~~*If* it is accomplished against a person's will by means
12 of force, violence, duress, menace, or fear of immediate and
13 unlawful bodily injury on the person or another.

14 (3) ~~Where~~*If* a person is prevented from resisting by ~~any~~ *an*
15 intoxicating or anesthetic substance, or ~~any~~ *a* controlled substance,
16 and this condition was known, or reasonably should have been
17 known by the accused.

18 (4) ~~Where~~*If* a person is at the time unconscious of the nature
19 of the act, and this is known to the accused. As used in this
20 paragraph, "unconscious of the nature of the act" means incapable
21 of resisting because the victim meets any one of the following
22 conditions:

23 (A) Was unconscious or asleep.

24 (B) Was not aware, knowing, perceiving, or cognizant that the
25 act occurred.

26 (C) Was not aware, knowing, perceiving, or cognizant of the
27 essential characteristics of the act due to the perpetrator's fraud in
28 fact.

29 (D) Was not aware, knowing, perceiving, or cognizant of the
30 essential characteristics of the act due to the perpetrator's fraudulent
31 representation that the sexual penetration served a professional
32 purpose when it served no professional purpose.

33 (5) ~~Where~~*If* a person submits under the belief that the person
34 committing the act is someone known to the victim other than the
35 accused, and this belief is induced by ~~any~~ artifice, pretense, or
36 concealment practiced by the accused, with intent to induce the
37 belief.

38 (6) ~~Where~~*If* the act is accomplished against the victim's will
39 by threatening to retaliate in the future against the victim or any
40 other person, and there is a reasonable possibility that the

1 perpetrator will execute the threat. As used in this paragraph,
2 “threatening to retaliate” means a threat to kidnap or falsely
3 imprison, or to inflict extreme pain, serious bodily injury, or death.

4 (7) ~~Where~~ *If* the act is accomplished against the victim’s will
5 by threatening to use the authority of a public official to incarcerate,
6 arrest, or deport the victim or another, and the victim has a
7 reasonable belief that the perpetrator is a public official. As used
8 in this paragraph, “public official” means a person employed by
9 a governmental agency who has the authority, as part of that
10 position, to incarcerate, arrest, or deport another. The perpetrator
11 does not actually have to be a public official.

12 (b) (1) *If probation is granted upon conviction of a violation*
13 *of this section when the victim was the spouse of the perpetrator,*
14 *the conditions of probation may include, in lieu of the fine, one or*
15 *both of the following:*

16 (A) *That the defendant make payments to a shelter for victims*
17 *of domestic violence, up to a maximum of one thousand dollars*
18 *(\$1,000).*

19 (B) *That the defendant reimburse the victim for reasonable costs*
20 *of counseling and other reasonable expenses that the court finds*
21 *are a direct result of the defendant’s offense.*

22 (2) *For any order to pay a fine, make payments to a shelter for*
23 *victims of domestic violence, or pay restitution as a condition of*
24 *probation under this subdivision, the court shall make a*
25 *determination of the defendant’s ability to pay. An order to make*
26 *payments to a shelter for victims of domestic violence shall not be*
27 *made if it would impair the ability of the defendant to pay direct*
28 *restitution to the victim or court-ordered child support. When the*
29 *injury to a married person is caused in whole or in part by the*
30 *criminal acts of a spouse in violation of this section, the community*
31 *property may not be used to discharge the liability of the offending*
32 *spouse for restitution to the injured spouse, required by Section*
33 *1203.04, as operative on or before August 2, 1995, or Section*
34 *1202.4, or to a shelter for costs with regard to the injured spouse*
35 *and dependents, required by this section, until all separate property*
36 *of the offending spouse is exhausted.*

37 (c) *For purposes of this section, the following definitions apply:*

38 ~~(b) As used in this section, “duress”~~

39 (1) *“Duress” means a direct or implied threat of force, violence,*
40 *danger, or retribution sufficient to coerce a reasonable person of*

1 ordinary susceptibilities to perform an act which otherwise would
 2 not have been performed, or acquiesce in an act to which one
 3 otherwise would not have submitted. The total circumstances,
 4 including the age of the victim, and ~~his or her~~ *the victim's*
 5 relationship to the defendant, are factors to consider in appraising
 6 the existence of duress.

7 ~~(e) As used in this section, "menace"~~

8 (2) "*Menace*" means any threat, declaration, or act ~~which that~~
 9 shows an intention to inflict an injury upon another.

10 *SEC. 18. Section 261.6 of the Penal Code is amended to read:*

11 261.6. (a) In prosecutions under Section 261, ~~262~~, 286, 287,
 12 or 289, or former Section 262 *or* 288a, in which consent is at issue,
 13 "consent" ~~shall be defined to mean~~ *means* positive cooperation in
 14 act or attitude pursuant to an exercise of free will. The person must
 15 act freely and voluntarily and have knowledge of the nature of the
 16 act or transaction involved.

17 **A**

18 (b) A current or previous dating or marital relationship ~~shall is~~
 19 not ~~be~~ sufficient to constitute consent ~~where if~~ consent is at issue
 20 in a prosecution under Section 261, ~~262~~, 286, 287, or 289, or
 21 former Section 262 *or* 288a.

22 ~~Nothing in this~~

23 (c) *This* section shall *not* affect the admissibility of evidence or
 24 the burden of proof on the issue of consent.

25 *SEC. 19. Section 261.7 of the Penal Code is amended to read:*

26 261.7. In prosecutions under Section 261, ~~262~~, 286, 287, or
 27 289, or former Section 262 *or* 288a, in which consent is at issue,
 28 evidence that the victim suggested, requested, or otherwise suggested,
 29 communicated to the defendant that the defendant use a condom
 30 or other birth control device, without additional evidence of
 31 consent, is not sufficient to constitute consent.

32 *SEC. 20. Section 262 of the Penal Code is repealed.*

33 ~~262. (a) Rape of a person who is the spouse of the perpetrator~~
 34 ~~is an act of sexual intercourse accomplished under any of the~~
 35 ~~following circumstances:~~

36 ~~(1) Where it is accomplished against a person's will by means~~
 37 ~~of force, violence, duress, menace, or fear of immediate and~~
 38 ~~unlawful bodily injury on the person or another.~~

39 ~~(2) Where a person is prevented from resisting by any~~
 40 ~~intoxicating or anesthetic substance, or any controlled substance,~~

1 and this condition was known, or reasonably should have been
2 known, by the accused.

3 (3) ~~Where a person is at the time unconscious of the nature of~~
4 ~~the act, and this is known to the accused. As used in this paragraph,~~
5 ~~“unconscious of the nature of the act” means incapable of resisting~~
6 ~~because the victim meets one of the following conditions:~~

7 (A) ~~Was unconscious or asleep.~~

8 (B) ~~Was not aware, knowing, perceiving, or cognizant that the~~
9 ~~act occurred.~~

10 (C) ~~Was not aware, knowing, perceiving, or cognizant of the~~
11 ~~essential characteristics of the act due to the perpetrator’s fraud in~~
12 ~~fact.~~

13 (4) ~~Where the act is accomplished against the victim’s will by~~
14 ~~threatening to retaliate in the future against the victim or any other~~
15 ~~person, and there is a reasonable possibility that the perpetrator~~
16 ~~will execute the threat. As used in this paragraph, “threatening to~~
17 ~~retaliate” means a threat to kidnap or falsely imprison, or to inflict~~
18 ~~extreme pain, serious bodily injury, or death.~~

19 (5) ~~Where the act is accomplished against the victim’s will by~~
20 ~~threatening to use the authority of a public official to incarcerate,~~
21 ~~arrest, or deport the victim or another, and the victim has a~~
22 ~~reasonable belief that the perpetrator is a public official. As used~~
23 ~~in this paragraph, “public official” means a person employed by~~
24 ~~a governmental agency who has the authority, as part of that~~
25 ~~position, to incarcerate, arrest, or deport another. The perpetrator~~
26 ~~does not actually have to be a public official.~~

27 (b) ~~As used in this section, “duress” means a direct or implied~~
28 ~~threat of force, violence, danger, or retribution sufficient to coerce~~
29 ~~a reasonable person of ordinary susceptibilities to perform an act~~
30 ~~which otherwise would not have been performed, or acquiesce in~~
31 ~~an act to which one otherwise would not have submitted. The total~~
32 ~~circumstances, including the age of the victim, and his or her~~
33 ~~relationship to the defendant, are factors to consider in apprising~~
34 ~~the existence of duress.~~

35 (c) ~~As used in this section, “menace” means any threat,~~
36 ~~declaration, or act that shows an intention to inflict an injury upon~~
37 ~~another.~~

38 (d) ~~If probation is granted upon conviction of a violation of this~~
39 ~~section, the conditions of probation may include, in lieu of a fine,~~
40 ~~one or both of the following requirements:~~

1 ~~(1) That the defendant make payments to a battered women's~~
2 ~~shelter, up to a maximum of one thousand dollars (\$1,000):~~

3 ~~(2) That the defendant reimburse the victim for reasonable costs~~
4 ~~of counseling and other reasonable expenses that the court finds~~
5 ~~are the direct result of the defendant's offense.~~

6 ~~For any order to pay a fine, make payments to a battered~~
7 ~~women's shelter, or pay restitution as a condition of probation~~
8 ~~under this subdivision, the court shall make a determination of the~~
9 ~~defendant's ability to pay. In no event shall any order to make~~
10 ~~payments to a battered women's shelter be made if it would impair~~
11 ~~the ability of the defendant to pay direct restitution to the victim~~
12 ~~or court-ordered child support. Where the injury to a married person~~
13 ~~is caused in whole or in part by the criminal acts of his or her~~
14 ~~spouse in violation of this section, the community property may~~
15 ~~not be used to discharge the liability of the offending spouse for~~
16 ~~restitution to the injured spouse, required by Section 1203.04, as~~
17 ~~operative on or before August 2, 1995, or Section 1202.4, or to a~~
18 ~~shelter for costs with regard to the injured spouse and dependents,~~
19 ~~required by this section, until all separate property of the offending~~
20 ~~spouse is exhausted.~~

21 *SEC. 21. Section 264 of the Penal Code is amended to read:*

22 264. (a) Except as provided in subdivision (c), rape, as defined
23 in Section 261 or *former Section 262*, is punishable by
24 imprisonment in the state prison for three, six, or eight years.

25 (b) In addition to any punishment imposed under this section
26 the judge may assess a fine not to exceed seventy dollars (\$70)
27 against ~~any~~ a person who violates Section 261 or *former Section*
28 262 with the proceeds of this fine to be used in accordance with
29 Section 1463.23. The court shall, however, take into consideration
30 the defendant's ability to pay, and no defendant shall be denied
31 probation because of ~~his or her~~ *the defendant's* inability to pay the
32 fine permitted under this subdivision.

33 (c) (1) ~~Any~~ A person who commits rape in violation of
34 paragraph (2) of subdivision (a) of Section 261 upon a child who
35 is under 14 years of age shall be punished by imprisonment in the
36 state prison for 9, 11, or 13 years.

37 (2) ~~Any~~ A person who commits rape in violation of paragraph
38 (2) of subdivision (a) of Section 261 upon a minor who is 14 years
39 of age or older shall be punished by imprisonment in the state
40 prison for 7, 9, or 11 years.

1 (3) This subdivision does not preclude prosecution under Section
2 269, Section 288.7, or any other ~~provision of~~ law.

3 *SEC. 22. Section 264.1 of the Penal Code is amended to read:*

4 264.1. (a) The provisions of Section 264 notwithstanding, ~~in~~
5 ~~any case in which~~ *when* the defendant, voluntarily acting in concert
6 with another person, by force or violence and against the will of
7 the victim, committed an act described in Section ~~261, 262, 261~~
8 or 289, either personally or by aiding and abetting the other person,
9 that fact shall be charged in the indictment or information and if
10 found to be true by the jury, upon a jury trial, or if found to be true
11 by the court, upon a court trial, or if admitted by the defendant,
12 the defendant shall suffer confinement in the state prison for five,
13 seven, or nine years.

14 (b) (1) If the victim of an offense described in subdivision (a)
15 is a child who is under 14 years of age, the defendant shall be
16 punished by imprisonment in the state prison for 10, 12, or 14
17 years.

18 (2) If the victim of an offense described in subdivision (a) is a
19 minor who is 14 years of age or older, the defendant shall be
20 punished by imprisonment in the state prison for 7, 9, or 11 years.

21 (3) This subdivision does not preclude prosecution under Section
22 269, Section 288.7, or any other ~~provision of~~ law.

23 *SEC. 23. Section 264.2 of the Penal Code is amended to read:*

24 264.2. (a) ~~Whenever~~ *When* there is an alleged violation or
25 violations of subdivision (e) of Section 243, or Section 261, 261.5,
26 ~~262, 273.5, 286, 287, or 289,~~ the law enforcement officer assigned
27 to the case shall immediately provide the victim of the crime with
28 the “Victims of Domestic Violence” card, as specified in
29 subparagraph (H) of paragraph (9) of subdivision (c) of Section
30 13701, or with the card described in subdivision (a) of Section
31 680.2, whichever is more applicable.

32 (b) (1) The law enforcement officer, ~~or his or her~~ *the law*
33 *enforcement officer’s* agency, shall immediately notify the local
34 rape victim counseling center, whenever a victim of an alleged
35 violation of Section 261, 261.5, ~~262, 286, 287, or 289~~ is transported
36 to a hospital for ~~any~~ *a* medical evidentiary or physical examination.
37 The hospital may notify the local rape victim counseling center,
38 when the victim of the alleged violation of Section 261, 261.5,
39 ~~262, 286, 287, or 289~~ is presented to the hospital for the medical
40 or evidentiary physical examination, upon approval of the victim.

1 The victim has the right to have a sexual assault counselor, as
2 defined in Section 1035.2 of the Evidence Code, and a support
3 person of the victim's choosing present at any medical evidentiary
4 or physical examination.

5 (2) Prior to the commencement of ~~any~~ *an* initial medical
6 evidentiary or physical examination arising out of a sexual assault,
7 the medical provider shall give the victim the card described in
8 subdivision (a) of Section 680.2. This requirement shall apply only
9 if the law enforcement agency has provided the card to the medical
10 provider in a language understood by the victim.

11 (3) The hospital may verify with the law enforcement officer,
12 ~~or his or her~~ *the law enforcement officer's* agency, whether the
13 local rape victim counseling center has been notified, upon the
14 approval of the victim.

15 (4) A support person may be excluded from a medical
16 evidentiary or physical examination if the law enforcement officer
17 or medical provider determines that the presence of that individual
18 would be detrimental to the purpose of the examination.

19 (5) After conducting the medical evidentiary or physical
20 examination, the medical provider shall give the victim the
21 opportunity to shower or bathe at no cost to the victim, unless a
22 showering or bathing facility is not available.

23 (6) A medical provider shall, within 24 hours of obtaining sexual
24 assault forensic evidence from the victim, notify the law
25 enforcement agency having jurisdiction over the alleged violation
26 if the medical provider knows the appropriate jurisdiction. If the
27 medical provider does not know the appropriate jurisdiction, the
28 medical provider shall notify the local law enforcement agency.

29 *SEC. 24. Section 273.7 of the Penal Code is amended to read:*

30 273.7. (a) ~~Any~~—A person who maliciously publishes,
31 disseminates, or otherwise discloses the location of ~~any~~ *a*
32 trafficking shelter or domestic violence shelter or ~~any~~ *a* place
33 designated as a trafficking shelter or domestic violence shelter,
34 without the authorization of that trafficking shelter or domestic
35 violence shelter, is guilty of a misdemeanor.

36 (b) *For purposes of this section, the following definitions apply:*

37 ~~(b) (1) For purposes of this section, "domestic~~

38 (1) "Domestic violence shelter" means a confidential location
39 that provides emergency housing on a 24-hour basis for victims
40 of sexual assault, spousal abuse, or both, and their families.

1 (2) ~~For purposes of this section, “trafficking—~~“*Trafficking*
2 shelter” means a confidential location that provides emergency
3 housing on a 24-hour basis for victims of human trafficking,
4 including any person who is a victim under Section 236.1.

5 (3) Sexual assault, spousal abuse, or both, include, but are not
6 limited to, those crimes described in Sections 240, 242, 243.4,
7 261, 261.5, ~~262~~, 264.1, 266, 266a, 266b, 266c, 266f, 273.5, 273.6,
8 285, 288, and 289.

9 ~~Nothing in this—this~~ section ~~shall~~ *does not* apply to
10 confidential communications between an attorney and ~~his or her~~
11 *their* client.

12 *SEC. 25. Section 290 of the Penal Code, as Amended by Stats.*
13 *2020, Ch. 79, Sec. 2, is amended to read:*

14 290. (a) Sections 290 to 290.024, inclusive, shall be known,
15 and may be cited, as the Sex Offender Registration Act. All
16 references to “the Act” in those sections are to the Sex Offender
17 Registration Act.

18 (b) Every person described in subdivision (c), for the period
19 specified in subdivision (d) while residing in California, or while
20 attending school or working in California, as described in Sections
21 290.002 and 290.01, shall register with the chief of police of the
22 city in which the person is residing, or the sheriff of the county if
23 the person is residing in an unincorporated area or city that has no
24 police department, and, additionally, with the chief of police of a
25 campus of the University of California, the California State
26 University, or community college if the person is residing upon
27 the campus or in any of its facilities, within five working days of
28 coming into, or changing the person’s residence within, any city,
29 county, or city and county, or campus in which the person
30 temporarily resides, and shall register thereafter in accordance
31 with the Act, unless the duty to register is terminated pursuant to
32 Section 290.5 or as otherwise provided by law.

33 (c) (1) The following persons shall register:

34 Every person who, since July 1, 1944, has been or is hereafter
35 convicted in any court in this state or in any federal or military
36 court of a violation of Section 187 committed in the perpetration,
37 or an attempt to perpetrate, rape or any act punishable under
38 Section 286, 287, 288, or 289 or former Section 288a, Section 207
39 or 209 committed with intent to violate Section 261, 286, 287,
40 288, or 289 or former Section 288a, Section 220, except assault

1 to commit mayhem, subdivision (b) or (c) of Section 236.1, Section
2 243.4, Section 261, paragraph (1) of subdivision (a) of *former*
3 Section 262 involving the use of force or violence for which the
4 person is sentenced to the state prison, Section 264.1, 266, or 266c,
5 subdivision (b) of Section 266h, subdivision (b) of Section 266i,
6 Section 266j, 267, 269, 285, 286, 287, 288, 288.3, 288.4, 288.5,
7 288.7, 289, or 311.1, or former Section 288a, subdivision (b), (c),
8 or (d) of Section 311.2, Section 311.3, 311.4, 311.10, 311.11, or
9 647.6, former Section 647a, subdivision (c) of Section 653f,
10 subdivision 1 or 2 of Section 314, any offense involving lewd or
11 lascivious conduct under Section 272, or any felony violation of
12 Section 288.2; any statutory predecessor that includes all elements
13 of one of the offenses described in this subdivision; or any person
14 who since that date has been or is hereafter convicted of the attempt
15 or conspiracy to commit any of the offenses described in this
16 subdivision.

17 (2) Notwithstanding paragraph (1), a person convicted of a
18 violation of subdivision (b) of Section 286, subdivision (b) of
19 Section 287, or subdivision (h) or (i) of Section 289 shall not be
20 required to register if, at the time of the offense, the person is not
21 more than 10 years older than the minor, as measured from the
22 minor's date of birth to the person's date of birth, and the
23 conviction is the only one requiring the person to register. This
24 paragraph does not preclude the court from requiring a person to
25 register pursuant to Section 290.006.

26 (d) A person described in subdivision (c), or who is otherwise
27 required to register pursuant to the Act shall register for 10 years,
28 20 years, or life, following a conviction and release from
29 incarceration, placement, commitment, or release on probation or
30 other supervision, as follows:

31 (1) (A) A tier one offender is subject to registration for a
32 minimum of 10 years. A person is a tier one offender if the person
33 is required to register for conviction of a misdemeanor described
34 in subdivision (c), or for conviction of a felony described in
35 subdivision (c) that was not a serious or violent felony as described
36 in subdivision (c) of Section 667.5 or subdivision (c) of Section
37 1192.7.

38 (B) This paragraph does not apply to a person who is subject
39 to registration pursuant to paragraph (2) or (3).

1 (2) (A) A tier two offender is subject to registration for a
2 minimum of 20 years. A person is a tier two offender if the person
3 was convicted of an offense described in subdivision (c) that is
4 also described in subdivision (c) of Section 667.5 or subdivision
5 (c) of Section 1192.7, Section 285, subdivision (g) or (h) of Section
6 286, subdivision (g) or (h) of Section 287 or former Section 288a,
7 subdivision (b) of Section 289, or Section 647.6 if it is a second
8 or subsequent conviction for that offense that was brought and
9 tried separately.

10 (B) This paragraph does not apply if the person is subject to
11 lifetime registration as required in paragraph (3).

12 (3) A tier three offender is subject to registration for life. A
13 person is a tier three offender if any one of the following applies:

14 (A) Following conviction of a registerable offense, the person
15 was subsequently convicted in a separate proceeding of committing
16 an offense described in subdivision (c) and the conviction is for
17 commission of a violent felony described in subdivision (c) of
18 Section 667.5, or the person was subsequently convicted of
19 committing an offense for which the person was ordered to register
20 pursuant to Section 290.006, and the conviction is for the
21 commission of a violent felony described in subdivision (c) of
22 Section 667.5.

23 (B) The person was committed to a state mental hospital as a
24 sexually violent predator pursuant to Article 4 (commencing with
25 Section 6600) of Chapter 2 of Part 2 of Division 6 of the Welfare
26 and Institutions Code.

27 (C) The person was convicted of violating any of the following:

28 (i) Section 187 while attempting to commit or committing an
29 act punishable under Section 261, 286, 287, 288, or 289 or former
30 Section 288a.

31 (ii) Section 207 or 209 with intent to violate Section 261, 286,
32 287, 288, or 289 or former Section 288a.

33 (iii) Section 220.

34 (iv) Subdivision (b) of Section 266h.

35 (v) Subdivision (b) of Section 266i.

36 (vi) Section 266j.

37 (vii) Section 267.

38 (viii) Section 269.

39 (ix) Subdivision (b) or (c) of Section 288.

40 (x) Section 288.2.

- 1 (xi) Section 288.3, unless committed with the intent to commit
2 a violation of subdivision (b) of Section 286, subdivision (b) of
3 Section 287 or former Section 288a, or subdivision (h) or (i) of
4 Section 289.
- 5 (xii) Section 288.4.
- 6 (xiii) Section 288.5.
- 7 (xiv) Section 288.7.
- 8 (xv) Subdivision (c) of Section 653f.
- 9 (xvi) Any offense for which the person is sentenced to a life
10 term pursuant to Section 667.61.
- 11 (D) The person's risk level on the static risk assessment
12 instrument for sex offenders (SARATSO), pursuant to Section
13 290.04, is well above average risk at the time of release on the
14 index sex offense into the community, as defined in the Coding
15 Rules for that instrument.
- 16 (E) The person is a habitual sex offender pursuant to Section
17 667.71.
- 18 (F) The person was convicted of violating subdivision (a) of
19 Section 288 in two proceedings brought and tried separately.
- 20 (G) The person was sentenced to 15 to 25 years to life for an
21 offense listed in Section 667.61.
- 22 (H) The person is required to register pursuant to Section
23 290.004.
- 24 (I) The person was convicted of a felony offense described in
25 subdivision (b) or (c) of Section 236.1.
- 26 (J) The person was convicted of a felony offense described in
27 subdivision (a), (c), or (d) of Section 243.4.
- 28 (K) The person was convicted of violating paragraph (2), (3),
29 or (4) of subdivision (a) of Section 261 or was convicted of
30 violating Section 261 and punished pursuant to paragraph (1) or
31 (2) of subdivision (c) of Section 264.
- 32 (L) The person was convicted of violating paragraph (1) of
33 subdivision (a) of *former* Section 262.
- 34 (M) The person was convicted of violating Section 264.1.
- 35 (N) The person was convicted of any offense involving lewd
36 or lascivious conduct under Section 272.
- 37 (O) The person was convicted of violating paragraph (2) of
38 subdivision (c) or subdivision (d), (f), or (i) of Section 286.

1 (P) The person was convicted of violating paragraph (2) of
2 subdivision (c) or subdivision (d), (f), or (i) of Section 287 or
3 former Section 288a.

4 (Q) The person was convicted of violating paragraph (1) of
5 subdivision (a) or subdivision (d), (e), or (j) of Section 289.

6 (R) The person was convicted of a felony violation of Section
7 311.1 or 311.11 or of violating subdivision (b), (c), or (d) of Section
8 311.2, Section 311.3, 311.4, or 311.10.

9 (4) (A) A person who is required to register pursuant to Section
10 290.005 shall be placed in the appropriate tier if the offense is
11 assessed as equivalent to a California registerable offense described
12 in subdivision (c).

13 (B) If the person's duty to register pursuant to Section 290.005
14 is based solely on the requirement of registration in another
15 jurisdiction, and there is no equivalent California registerable
16 offense, the person shall be subject to registration as a tier two
17 offender, except that the person is subject to registration as a tier
18 three offender if one of the following applies:

19 (i) The person's risk level on the static risk assessment
20 instrument (SARATSO), pursuant to Section 290.06, is well above
21 average risk at the time of release on the index sex offense into
22 the community, as defined in the Coding Rules for that instrument.

23 (ii) The person was subsequently convicted in a separate
24 proceeding of an offense substantially similar to an offense listed
25 in subdivision (c) which is also substantially similar to an offense
26 described in subdivision (c) of Section 667.5, or is substantially
27 similar to Section 269 or 288.7.

28 (iii) The person has ever been committed to a state mental
29 hospital or mental health facility in a proceeding substantially
30 similar to civil commitment as a sexually violent predator pursuant
31 to Article 4 (commencing with Section 6600) of Chapter 2 of Part
32 2 of Division 6 of the Welfare and Institutions Code.

33 (5) (A) The Department of Justice may place a person described
34 in subdivision (c), or who is otherwise required to register pursuant
35 to the Act, in a tier-to-be-determined category if the appropriate
36 tier designation described in this subdivision cannot be immediately
37 ascertained. An individual placed in this tier-to-be-determined
38 category shall continue to register in accordance with the Act. The
39 individual shall be given credit *toward the mandated minimum*
40 *registration period* for any period for which the individual registers

1 ~~towards the individual's mandated minimum registration period.~~
 2 ~~registers.~~

3 (B) The Department of Justice shall ascertain an individual's
 4 appropriate tier designation as described in this subdivision within
 5 24 months of the individual's placement in the
 6 tier-to-be-determined category.

7 (e) The minimum time period for the completion of the required
 8 registration period in tier one or two commences on the date of
 9 release from incarceration, placement, or commitment, including
 10 any related civil commitment on the registerable offense. The
 11 minimum time for the completion of the required registration
 12 period for a designated tier is tolled during any period of
 13 subsequent incarceration, placement, or commitment, including
 14 any subsequent civil commitment, except that arrests not resulting
 15 in conviction, adjudication, or revocation of probation or parole
 16 shall not toll the required registration period. The minimum time
 17 period shall be extended by one year for each misdemeanor
 18 conviction of failing to register under this act, and by three years
 19 for each felony conviction of failing to register under this act,
 20 without regard to the actual time served in custody for the
 21 conviction. If a registrant is subsequently convicted of another
 22 offense requiring registration pursuant to the Act, a new minimum
 23 time period for the completion of the registration requirement for
 24 the applicable tier shall commence upon that person's release from
 25 incarceration, placement, or commitment, including any related
 26 civil commitment. If the subsequent conviction requiring
 27 registration pursuant to the Act occurs prior to an order to terminate
 28 the registrant from the registry after completion of a tier associated
 29 with the first conviction for a registerable offense, the applicable
 30 tier shall be the highest tier associated with the convictions.

31 (f) ~~Nothing in this~~ *This section shall be construed to does not*
 32 require a ward of the juvenile court to register under the Act, except
 33 as provided in Section 290.008.

34 ~~(g) This section shall become operative on January 1, 2021.~~

35 *SEC. 26. Section 292 of the Penal Code is amended to read:*

36 292. It is the intention of the Legislature in enacting this section
 37 to clarify that for the purposes of subdivisions (b) and (c) of Section
 38 12 of Article I of the California Constitution, a violation of
 39 paragraph (2) or (6) of subdivision (a) of Section 261, paragraph
 40 (1) or (4) of subdivision (a) of *former* Section 262, Section 264.1,

1 subdivision (c) or (d) of Section 286, subdivision (c) or (d) of
2 Section 287 or former Section 288a, subdivision (b) of Section
3 288, or subdivision (a) of Section 289, shall be deemed to be a
4 felony offense involving an act of violence and a felony offense
5 involving great bodily harm.

6 *SEC. 27. Section 667 of the Penal Code is amended to read:*

7 667. (a) (1) ~~Any~~A person convicted of a serious felony who
8 previously has been convicted of a serious felony in this state or
9 of any offense committed in another jurisdiction—~~which~~ *that*
10 includes all of the elements of any serious felony, shall receive,
11 in addition to the sentence imposed by the court for the present
12 offense, a five-year enhancement for each such prior conviction
13 on charges brought and tried separately. The terms of the present
14 offense and each enhancement shall run consecutively.

15 (2) This subdivision shall not be applied when the punishment
16 imposed under other provisions of law would result in a longer
17 term of imprisonment. There is no requirement of prior
18 incarceration or commitment for this subdivision to apply.

19 (3) The Legislature may increase the length of the enhancement
20 of sentence provided in this subdivision by a statute passed by
21 majority vote of each house thereof.

22 (4) As used in this subdivision, “serious felony” means a serious
23 felony listed in subdivision (c) of Section 1192.7.

24 (5) This subdivision does not apply to a person convicted of
25 selling, furnishing, administering, or giving, or offering to sell,
26 furnish, administer, or give to a minor any
27 methamphetamine-related drug or any precursors of
28 methamphetamine unless the prior conviction was for a serious
29 felony described in subparagraph (24) of subdivision (c) of Section
30 1192.7.

31 (b) It is the intent of the Legislature in enacting subdivisions
32 (b) to (i), inclusive, to ensure longer prison sentences and greater
33 punishment for those who commit a felony and have been
34 previously convicted of one or more serious or violent felony
35 offenses.

36 (c) Notwithstanding any other law, if a defendant has been
37 convicted of a felony and it has been pled and proved that the
38 defendant has one or more prior serious or violent felony
39 convictions as defined in subdivision (d), the court shall adhere to
40 each of the following:

1 (1) There shall not be an aggregate term limitation for purposes
2 of consecutive sentencing for any subsequent felony conviction.

3 (2) Probation for the current offense shall not be granted, nor
4 shall execution or imposition of the sentence be suspended for any
5 prior offense.

6 (3) The length of time between the prior serious or violent felony
7 conviction and the current felony conviction shall not affect the
8 imposition of sentence.

9 (4) There shall not be a commitment to any other facility other
10 than the state prison. Diversion shall not be ~~granted~~ *granted*, nor
11 shall the defendant be eligible for commitment to the California
12 Rehabilitation Center as provided in Article 2 (commencing with
13 Section 3050) of Chapter 1 of Division 3 of the Welfare and
14 Institutions Code.

15 (5) The total amount of credits awarded pursuant to Article 2.5
16 (commencing with Section 2930) of Chapter 7 of Title 1 of Part
17 3 shall not exceed one-fifth of the total term of imprisonment
18 imposed and shall not accrue until the defendant is physically
19 placed in the state prison.

20 (6) If there is a current conviction for more than one felony
21 count not committed on the same occasion, and not arising from
22 the same set of operative facts, the court shall sentence the
23 defendant consecutively on each count pursuant to subdivision
24 (e).

25 (7) If there is a current conviction for more than one serious or
26 violent felony as described in paragraph (6), the court shall impose
27 the sentence for each conviction consecutive to the sentence for
28 any other conviction for which the defendant may be consecutively
29 sentenced in the manner prescribed by law.

30 (8) ~~Any~~ A sentence imposed pursuant to subdivision (e) ~~will~~
31 *shall* be imposed consecutive to any other sentence ~~which~~ *that* the
32 defendant is already serving, unless otherwise provided by law.

33 (d) Notwithstanding any other law and for the purposes of
34 subdivisions (b) to (i), inclusive, a prior conviction of a serious or
35 violent felony shall be defined as:

36 (1) ~~Any~~ An offense defined in subdivision (c) of Section 667.5
37 as a violent felony or ~~any~~ an offense defined in subdivision (c) of
38 Section 1192.7 as a serious felony in this state. The determination
39 of whether a prior conviction is a prior felony conviction for
40 purposes of subdivisions (b) to (i), inclusive, shall be made upon

1 the date of that prior conviction and is not affected by the sentence
2 imposed unless the sentence automatically, upon the initial
3 sentencing, converts the felony to a misdemeanor. The following
4 dispositions shall not affect the determination that a prior
5 conviction is a prior felony for purposes of subdivisions (b) to (i),
6 inclusive:

7 (A) The suspension of imposition of judgment or sentence.

8 (B) The stay of execution of sentence.

9 (C) The commitment to the State Department of ~~Health Care~~
10 ~~Services~~ *State Hospitals* as a mentally disordered sex offender
11 following a conviction of a felony.

12 (D) The commitment to the California Rehabilitation Center or
13 any other facility whose function is rehabilitative diversion from
14 the state prison.

15 (2) A prior conviction in another jurisdiction for an offense that,
16 if committed in California, is punishable by imprisonment in the
17 state prison constitutes a prior conviction of a particular serious
18 or violent felony if the prior conviction in the other jurisdiction is
19 for an offense that includes all of the elements of a particular
20 violent felony as defined in subdivision (c) of Section 667.5 or
21 serious felony as defined in subdivision (c) of Section 1192.7.

22 (3) A prior juvenile adjudication constitutes a prior serious or
23 violent felony conviction for purposes of sentence enhancement
24 ~~if~~ *if it meets all of the following:*

25 (A) The juvenile was 16 years of age or older at the time the
26 juvenile committed the prior offense.

27 (B) The prior offense is listed in subdivision (b) of Section 707
28 of the Welfare and Institutions Code or described in paragraph (1)
29 or (2) as a serious or violent felony.

30 (C) The juvenile was found to be a fit and proper subject to be
31 dealt with under the juvenile court law.

32 (D) The juvenile was adjudged a ward of the juvenile court
33 within the meaning of Section 602 of the Welfare and Institutions
34 Code because the person committed an offense listed in subdivision
35 (b) of Section 707 of the Welfare and Institutions Code.

36 (e) For purposes of subdivisions (b) to (i), inclusive, and in
37 addition to any other enhancement or punishment provisions ~~which~~
38 ~~may~~ *that* apply, the following apply if a defendant has one or more
39 prior serious or violent felony convictions:

1 (1) If a defendant has one prior serious or violent felony
2 conviction as defined in subdivision (d) that has been pled and
3 proved, the determinate term or minimum term for an indeterminate
4 term shall be twice the term otherwise provided as punishment for
5 the current felony conviction.

6 (2) (A) Except as provided in subparagraph (C), if a defendant
7 has two or more prior serious or violent felony convictions as
8 defined in subdivision (d) that have been pled and proved, the term
9 for the current felony conviction shall be an indeterminate term
10 of life imprisonment with a minimum term of the indeterminate
11 sentence calculated as the greatest of:

12 (i) Three times the term otherwise provided as punishment for
13 each current felony conviction subsequent to the two or more prior
14 serious or violent felony convictions.

15 (ii) Imprisonment in the state prison for 25 years.

16 (iii) The term determined by the court pursuant to Section 1170
17 for the underlying conviction, including any enhancement
18 applicable under Chapter 4.5 (commencing with Section 1170) of
19 Title 7 of Part 2, or any period prescribed by Section 190 or 3046.

20 (B) The indeterminate term described in subparagraph (A) shall
21 be served consecutive to any other term of imprisonment for which
22 a consecutive term may be imposed by law. Any other term
23 imposed subsequent to ~~any~~ *an* indeterminate term described in
24 subparagraph (A) shall not be merged therein but shall commence
25 at the time the person would otherwise have been released from
26 prison.

27 (C) If a defendant has two or more prior serious or violent felony
28 convictions as defined in subdivision (c) of Section 667.5 or
29 subdivision (c) of Section 1192.7 that have been pled and proved,
30 and the current offense is not a serious or violent felony as defined
31 in subdivision (d), the defendant shall be sentenced pursuant to
32 paragraph (1) of subdivision (e) unless the prosecution pleads and
33 proves any of the following:

34 (i) The current offense is a controlled substance charge, in which
35 an allegation under Section 11370.4 or 11379.8 of the Health and
36 Safety Code was admitted or found true.

37 (ii) The current offense is a felony sex offense, defined in
38 subdivision (d) of Section 261.5 or *former* Section 262, or ~~any~~ *a*
39 felony offense that results in mandatory registration as a sex
40 offender pursuant to subdivision (c) of Section 290 except for

1 violations of Sections 266 and 285, paragraph (1) of subdivision
2 (b) and subdivision (e) of Section 286, paragraph (1) of subdivision
3 (b) and subdivision (e) of Section 288a, Section 311.11, and
4 Section 314.

5 (iii) During the commission of the current offense, the defendant
6 used a firearm, was armed with a firearm or deadly weapon, or
7 intended to cause great bodily injury to another person.

8 (iv) The defendant suffered a prior serious or violent felony
9 conviction, as defined in subdivision (d) of this section, for any of
10 the following felonies:

11 (I) A “sexually violent offense” as defined in subdivision (b)
12 of Section 6600 of the Welfare and Institutions Code.

13 (II) Oral copulation with a child who is under 14 years of ~~age,~~
14 ~~age~~ and ~~who is~~ more than 10 years younger than the defendant as
15 defined by Section 288a, sodomy with another person who is under
16 14 years of age and more than 10 years younger than the defendant
17 as defined by Section 286, or sexual penetration with another
18 person who is under 14 years of ~~age,~~ ~~age~~ and ~~who is~~ more than 10
19 years younger than the defendant, as defined by Section 289.

20 (III) A lewd or lascivious act involving a child under 14 years
21 of age, in violation of Section 288.

22 (IV) Any homicide offense, including any attempted homicide
23 offense, defined in Sections 187 to 191.5, inclusive.

24 (V) Solicitation to commit murder as defined in Section 653f.

25 (VI) Assault with a machine gun on a peace officer or firefighter,
26 as defined in paragraph (3) of subdivision (d) of Section 245.

27 (VII) Possession of a weapon of mass destruction, as defined
28 in paragraph (1) of subdivision (a) of Section 11418.

29 (VIII) Any serious or violent felony offense punishable in
30 California by life imprisonment or death.

31 (f) (1) Notwithstanding any other law, subdivisions (b) to (i),
32 inclusive, shall be applied in every case in which a defendant has
33 one or more prior serious or violent felony convictions as defined
34 in subdivision (d). The prosecuting attorney shall plead and prove
35 each prior serious or violent felony conviction except as provided
36 in paragraph (2).

37 (2) The prosecuting attorney may move to dismiss or strike a
38 prior serious or violent felony conviction allegation in the
39 furtherance of justice pursuant to Section 1385, or if there is
40 insufficient evidence to prove the prior serious or violent felony

1 conviction. If upon the satisfaction of the court that there is
 2 insufficient evidence to prove the prior serious or violent felony
 3 conviction, the court may dismiss or strike the allegation. This
 4 section shall not be read to alter a court's authority under Section
 5 1385.

6 (g) Prior serious or violent felony convictions shall not be used
 7 in plea bargaining as defined in subdivision (b) of Section 1192.7.
 8 The prosecution shall plead and prove all known prior felony
 9 serious or violent convictions and shall not enter into any
 10 agreement to strike or seek the dismissal of any prior serious or
 11 violent felony conviction allegation except as provided in paragraph
 12 (2) of subdivision (f).

13 (h) All references to existing statutes in subdivisions (c) to (g),
 14 inclusive, are to statutes as they existed on November 7, 2012.

15 (i) If any provision of subdivisions (b) to (h), inclusive, or the
 16 application thereof to any person or circumstance is held invalid,
 17 that invalidity shall not affect other provisions or applications of
 18 those subdivisions—~~which~~ *that* can be given effect without the
 19 invalid provision or application, and to this end the provisions of
 20 those subdivisions are severable.

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

26 *SEC. 28. Section 667.5 of the Penal Code is amended to read:*
 27 667.5. Enhancement of prison terms for new offenses because
 28 of prior prison terms shall be imposed as follows:

29 (a) ~~Where~~ *If* one of the new offenses is one of the violent
 30 felonies specified in subdivision (c), in addition to and consecutive
 31 to any other prison terms therefor, the court shall impose a
 32 three-year term for each prior separate prison term served by the
 33 defendant—~~where~~ *when* the prior offense was one of the violent
 34 felonies specified in subdivision (c). However, ~~no~~ *an* additional
 35 term shall *not* be imposed under this subdivision for any prison
 36 term served prior to a period of 10 years in which the defendant
 37 remained free of both prison custody and the commission of an
 38 offense—~~which~~ *that* results in a felony conviction.

39 (b) Except ~~where~~ *when* subdivision (a) applies, ~~where~~ *if* the new
 40 offense is any felony for which a prison sentence or a sentence of

1 imprisonment in a county jail under subdivision (h) of Section
2 1170 is imposed or is not suspended, in addition and consecutive
3 to any other sentence therefor, the court shall impose a one-year
4 term for each prior separate prison term for a sexually violent
5 offense as defined in subdivision (b) of Section 6600 of the Welfare
6 and Institutions Code, provided that ~~no~~ *an* additional term shall
7 *not* be imposed under this subdivision for any prison term served
8 prior to a period of five years in which the defendant remained
9 free of both the commission of an offense ~~which~~ *that* results in a
10 felony conviction, and prison custody or the imposition of a term
11 of jail custody imposed under subdivision (h) of Section 1170 or
12 any felony sentence that is not suspended.

13 (c) *The Legislature finds and declares that the following*
14 *specified crimes merit special consideration when imposing a*
15 *sentence to display society's condemnation for these extraordinary*
16 *crimes of violence against the person.* For the purpose of this
17 section, "violent felony" ~~shall mean~~ *means* any of the following:

- 18 (1) Murder or voluntary manslaughter.
- 19 (2) Mayhem.
- 20 (3) Rape as defined in paragraph (2) or (6) of subdivision (a)
21 of Section 261 or paragraph (1) or (4) of subdivision (a) of *former*
22 Section 262.
- 23 (4) Sodomy as defined in subdivision (c) or (d) of Section 286.
- 24 (5) Oral copulation as defined in subdivision (c) or (d) of Section
25 287 or of former Section 288a.
- 26 (6) Lewd or lascivious act as defined in subdivision (a) or (b)
27 of Section 288.
- 28 (7) Any felony punishable by death or imprisonment in the state
29 prison for life.
- 30 (8) Any felony in which the defendant inflicts great bodily injury
31 on ~~any a~~ *a* person other than an ~~accomplice~~ *accomplice*, which has
32 been charged and proved as provided for in Section 12022.7,
33 12022.8, or 12022.9 on or after July 1, 1977, or as specified prior
34 to July 1, 1977, in Sections 213, 264, and 461, or any felony in
35 which the defendant uses a firearm which use has been charged
36 and proved as provided in subdivision (a) of Section 12022.3, or
37 Section 12022.5 or 12022.55.
- 38 (9) Any robbery.
- 39 (10) Arson, in violation of subdivision (a) or (b) of Section 451.

- 1 (11) Sexual penetration as defined in subdivision (a) or (j) of
2 Section 289.
- 3 (12) Attempted murder.
- 4 (13) A violation of Section 18745, 18750, or 18755.
- 5 (14) Kidnapping.
- 6 (15) Assault with the intent to commit a specified felony, in
7 violation of Section 220.
- 8 (16) Continuous sexual abuse of a child, in violation of Section
9 288.5.
- 10 (17) Carjacking, as defined in subdivision (a) of Section 215.
- 11 (18) ~~Rape, spousal rape, Rape~~ or sexual penetration, in concert,
12 in violation of Section 264.1.
- 13 (19) Extortion, as defined in Section 518, which would constitute
14 a felony violation of Section 186.22.
- 15 (20) Threats to victims or witnesses, as defined in Section 136.1,
16 which would constitute a felony violation of Section 186.22.
- 17 (21) Any burglary of the first degree, as defined in subdivision
18 (a) of Section 460, wherein it is charged and proved that another
19 person, other than an accomplice, was present in the residence
20 during the commission of the burglary.
- 21 (22) Any violation of Section 12022.53.
- 22 (23) A violation of subdivision (b) or (c) of Section 11418. ~~The~~
23 ~~Legislature finds and declares that these specified crimes merit~~
24 ~~special consideration when imposing a sentence to display society's~~
25 ~~condemnation for these extraordinary crimes of violence against~~
26 ~~the person.~~
- 27 (d) For the purposes of this section, the defendant shall be
28 deemed to remain in prison custody for an offense until the official
29 discharge from custody, including any period of mandatory
30 supervision, or until release on parole or postrelease community
31 supervision, whichever first occurs, including any time during
32 which the defendant remains subject to reimprisonment or custody
33 in county jail for escape from custody or is reimprisoned on
34 revocation of parole or postrelease community supervision. The
35 additional penalties provided for prior prison terms shall not be
36 imposed unless they are charged and admitted or found true in the
37 action for the new offense.
- 38 (e) The additional penalties provided for prior prison terms shall
39 not be imposed for any felony for which the defendant did not

1 serve a prior separate term in state prison or in county jail under
2 subdivision (h) of Section 1170.

3 (f) A prior conviction of a felony shall include a conviction in
4 another jurisdiction for an offense which, if committed in
5 California, is punishable by imprisonment in the state prison or in
6 county jail under subdivision (h) of Section 1170 if the defendant
7 served one year or more in prison for the offense in the other
8 jurisdiction. A prior conviction of a particular felony shall include
9 a conviction in another jurisdiction for an offense ~~which~~ *that*
10 includes all of the elements of the particular felony as defined
11 under California law if the defendant served one year or more in
12 prison for the offense in the other jurisdiction.

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

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

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

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

35 (k) (1) Notwithstanding subdivisions (d) and (g) or any other
36 ~~provision of law, where~~ *when* one of the new offenses is committed
37 while the defendant is temporarily removed from prison pursuant
38 to Section 2690 or while the defendant is transferred to a
39 community facility pursuant to Section 3416, 6253, or 6263, or
40 while the defendant is on furlough pursuant to Section 6254, the

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

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

6 *SEC. 29. Section 667.51 of the Penal Code is amended to read:*

7 667.51. (a) ~~Any~~ A person who is convicted of violating Section
8 288 or 288.5 shall receive a five-year enhancement for a prior
9 conviction of an offense specified in subdivision (b).

10 (b) Section 261, ~~262~~, 264.1, 269, 285, 286, 287, 288, 288.5, or
11 289, former Section 262 *or* 288a, or any offense committed in
12 another jurisdiction that includes all of the elements of any of the
13 offenses specified in this subdivision.

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

18 *SEC. 30. Section 667.6 of the Penal Code is amended to read:*

19 667.6. (a) ~~Any~~ A person who is convicted of an offense
20 specified in subdivision (e) and who has been convicted previously
21 of any of those offenses shall receive a five-year enhancement for
22 each of those prior convictions.

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

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

1 (d) (1) A full, separate, and consecutive term shall be imposed
2 for each violation of an offense specified in subdivision (e) if the
3 crimes involve separate victims or involve the same victim on
4 separate occasions.

5 ~~In~~

6 (2) *In* determining whether crimes against a single victim were
7 committed on separate occasions under this subdivision, the court
8 shall consider whether, between the commission of one sex crime
9 and another, the defendant had a reasonable opportunity to reflect
10 upon ~~his or her~~ *the defendant's* actions and nevertheless resumed
11 sexually assaultive behavior. Neither the duration of time between
12 crimes, nor whether or not the defendant lost or abandoned ~~his or~~
13 ~~her~~ *the* opportunity to attack, shall be, in and of itself, determinative
14 on the issue of whether the crimes in question occurred on separate
15 occasions.

16 ~~The~~

17 (3) *The* term shall be served consecutively to any other term of
18 imprisonment and shall commence from the time the person
19 otherwise would have been released from imprisonment. The term
20 shall not be included in any determination pursuant to Section
21 1170.1. Any other term imposed subsequent to that term shall not
22 be merged therein but shall commence at the time the person
23 otherwise would have been released from prison.

24 (e) This section shall apply to the following offenses:

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

27 (2) ~~Spousal rape, Rape,~~ in violation of paragraph (1), (4), or (5)
28 of subdivision (a) of *former* Section 262.

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

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

33 (5) Lewd or lascivious act, in violation of subdivision (b) of
34 Section 288.

35 (6) Continuous sexual abuse of a child, in violation of Section
36 288.5.

37 (7) Oral copulation, in violation of paragraph (2) or (3) of
38 subdivision (c), or subdivision (d) or (k), of Section 287 or of
39 *former* Section 288a.

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

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

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

9 (f) In addition to any enhancement imposed pursuant to
 10 subdivision (a) or (b), the court may also impose a fine not to
 11 exceed twenty thousand dollars (\$20,000) for anyone sentenced
 12 under those provisions. The fine imposed and collected pursuant
 13 to this subdivision shall be deposited in the Victim-Witness
 14 Assistance Fund to be available for appropriation to fund child
 15 sexual exploitation and child sexual abuse victim counseling
 16 centers and prevention programs established pursuant to Section
 17 13837. If the court orders a fine to be imposed pursuant to this
 18 subdivision, the actual administrative cost of collecting that fine,
 19 not to exceed 2 percent of the total amount paid, may be paid into
 20 the general fund of the county treasury for the use and benefit of
 21 the county.

22 *SEC. 31. Section 667.61 of the Penal Code is amended to read:*

23 667.61. (a) Except as provided in subdivision (j), (l), or (m),
 24 ~~any~~ a person who is convicted of an offense specified in
 25 subdivision (c) under one or more of the circumstances specified
 26 in subdivision (d) or under two or more of the circumstances
 27 specified in subdivision (e) shall be punished by imprisonment in
 28 the state prison for 25 years to life.

29 (b) Except as provided in subdivision (a), (j), (l), or (m), ~~any~~ a
 30 person who is convicted of an offense specified in subdivision (c)
 31 under one of the circumstances specified in subdivision (e) shall
 32 be punished by imprisonment in the state prison for 15 years to
 33 life.

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

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

37 (2) ~~Spousal rape,~~ Rape, in violation of paragraph (1) or (4) of
 38 subdivision (a) of *former* Section 262.

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

1 (4) Lewd or lascivious act, in violation of subdivision (b) of
2 Section 288.

3 (5) Sexual penetration, in violation of subdivision (a) of Section
4 289.

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

7 (7) Oral copulation, in violation of paragraph (2) or (3) of
8 subdivision (c), or subdivision (d), of Section 287 or former Section
9 288a.

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

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

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

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

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

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

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

31 (5) The defendant committed the present offense in violation
32 of Section 264.1, subdivision (d) of Section 286, or subdivision
33 (d) of Section 287 or former Section 288a, and, in the commission
34 of that offense, any person committed any act described in
35 paragraph (2), (3), or (4) of this subdivision.

36 (6) The defendant personally inflicted great bodily injury on
37 the victim or another person in the commission of the present
38 offense in violation of Section 12022.53, 12022.7, or 12022.8.

39 (7) The defendant personally inflicted bodily harm on the victim
40 who was under 14 years of age.

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

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

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

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

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

15 (5) The defendant engaged in the tying or binding of the victim
16 or another person in the commission of the present offense.

17 (6) The defendant administered a controlled substance to the
18 victim in the commission of the present offense in violation of
19 Section 12022.75.

20 (7) The defendant committed the present offense in violation
21 of Section 264.1, subdivision (d) of Section 286, or subdivision
22 (d) of Section 287 or former Section 288a, and, in the commission
23 of that offense, any person committed ~~any~~ *an* act described in
24 paragraph (1), (2), (3), (5), or (6) of this subdivision or paragraph
25 (6) of subdivision (d).

26 (f) If only the minimum number of circumstances specified in
27 subdivision (d) or (e) that are required for the punishment provided
28 in subdivision (a), (b), (j), (l), or (m) to apply have been pled and
29 proved, that circumstance or those circumstances shall be used as
30 the basis for imposing the term provided in subdivision (a), (b),
31 (j), (l), or (m) whichever is greater, rather than being used to impose
32 the punishment authorized under any other ~~provision of law~~, unless
33 another ~~provision of law~~ provides for a greater penalty or the
34 punishment under another ~~provision of law~~ can be imposed in
35 addition to the punishment provided by this section. However, if
36 any additional circumstance or circumstances specified in
37 subdivision (d) or (e) have been pled and proved, the minimum
38 number of circumstances shall be used as the basis for imposing
39 the term provided in subdivision (a), (j), or (l) and any other
40 additional circumstance or circumstances shall be used to impose

1 any punishment or enhancement authorized under any other
2 ~~provision of law.~~

3 (g) Notwithstanding Section 1385 or any other ~~provision of law,~~
4 the court shall not strike any allegation, admission, or finding of
5 any of the circumstances specified in subdivision (d) or (e) for any
6 person who is subject to punishment under this section.

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

11 (i) For any offense specified in paragraphs (1) to (7), inclusive,
12 of subdivision (c), or in paragraphs (1) to (6), inclusive, of
13 subdivision (n), the court shall impose a consecutive sentence for
14 each offense that results in a conviction under this section if the
15 crimes involve separate victims or involve the same victim on
16 separate occasions as defined in subdivision (d) of Section 667.6.

17 (j) (1) ~~Any~~ A person who is convicted of an offense specified
18 in subdivision (c), with the exception of a violation of subdivision
19 (a) of Section 288, upon a victim who is a child under 14 years of
20 age under one or more of the circumstances specified in subdivision
21 (d) or under two or more of the circumstances specified in
22 subdivision (e), shall be punished by imprisonment in the state
23 prison for life without the possibility of parole. Where the person
24 was under 18 years of age at the time of the offense, the person
25 shall be punished by imprisonment in the state prison for 25 years
26 to life.

27 (2) ~~Any~~ A person who is convicted of an offense specified in
28 subdivision (c) under one of the circumstances specified in
29 subdivision (e), upon a victim who is a child under 14 years of
30 age, shall be punished by imprisonment in the state prison for 25
31 years to life.

32 (k) As used in this section, “bodily harm” means any substantial
33 physical injury resulting from the use of force that is more than
34 the force necessary to commit an offense specified in subdivision
35 (c).

36 (l) ~~Any~~ A person who is convicted of an offense specified in
37 subdivision (n) under one or more of the circumstances specified
38 in subdivision (d) or under two or more of the circumstances
39 specified in subdivision (e), upon a victim who is a minor 14 years
40 of age or older shall be punished by imprisonment in the state

1 prison for life without the possibility of parole. If the person who
2 was convicted was under 18 years of age at the time of the offense,
3 ~~he or she~~ *the person* shall be punished by imprisonment in the state
4 prison for 25 years to life.

5 (m) ~~Any~~ A person who is convicted of an offense specified in
6 subdivision (n) under one of the circumstances specified in
7 subdivision (e) against a minor 14 years of age or older shall be
8 punished by imprisonment in the state prison for 25 years to life.

9 (n) Subdivisions (l) and (m) shall apply to any of the following
10 offenses:

11 (1) Rape, in violation of paragraph (2) of subdivision (a) of
12 Section 261.

13 (2) ~~Spousal rape, Rape,~~ in violation of paragraph (1) of
14 subdivision (a) of *former* Section 262.

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

17 (4) Sexual penetration, in violation of paragraph (1) of
18 subdivision (a) of Section 289.

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

21 (6) Oral copulation, in violation of paragraph (2) of subdivision
22 (c) of Section 287 or former Section 288a, or in violation of
23 subdivision (d) of Section 287 or former Section 288a.

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

29 *SEC. 32. Section 667.71 of the Penal Code is amended to read:*

30 667.71. (a) For the purpose of this section, a habitual sexual
31 offender is a person who has been previously convicted of one or
32 more of the offenses specified in subdivision (c) and who is
33 convicted in the present proceeding of one of those offenses.

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

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

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

39 (2) ~~Spousal rape, Rape,~~ in violation of paragraph (1) or (4) of
40 subdivision (a) of *former* Section 262.

- 1 (3) ~~Rape, spousal rape,~~ *Rape* or sexual penetration, in concert,
2 in violation of Section 264.1.
- 3 (4) Lewd or lascivious act, in violation of subdivision (a) or (b)
4 of Section 288.
- 5 (5) Sexual penetration, in violation of subdivision (a) or (j) of
6 Section 289.
- 7 (6) Continuous sexual abuse of a child, in violation of Section
8 288.5.
- 9 (7) Sodomy, in violation of subdivision (c) or (d) of Section
10 286.
- 11 (8) Oral copulation, in violation of subdivision (c) or (d) of
12 Section 287 or of former Section 288a.
- 13 (9) Kidnapping, in violation of subdivision (b) of Section 207.
- 14 (10) Kidnapping, in violation of former subdivision (d) of
15 Section 208 (kidnapping to commit specified sex offenses).
- 16 (11) Kidnapping, in violation of subdivision (b) of Section 209
17 with the intent to commit a specified sexual offense.
- 18 (12) Aggravated sexual assault of a child, in violation of Section
19 269.
- 20 (13) An offense committed in another jurisdiction that includes
21 all of the elements of an offense specified in this subdivision.
- 22 (d) Notwithstanding Section 1385 or any other ~~provision of~~ law,
23 the court shall not strike any allegation, admission, or finding of
24 any prior conviction specified in subdivision (c) for ~~any~~ a person
25 who is subject to punishment under this section.
- 26 (e) Notwithstanding any other ~~provision of~~ law, probation shall
27 not be granted to, nor shall the execution or imposition of sentence
28 be suspended for, ~~any~~ a person who is subject to punishment under
29 this section.
- 30 (f) This section shall apply only if the defendant's status as a
31 habitual sexual offender is alleged in the accusatory pleading, and
32 either admitted by the defendant in open court, or found to be true
33 by the trier of fact.
- 34 *SEC. 33. Section 667.8 of the Penal Code is amended to read:*
35 667.8. (a) Except as provided in subdivision (b), ~~any~~ a person
36 convicted of a felony violation of Section 261, ~~262,~~ 264.1, 286,
37 287, or 289 or former Section 262 *or* 288a who, for the purpose
38 of committing that sexual offense, kidnapped the victim in violation
39 of Section 207 or 209, shall be punished by an additional term of
40 nine years.

1 (b) ~~Any~~ A person convicted of a felony violation of subdivision
2 (c) of Section 286, subdivision (c) of Section 287 or former Section
3 288a, or Section 288 who, for the purpose of committing that
4 sexual offense, kidnapped the victim, who was under ~~the age of~~
5 14 years *of age* at the time of the offense, in violation of Section
6 207 or 209, shall be punished by an additional term of 15 years.
7 This subdivision ~~is~~ *does not applicable apply* to conduct proscribed
8 by Section 277, 278, or 278.5.

9 (c) The following shall govern the imposition of an enhancement
10 pursuant to this section:

11 (1) Only one enhancement shall be imposed for a victim per
12 incident.

13 (2) If there are two or more victims, one enhancement can be
14 imposed for each victim per incident.

15 (3) The enhancement may be in addition to the punishment for
16 either, but not both, of the following:

17 (A) A violation of Section 207 or 209.

18 (B) A violation of the sexual offenses enumerated in this section.

19 *SEC. 34. Section 667.9 of the Penal Code is amended to read:*

20 667.9. (a) ~~Any~~ A person who commits one or more of the
21 crimes specified in subdivision (c) against a person who is 65 years
22 of age or older, or against a person who is blind, deaf,
23 developmentally disabled, a paraplegic, or a quadriplegic, or
24 against a person who is under ~~the age~~ 14 years *of 14 years, age*,
25 and that disability or condition is known or reasonably should be
26 known to the person committing the crime, shall receive a one-year
27 enhancement for each violation.

28 (b) ~~Any~~ A person who commits a violation of subdivision (a)
29 and who has a prior conviction for any of the offenses specified
30 in subdivision (c), shall receive a two-year enhancement for each
31 violation in addition to the sentence provided under Section 667.

32 (c) Subdivisions (a) and (b) apply to the following crimes:

33 (1) Mayhem, in violation of Section 203 or 205.

34 (2) Kidnapping, in violation of Section 207, 209, or 209.5.

35 (3) Robbery, in violation of Section 211.

36 (4) Carjacking, in violation of Section 215.

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

39 (6) ~~Spousal rape, Rape~~, in violation of paragraph (1) or (4) of
40 subdivision (a) of *former* Section 262.

1 (7) ~~Rape, spousal rape,~~ *Rape* or sexual penetration in concert,
2 in violation of Section 264.1.

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

5 (9) Oral copulation, in violation of paragraph (2) or (3) of
6 subdivision (c), or subdivision (d), of Section 287 or of former
7 Section 288a.

8 (10) Sexual penetration, in violation of subdivision (a) of Section
9 289.

10 (11) Burglary of the first degree, as defined in Section 460, in
11 violation of Section 459.

12 (d) As used in this section, “developmentally disabled” means
13 a severe, chronic disability of a person, which is all of the
14 following:

15 (1) Attributable to a mental or physical impairment or a
16 combination of mental and physical impairments.

17 (2) Likely to continue indefinitely.

18 (3) Results in substantial functional limitation in three or more
19 of the following areas of life activity:

20 (A) Self-care.

21 (B) Receptive and expressive language.

22 (C) Learning.

23 (D) Mobility.

24 (E) Self-direction.

25 (F) Capacity for independent living.

26 (G) Economic self-sufficiency.

27 *SEC. 35. Section 679.02 of the Penal Code is amended to read:*

28 679.02. (a) The following *rights* are hereby established as the
29 statutory rights of victims and witnesses of crimes:

30 (1) To be notified as soon as feasible that a court proceeding to
31 which ~~he the victim or she the witness~~ has been subpoenaed as a
32 witness will not proceed as scheduled, provided the prosecuting
33 attorney determines that the witness’ attendance is not required.

34 (2) Upon request of the victim or a witness, to be informed by
35 the prosecuting attorney of the final disposition of the case, as
36 provided by Section 11116.10.

37 (3) For the victim, the victim’s parents or guardian if the victim
38 is a minor, or the next of kin of the victim if the victim has died,
39 to be notified of all sentencing proceedings, and of the right to
40 appear, to reasonably express ~~his or her~~ *their* views, have those

1 views preserved by audio or video means as provided in Section
2 1191.16, and to have the court consider ~~his or her~~ *their* statements,
3 as provided by Sections 1191.1 and 1191.15.

4 (4) For the victim, the victim's parents or guardian if the victim
5 is a minor, or the next of kin of the victim if the victim has died,
6 to be notified of all juvenile disposition hearings in which the
7 alleged act would have been a felony if committed by an adult,
8 and of the right to attend and to express ~~his or her~~ *their* views, as
9 provided by Section 656.2 of the Welfare and Institutions Code.

10 (5) Upon request by the victim or the next of kin of the victim
11 if the victim has died, to be notified of any parole eligibility hearing
12 and of the right to appear, either personally as provided by Section
13 ~~3043 of this code, 3043,~~ or by other means as provided by Sections
14 3043.2 and ~~3043.25 of this code, 3043.25,~~ to reasonably express
15 ~~his or her~~ *their* views, and to have ~~his or her~~ *their* statements
16 considered, as provided by Section 3043 of this code and by
17 Section 1767 of the Welfare and Institutions Code.

18 (6) Upon request by the victim or the next of kin of the victim
19 if the crime was a homicide, to be notified of an inmate's placement
20 in a reentry or work furlough program, or notified of the inmate's
21 escape as provided by Section 11155.

22 (7) To be notified that ~~he or she~~ *a witness* may be entitled to
23 witness fees and mileage, as provided by Section 1329.1.

24 (8) For the victim, to be provided with information concerning
25 the victim's right to civil recovery and the opportunity to be
26 compensated from the Restitution Fund pursuant to Chapter 5
27 (commencing with Section 13959) of Part 4 of Division 3 of Title
28 2 of the Government Code and Section 1191.2 of this code.

29 (9) To the expeditious return of ~~his or her~~ property ~~which~~ *that*
30 has allegedly been stolen or embezzled, when it is no longer needed
31 as evidence, as provided by Chapter 12 (commencing with Section
32 1407) and Chapter 13 (commencing with Section 1417) of Title
33 10 of Part 2.

34 (10) To an expeditious disposition of the criminal action.

35 (11) To be notified, if applicable, in accordance with Sections
36 679.03 and 3058.8 if the defendant is to be placed on parole.

37 (12) For the victim, upon request, to be notified of any pretrial
38 disposition of the case, to the extent required by Section 28 of
39 Article I of the California Constitution.

40 (A) A victim may request to be notified of a pretrial disposition.

1 (B) The victim may be notified by any reasonable means
2 available.

3 ~~Nothing in this~~

4 *This* paragraph is *not* intended to affect the right of the people
5 and the defendant to an expeditious disposition as provided in
6 Section 1050.

7 (13) For the victim, to be notified by the district attorney's office
8 of the right to request, upon a form provided by the district
9 attorney's office, and receive a notice pursuant to paragraph (14),
10 if the defendant is convicted of any of the following offenses:

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

14 (B) A violation of Section 207 or 209 committed with the intent
15 to commit a violation of Section 261, ~~262~~, 286, 287, 288, or 289,
16 or former Section 262 *or* 288a.

17 (C) Rape, in violation of Section 261.

18 (D) Oral copulation, in violation of Section 287 or former
19 Section 288a.

20 (E) Sodomy, in violation of Section 286.

21 (F) A violation of Section 288.

22 (G) A violation of Section 289.

23 (14) When a victim has requested notification pursuant to
24 paragraph (13), the sheriff shall inform the victim that the person
25 who was convicted of the offense has been ordered to be placed
26 on probation, and give the victim notice of the proposed date upon
27 which the person will be released from the custody of the sheriff.

28 (b) The rights set forth in subdivision (a) shall be set forth in
29 the information and educational materials prepared pursuant to
30 Section 13897.1. The information and educational materials shall
31 be distributed to local law enforcement agencies and local victims'
32 programs by the Victims' Legal Resource Center established
33 pursuant to Chapter 11 (commencing with Section 13897) of Title
34 6 of Part 4.

35 (c) Local law enforcement agencies shall make available copies
36 of the materials described in subdivision (b) to victims and
37 witnesses.

38 (d) ~~Nothing in this~~ *This* section is *not* intended to affect the
39 rights and services provided to victims and witnesses by the local
40 assistance centers for victims and witnesses.

1 (e) The court shall not release statements, made pursuant to
2 paragraph (3) or (4) of subdivision (a), to the public prior to the
3 statement being heard in court.

4 *SEC. 36. Section 680 of the Penal Code is amended to read:*

5 680. (a) This section shall be known as and may be cited as
6 the “Sexual Assault Victims’ DNA Bill of Rights.”

7 (b) The Legislature finds and declares all of the following:

8 (1) Deoxyribonucleic acid (DNA) and forensic identification
9 analysis is a powerful law enforcement tool for identifying and
10 prosecuting sexual assault offenders.

11 (2) Existing law requires an adult arrested for or charged with
12 a felony and a juvenile adjudicated for a felony to submit DNA
13 samples as a result of that arrest, charge, or adjudication.

14 (3) Victims of sexual assaults have a strong interest in the
15 investigation and prosecution of their cases.

16 (4) Law enforcement agencies have an obligation to victims of
17 sexual assaults in the proper handling, retention, and timely DNA
18 testing of rape kit evidence or other crime scene evidence and to
19 be responsive to victims concerning the developments of forensic
20 testing and the investigation of their cases.

21 (5) The growth of the Department of Justice’s Cal-DNA
22 databank and the national databank through the Combined DNA
23 Index System (CODIS) makes it possible for many sexual assault
24 perpetrators to be identified after their first offense, provided that
25 rape kit evidence is analyzed in a timely manner.

26 (6) Timely DNA analysis of rape kit evidence is a core public
27 safety issue affecting men, women, and children in the State of
28 California. It is the intent of the Legislature, in order to further
29 public safety, to encourage DNA analysis of rape kit evidence
30 within the time limits imposed by subparagraphs (A) and (B) of
31 paragraph (1) of subdivision (g) of Section 803.

32 (c) In order to ensure that sexual assault forensic evidence is
33 analyzed within the two-year timeframe required by subparagraphs
34 (A) and (B) of paragraph (1) of subdivision (g) of Section 803 and
35 to ensure the longest possible statute of limitations for sex offenses,
36 including sex offenses designated pursuant to those subparagraphs,
37 the following shall occur:

38 (1) A law enforcement agency in whose jurisdiction a sex
39 offense specified in Section 261, 261.5, ~~262~~, 286, 287, or 289 or
40 former Section 262 *or* 288a occurred shall do one of the following

1 for any sexual assault forensic evidence received by the law
2 enforcement agency on or after January 1, 2016:

3 (A) Submit sexual assault forensic evidence to the crime lab
4 within 20 days after it is booked into evidence.

5 (B) Ensure that a rapid turnaround DNA program is in place to
6 submit forensic evidence collected from the victim of a sexual
7 assault directly from the medical facility where the victim is
8 examined to the crime lab within five days after the evidence is
9 obtained from the victim.

10 (2) The crime lab shall do one of the following for any sexual
11 assault forensic evidence received by the crime lab on or after
12 January 1, 2016.

13 (A) Process sexual assault forensic evidence, create DNA
14 profiles when able, and upload qualifying DNA profiles into
15 CODIS as soon as practically possible, but no later than 120 days
16 after initially receiving the evidence.

17 (B) Transmit the sexual assault forensic evidence to another
18 crime lab as soon as practically possible, but no later than 30 days
19 after initially receiving the evidence, for processing of the evidence
20 for the presence of DNA. If a DNA profile is created, the
21 transmitting crime lab shall upload the profile into CODIS as soon
22 as practically possible, but no longer than 30 days after being
23 notified about the presence of DNA.

24 (3) This subdivision does not require a lab to test all items of
25 forensic evidence obtained in a sexual assault forensic evidence
26 examination. A lab is considered to be in compliance with the
27 guidelines of this section when representative samples of the
28 evidence are processed by the lab in an effort to detect the foreign
29 DNA of the perpetrator.

30 (4) This section does not require a DNA profile to be uploaded
31 into CODIS if the DNA profile does not meet federal guidelines
32 regarding the uploading of DNA profiles into CODIS.

33 (5) For purposes of this section, a “rapid turnaround DNA
34 program” is a program for the training of sexual assault team
35 personnel in the selection of representative samples of forensic
36 evidence from the victim to be the best evidence, based on the
37 medical evaluation and patient history, the collection and
38 preservation of that evidence, and the transfer of the evidence
39 directly from the medical facility to the crime lab, which is adopted
40 pursuant to a written agreement between the law enforcement

1 agency, the crime lab, and the medical facility where the sexual
 2 assault team is based.

3 (6) For the purpose of this section, “law enforcement” means
 4 the law enforcement agency with the primary responsibility for
 5 investigating an alleged sexual assault.

6 (d) (1) Upon the request of a sexual assault victim, the law
 7 enforcement agency investigating a violation of Section 261, 261.5,
 8 ~~262~~, 286, 287, or 289 or of former Section 262 *or* 288a shall inform
 9 the victim of the status of the DNA testing of the rape kit evidence
 10 or other crime scene evidence from the victim’s case. The law
 11 enforcement agency may, at its discretion, require that the victim’s
 12 request be in writing. The law enforcement agency shall respond
 13 to the victim’s request with either an oral or written
 14 communication, or by email, if an email address is available.
 15 ~~Nothing in this~~ *This subdivision requires does not require* that the
 16 law enforcement agency communicate with the victim or the
 17 victim’s designee regarding the status of DNA testing absent a
 18 specific request from the victim or the victim’s designee.

19 (2) Subject to the commitment of sufficient resources to respond
 20 to requests for information, sexual assault victims have the
 21 following rights:

22 (A) The right to be informed whether or not a DNA profile of
 23 the assailant was obtained from the testing of the rape kit evidence
 24 or other crime scene evidence from their case.

25 (B) The right to be informed whether or not the DNA profile
 26 of the assailant developed from the rape kit evidence or other crime
 27 scene evidence has been entered into the Department of Justice
 28 Data Bank of case evidence.

29 (C) The right to be informed whether or not there is a match
 30 between the DNA profile of the assailant developed from the rape
 31 kit evidence or other crime scene evidence and a DNA profile
 32 contained in the Department of Justice Convicted Offender DNA
 33 Data Base, provided that disclosure would not impede or
 34 compromise an ongoing investigation.

35 (3) This subdivision is intended to encourage law enforcement
 36 agencies to notify victims of information ~~which~~ *that* is in their
 37 possession. It is not intended to affect the manner of or frequency
 38 with which the Department of Justice provides this information to
 39 law enforcement agencies.

1 (e) If the law enforcement agency does not analyze DNA
2 evidence within six months prior to the time limits established by
3 subparagraphs (A) and (B) of paragraph (1) of subdivision (g) of
4 Section 803, a victim of a sexual assault offense specified in
5 Section 261, 261.5, ~~262~~, 286, 287, or 289 or former Section 262
6 or 288a shall be informed, either orally or in writing, of that fact
7 by the law enforcement agency.

8 (f) (1) If the law enforcement agency intends to destroy or
9 dispose of rape kit evidence or other crime scene evidence from
10 an unsolved sexual assault case, a victim of a violation of Section
11 261, 261.5, ~~262~~, 286, 287, or 289 or former Section 262 or 288a
12 shall be given written notification by the law enforcement agency
13 of that intention.

14 (2) A law enforcement agency shall not destroy or dispose of
15 rape kit evidence or other crime scene evidence from an unsolved
16 sexual assault case before at least 20 years, or if the victim was
17 under 18 years of age at the time of the alleged offense, before the
18 victim's 40th birthday.

19 (g) Written notification under subdivision (e) or (f) shall be
20 made at least 60 days prior to the destruction or disposal of the
21 rape kit evidence or other crime scene evidence from an unsolved
22 sexual assault case.

23 (h) A sexual assault victim may designate a sexual assault victim
24 advocate, or other support person of the victim's choosing, to act
25 as a recipient of the above information required to be provided by
26 this section.

27 (i) It is the intent of the Legislature that a law enforcement
28 agency responsible for providing information under subdivision
29 (d) do so in a timely manner and, upon request of the victim or the
30 victim's designee, advise the victim or the victim's designee of
31 any significant changes in the information of which the law
32 enforcement agency is aware. In order to be entitled to receive
33 notice under this section, the victim or the victim's designee shall
34 keep appropriate authorities informed of the name, address,
35 telephone number, and email address of the person to whom the
36 information should be provided, and any changes of the name,
37 address, telephone number, and email address, if an email address
38 is available.

39 (j) A defendant or person accused or convicted of a crime against
40 the victim shall have no standing to object to any failure to comply

1 with this section. The failure to provide a right or notice to a sexual
2 assault victim under this section may not be used by a defendant
3 to seek to have the conviction or sentence set aside.

4 (k) The sole civil or criminal remedy available to a sexual assault
5 victim for a law enforcement agency's failure to fulfill its
6 responsibilities under this section is standing to file a writ of
7 mandamus to require compliance with subdivision (e) or (f).

8 *SEC. 37. Section 784.7 of the Penal Code is amended to read:*

9 784.7. (a) If more than one violation of Section 220, except
10 assault with intent to commit mayhem, 261, ~~262~~, 264.1, 269, 286,
11 287, 288, 288.5, 288.7, or 289 or former Section 262 or 288a
12 occurs in more than one jurisdictional territory, the jurisdiction of
13 any of those offenses, and for any offenses properly joinable with
14 that offense, is in any jurisdiction where at least one of the offenses
15 occurred, subject to a hearing, pursuant to Section 954, within the
16 jurisdiction of the proposed trial. At the Section 954 hearing, the
17 prosecution shall present written evidence that all district attorneys
18 in counties with jurisdiction of the offenses agree to the venue.
19 Charged offenses from jurisdictions where there is not a written
20 agreement from the district attorney shall be returned to that
21 jurisdiction.

22 (b) If more than one violation of Section 243.4, 261.5, 273a,
23 273.5, or 646.9 occurs in more than one jurisdictional territory,
24 and the defendant and the victim are the same for all of the
25 offenses, the jurisdiction of any of those offenses and for any
26 offenses properly joinable with that offense, is in any jurisdiction
27 where at least one of the offenses occurred.

28 (c) If more than one violation of Section 236.1, 266h, or 266i
29 occurs in more than one jurisdictional territory, the jurisdiction of
30 any of those offenses, and for any offenses properly joinable with
31 that offense, is in any jurisdiction where at least one of the offenses
32 occurred, subject to a hearing pursuant to Section 954, within the
33 jurisdiction of the proposed trial. At the Section 954 hearing, the
34 prosecution shall present written evidence that all district attorneys
35 in counties with jurisdiction of the offenses agree to the venue.
36 Charged offenses from jurisdictions where there is not a written
37 agreement from the district attorney shall be returned to that
38 jurisdiction. In determining whether all counts in the complaint
39 should be joined in one county for prosecution, the court shall
40 consider the location and complexity of the likely evidence, where

1 the majority of the offenses occurred, the rights of the defendant
2 and the people, and the convenience of, or hardship to, the victim
3 or victims and witnesses.

4 *SEC. 38. Section 799 of the Penal Code is amended to read:*

5 799. (a) Prosecution for an offense punishable by death or by
6 imprisonment in the state prison for life or for life without the
7 possibility of parole, or for the embezzlement of public money,
8 may be commenced at any time.

9 (b) (1) Prosecution for a felony offense described in paragraph
10 (1), (2), (3), (4), (6), or (7) of subdivision (a) of Section 261,
11 paragraph (1), (2), (3), (4), or (5) of subdivision (a) of *former*
12 Section 262, Section 264.1, paragraph (2) or (3) of subdivision (c)
13 of, or subdivision (d), (f), (g), (i), or (k) of, Section 286, paragraph
14 (2) or (3) of subdivision (c) of, or subdivision (d), (f), (g), (i), or
15 (k) of, Section 287 or former Section 288a, subdivision (a) of
16 Section 288 involving substantial sexual conduct as defined in
17 subdivision (b) of Section 1203.066, subdivision (b) of Section
18 288, Section 288.5, or subdivision (a), (b), (d), (e), or (g) of Section
19 289 may be commenced at any time.

20 (2) This subdivision applies to crimes that were committed on
21 or after January 1, 2017, and to crimes for which the statute of
22 limitations that was in effect prior to January 1, 2017, has not run
23 as of January 1, 2017.

24 (c) This section applies ~~in any case in which~~ *when* the defendant
25 was a minor at the time of the commission of the offense and the
26 prosecuting attorney could have petitioned the court for a fitness
27 hearing pursuant to Section 707 of the Welfare and Institutions
28 Code.

29 *SEC. 39. Section 868.5 of the Penal Code is amended to read:*

30 868.5. (a) Notwithstanding any other law, a prosecuting
31 witness in a case involving a violation or attempted violation of
32 Section 187, 203, 205, or 207, subdivision (b) of Section 209,
33 Section 211, 215, 220, 236.1, 240, 242, 243.4, 245, 261, ~~262~~, 266,
34 266a, 266b, 266c, 266d, 266e, 266f, 266g, 266h, 266i, 266j, 266k,
35 267, 269, 273a, 273d, 273.5, 273.6, 278, 278.5, 285, 286, 287,
36 288, 288.5, 288.7, 289, 311.1, 311.2, 311.3, 311.4, 311.5, 311.6,
37 311.10, 311.11, 422, 646.9, or 647.6, former Section 262, 277,
38 288a, or 647a, subdivision (1) of Section 314, or subdivision (b),
39 (d), or (e) of Section 368 when the prosecuting witness is the elder
40 or dependent adult, shall be entitled, for support, to the attendance

1 of up to two persons of ~~his or her~~ *the prosecuting witness*' own
2 choosing, one of whom may be a witness, at the preliminary
3 hearing and at the trial, or at a juvenile court proceeding, during
4 the testimony of the prosecuting witness. Only one of those support
5 persons may accompany the witness to the witness stand, although
6 the other may remain in the courtroom during the witness'
7 testimony. The person or persons so chosen shall not be a person
8 described in Section 1070 of the Evidence Code unless the person
9 or persons are related to the prosecuting witness as a parent,
10 guardian, or sibling and do not make notes during the hearing or
11 proceeding.

12 (b) If the person or persons so chosen are also witnesses, the
13 prosecution shall present evidence that the person's attendance is
14 both desired by the prosecuting witness for support and will be
15 helpful to the prosecuting witness. Upon that showing, the court
16 shall grant the request unless information presented by the
17 defendant or noticed by the court establishes that the support
18 person's attendance during the testimony of the prosecuting witness
19 would pose a substantial risk of influencing or affecting the content
20 of that testimony. In the case of a juvenile court proceeding, the
21 judge shall inform the support person or persons that juvenile court
22 proceedings are confidential and may not be discussed with anyone
23 not in attendance at the proceedings. In all cases, the judge shall
24 admonish the support person or persons to not prompt, sway, or
25 influence the witness in any way. ~~Nothing in this~~ *This section shall*
26 *does not* preclude a court from exercising its discretion to remove
27 a person from the courtroom whom it believes is prompting,
28 swaying, or influencing the witness.

29 (c) The testimony of the person or persons so chosen who are
30 also witnesses shall be presented before the testimony of the
31 prosecuting witness. The prosecuting witness shall be excluded
32 from the courtroom during that testimony. Whenever the evidence
33 given by that person or those persons would be subject to exclusion
34 because it has been given before the corpus delicti has been
35 established, the evidence shall be admitted subject to the court's
36 or the defendant's motion to strike that evidence from the record
37 if the corpus delicti is not later established by the testimony of the
38 prosecuting witness.

39 *SEC. 40. Section 1048 of the Penal Code is amended to read:*

1 1048. (a) The issues on the calendar shall be disposed of in
2 the following order, unless for good cause the court directs an
3 action to be tried out of its order:

- 4 (1) Prosecutions for felony, when the defendant is in custody.
- 5 (2) Prosecutions for misdemeanor, when the defendant is in
6 custody.
- 7 (3) Prosecutions for felony, when the defendant is on bail.
- 8 (4) Prosecutions for misdemeanor, when the defendant is on
9 bail.

10 (b) Notwithstanding subdivision (a), all criminal actions in
11 which (1) a minor is detained as a material witness or is the victim
12 of the alleged offense, (2) a person who was 70 years of age or
13 older at the time of the alleged offense or is a dependent adult, as
14 defined in subdivision (h) of Section 368, was a witness to, or is
15 the victim of, the alleged offense or (3) any person is a victim of
16 an alleged violation of Section 261, ~~262~~, 264.1, 273a, 273d, 285,
17 286, 287, 288, or 289 or former Section 262 *or* 288a, committed
18 by the use of force, violence, or the threat thereof, shall be given
19 precedence over all other criminal actions in the order of trial. In
20 those actions, continuations shall be granted by the court only after
21 a hearing and determination of the necessity thereof, and in any
22 event, the trial shall be commenced within 30 days after
23 arraignment, unless for good cause the court shall direct the action
24 to be continued, after a hearing and determination of the necessity
25 of the continuance, and states the findings for a determination of
26 good cause on the record.

27 ~~(c) Nothing in this~~ *This section shall be deemed to does not*
28 provide a statutory right to a trial within 30 days.

29 *SEC. 41. Section 1127e of the Penal Code is amended to read:*

30 1127e. The term “unchaste character” shall not be used by any
31 court in any criminal case in which the defendant is charged with
32 a violation of Section ~~261~~, *261* or 261.5, or ~~262 of the Penal Code~~,
33 ~~or attempt to commit or assault with intent to commit any crime~~
34 defined in any of these sections, in any instruction to the jury.

35 *SEC. 42. Section 1170.12 of the Penal Code is amended to*
36 *read:*

37 ~~1170.12. Aggregate and consecutive terms for multiple~~
38 ~~convictions; prior conviction as prior felony; commitment and~~
39 ~~other enhancements or punishment.~~

40 ~~(a)~~

1 1170.12. (a) Notwithstanding any other law, if a defendant
2 has been convicted of a felony and it has been pled and proved
3 that the defendant has one or more prior serious or violent felony
4 convictions, as defined in subdivision (b), the court shall adhere
5 to each of the following:

6 (1) There shall not be an aggregate term limitation for purposes
7 of consecutive sentencing for any subsequent felony conviction.

8 (2) Probation for the current offense shall not be granted, nor
9 shall execution or imposition of the sentence be suspended for any
10 prior offense.

11 (3) The length of time between the prior serious or violent felony
12 conviction and the current felony conviction shall not affect the
13 imposition of sentence.

14 (4) There shall not be a commitment to any other facility other
15 than the state prison. Diversion shall not be granted nor shall the
16 defendant be eligible for commitment to the California
17 Rehabilitation Center as provided in Article 2 (commencing with
18 Section 3050) of Chapter 1 of Division 3 of the Welfare and
19 Institutions Code.

20 (5) The total amount of credits awarded pursuant to Article 2.5
21 (commencing with Section 2930) of Chapter 7 of Title 1 of Part
22 3 shall not exceed one-fifth of the total term of imprisonment
23 imposed and shall not accrue until the defendant is physically
24 placed in the state prison.

25 (6) If there is a current conviction for more than one felony
26 count not committed on the same occasion, and not arising from
27 the same set of operative facts, the court shall sentence the
28 defendant consecutively on each count pursuant to this section.

29 (7) If there is a current conviction for more than one serious or
30 violent felony as described in subdivision (b), the court shall
31 impose the sentence for each conviction consecutive to the sentence
32 for any other conviction for which the defendant may be
33 consecutively sentenced in the manner prescribed by law.

34 (b) Notwithstanding any other law and for the purposes of this
35 section, a prior serious or violent conviction of a felony is defined
36 as:

37 (1) Any offense defined in subdivision (c) of Section 667.5 as
38 a violent felony or any offense defined in subdivision (c) of Section
39 1192.7 as a serious felony in this state. The determination of
40 whether a prior conviction is a prior serious ~~and/or~~ or violent felony

1 conviction for purposes of this section shall be made upon the date
2 of that prior conviction and is not affected by the sentence imposed
3 unless the sentence automatically, upon the initial sentencing,
4 converts the felony to a misdemeanor. The following dispositions
5 shall not affect the determination that a prior serious or violent
6 conviction is a serious or violent felony for purposes of this section:

7 (A) The suspension of imposition of judgment or sentence.

8 (B) The stay of execution of sentence.

9 (C) The commitment to the State Department of ~~Health Services~~
10 *State Hospitals* as a mentally disordered sex offender following a
11 conviction of a felony.

12 (D) The commitment to the California Rehabilitation Center or
13 any other facility whose function is rehabilitative diversion from
14 the state prison.

15 (2) A prior conviction in another jurisdiction for an offense that,
16 if committed in California, is punishable by imprisonment in the
17 state prison constitutes a prior conviction of a particular serious
18 or violent felony if the prior conviction in the other jurisdiction is
19 for an offense that includes all of the elements of the particular
20 violent felony as defined in subdivision (c) of Section 667.5 or
21 serious felony as defined in subdivision (c) of Section 1192.7.

22 (3) A prior juvenile adjudication constitutes a prior serious or
23 violent felony conviction for the purposes of sentence enhancement
24 ~~if~~ *if it meets all of the following criteria:*

25 (A) The juvenile was 16 years of age or older at the time the
26 juvenile committed the prior ~~offense, and~~ *offense*.

27 (B) The prior offense is *either of the following:*

28 (i) ~~listed~~ *Listed* in subdivision (b) of Section 707 of the Welfare
29 and Institutions ~~Code, or~~ *Code*.

30 (ii) ~~listed~~ *Listed* in this subdivision as a serious or violent ~~felony,~~
31 ~~and~~ *felony*.

32 (C) The juvenile was found to be a fit and proper subject to be
33 dealt with under the juvenile court ~~law, and~~ *law*.

34 (D) The juvenile was adjudged a ward of the juvenile court
35 within the meaning of Section 602 of the Welfare and Institutions
36 Code because the person committed an offense listed in subdivision
37 (b) of Section 707 of the Welfare and Institutions Code.

38 (c) For purposes of this section, and in addition to any other
39 enhancements or punishment provisions ~~which~~ *that* may apply,

1 the following apply if a defendant has one or more prior serious
2 or violent felony convictions:

3 (1) If a defendant has one prior serious or violent felony
4 conviction as defined in subdivision (b) that has been pled and
5 proved, the determinate term or minimum term for an indeterminate
6 term shall be twice the term otherwise provided as punishment for
7 the current felony conviction.

8 (2) (A) Except as provided in subparagraph (C), if a defendant
9 has two or more prior serious or violent felony convictions, as
10 defined in subdivision (b), that have been pled and proved, the
11 term for the current felony conviction shall be an indeterminate
12 term of life imprisonment with a minimum term of the
13 indeterminate sentence calculated as the greatest ~~of~~ *of any of the*
14 *following*:

15 (i) ~~three~~ *Three* times the term otherwise provided as punishment
16 for each current felony conviction subsequent to the two or more
17 prior serious or violent felony ~~convictions, or convictions.~~

18 (ii) ~~twenty-five years or~~ *Twenty-five years.*

19 (iii) ~~the~~ *The* term determined by the court pursuant to Section
20 1170 for the underlying conviction, including any enhancement
21 applicable under Chapter 4.5 (commencing with Section 1170) of
22 Title 7 of Part 2, or any period prescribed by Section 190 or 3046.

23 (B) The indeterminate term described in subparagraph (A) ~~of~~
24 ~~paragraph (2) of this subdivision~~ shall be served consecutive to
25 any other term of imprisonment for which a consecutive term may
26 be imposed by law. Any other term imposed subsequent to ~~any an~~
27 indeterminate term described in subparagraph (A) ~~of paragraph~~
28 ~~(2) of this subdivision~~ shall not be merged therein but shall
29 commence at the time the person would otherwise have been
30 released from prison.

31 (C) If a defendant has two or more prior serious or violent felony
32 convictions as defined in subdivision (c) of Section 667.5 or
33 subdivision (c) of Section 1192.7 that have been pled and proved,
34 and the current offense is not a felony described in paragraph (1)
35 of subdivision ~~(b) of this section,~~ *(b)*, the defendant shall be
36 sentenced pursuant to paragraph (1) of subdivision ~~(c) of this~~
37 ~~section,~~ *(c)*, unless the prosecution pleads and proves any of the
38 following:

1 (i) The current offense is a controlled substance charge, in which
2 an allegation under Section 11370.4 or 11379.8 of the Health and
3 Safety Code was admitted or found true.

4 (ii) The current offense is a felony sex offense, defined in
5 subdivision (d) of Section ~~261.5~~ 261.5, or ~~Section 262~~, or any
6 felony offense that results in mandatory registration as a sex
7 offender pursuant to subdivision (c) of Section 290 except for
8 violations of Sections 266 and 285, paragraph (1) of subdivision
9 (b) and subdivision (e) of Section 286, paragraph (1) of subdivision
10 (b) and subdivision (e) of Section 287, Section 314, and Section
11 311.11.

12 (iii) During the commission of the current offense, the defendant
13 used a firearm, was armed with a firearm or deadly weapon, or
14 intended to cause great bodily injury to another person.

15 (iv) The defendant suffered a prior conviction, as defined in
16 subdivision ~~(b) of this section~~, (b), for any of the following serious
17 or violent felonies:

18 (I) A “sexually violent offense” as defined by subdivision (b)
19 of Section 6600 of the Welfare and Institutions Code.

20 (II) Oral copulation with a child who is under 14 years of age,
21 and ~~who is~~ more than 10 years younger than the defendant as
22 defined by Section 287 or former Section 288a, sodomy with
23 another person who is under 14 years of age and more than 10
24 years younger than the defendant as defined by Section ~~286~~ 286,
25 or sexual penetration with another person who is under 14 years
26 of age, age and ~~who is~~ more than 10 years younger than the
27 defendant, defendant as defined by Section 289.

28 (III) A lewd or lascivious act involving a child under 14 years
29 of age, in violation of Section 288.

30 (IV) Any homicide offense, including any attempted homicide
31 offense, defined in Sections 187 to 191.5, inclusive.

32 (V) Solicitation to commit murder as defined in Section 653f.

33 (VI) Assault with a machinegun on a peace officer or firefighter,
34 as defined in paragraph (3) of subdivision (d) of Section 245.

35 (VII) Possession of a weapon of mass destruction, as defined
36 in paragraph (1) of subdivision (a) of Section 11418.

37 (VIII) Any serious or violent felony offense punishable in
38 California by life imprisonment or death.

39 (d) (1) Notwithstanding any other law, this section shall be
40 applied in every case in which a defendant has one or more prior

1 serious~~and/or~~ or violent felony convictions as defined in this
2 section. The prosecuting attorney shall plead and prove each prior
3 serious or violent felony conviction except as provided in paragraph
4 (2).

5 (2) The prosecuting attorney may move to dismiss or strike a
6 prior serious or violent felony conviction allegation in the
7 furtherance of justice pursuant to Section 1385, or if there is
8 insufficient evidence to prove the prior serious or violent
9 conviction. If upon the satisfaction of the court that there is
10 insufficient evidence to prove the prior serious or violent felony
11 conviction, the court may dismiss or strike the allegation. This
12 section~~shall~~ *does not be read to* alter a court's authority under
13 Section 1385.

14 (e) Prior serious or violent felony convictions shall not be used
15 in plea bargaining, as defined in subdivision (b) of Section 1192.7.
16 The prosecution shall plead and prove all known prior serious or
17 violent felony convictions and shall not enter into any agreement
18 to strike or seek the dismissal of any prior serious or violent felony
19 conviction allegation except as provided in paragraph (2) of
20 subdivision (d).

21 (f) If any provision of subdivisions (a) to (e), inclusive, or of
22 Section 1170.126, or the application thereof to any person or
23 circumstance is held invalid, that invalidity does not affect other
24 provisions or applications of those subdivisions~~which~~ *that* can be
25 given effect without the invalid provision or application, and to
26 this end the provisions of those subdivisions are severable.

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

32 *SEC. 43. Section 1192.5 of the Penal Code is amended to read:*

33 1192.5. (a) Upon a plea of guilty or nolo contendere to an
34 accusatory pleading charging a felony, other than a violation of
35 paragraph (2), (3), or (6) of subdivision (a) of Section 261,
36 ~~paragraph (1) or (4) of subdivision (a) of Section 262, Section~~
37 264.1, Section 286 or 287 or former Section 288a by force,
38 violence, duress, menace or threat of great bodily harm, subdivision
39 (b) of Section 288, or subdivision (a) of Section 289, the plea may
40 specify the punishment to the same extent as it may be specified

1 by the jury on a plea of not guilty or fixed by the court on a plea
2 of guilty, nolo contendere, or not guilty, and may specify the
3 exercise by the court thereafter of other powers legally available
4 to it.

5 ~~Where~~

6 (b) *When* the plea is accepted by the prosecuting attorney in
7 open court and is approved by the court, the defendant, except as
8 otherwise provided in this section, cannot be sentenced on the plea
9 to a punishment more severe than that specified in the plea and
10 the court may not proceed as to the plea other than as specified in
11 the plea.

12 ~~If~~

13 (c) *If* the court approves of the plea, it shall inform the defendant
14 prior to the making of the plea that (1) its approval is not binding,
15 (2) it may, at the time set for the hearing on the application for
16 probation or pronouncement of judgment, withdraw its approval
17 in the light of further consideration of the matter, and (3) in that
18 case, the defendant shall be permitted to withdraw ~~his or her~~ *the*
19 plea ~~if he or she~~ *the defendant* desires to do so. The court shall
20 also cause an inquiry to be made of the defendant to satisfy itself
21 that the plea is freely and voluntarily made, and that there is a
22 factual basis for the plea.

23 ~~If~~

24 (d) *If* the plea is not accepted by the prosecuting attorney and
25 approved by the court, the plea shall be deemed withdrawn and
26 the defendant may then enter the plea or pleas as would otherwise
27 have been available.

28 ~~If~~

29 (e) *If* the plea is withdrawn or deemed withdrawn, it may not
30 be received in evidence in any criminal, civil, or special action or
31 proceeding of any nature, including proceedings before agencies,
32 commissions, boards, and tribunals.

33 *SEC. 44. Section 1202.1 of the Penal Code is amended to read:*

34 1202.1. (a) Notwithstanding Sections 120975 and 120990 of
35 the Health and Safety Code, the court shall order every person
36 who is convicted of, or adjudged by the court to be a person
37 described by Section 601 or 602 of the Welfare and Institutions
38 Code as provided in Section 725 of the Welfare and Institutions
39 Code by reason of a violation of, a sexual offense listed in
40 subdivision (e), whether or not a sentence or fine is imposed or

1 probation is granted, to submit to a blood or oral mucosal
2 transudate saliva test for evidence of antibodies to the probable
3 causative agent of acquired immunodeficiency syndrome (AIDS)
4 within 180 days of the date of conviction. Each person tested under
5 this section shall be informed of the results of the blood or oral
6 mucosal transudate saliva test.

7 (b) Notwithstanding Section 120980 of the Health and Safety
8 Code, the results of the blood or oral mucosal transudate saliva
9 test to detect antibodies to the probable causative agent of AIDS
10 shall be transmitted by the clerk of the court to the Department of
11 Justice and the local health officer.

12 (c) Notwithstanding Section 120980 of the Health and Safety
13 Code, the Department of Justice shall provide the results of a test
14 or tests as to persons under investigation or being prosecuted under
15 Section 12022.85, if the results are on file with the department, to
16 the defense attorney upon request and the results also shall be
17 available to the prosecuting attorney upon request for the purpose
18 of either preparing counts for a sentence enhancement under
19 Section 12022.85 or complying with subdivision (d).

20 (d) (1) ~~In every case in which~~ *When* a person is convicted of a
21 sexual offense listed in subdivision (e) or adjudged by the court
22 to be a person described by Section 601 or 602 of the Welfare and
23 Institutions Code as provided in Section 725 of the Welfare and
24 Institutions Code by reason of the commission of a sexual offense
25 listed in subdivision (e), the prosecutor or the prosecutor's
26 victim-witness assistance bureau shall advise the victim of ~~his or~~
27 ~~her~~ *the* right to receive the results of the blood or oral mucosal
28 transudate saliva test performed pursuant to subdivision (a). The
29 prosecutor or the prosecutor's victim-witness assistance bureau
30 shall refer the victim to the local health officer for counseling to
31 assist ~~him or her~~ *the victim* in understanding the extent to which
32 the particular circumstances of the crime may or may not have
33 placed the victim at risk of transmission of the human
34 immunodeficiency virus (HIV) from the accused, to ensure that
35 the victim understands the limitations and benefits of current tests
36 for HIV, and to assist the victim in determining whether ~~he or she~~
37 *the victim* should make the request.

38 (2) Notwithstanding any other law, upon the victim's request,
39 the local health officer shall be responsible for disclosing test
40 results to the victim who requested the test and the person who

1 was tested. However, as specified in subdivision (g), positive test
2 results shall not be disclosed to the victim or the person who was
3 tested without offering or providing professional counseling
4 appropriate to the circumstances as follows:

5 (A) To help the victim understand the extent to which the
6 particular circumstances of the crime may or may not have put the
7 victim at risk of transmission of HIV from the perpetrator.

8 (B) To ensure that the victim understands both the benefits and
9 limitations of the current tests for HIV.

10 (C) To obtain referrals to appropriate health care and support
11 services.

12 (e) For purposes of this section, “sexual offense” includes any
13 of the following:

14 (1) Rape in violation of Section ~~261~~ 261, 261.4, or ~~264.1~~. former
15 Section 262.

16 (2) Unlawful intercourse with a person under 18 years of age
17 in violation of Section 261.5 or 266c.

18 ~~(3) Rape of a spouse in violation of Section 262 or 264.1.~~

19 ~~(4)~~

20 (3) Sodomy in violation of Section 266c or 286.

21 ~~(5)~~

22 (4) Oral copulation in violation of Section 266c or 287, or former
23 Section 288a.

24 ~~(6)~~

25 (5) (A) Any of the following offenses if the court finds that
26 there is probable cause to believe that blood, semen, or any other
27 bodily fluid capable of transmitting HIV has been transferred from
28 the defendant to the victim:

29 (i) Sexual penetration in violation of Section 264.1, 266c, or
30 289.

31 (ii) Aggravated sexual assault of a child in violation of Section
32 269.

33 (iii) Lewd or lascivious conduct with a child in violation of
34 Section 288.

35 (iv) Continuous sexual abuse of a child in violation of Section
36 288.5.

37 (v) The attempt to commit any offense described in clauses (i)
38 to (iv), inclusive.

39 (B) For purposes of this paragraph, the court shall note its
40 finding on the court docket and minute order if one is prepared.

1 (f) Any blood or oral mucosal transudate saliva tested pursuant
 2 to subdivision (a) shall be subjected to appropriate confirmatory
 3 tests to ensure accuracy of the first test results, and under no
 4 circumstances shall test results be transmitted to the victim or the
 5 person who is tested unless any initially reactive test result has
 6 been confirmed by appropriate confirmatory tests for positive
 7 reactors.

8 (g) The local health officer shall be responsible for disclosing
 9 test results to the victim who requested the test and the person who
 10 was tested. However, positive test results shall not be disclosed to
 11 the victim or the person who was tested without offering or
 12 providing professional counseling appropriate to the circumstances.

13 (h) The local health officer and the victim shall comply with all
 14 laws and policies relating to medical confidentiality, subject to the
 15 disclosure authorized by subdivisions (g) and (i).

16 (i) ~~Any~~A victim who receives information from the local health
 17 officer pursuant to subdivision (g) may disclose the information
 18 as ~~he or she~~ *the victim* deems necessary to protect ~~his or her~~ *the*
 19 *victim's* health and safety or the health and safety of ~~his or her~~ *the*
 20 *victim's* family or sexual partner.

21 (j) ~~Any~~A person who transmits test results or discloses
 22 information pursuant to this section shall be immune from civil
 23 liability for any action taken in compliance with this section.

24 *SEC. 45. Section 1203.055 of the Penal Code is amended to*
 25 *read:*

26 1203.055. (a) (1) Notwithstanding any other law, in
 27 sentencing a person convicted of committing or of attempting to
 28 commit one or more of the offenses listed in subdivision (b) against
 29 a person who is a passenger, operator, driver, or other occupant
 30 of any public transit vehicle whether the offense or attempt is
 31 committed within the vehicle or directed at the vehicle, the court
 32 shall require that the person serve some period of confinement. If
 33 probation is granted, it shall be a condition of probation that the
 34 person shall be confined in the county jail for some period of time.
 35 If the time spent in jail prior to arraignment is less than 24 hours,
 36 it shall not be considered to satisfy the requirement that some
 37 period of confinement be imposed.

38 *As*

39 (2) *As* used in this subdivision, "public transit vehicle" means
 40 ~~any~~ a motor vehicle, streetcar, trackless trolley, bus, shuttle, light

1 rail system, rapid transit system, subway, train, taxi cab, or ~~jitney,~~
2 ~~which jitney that~~ transports members of the public for hire.

3 (b) Subdivision (a) applies to the following crimes:

4 (1) Murder.

5 (2) A violation of Section 241, 241.3, 241.4, 244, 245, 245.2,
6 or 246.

7 (3) Robbery, in violation of Section 211.

8 (4) Kidnapping, in violation of Section 207.

9 (5) Kidnapping, in violation of Section 209.

10 (6) Battery, in violation of Section 243, 243.1, or 243.3.

11 (7) Rape, in violation of Section 261, ~~262~~, 264, or 264.1.

12 (8) Assault with intent to commit rape or sodomy, in violation
13 of Section 220.

14 (9) Any other offense in which the defendant inflicts great bodily
15 injury on ~~any~~ a person other than an accomplice. As used in this
16 paragraph, "great bodily injury" ~~means "great bodily injury"~~ *has*
17 *the same meaning* as defined in Section 12022.7.

18 (10) Grand theft, in violation of subdivision (1) of Section 487.

19 (11) Throwing of a hard substance or shooting a missile at a
20 transit vehicle, in violation of Section 219.2.

21 (12) Unlawfully causing a fire, in violation of Section 452.

22 (13) Drawing, exhibiting, or using a firearm or deadly weapon,
23 in violation of Section 417.

24 (14) A violation of Section 214.

25 (15) A violation of Section 215.

26 (16) Kidnapping, in violation of Section 209.5.

27 (c) Probation shall not be granted to, nor shall the execution or
28 imposition of sentence be suspended for, ~~any~~ a person convicted
29 of a felony offense falling within this section if the person has been
30 previously convicted and sentenced pursuant to this section.

31 (d) (1) The existence of any fact ~~which~~ *that* would make a
32 person ineligible for probation under subdivisions (a) and (c) shall
33 be alleged in the accusatory pleading, and either admitted by the
34 defendant in open court, or found to be true by the jury trying the
35 issue of guilt or by the court where guilt is established by a plea
36 of guilty or nolo contendere or by a trial by the court sitting without
37 a jury.

38 A finding bringing the defendant within this section shall not be
39 stricken pursuant to Section 1385 or any ~~provision~~ of law.

1 (2) This subdivision does not prohibit the adjournment of
 2 criminal proceedings pursuant to Division 3 (commencing with
 3 Section 3000) or Division 6 (commencing with Section 6000) of
 4 the Welfare and Institutions Code.

5 (e) The court shall require, as a condition of probation for ~~any~~
 6 *a* person convicted of committing a crime ~~which~~ *that* took place
 7 on a public transit vehicle, ~~except in any case in which~~ *when* the
 8 court makes a finding and states on the record clear and compelling
 9 reasons why the condition would be inappropriate, that the person
 10 make restitution to the victim. If restitution is found to be
 11 inappropriate, the court shall require as a condition of probation,
 12 ~~except in any case in which~~ *when* the court makes a finding and
 13 states on the record its reasons that the condition would be
 14 inappropriate, that the defendant perform specified community
 15 service. ~~Nothing in this~~ *This* subdivision ~~shall be construed to~~ *does*
 16 *not* limit the authority of a court to provide additional conditions
 17 of probation.

18 (f) ~~In any case in which~~ *When* a person is convicted of
 19 committing a crime ~~which~~ *that* took place on a public transit
 20 vehicle, the probation officer shall immediately investigate and
 21 report to the court at a specified time whether, as a result of the
 22 crime, property damage or loss or personal injury was caused by
 23 the defendant, the amount of the damage, loss, or injury, and the
 24 feasibility of requiring restitution to be made by the defendant.
 25 When a probation report is required pursuant to Section 1203 the
 26 information required by this subdivision shall be added to that
 27 probation report.

28 *SEC. 46. Section 1203.06 of the Penal Code is amended to*
 29 *read:*

30 1203.06. (a) Notwithstanding any other ~~provision~~ of law,
 31 probation shall not be granted to, nor shall the execution or
 32 imposition of sentence be suspended for, nor shall a finding
 33 bringing the defendant within this section be stricken pursuant to
 34 Section 1385 for, any of the following persons:

35 (1) ~~Any~~ A person who personally used a firearm during the
 36 commission or attempted commission of any of the following
 37 crimes:

38 (A) Murder.

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

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

- 1 (D) Lewd or lascivious act, in violation of Section 288.
- 2 (E) Burglary of the first degree, as defined in Section 460.
- 3 (F) Rape, in violation of Section 261, ~~262~~, 264.1, or ~~264.1~~.
- 4 ~~former Section 262~~.
- 5 (G) Assault with intent to commit a specified sexual offense,
- 6 in violation of Section 220.
- 7 (H) Escape, in violation of Section 4530 or 4532.
- 8 (I) Carjacking, in violation of Section 215.
- 9 (J) Aggravated mayhem, in violation of Section 205.
- 10 (K) Torture, in violation of Section 206.
- 11 (L) Continuous sexual abuse of a child, in violation of Section
- 12 288.5.
- 13 (M) A felony violation of Section 136.1 or 137.
- 14 (N) Sodomy, in violation of Section 286.
- 15 (O) Oral copulation, in violation of Section 287 or former
- 16 Section 288a.
- 17 (P) Sexual penetration, in violation of Section 289 or 264.1.
- 18 (Q) Aggravated sexual assault of a child, in violation of Section
- 19 269.
- 20 (2) ~~Any~~ A person previously convicted of a felony specified in
- 21 paragraph (1), or assault with intent to commit murder under former
- 22 Section 217, who is convicted of a subsequent felony and who was
- 23 personally armed with a firearm at any time during its commission
- 24 or attempted commission or was unlawfully armed with a firearm
- 25 at the time of ~~his or her~~ arrest for the subsequent felony.
- 26 (3) Aggravated arson, in violation of Section 451.5.
- 27 (b) ~~(4)~~ The existence of any fact that would make a person
- 28 ineligible for probation under subdivision (a) shall be alleged in
- 29 the accusatory pleading, and either admitted by the defendant in
- 30 ~~open court~~, court or found to be true by the trier of fact.
- 31 (c) For purposes of this section, the following definitions apply:
- 32 (1) “Armed with a firearm” means to knowingly carry or have
- 33 available for use a firearm as a means of offense or defense.
- 34 (2) ~~As used in subdivision (a), “used~~ “Used a firearm” means
- 35 to display a firearm in a menacing manner, to intentionally fire it,
- 36 to intentionally strike or hit a human being with it, or to use it in
- 37 any manner that qualifies under Section 12022.5.
- 38 ~~(3) As used in subdivision (a), “armed with a firearm” means~~
- 39 ~~to knowingly carry or have available for use a firearm as a means~~
- 40 ~~of offense or defense.~~

1 *SEC. 47. Section 1203.066 of the Penal Code is amended to*
2 *read:*

3 1203.066. (a) Notwithstanding Section 1203 or any other law,
4 probation shall not be granted to, nor shall the execution or
5 imposition of sentence be suspended for, nor shall a finding
6 bringing the defendant within the provisions of this section be
7 stricken pursuant to Section 1385 for, any of the following persons:

8 (1) A person who is convicted of violating Section 288 or 288.5
9 when the act is committed by the use of force, violence, duress,
10 menace, or fear of immediate and unlawful bodily injury on the
11 victim or another person.

12 (2) A person who caused bodily injury on the child victim in
13 committing a violation of Section 288 or 288.5.

14 (3) A person who is convicted of a violation of Section 288 or
15 288.5 and who was a stranger to the child victim or befriended the
16 child victim for the purpose of committing an act in violation of
17 Section 288 or 288.5, unless the defendant honestly and reasonably
18 believed the victim was 14 years of age or older.

19 (4) A person who used a weapon during the commission of a
20 violation of Section 288 or 288.5.

21 (5) A person who is convicted of committing a violation of
22 Section 288 or 288.5 and who has been previously convicted of a
23 violation of Section 261, ~~262~~, 264.1, 266, 266c, 267, 285, 286,
24 287, 288, 288.5, or 289, or former Section 262 *or* 288a, or of
25 assaulting another person with intent to commit a crime specified
26 in this paragraph in violation of Section 220, or who has been
27 previously convicted in another state of an offense which, if
28 committed or attempted in this state, would constitute an offense
29 enumerated in this paragraph.

30 (6) A person who violated Section 288 or 288.5 while
31 kidnapping the child victim in violation of Section 207, 209, or
32 209.5.

33 (7) A person who is convicted of committing a violation of
34 Section 288 or 288.5 against more than one victim.

35 (8) A person who, in violating Section 288 or 288.5, has
36 substantial sexual conduct with a victim who is under 14 years of
37 age.

38 (9) A person who, in violating Section 288 or 288.5, used
39 obscene matter, as defined in Section 311, or matter, as defined in
40 Section 311, depicting sexual conduct, as defined in Section 311.3.

1 (b) “Substantial sexual conduct” means penetration of the vagina
2 or rectum of either the victim or the offender by the penis of the
3 other or by any foreign object, oral copulation, or masturbation of
4 either the victim or the offender.

5 (c) (1) Except for a violation of subdivision (b) of Section 288,
6 this section shall only apply if the existence of any fact required
7 in subdivision (a) is alleged in the accusatory pleading and is either
8 admitted by the defendant in open court, or found to be true by the
9 trier of fact.

10 (2) For the existence of any fact under paragraph (7) of
11 subdivision (a), the allegation must be made pursuant to this
12 section.

13 (d) (1) If a person is convicted of a violation of Section 288 or
14 288.5, and the factors listed in subdivision (a) are not pled or
15 proven, probation may be granted only if the following terms and
16 conditions are met:

17 (A) If the defendant is a member of the victim’s household, the
18 court finds that probation is in the best interest of the child victim.

19 (B) The court finds that rehabilitation of the defendant is feasible
20 and that the defendant is amenable to undergoing treatment, and
21 the defendant is placed in a recognized treatment program designed
22 to deal with child molestation immediately after the grant of
23 probation or the suspension of execution or imposition of sentence.

24 (C) If the defendant is a member of the victim’s household,
25 probation shall not be granted unless the defendant is removed
26 from the household of the victim until the court determines that
27 the best interests of the victim would be served by ~~his or her~~ *the*
28 *defendant’s* return. While removed from the household, the court
29 shall prohibit contact by the defendant with the victim, with the
30 exception that the court may permit supervised contact, upon the
31 request of the director of the court-ordered supervised treatment
32 program, and with the agreement of the victim and the victim’s
33 parent or legal guardian, other than the defendant.

34 (D) If the defendant is not a member of the victim’s household,
35 the court shall prohibit the defendant from being placed or residing
36 within one-half mile of the child victim’s residence for the duration
37 of the probation term unless the court, on the record, states its
38 reasons for finding that this residency restriction would not serve
39 the best interests of the victim.

1 (E) The court finds that there is no threat of physical harm to
 2 the victim if probation is granted.

3 (2) The court shall state its reasons on the record for whatever
 4 sentence it imposes on the defendant.

5 (3) The court shall order the psychiatrist or psychologist who
 6 is appointed pursuant to Section 288.1 to include a consideration
 7 of the factors specified in subparagraphs (A), (B), and (C) of
 8 paragraph (1) in making ~~his or her~~ *the* report to the court.

9 (4) The court shall order the defendant to comply with all
 10 probation requirements, including the requirements to attend
 11 counseling, keep all program appointments, and pay program fees
 12 based upon ability to pay.

13 (5) ~~No~~ A victim shall *not* be compelled to participate in a
 14 program or counseling, and ~~no~~ a program may *not* condition a
 15 defendant’s enrollment on participation by the victim.

16 (e) As used in subdivision (d), the following definitions apply:

17 (1) “Contact with the victim” includes all physical contact, being
 18 in the presence of the victim, communicating by any means,
 19 including by a third party acting on behalf of the defendant, or
 20 sending any gifts.

21 (2) “Recognized treatment program” means a program that
 22 consists of the following components:

23 (A) Substantial expertise in the treatment of child sexual abuse.

24 (B) A treatment regimen designed to specifically address the
 25 offense.

26 (C) The ability to serve indigent clients.

27 (D) Adequate reporting requirements to ensure that all persons
 28 who, after being ordered to attend and complete a program, may
 29 be identified for either failure to enroll in, or failure to successfully
 30 complete, the program, or for the successful completion of the
 31 program as ordered. The program shall notify the court and the
 32 probation department, in writing, within the period of time and in
 33 the manner specified by the court of any person who fails to
 34 complete the program. Notification shall be given if the program
 35 determines that the defendant is performing unsatisfactorily or if
 36 the defendant is not benefiting from the education, treatment, or
 37 counseling.

38 *SEC. 48. Section 1203.067 of the Penal Code is amended to*
 39 *read:*

1 1203.067. (a) Notwithstanding any other law, before probation
2 may be granted to any person convicted of a felony specified in
3 Section 261,~~262~~, 264.1, 286, 287, 288, 288.5, or 289, or former
4 Section ~~262~~ or 288a, who is eligible for probation, the court shall
5 do all of the following:

6 (1) Order the defendant evaluated pursuant to Section 1203.03,
7 or similar evaluation by the county probation department.

8 (2) Conduct a hearing at the time of sentencing to determine if
9 probation of the defendant would pose a threat to the victim. The
10 victim shall be notified of the hearing by the prosecuting attorney
11 and given an opportunity to address the court.

12 (3) Order any psychiatrist or psychologist appointed pursuant
13 to Section 288.1 to include a consideration of the threat to the
14 victim and the defendant's potential for positive response to
15 treatment in making ~~his or her~~ *the* report to the court. ~~Nothing in~~
16 ~~this~~ *This section shall be construed to does not* require the court
17 to order an examination of the victim.

18 (b) ~~On or after July 1, 2012, the~~ *The* terms of probation for
19 persons placed on formal probation for an offense that requires
20 registration pursuant to Sections 290 to 290.023, inclusive, shall
21 include all of the following:

22 (1) ~~Persons~~ *A person* placed on formal probation prior to July
23 1, 2012, shall participate in an approved sex offender management
24 program, following the standards developed pursuant to Section
25 9003, for a period of not less than one year or the remaining term
26 of probation if it is less than one year. The length of the period in
27 the program is to be determined by the certified sex offender
28 management professional in consultation with the probation officer
29 and as approved by the court. Participation in this program applies
30 to every person described without regard to when ~~his or her~~ *the*
31 *person's* crime or crimes were committed.

32 (2) ~~Persons~~ *A person* placed on formal probation on or after
33 July 1, 2012, shall successfully complete a sex offender
34 management program, following the standards developed pursuant
35 to Section 9003, as a condition of release from probation. The
36 length of the period in the program shall be not less than one year,
37 up to the entire period of probation, as determined by the certified
38 sex offender management professional in consultation with the
39 probation officer and as approved by the court. Participation in

1 this program applies to each person without regard to when ~~his or~~
2 ~~her~~ *the person's* crime or crimes were committed.

3 (3) Waiver of any privilege against self-incrimination and
4 participation in polygraph examinations, which shall be part of the
5 sex offender management program.

6 (4) Waiver of any psychotherapist-patient privilege to enable
7 communication between the sex offender management professional
8 and supervising probation officer, pursuant to Section 290.09.

9 (c) ~~Any~~ A defendant ordered to be placed in an approved sex
10 offender management program pursuant to subdivision (b) shall
11 be responsible for paying the expense of ~~his or her~~ participation
12 in the program as determined by the court. The court shall take
13 into consideration the ability of the defendant to pay, and ~~no a~~
14 defendant shall *not* be denied probation because of ~~his or her~~ *their*
15 inability to pay.

16 *SEC. 49. Section 1203.075 of the Penal Code is amended to*
17 *read:*

18 1203.075. (a) Notwithstanding any other ~~provision of~~ law,
19 probation shall not be granted to, nor shall the execution or
20 imposition of sentence be suspended for, nor shall a finding
21 bringing the defendant within this section be stricken pursuant to
22 Section 1385 for, any person who personally inflicts great bodily
23 injury, as defined in Section 12022.7, on the person of another in
24 the commission or attempted commission of any of the following
25 crimes:

26 (1) Murder.

27 (2) Robbery, in violation of Section 211.

28 (3) Kidnapping, in violation of Section 207, 209, or 209.5.

29 (4) Lewd or lascivious act, in violation of Section 288.

30 (5) Burglary of the first degree, as defined in Section 460.

31 (6) Rape, in violation of Section 261, ~~262~~, 264.1, or ~~264.1~~.
32 *former Section 262.*

33 (7) Assault with intent to commit a specified sexual offense, in
34 violation of Section 220.

35 (8) Escape, in violation of Section 4530 or 4532.

36 (9) Sexual penetration, in violation of Section 289 or 264.1.

37 (10) Sodomy, in violation of Section 286.

38 (11) Oral copulation, in violation of Section 287 or former
39 Section 288a.

40 (12) Carjacking, in violation of Section 215.

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

3 (14) Aggravated sexual assault of a child, in violation of Section
4 269.

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

9 *SEC. 50. Section 1203.08 of the Penal Code is amended to*
10 *read:*

11 1203.08. (a) Notwithstanding any other law, probation shall
12 not be granted to, nor shall the execution or imposition of sentence
13 be suspended for, ~~any~~ *an* adult person convicted of a designated
14 felony who has been previously convicted as an adult under charges
15 separately brought and tried two or more times of any designated
16 felony or in any other place of a public offense which, if committed
17 in this state, would have been punishable as a designated felony,
18 if all the convictions occurred within a 10-year period. The 10-year
19 period shall be calculated exclusive of any period of time during
20 which the person has been confined in a state or federal prison.

21 (b) (1) The existence of any fact ~~which~~ *that* would make a
22 person ineligible for probation under subdivision (a) shall be
23 alleged in the information or indictment, and either admitted by
24 the defendant in open court, or found to be true by the jury trying
25 the issue of guilt or by the court where guilt is established by plea
26 of guilty or nolo contendere or by trial by the court sitting without
27 a jury.

28 (2) Except where the existence of the fact was not admitted or
29 found to be true pursuant to paragraph (1), or the court finds that
30 a prior conviction was invalid, the court shall not strike or dismiss
31 any prior convictions alleged in the information or indictment.

32 (3) This subdivision does not prohibit the adjournment of
33 criminal proceedings pursuant to Division 3 (commencing with
34 Section 3000) or Division 6 (commencing with Section 6000) of
35 the Welfare and Institutions Code.

36 (c) As used in this section, “designated felony” means any felony
37 specified in Section 187, 192, 207, 209, 209.5, 211, 215, 217, 245,
38 288, or paragraph (2), (6), or (7) of subdivision (a) of Section 261,
39 paragraph (1), (4), or (5) of subdivision (a) of *former* Section 262,
40 subdivision (a) of Section 460, or when great bodily injury occurs

1 in perpetration of an assault to commit robbery, mayhem, or rape,
2 as defined in Section 220.

3 *SEC. 51. Section 1203.09 of the Penal Code is amended to*
4 *read:*

5 1203.09. (a) Notwithstanding any other law, probation shall
6 not be granted to, nor shall the execution or imposition of sentence
7 be suspended for, ~~any~~ a person who commits or attempts to commit
8 one or more of the crimes listed in subdivision (b) against a person
9 who is 60 years of age or older; or against a person who is blind,
10 a paraplegic, a quadriplegic, or a person confined to a wheelchair
11 and that disability is known or reasonably should be known to the
12 person committing the crime; and who during the course of the
13 offense inflicts great bodily injury upon the person.

14 (b) Subdivision (a) applies to the following crimes:

15 (1) Murder.

16 (2) Robbery, in violation of Section 211.

17 (3) Kidnapping, in violation of Section 207.

18 (4) Kidnapping, in violation of Section 209.

19 (5) Burglary of the first degree, as defined in Section 460.

20 (6) Rape by force or violence, in violation of paragraph (2) or
21 (6) of subdivision (a) of Section 261 or paragraph (1) or (4) of
22 subdivision (a) of *former* Section 262.

23 (7) Assault with intent to commit rape or sodomy, in violation
24 of Section 220.

25 (8) Carjacking, in violation of Section 215.

26 (9) Kidnapping, in violation of Section 209.5.

27 (c) The existence of any fact ~~which~~ *that* would make a person
28 ineligible for probation under either subdivision (a) or (f) shall be
29 alleged in the information or indictment, and either admitted by
30 the defendant in open court, or found to be true by the jury trying
31 the issue of guilt or by the court where guilt is established by plea
32 of guilty or nolo contendere or by trial by the court sitting without
33 a jury.

34 (d) As used in this section “great bodily injury” ~~means “great~~
35 ~~bodily injury”~~ *has the same meaning* as defined in Section 12022.7.

36 (e) This section shall apply in all cases, including those cases
37 where the infliction of great bodily injury is an element of the
38 offense.

39 (f) Except in unusual cases where the interests of justice would
40 best be served if the person is granted probation, probation shall

1 not be granted to, nor shall the execution or imposition of sentence
2 be suspended for, ~~any~~ a person convicted of having committed
3 one or more of the following crimes against a person who is 60
4 years of age or older: assault with a deadly weapon or instrument,
5 battery ~~which that~~ results in physical injury ~~which that~~ requires
6 professional medical treatment, carjacking, robbery, or mayhem.

7 *SEC. 52. Section 1270.1 of the Penal Code is amended to read:*

8 1270.1. (a) Except as provided in subdivision (e), before ~~any~~
9 a person who is arrested for any of the following crimes may be
10 released on bail in an amount that is either more or less than the
11 amount contained in the schedule of bail for the offense, or may
12 be released on ~~his or her~~ *the person's* own recognizance, a hearing
13 shall be held in open court before the magistrate or judge:

14 (1) A serious felony, as defined in subdivision (c) of Section
15 1192.7, or a violent felony, as defined in subdivision (c) of Section
16 667.5, but not including a violation of subdivision (a) of Section
17 460 (residential burglary).

18 (2) A violation of Section 136.1 where punishment is imposed
19 pursuant to subdivision (c) of Section 136.1, Section ~~262, 273.5,~~
20 273.5 or 422 ~~where~~ *if* the offense is punished as a felony, or Section
21 646.9.

22 (3) A violation of paragraph (1) of subdivision (e) of Section
23 243.

24 (4) A violation of Section 273.6 if the detained person made
25 threats to kill or harm, has engaged in violence against, or has gone
26 to the residence or workplace of, the protected party.

27 (b) The prosecuting attorney and defense attorney shall be given
28 a two-court-day written notice and an opportunity to be heard on
29 the matter. If the detained person does not have counsel, the court
30 shall appoint counsel for purposes of this section only. The hearing
31 required by this section shall be held within the time period
32 prescribed in Section 825.

33 (c) At the hearing, the court shall consider evidence of past court
34 appearances of the detained person, the maximum potential
35 sentence that could be imposed, and the danger that may be posed
36 to other persons if the detained person is released. In making the
37 determination whether to release the detained person on ~~his or her~~
38 *their* own recognizance, the court shall consider the potential
39 danger to other persons, including threats that have been made by
40 the detained person and any past acts of violence. The court shall

1 also consider any evidence offered by the detained person regarding
2 ~~his or her~~ *the detained person's* ties to the community and ~~his or~~
3 ~~her~~ ability to post bond.

4 (d) If the judge or magistrate sets the bail in an amount that is
5 either more or less than the amount contained in the schedule of
6 bail for the offense, the judge or magistrate shall state the reasons
7 for that decision and shall address the issue of threats made against
8 the victim or witness, if they were made, in the record. This
9 statement shall be included in the record.

10 (e) Notwithstanding subdivision (a), a judge or magistrate,
11 pursuant to Section 1269c, may, with respect to aailable felony
12 offense or a misdemeanor offense of violating a domestic violence
13 order, increase bail to an amount exceeding that set forth in the
14 bail schedule without a hearing, provided an oral or written
15 declaration of facts justifying the increase is presented under
16 penalty of perjury by a sworn peace officer.

17 *SEC. 53. Section 1346.1 of the Penal Code is amended to read:*

18 1346.1. (a) When a defendant has been charged with a violation
19 of Section ~~262~~ 261, *if the victim is the spouse of the defendant*, or
20 subdivision (a) of Section 273.5, the people may apply for an order
21 that the victim's testimony at the preliminary hearing, in addition
22 to being stenographically recorded, be video recorded and the
23 video recording preserved.

24 (b) The application for the order shall be in writing and made
25 three days prior to the preliminary hearing.

26 (c) Upon timely receipt of the application, the magistrate shall
27 order that the testimony of the victim given at the preliminary
28 hearing be taken and preserved as a video recording, in addition
29 to being stenographically recorded. The video recording shall be
30 transmitted to the clerk of the court in which the action is pending.

31 (d) If the victim's prior testimony given at the preliminary
32 hearing is admissible pursuant to the Evidence Code, then the
33 video recording of that testimony may be introduced as evidence
34 at trial.

35 *SEC. 54. Section 1387 of the Penal Code is amended to read:*

36 1387. (a) An order terminating an action pursuant to this
37 chapter, or Section 859b, 861, 871, or 995, is a bar to any other
38 prosecution for the same offense if it is a felony or if it is a
39 misdemeanor charged together with a felony and the action has
40 been previously terminated pursuant to this chapter, or Section

1 859b, 861, 871, or 995, or if it is a misdemeanor not charged
2 together with a felony, except in those felony cases, or those cases
3 where a misdemeanor is charged with a felony, where subsequent
4 to the dismissal of the felony or misdemeanor the judge or
5 magistrate finds any of the following:

6 (1) That substantial new evidence has been discovered by the
7 prosecution ~~which~~ *that* would not have been known through the
8 exercise of due diligence at, or prior to, the time of termination of
9 the action.

10 (2) That the termination of the action was the result of the direct
11 intimidation of a material witness, as shown by a preponderance
12 of the evidence.

13 (3) That the termination of the action was the result of the failure
14 to appear by the complaining witness, who had been personally
15 subpoenaed in a prosecution arising under subdivision (e) of
16 Section 243 or Section ~~262, 273.5, 273.5~~ or ~~273.6, 273.6~~, *or Section*
17 *261, where the complaining witness is the spouse of the defendant.*
18 This paragraph shall apply only within six months of the original
19 dismissal of the action, and may be invoked only once in each
20 action. ~~Nothing in this~~ *This section shall does not* preclude a
21 defendant from being eligible for diversion.

22 (4) That the termination of the action was the result of the
23 complaining witness being found in contempt of court as described
24 in subdivision (b) of Section 1219 of the Code of Civil Procedure.
25 This paragraph shall apply only within six months of the original
26 dismissal of the action, and may be invoked only once in each
27 action.

28 (b) Notwithstanding subdivision (a), an order terminating an
29 action pursuant to this chapter is not a bar to another prosecution
30 for the same offense if it is a misdemeanor charging an offense
31 based on an act of domestic violence, as defined in subdivisions
32 (a) and (b) of Section 13700, and the termination of the action was
33 the result of the failure to appear by the complaining witness, who
34 had been personally subpoenaed. This subdivision shall apply only
35 within six months of the original dismissal of the action, and may
36 be invoked only once in each action. ~~Nothing in this~~ *This*
37 *subdivision shall does not* preclude a defendant from being eligible
38 for diversion.

39 (c) An order terminating an action is not a bar to prosecution
40 if a complaint is dismissed before the commencement of a

1 preliminary hearing in favor of an indictment filed pursuant to
2 Section 944 and the indictment is based upon the same subject
3 matter as charged in the dismissed complaint, information, or
4 indictment.

5 However, if the previous termination was pursuant to Section
6 859b, 861, 871, or 995, the subsequent order terminating an action
7 is not a bar to prosecution if:

8 (1) Good cause is shown why the preliminary examination was
9 not held within 60 days from the date of arraignment or plea.

10 (2) The motion pursuant to Section 995 was granted because of
11 any of the following reasons:

12 (A) Present insanity of the defendant.

13 (B) A lack of counsel after the defendant elected to ~~represent~~
14 ~~himself or herself~~ *self-represent* rather than being represented by
15 appointed counsel.

16 (C) Ineffective assistance of counsel.

17 (D) Conflict of interest of defense counsel.

18 (E) Violation of time deadlines based upon unavailability of
19 defense counsel.

20 (F) Defendant's motion to withdraw a waiver of the preliminary
21 examination.

22 (3) The motion pursuant to Section 995 was granted after
23 dismissal by the magistrate of the action pursuant to Section 871
24 and was recharged pursuant to Section 739.

25 *SEC. 55. Section 1524.1 of the Penal Code is amended to read:*

26 1524.1. (a) The primary purpose of the testing and disclosure
27 provided in this section is to benefit the victim of a crime by
28 informing the victim whether the defendant is infected with the
29 HIV virus. It is also the intent of the Legislature in enacting this
30 section to protect the health of both victims of crime and those
31 accused of committing a crime. ~~Nothing in this~~ *This section shall*
32 ~~be construed to~~ *does not* authorize mandatory testing or disclosure
33 of test results for the purpose of a charging decision by a
34 prosecutor, ~~nor, and,~~ except as specified in subdivisions (g) and
35 (i), ~~shall this section be construed to~~ *does not* authorize breach of
36 the confidentiality provisions contained in Chapter 7 (commencing
37 with Section 120975) of Part 4 of Division 105 of the Health and
38 Safety Code.

39 (b) (1) Notwithstanding the provisions of Chapter 7
40 (commencing with Section 120975) of Part 4 of Division 105 of

1 the Health and Safety Code, when a defendant has been charged
2 by complaint, information, or indictment with a crime, or a minor
3 is the subject of a petition filed in juvenile court alleging the
4 commission of a crime, the court, at the request of the victim, may
5 issue a search warrant for the purpose of testing the accused's
6 blood or oral mucosal transudate saliva with~~any~~ *an* HIV test, as
7 defined in Section 120775 of the Health and Safety Code only
8 under the following circumstances: when the court finds, upon the
9 conclusion of the hearing described in paragraph (3), or ~~in those~~
10 ~~cases in which~~ *when* a preliminary hearing is not required to be
11 held, that there is probable cause to believe that the accused
12 committed the offense, and that there is probable cause to believe
13 that blood, semen, or any other bodily fluid identified by the State
14 Department of *Public Health Services* in appropriate regulations
15 as capable of transmitting the human immunodeficiency virus has
16 been transferred from the accused to the victim.

17 (2) Notwithstanding Chapter 7 (commencing with Section
18 120975) of Part 4 of Division 105 of the Health and Safety Code,
19 when a defendant has been charged by complaint, information, or
20 indictment with a crime under Section 220, 261, 261.5, ~~262~~, 264.1,
21 266c, 269, 286, 287, 288, 288.5, 289, or 289.5, or former Section
22 262 *or* 288a, or with an attempt to commit any of the offenses,
23 and is the subject of a police report alleging the commission of a
24 separate, uncharged offense that could be charged under Section
25 220, 261, 261.5, ~~262~~, 264.1, 266c, 269, 286, 287, 288, 288.5, 289,
26 or 289.5, or former Section 262 *or* 288a, or of an attempt to commit
27 any of the offenses, or a minor is the subject of a petition filed in
28 juvenile court alleging the commission of a crime under Section
29 220, 261, 261.5, ~~262~~, 264.1, 266c, 269, 286, 287, 288, 288.5, 289,
30 or 289.5, or former Section 262 *or* 288a, or of an attempt to commit
31 any of the offenses, and is the subject of a police report alleging
32 the commission of a separate, uncharged offense that could be
33 charged under Section 220, 261, 261.5, ~~262~~, 264.1, 266c, 269,
34 286, 287, 288, 288.5, 289, or 289.5, or former Section 262 *or* 288a,
35 or of an attempt to commit any of the offenses, the court, at the
36 request of the victim of the uncharged offense, may issue a search
37 warrant for the purpose of testing the accused's blood or oral
38 mucosal transudate saliva with~~any~~ *an* HIV test, as defined in
39 Section 120775 of the Health and Safety Code only under the
40 following circumstances: when the court finds that there is probable

1 cause to believe that the accused committed the uncharged offense,
2 and that there is probable cause to believe that blood, semen, or
3 any other bodily fluid identified by the State Department of *Public*
4 ~~Health—Services~~ in appropriate regulations as capable of
5 transmitting the human immunodeficiency virus has been
6 transferred from the accused to the victim. As used in this
7 paragraph, “Section 289.5” refers to the statute enacted by Chapter
8 293 of the Statutes of 1991, penetration by an unknown object.

9 (3) (A) Prior to the issuance of a search warrant pursuant to
10 paragraph (1), the court, where applicable and at the conclusion
11 of the preliminary examination if the defendant is ordered to answer
12 pursuant to Section 872, shall conduct a hearing at which both the
13 victim and the defendant have the right to be present. During the
14 hearing, only affidavits, counter affidavits, and medical reports
15 regarding the facts that support or rebut the issuance of a search
16 warrant under paragraph (1) shall be admissible.

17 (B) Prior to the issuance of a search warrant pursuant to
18 paragraph (2), the court, where applicable, shall conduct a hearing
19 at which both the victim and the defendant are present. During the
20 hearing, only affidavits, counter affidavits, and medical reports
21 regarding the facts that support or rebut the issuance of a search
22 warrant under paragraph (2) shall be admissible.

23 (4) A request for a probable cause hearing made by a victim
24 under paragraph (2) shall be made before sentencing in the superior
25 court, or before disposition on a petition in a juvenile court, of the
26 criminal charge or charges filed against the defendant.

27 (c) (1) ~~In all cases in which~~ *When* the person has been charged
28 by complaint, information, or indictment with a crime, or is the
29 subject of a petition filed in a juvenile court alleging the
30 commission of a crime, the prosecutor shall advise the victim of
31 ~~his or her~~ *the* right to make this request. To assist the victim of the
32 crime to determine whether ~~he or she~~ *the victim* should make this
33 request, the prosecutor shall refer the victim to the local health
34 officer for prerequest counseling to help that person understand
35 the extent to which the particular circumstances of the crime may
36 or may not have put the victim at risk of transmission of HIV from
37 the accused, to ensure that the victim understands both the benefits
38 and limitations of the current tests for HIV, to help the victim
39 decide whether ~~he or she~~ *the victim* wants to request that the

1 accused be tested, and to help the victim decide whether ~~he or she~~
2 *the victim* wants to be tested.

3 (2) The Department of Justice, in cooperation with the California
4 District Attorneys Association, shall prepare a form to be used in
5 providing victims with the notice required by paragraph (1).

6 (d) If the victim decides to request HIV testing of the accused,
7 the victim shall request the issuance of a search warrant, as
8 described in subdivision (b).

9 Neither the failure of a prosecutor to refer or advise the victim
10 as provided in this subdivision, nor the failure or refusal by the
11 victim to seek or obtain counseling, shall be considered by the
12 court in ruling on the victim's request.

13 (e) The local health officer shall make provision for
14 administering all HIV tests ordered pursuant to subdivision (b).

15 (f) Any blood or oral mucosal transudate saliva tested pursuant
16 to subdivision (b) shall be subjected to appropriate confirmatory
17 tests to ensure accuracy of the first test results, and under no
18 circumstances shall test results be transmitted to the victim or the
19 accused unless any initially reactive test result has been confirmed
20 by appropriate confirmatory tests for positive reactors.

21 (g) The local health officer shall have the responsibility for
22 disclosing test results to the victim who requested the test and to
23 the accused who was tested. However, ~~no~~ positive test results shall
24 *not* be disclosed to the victim or to the accused without also
25 providing or offering professional counseling appropriate to the
26 circumstances.

27 (h) The local health officer and victim shall comply with all
28 laws and policies relating to medical confidentiality subject to the
29 disclosure authorized by subdivisions (g) and (i). ~~Any~~ *An* individual
30 who files a false report of sexual assault in order to obtain test
31 result information pursuant to this section shall, in addition to any
32 other liability under law, be guilty of a misdemeanor punishable
33 as provided in subdivision (c) of Section 120980 of the Health and
34 Safety Code. ~~Any~~ *An* individual as described in the preceding
35 sentence who discloses test result information obtained pursuant
36 to this section shall also be guilty of an additional misdemeanor
37 punishable as provided for in subdivision (c) of Section 120980
38 of the Health and Safety Code for each separate disclosure of that
39 information.

1 (i) ~~Any~~—A victim who receives information from the health
2 officer pursuant to subdivision (g) may disclose the test results as
3 the victim deems necessary to protect ~~his or her~~ *their* health and
4 safety or the health and safety of ~~his or her~~ *the victim's* family or
5 sexual partner.

6 (j) ~~Any~~—A person transmitting test results or disclosing
7 information pursuant to this section shall be immune from civil
8 liability for any actions taken in compliance with this section.

9 (k) The results of any blood or oral mucosal transudate saliva
10 tested pursuant to subdivision (b) shall not be used in any criminal
11 proceeding as evidence of either guilt or innocence.

12 *SEC. 56. Section 1601 of the Penal Code is amended to read:*

13 1601. (a) ~~In the case of any~~ *When a person charged with and*
14 *found incompetent on a charge of, convicted of, or found not guilty*
15 *by reason of insanity of murder, mayhem, aggravated mayhem, a*
16 *violation of Section 207, 209, or 209.5 in which the victim suffers*
17 *intentionally inflicted great bodily injury, robbery or carjacking*
18 *with a deadly or dangerous weapon or in which the victim suffers*
19 *great bodily injury, a violation of subdivision (a) or (b) of Section*
20 *451, a violation of paragraph (2), (3), or (6) of subdivision (a) of*
21 *Section 261, a violation of paragraph (1) or (4) of subdivision (a)*
22 *of former Section 262, a violation of Section 459 in the first degree,*
23 *a violation of Section 220 in which the victim suffers great bodily*
24 *injury, a violation of Section 288, a violation of Section 18715,*
25 *18725, 18740, 18745, 18750, or 18755, or any felony involving*
26 *death, great bodily injury, or an act which poses a serious threat*
27 *of bodily harm to another person, outpatient status under this title*
28 *shall not be available until that person has actually been confined*
29 *in a state hospital or other treatment facility for 180 days or more*
30 *after having been committed under the provisions of law specified*
31 *in Section 1600, unless the court finds a suitable placement,*
32 *including, but not limited to, an outpatient placement program,*
33 *that would provide the person with more appropriate mental health*
34 *treatment and the court finds that the placement would not pose a*
35 *danger to the health or safety of others, including, but not limited*
36 *to, the safety of the victim and the victim's family.*

37 (b) ~~In the case of any~~ *When a person charged with, and found*
38 *incompetent on a charge of, or convicted of, any misdemeanor or*
39 *any felony other than those described in subdivision (a), or found*
40 *not guilty of any misdemeanor by reason of insanity, outpatient*

1 status under this title may be granted by the court prior to actual
2 confinement in a state hospital or other treatment facility under
3 the provisions of law specified in Section 1600.

4 *SEC. 57. Section 2933.5 of the Penal Code is amended to read:*

5 2933.5. (a) (1) Notwithstanding any other law, ~~every~~ a person
6 who is convicted of any felony offense listed in paragraph (2), and
7 who previously has been convicted two or more times, on charges
8 separately brought and tried, and who previously has served two
9 or more separate prior prison terms, as defined in subdivision (g)
10 of Section 667.5, of any offense or offenses listed in paragraph
11 (2), shall be ineligible to earn credit on ~~his or her~~ *the person's* term
12 of imprisonment pursuant to this article.

13 (2) As used in this subdivision, “felony offense” includes any
14 of the following:

15 (A) Murder, as defined in Sections 187 and 189.

16 (B) Voluntary manslaughter, as defined in subdivision (a) of
17 Section 192.

18 (C) Mayhem as defined in Section 203.

19 (D) Aggravated mayhem, as defined in Section 205.

20 (E) Kidnapping, as defined in Section 207, 209, or 209.5.

21 (F) Assault with vitriol, corrosive acid, or caustic chemical of
22 any nature, as described in Section 244.

23 (G) Rape, as defined in paragraph (2) or (6) of subdivision (a)
24 of Section 261 or paragraph (1) or (4) of subdivision (a) of *former*
25 Section 262.

26 (H) Sodomy by means of force, violence, duress, menace or
27 fear of immediate and unlawful bodily injury on the victim or
28 another person, as described in subdivision (c) of Section 286.

29 (I) Sodomy while voluntarily acting in concert, as described in
30 subdivision (d) of Section 286.

31 (J) Lewd or lascivious acts on a child under the age of 14 years,
32 as described in subdivision (b) of Section 288.

33 (K) Oral copulation by means of force, violence, duress, menace,
34 or fear of immediate and unlawful bodily injury on the victim or
35 another person, as described in subdivision (c) of Section 287 or
36 of former Section 288a.

37 (L) Continuous sexual abuse of a child, as described in Section
38 288.5.

39 (M) Sexual penetration, as described in subdivision (a) of
40 Section 289.

1 (N) Exploding a destructive device or explosive with intent to
2 injure, as described in Section 18740, with intent to murder, as
3 described in Section 18745, or resulting in great bodily injury or
4 mayhem, as described in Section 18750.

5 (O) Any felony in which the defendant personally inflicted great
6 bodily injury, as provided in Section 12022.53 or 12022.7.

7 (b) A prior conviction of an offense listed in subdivision (a)
8 shall include a conviction in another jurisdiction for an offense
9 ~~which~~ *that* includes all of the elements of the particular felony as
10 defined under California law.

11 (c) This section shall apply whenever the present felony is
12 committed on or after the effective date of this section, regardless
13 of the date of commission of the prior offense or offenses resulting
14 in credit-earning ineligibility.

15 (d) This section shall be in addition to, and shall not preclude
16 the imposition of, any applicable sentence enhancement terms, or
17 probation ineligibility and habitual offender provisions authorized
18 under any other section.

19 *SEC. 58. Section 2962 of the Penal Code is amended to read:*

20 2962. As a condition of parole, a prisoner who meets the
21 following criteria shall be provided necessary treatment by the
22 State Department of State Hospitals as follows:

23 (a) (1) The prisoner has a severe mental health disorder that is
24 not in remission or that cannot be kept in remission without
25 treatment.

26 (2) The term “severe mental health disorder” means an ~~illness~~
27 ~~illness, disease, or disease~~ or condition that substantially impairs
28 the person’s thought, perception of reality, emotional process, or
29 judgment; or that grossly impairs behavior; or that demonstrates
30 evidence of an acute brain syndrome for which prompt remission,
31 in the absence of treatment, is unlikely. The term “severe mental
32 health disorder,” as used in this section, does not include a
33 personality or adjustment disorder, epilepsy, intellectual disability
34 or other developmental disabilities, or addiction to or abuse of
35 intoxicating substances.

36 (3) The term “remission” means a finding that the overt signs
37 and symptoms of the severe mental health disorder are controlled
38 either by psychotropic medication or psychosocial support. A
39 person “cannot be kept in remission without treatment” if during
40 the year prior to the question being before the Board of Parole

1 Hearings or a trial court, the person has been in remission and has
2 been physically violent, except in self-defense, or has made a
3 serious threat of substantial physical harm upon the person of
4 another so as to cause the target of the threat to reasonably fear
5 for their safety or the safety of their immediate family, or the
6 person has intentionally caused property damage, or has not
7 voluntarily followed the treatment plan. In determining if a person
8 has voluntarily followed the treatment plan, the standard is whether
9 the person has acted as a reasonable person would in following
10 the treatment plan.

11 (b) The severe mental health disorder was one of the causes of,
12 or was an aggravating factor in, the commission of a crime for
13 which the prisoner was sentenced to prison.

14 (c) The prisoner has been in treatment for the severe mental
15 health disorder for 90 days or more within the year prior to the
16 prisoner's parole or release.

17 (d) (1) Prior to release on parole, the person in charge of treating
18 the prisoner and a practicing psychiatrist or psychologist from the
19 State Department of State Hospitals have evaluated the prisoner
20 at a facility of the Department of Corrections and Rehabilitation,
21 and a chief psychiatrist of the Department of Corrections and
22 Rehabilitation has certified to the Board of Parole Hearings that
23 the prisoner has a severe mental health disorder, that the disorder
24 is not in ~~remission~~, *remission* or cannot be kept in remission
25 without treatment, that the severe mental health disorder was one
26 of the causes or was an aggravating factor in the prisoner's criminal
27 behavior, that the prisoner has been in treatment for the severe
28 mental health disorder for 90 days or more within the year prior
29 to the prisoner's parole release day, and that by reason of the
30 prisoner's severe mental health disorder the prisoner represents a
31 substantial danger of physical harm to others.

32 (A) For prisoners being treated by the State Department of State
33 Hospitals pursuant to Section 2684, the certification shall be by a
34 chief psychiatrist of the Department of Corrections and
35 Rehabilitation, and the evaluation shall be conducted at a state
36 hospital by the person at the state hospital in charge of treating the
37 prisoner and a practicing psychiatrist or psychologist from the
38 Department of Corrections and Rehabilitation.

39 (B) For the evaluation of Department of Corrections and
40 Rehabilitation prisoners who are temporarily housed at a county

1 correctional facility, a county medical facility, or a state-assigned
2 mental health provider, a practicing psychiatrist or psychologist
3 from the State Department of State Hospitals, the Department of
4 Corrections and Rehabilitation, or the Board of Parole Hearings
5 shall be afforded prompt and unimpeded access to the prisoner
6 and their records for the period of confinement at that facility upon
7 submission of current and valid proof of state employment and a
8 departmental letter or memorandum arranging the appointment.

9 (2) If the professionals doing the evaluation pursuant to
10 paragraph (1) do not concur that (A) the prisoner has a severe
11 mental health disorder, (B) that the disorder is not in remission or
12 cannot be kept in remission without treatment, or (C) that the severe
13 mental health disorder was a cause of, or aggravated, the prisoner's
14 criminal behavior, and a chief psychiatrist has certified the prisoner
15 to the Board of Parole Hearings pursuant to this paragraph, the
16 Board of Parole Hearings shall order a further examination by two
17 independent professionals, as provided for in Section 2978.

18 (3) If at least one of the independent professionals who evaluate
19 the prisoner pursuant to paragraph (2) concurs with the chief
20 psychiatrist's certification of the issues described in paragraph (2),
21 this subdivision shall be applicable to the prisoner. The
22 professionals appointed pursuant to Section 2978 shall inform the
23 prisoner that the purpose of their examination is not treatment, but
24 to determine if the prisoner meets certain criteria to be involuntarily
25 treated as an offender with a mental health disorder. It is not
26 required that the prisoner appreciate or understand that information.

27 (e) The crime referred to in subdivision (b) meets both of the
28 following criteria:

29 (1) The defendant received a determinate sentence pursuant to
30 Section 1170 for the crime.

31 (2) The crime is one of the following:

32 (A) Voluntary manslaughter.

33 (B) Mayhem.

34 (C) Kidnapping in violation of Section 207.

35 (D) A robbery wherein it was charged and proved that the
36 defendant personally used a deadly or dangerous weapon, as
37 provided in subdivision (b) of Section 12022, in the commission
38 of that robbery.

39 (E) Carjacking, as defined in subdivision (a) of Section 215, if
40 it is charged and proved that the defendant personally used a deadly

1 or dangerous weapon, as provided in subdivision (b) of Section
2 12022, in the commission of the carjacking.

3 (F) Rape, as defined in paragraph (2) or (6) of subdivision (a)
4 of Section 261 or paragraph (1) or (4) of subdivision (a) of *former*
5 Section 262.

6 (G) Sodomy by force, violence, duress, menace, or fear of
7 immediate and unlawful bodily injury on the victim or another
8 person.

9 (H) Oral copulation by force, violence, duress, menace, or fear
10 of immediate and unlawful bodily injury on the victim or another
11 person.

12 (I) Lewd acts on a child under 14 years of age in violation of
13 Section 288.

14 (J) Continuous sexual abuse in violation of Section 288.5.

15 (K) The offense described in subdivision (a) of Section 289 if
16 the act was accomplished against the victim's will by force,
17 violence, duress, menace, or fear of immediate and unlawful bodily
18 injury on the victim or another person.

19 (L) Arson in violation of subdivision (a) of Section 451, or arson
20 in violation of any other provision of Section 451 or in violation
21 of Section 455 if the act posed a substantial danger of physical
22 harm to others.

23 (M) A felony in which the defendant used a firearm which use
24 was charged and proved as provided in Section 12022.5, 12022.53,
25 or 12022.55.

26 (N) A violation of Section 18745.

27 (O) Attempted murder.

28 (P) A crime not enumerated in subparagraphs (A) to (O),
29 inclusive, in which the prisoner used force or violence, or caused
30 serious bodily injury as defined in paragraph (4) of subdivision (f)
31 of Section 243.

32 (Q) A crime in which the perpetrator expressly or impliedly
33 threatened another with the use of force or violence likely to
34 produce substantial physical harm in a manner that a reasonable
35 person would believe and expect that the force or violence would
36 be used. For purposes of this subparagraph, substantial physical
37 harm does not require proof that the threatened act was likely to
38 cause great or serious bodily injury.

39 (f) For purposes of meeting the criteria set forth in this section,
40 the existence or nature of the crime, as defined in paragraph (2)

1 of subdivision (e), for which the prisoner has been convicted may
2 be shown with documentary evidence. The details underlying the
3 commission of the offense that led to the conviction, including the
4 use of force or violence, causing serious bodily injury, or the threat
5 to use force or violence likely to produce substantial physical harm,
6 may be shown by documentary evidence, including, but not limited
7 to, preliminary hearing transcripts, trial transcripts, probation and
8 sentencing reports, and evaluations by the State Department of
9 State Hospitals.

10 (g) As used in this chapter, “substantial danger of physical harm”
11 does not require proof of a recent overt act.

12 *SEC. 59. Section 3000 of the Penal Code is amended to read:*

13 3000. (a) (1) The Legislature finds and declares that the period
14 immediately following incarceration is critical to successful
15 reintegration of the offender into society and to positive citizenship.
16 It is in the interest of public safety for the state to provide for the
17 effective supervision of and surveillance of parolees, including
18 the judicious use of revocation actions, and to provide educational,
19 vocational, family, and personal counseling necessary to assist
20 parolees in the transition between imprisonment and discharge. A
21 sentence resulting in imprisonment in the state prison pursuant to
22 Section 1168 or 1170 shall include a period of parole supervision
23 or postrelease community supervision, unless waived, or as
24 otherwise provided in this article.

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

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

36 (4) For any person subject to a sexually violent predator
37 proceeding pursuant to Article 4 (commencing with Section 6600)
38 of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions
39 Code, an order issued by a judge pursuant to Section 6601.5 of the
40 Welfare and Institutions Code, finding that the petition, on its face,

1 supports a finding of probable cause to believe that the individual
2 named in the petition is likely to engage in sexually violent
3 predatory criminal behavior upon ~~his or her~~ release, shall toll the
4 period of parole of that person, from the date that person is released
5 by the Department of Corrections and Rehabilitation as follows:

6 (A) If the person is committed to the State Department of State
7 Hospitals as a sexually violent predator and subsequently a court
8 orders that the person be unconditionally discharged, the parole
9 period shall be tolled until the date the judge enters the order
10 unconditionally discharging that person.

11 (B) If the person is not committed to the State Department of
12 State Hospitals as a sexually violent predator, the tolling of the
13 parole period shall be abrogated and the parole period shall be
14 deemed to have commenced on the date of release from the
15 Department of Corrections and Rehabilitation.

16 (5) Paragraph (4) applies to persons released by the Department
17 of Corrections and Rehabilitation on or after January 1, 2012.
18 Persons released by the Department of Corrections and
19 Rehabilitation prior to January 1, 2012, shall continue to be subject
20 to the law governing the tolling of parole in effect on December
21 31, 2011.

22 (b) Notwithstanding any provision to the contrary in Article 3
23 (commencing with Section 3040) of this chapter, the following
24 shall apply to any inmate subject to Section 3000.08:

25 (1) In the case of ~~any~~ *an* inmate sentenced under Section 1168
26 for a crime committed prior to July 1, 2013, the period of parole
27 shall not exceed five years in the case of an inmate imprisoned for
28 any offense other than first or second degree murder for which the
29 inmate has received a life sentence, and shall not exceed three
30 years in the case of any other inmate, unless in either case the
31 Board of Parole Hearings for good cause waives parole and
32 discharges the inmate from custody of the department. This
33 subdivision shall also be applicable to inmates who committed
34 crimes prior to July 1, 1977, to the extent specified in Section
35 1170.2. In the case of any inmate sentenced under Section 1168
36 for a crime committed on or after July 1, 2013, the period of parole
37 shall not exceed five years in the case of an inmate imprisoned for
38 any offense other than first or second degree murder for which the
39 inmate has received a life sentence, and shall not exceed three
40 years in the case of any other inmate, unless in either case the

1 department for good cause waives parole and discharges the inmate
2 from custody of the department.

3 (2) (A) For a crime committed prior to July 1, 2013, at the
4 expiration of a term of imprisonment of one year and one day, or
5 a term of imprisonment imposed pursuant to Section 1170 or at
6 the expiration of a term reduced pursuant to Section 2931 or 2933,
7 if applicable, the inmate shall be released on parole for a period
8 not exceeding three years, except that any inmate sentenced for
9 an offense specified in paragraph (3), (4), (5), (6), (11), or (18) of
10 subdivision (c) of Section 667.5 shall be released on parole for a
11 period not exceeding 10 years, unless a longer period of parole is
12 specified in Section 3000.1.

13 (B) For a crime committed on or after July 1, 2013, at the
14 expiration of a term of imprisonment of one year and one day, or
15 a term of imprisonment imposed pursuant to Section 1170 or at
16 the expiration of a term reduced pursuant to Section 2931 or 2933,
17 if applicable, the inmate shall be released on parole for a period
18 of three years, except that any inmate sentenced for an offense
19 specified in paragraph (3), (4), (5), (6), (11), or (18) of subdivision
20 (c) of Section 667.5 shall be released on parole for a period of 10
21 years, unless a longer period of parole is specified in Section
22 3000.1.

23 (3) Notwithstanding paragraphs (1) and (2), in the case of any
24 offense for which the inmate has received a life sentence pursuant
25 to subdivision (b) of Section 209, with the intent to commit a
26 specified sex offense, or Section 667.51, 667.61, or 667.71, the
27 period of parole shall be 10 years, unless a longer period of parole
28 is specified in Section 3000.1.

29 (4) (A) Notwithstanding paragraphs (1) to (3), inclusive, in the
30 case of a person convicted of and required to register as a sex
31 offender for the commission of an offense specified in Section
32 261, ~~262~~, 264.1, 286, 287, paragraph (1) of subdivision (b) of
33 Section 288, Section 288.5 or 289, or former Section 262 or 288a,
34 in which one or more of the victims of the offense was a child
35 under 14 years of age, the period of parole shall be 20 years and
36 six months unless the board, for good cause, determines that the
37 person will be retained on parole. The board shall make a written
38 record of this determination and transmit a copy of it to the parolee.

39 (B) In the event of a retention on parole, the parolee shall be
40 entitled to a review by the board each year thereafter.

1 (C) There shall be a board hearing consistent with the procedures
2 set forth in Sections 3041.5 and 3041.7 within 12 months of the
3 date of any revocation of parole to consider the release of the
4 inmate on parole, and notwithstanding the provisions of paragraph
5 (3) of subdivision (b) of Section 3041.5, there shall be annual
6 parole consideration hearings thereafter, unless the person is
7 released or otherwise ineligible for parole release. The panel or
8 board shall release the person within one year of the date of the
9 revocation unless it determines that the circumstances and gravity
10 of the parole violation are such that consideration of the public
11 safety requires a more lengthy period of incarceration or unless
12 there is a new prison commitment following a conviction.

13 (D) The provisions of Section 3042 shall not apply to any
14 hearing held pursuant to this subdivision.

15 (5) (A) The Board of Parole Hearings shall consider the request
16 of any inmate whose commitment offense occurred prior to July
17 1, 2013, regarding the length of ~~his or her~~ parole and the conditions
18 thereof.

19 (B) For an inmate whose commitment offense occurred on or
20 after July 1, 2013, except for those inmates described in Section
21 3000.1, the department shall consider the request of the inmate
22 regarding the length of ~~his or her~~ parole and the conditions thereof.
23 For those inmates described in Section 3000.1, the Board of Parole
24 Hearings shall consider the request of the inmate regarding the
25 length of ~~his or her~~ parole and the conditions thereof.

26 (6) Upon successful completion of parole, or at the end of the
27 maximum statutory period of parole specified for the inmate under
28 paragraph (1), (2), (3), or (4), as the case may be, whichever is
29 earlier, the inmate shall be discharged from custody. The date of
30 the maximum statutory period of parole under this subdivision and
31 paragraphs (1), (2), (3), and (4) shall be computed from the date
32 of initial parole and shall be a period chronologically determined.
33 Time during which parole is suspended because the prisoner has
34 absconded or has been returned to custody as a parole violator
35 shall not be credited toward any period of parole unless the prisoner
36 is found not guilty of the parole violation. However, the period of
37 parole is subject to the following:

38 (A) Except as provided in Section 3064, in no case may a
39 prisoner subject to three years on parole be retained under parole

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

3 (B) Except as provided in Section 3064, in no case may a
4 prisoner subject to five years on parole be retained under parole
5 supervision or in custody for a period longer than seven years from
6 the date of ~~his or her~~ *the* initial parole.

7 (C) Except as provided in Section 3064, in no case may a
8 prisoner subject to 10 years on parole be retained under parole
9 supervision or in custody for a period longer than 15 years from
10 the date of ~~his or her~~ *the* initial parole.

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

25 (8) For purposes of this chapter, and except as otherwise
26 described in this section, the board shall be considered the parole
27 authority.

28 (9) (A) On and after July 1, 2013, the sole authority to issue
29 warrants for the return to actual custody of any state prisoner
30 released on parole rests with the court pursuant to Section 1203.2,
31 except for any escaped state prisoner or any state prisoner released
32 prior to ~~his or her~~ *the prisoner's* scheduled release date who should
33 be returned to custody, and Section 5054.1 shall apply.

34 (B) Notwithstanding subparagraph (A), any warrant issued by
35 the Board of Parole Hearings prior to July 1, 2013, shall remain
36 in full force and effect until the warrant is served or it is recalled
37 by the board. All prisoners on parole arrested pursuant to a warrant
38 issued by the board shall be subject to a review by the board prior
39 to the department filing a petition with the court to revoke the
40 parole of the petitioner.

1 (10) It is the intent of the Legislature that efforts be made with
2 respect to persons who are subject to Section 290.011 who are on
3 parole to engage them in treatment.

4 *SEC. 60. Section 3053.8 of the Penal Code is amended to read:*

5 3053.8. (a) Notwithstanding any other ~~provision of law~~, when
6 a person is released on parole after having served a term of
7 imprisonment for any of the offenses specified in subdivision (b)
8 in which one or more of the victims was under 14 years of age,
9 and for which registration is required pursuant to the Sex Offender
10 Registration Act, it shall be a condition of parole that the person
11 may not, during ~~his or her~~ *the* period of parole, enter ~~any a~~ park
12 where children regularly gather without the express permission of
13 ~~his or her~~ *the person's* parole agent.

14 (b) Subdivision (a) shall apply to persons released on parole
15 after having served a term of imprisonment for an offense specified
16 in Section 261, ~~262~~, 264.1, 269, 286, 287, 288.5, 288.7, or 289,
17 paragraph (1) of subdivision (b) of Section 288, subdivision (c) of
18 Section 667.51, subdivision (j), (k), or (l) of Section 667.61,
19 Section 667.71, or former Section 262 or 288a.

20 *SEC. 61. Section 3057 of the Penal Code is amended to read:*

21 3057. (a) Confinement pursuant to a revocation of parole in
22 the absence of a new conviction and commitment to prison under
23 other provisions of law, shall not exceed 12 months, except as
24 provided in subdivision (c).

25 (b) Upon completion of confinement pursuant to parole
26 revocation without a new commitment to prison, the inmate shall
27 be released on parole for a period ~~which~~ *that* shall not extend
28 beyond that portion of the maximum statutory period of parole
29 specified by Section 3000 which was unexpired at the time of each
30 revocation.

31 (c) Notwithstanding the limitations in subdivision (a) and in
32 Section 3060.5 upon confinement pursuant to a parole revocation,
33 the parole authority may extend the confinement pursuant to parole
34 revocation for a maximum of an additional 12 months for
35 subsequent acts of misconduct committed by the parolee while
36 confined pursuant to that parole revocation. Upon a finding of
37 good cause to believe that a parolee has committed a subsequent
38 act of misconduct and utilizing procedures governing parole
39 revocation proceedings, the parole authority may extend the period
40 of confinement pursuant to parole revocation as follows: (1) not

1 more than 180 days for an act punishable as a felony, whether or
2 not prosecution is undertaken, (2) not more than 90 days for an
3 act punishable as a misdemeanor, whether or not prosecution is
4 undertaken, and (3) not more than 30 days for an act defined as a
5 serious disciplinary offense pursuant to subdivision (a) of Section
6 2932.

7 (d) (1) Except for parolees specified in paragraph (2), any
8 revocation period imposed under subdivision (a) may be reduced
9 in the same manner and to the same extent as a term of
10 imprisonment may be reduced by worktime credits under Section
11 2933. Worktime credit ~~must~~ *shall* be earned and may be forfeited
12 pursuant to the provisions of Section 2932.

13 Worktime credit forfeited shall not be restored.

14 (2) The following parolees shall not be eligible for credit under
15 this subdivision:

16 (A) Parolees who are sentenced under Section 1168 with a
17 maximum term of life imprisonment.

18 (B) Parolees who violated a condition of parole relating to
19 association with specified persons, entering prohibited areas,
20 attendance at parole outpatient clinics, or psychiatric attention.

21 (C) Parolees who were revoked for conduct described in, or that
22 could be prosecuted under any of the following sections, whether
23 or not prosecution is undertaken: Section 189, Section 191.5,
24 subdivision (a) of Section 192, subdivision (a) of Section 192.5,
25 Section 203, 207, 211, 215, 217.1, or 220, subdivision (b) of
26 Section 241, Section 244, paragraph (1) or (2) of subdivision (a)
27 of Section 245, paragraph (2) or (6) of subdivision (a) of Section
28 261, paragraph (1) or (4) of subdivision (a) of *former* Section 262,
29 Section 264.1, subdivision (c) or (d) of Section 286, subdivision
30 (c) or (d) of Section 287 or of former Section 288a, Section 288,
31 subdivision (a) of Section 289, 347, or 404, subdivision (a) of
32 Section 451, Section 12022, 12022.5, 12022.53, 12022.7, 12022.8,
33 or 25400, Chapter 2 (commencing with Section 29800) of Division
34 9 of Title 4 of Part 6, any provision listed in Section 16590, or
35 Section 664 for any attempt to engage in conduct described in or
36 that could be prosecuted under any of the above-mentioned
37 sections.

38 (D) Parolees who were revoked for any reason if they had been
39 granted parole after conviction of any of the offenses specified in
40 subparagraph (C).

1 (E) Parolees who the parole authority finds at a revocation
2 hearing to be unsuitable for reduction of the period of confinement
3 because of the circumstances and gravity of the parole violation,
4 or because of prior criminal history.

5 (e) Commencing October 1, 2011, this section shall only apply
6 to inmates sentenced to a term of life imprisonment or parolees
7 that on or before September 30, 2011, are pending a final
8 adjudication of a parole revocation charge and subject to
9 subdivision (c) of Section 3000.09.

10 *SEC. 62. Section 11105.3 of the Penal Code, as Amended by*
11 *Stats. 2020, Ch. 191, Sec. 2, is amended to read:*

12 11105.3. (a) Notwithstanding any other law, a human resource
13 agency or an employer may request from the Department of Justice
14 records of all convictions or any arrest pending adjudication
15 involving the offenses specified in subdivision (a) of Section 15660
16 of the Welfare and Institutions Code of a person who applies for
17 a license, employment, or volunteer position, in which they would
18 have supervisory or disciplinary power over a minor or any person
19 under their care. The department shall furnish the information to
20 the requesting employer and shall also send a copy of the
21 information to the applicant.

22 (b) ~~Any~~A request for records under subdivision (a) shall include
23 the applicant's fingerprints, which may be taken by the requester,
24 and any other data specified by the department. The department
25 shall not require the applicant's residence address for any request
26 for records pursuant to subdivision (a). The request shall be on a
27 form approved by the department, and the department may charge
28 a fee to be paid by the employer, human resource agency, or
29 applicant for the actual cost of processing the request. However,
30 ~~no~~ a fee shall *not* be charged to a nonprofit organization. Requests
31 received by the department for federal level criminal offender
32 record information shall be forwarded to the Federal Bureau of
33 Investigation by the department to be searched for any record of
34 arrests or convictions.

35 (c) (1) When a request pursuant to this section reveals that a
36 prospective employee or volunteer has been convicted of a
37 violation or attempted violation of Section 220, 261.5, ~~262~~, 273a,
38 273d, or 273.5, *former Section 262*, or any sex offense listed in
39 Section 290, except for the offense specified in subdivision (d) of
40 Section 243.4, and where the agency or employer hires the

1 prospective employee or volunteer, the agency or employer shall
2 notify the parents or guardians of any minor who will be supervised
3 or disciplined by the employee or volunteer. A conviction for a
4 violation or attempted violation of an offense committed outside
5 the State of California shall be included in this notice if the offense
6 would have been a crime specified in this subdivision if committed
7 in California. The notice shall be given to the parents or guardians
8 with whom the child resides, and shall be given at least 10 days
9 prior to the day that the employee or volunteer begins their duties
10 or tasks. Notwithstanding any other law, ~~any~~ a person who conveys
11 or receives information in good faith and in conformity with this
12 section is exempt from prosecution under Section 11142 or 11143
13 for ~~that~~ conveying or receiving ~~of that~~ information.
14 Notwithstanding subdivision (d), the notification requirements of
15 this subdivision shall apply as an additional requirement of any
16 other ~~provision~~ of law requiring criminal record access or
17 dissemination of criminal history information.

18 (2) The notification requirement pursuant to paragraph (1) shall
19 not apply to a misdemeanor ~~conviction for violating Section 261.5~~
20 ~~or to a conviction for violating Section 262 or 273.5. Nothing in~~
21 ~~this conviction. This paragraph shall does not~~ preclude an employer
22 from requesting records of *misdemeanor* convictions ~~for violating~~
23 ~~Section 261.5, 262, or 273.5~~ from the Department of Justice
24 pursuant to this section.

25 (d) ~~Nothing in this~~ *This section supersedes does not supersede*
26 any law requiring criminal record access or dissemination of
27 criminal history information. In any conflict with another statute,
28 dissemination of criminal history information shall be pursuant to
29 the mandatory statute. This subdivision applies to, but is not limited
30 to, requirements pursuant to Article 1 (commencing with Section
31 1500) of Chapter 3 of, and Chapter 3.2 (commencing with Section
32 1569) and Chapter 3.4 (commencing with Section 1596.70) of,
33 Division 2 of, and Section 1522 of, the Health and Safety Code,
34 and Sections 8712, 8811, and 8908 of the Family Code, and Section
35 16519.5 of the Welfare and Institutions Code.

36 (e) The department may adopt regulations to implement the
37 provisions of this section as necessary.

38 (f) As used in this section, “employer” means any nonprofit
39 corporation or other organization specified by the Attorney General
40 that employs or uses the services of volunteers in positions in

1 which the volunteer or employee has supervisory or disciplinary
2 power over a child or children.

3 (g) As used in this section, “human resource agency” means a
4 public or private entity, excluding any agency responsible for
5 licensing of facilities pursuant to the California Community Care
6 Facilities Act (Chapter 3 (commencing with Section 1500)), the
7 California Residential Care Facilities for the Elderly Act (Chapter
8 3.2 (commencing with Section 1569)), Chapter 3.01 (commencing
9 with Section 1568.01), and the California Child Day Care Facilities
10 Act (Chapter 3.4 (commencing with Section 1596.70)) of Division
11 2 of the Health and Safety Code, responsible for determining the
12 character and fitness of a person who is:

13 (1) Applying for a license, employment, or as a volunteer within
14 the human services field that involves the care and security of
15 children, the elderly, the handicapped, or the mentally impaired.

16 (2) Applying to be a volunteer who transports individuals
17 impaired by drugs or alcohol.

18 (3) Applying to adopt a child or to be a foster parent.

19 (h) Except as provided in subdivision (c), ~~any~~ criminal history
20 information obtained pursuant to this section is confidential and
21 ~~no~~ a recipient shall *not* disclose its contents other than for the
22 purpose for which it was acquired.

23 (i) As used in this subdivision, “community youth athletic
24 program” means an employer having as its primary purpose the
25 promotion or provision of athletic activities for youth under 18
26 years of age.

27 ~~(i)~~

28 (i) (1) A community youth athletic ~~program, as defined in~~
29 ~~subdivision (i)~~, *program* may request state and federal level
30 criminal history information pursuant to subdivision (a) for a
31 volunteer coach or hired coach candidate. The director of the
32 community youth athletic program shall be the custodian of
33 records.

34 ~~(k)~~

35 (2) The community youth athletic program may request from
36 the Department of Justice subsequent arrest notification service,
37 as provided in Section 11105.2, for a volunteer coach or a hired
38 coach candidate.

39 (3) *As used in this subdivision, “community youth athletic*
40 *program” means an employer having as its primary purpose the*

1 *promotion or provision of athletic activities for youth under 18*
 2 *years of age.*

3 ~~(h)~~

4 (j) Compliance with this section does not remove or limit the
 5 liability of a mandated reporter pursuant to Section 11166.

6 *SEC. 63. Section 11160 of the Penal Code is amended to read:*

7 11160. (a) A health practitioner, as defined in subdivision (a)
 8 of Section 11162.5, employed by a health facility, clinic,
 9 physician’s office, local or state public health department, local
 10 government agency, or a clinic or other type of facility operated
 11 by a local or state public health department who, in the health
 12 practitioner’s professional capacity or within the scope of the health
 13 practitioner’s employment, provides medical services for a physical
 14 condition to a patient whom the health practitioner knows or
 15 reasonably suspects is a person described as follows, shall
 16 immediately make a report in accordance with subdivision (b):

17 (1) A person suffering from ~~any~~ a wound or other physical
 18 injury inflicted by the person’s own act or inflicted by another
 19 where the injury is by means of a firearm.

20 (2) A person suffering from ~~any~~ a wound or other physical
 21 injury inflicted upon the person where the injury is the result of
 22 assaultive or abusive conduct.

23 (b) A health practitioner, as defined in subdivision (a) of Section
 24 11162.5, employed by a health facility, clinic, physician’s office,
 25 local or state public health department, local government agency,
 26 or a clinic or other type of facility operated by a local or state
 27 public health department shall make a report regarding persons
 28 described in subdivision (a) to a local law enforcement agency as
 29 follows:

30 (1) A report by telephone shall be made immediately or as soon
 31 as practically possible.

32 (2) A written report shall be prepared on the standard form
 33 developed in compliance with paragraph ~~(4) of this subdivision,~~
 34 (4), and adopted by the Office of Emergency Services, or on a
 35 form developed and adopted by another state agency that otherwise
 36 fulfills the requirements of the standard form. The completed form
 37 shall be sent to a local law enforcement agency within two working
 38 days of receiving the information regarding the person.

39 (3) A local law enforcement agency shall be notified and a
 40 written report shall be prepared and sent pursuant to paragraphs

1 (1) and (2) even if the person who suffered the wound, other injury,
2 or assaultive or abusive conduct has expired, regardless of whether
3 or not the wound, other injury, or assaultive or abusive conduct
4 was a factor contributing to the death, and even if the evidence of
5 the conduct of the perpetrator of the wound, other injury, or
6 assaultive or abusive conduct was discovered during an autopsy.

7 (4) The report shall include, but shall not be limited to, the
8 following:

9 (A) The name of the injured person, if known.

10 (B) The injured person's whereabouts.

11 (C) The character and extent of the person's injuries.

12 (D) The identity of any person the injured person alleges
13 inflicted the wound, other injury, or assaultive or abusive conduct
14 upon the injured person.

15 (c) For the purposes of this section, "injury" does not include
16 any psychological or physical condition brought about solely
17 through the voluntary administration of a narcotic or restricted
18 dangerous drug.

19 (d) For the purposes of this section, "assaultive or abusive
20 conduct" includes any of the following offenses:

21 (1) Murder, in violation of Section 187.

22 (2) Manslaughter, in violation of Section 192 or 192.5.

23 (3) Mayhem, in violation of Section 203.

24 (4) Aggravated mayhem, in violation of Section 205.

25 (5) Torture, in violation of Section 206.

26 (6) Assault with intent to commit mayhem, rape, sodomy, or
27 oral copulation, in violation of Section 220.

28 (7) Administering controlled substances or anesthetic to aid in
29 commission of a felony, in violation of Section 222.

30 (8) Battery, in violation of Section 242.

31 (9) Sexual battery, in violation of Section 243.4.

32 (10) Incest, in violation of Section 285.

33 (11) Throwing any vitriol, corrosive acid, or caustic chemical
34 with intent to injure or disfigure, in violation of Section 244.

35 (12) Assault with a stun gun or taser, in violation of Section
36 244.5.

37 (13) Assault with a deadly weapon, firearm, assault weapon, or
38 machinegun, or by means likely to produce great bodily injury, in
39 violation of Section 245.

- 1 (14) Rape, in violation of Section ~~261~~. *261 or former Section*
2 *262.*
- 3 ~~(15) Spousal rape, in violation of Section 262.~~
- 4 ~~(16)~~
- 5 (15) Procuring ~~any female~~ *a person* to have sex with another
6 ~~man~~, *person*, in violation of Section 266, 266a, 266b, or 266c.
- 7 ~~(17)~~
- 8 (16) Child abuse or endangerment, in violation of Section 273a
9 or 273d.
- 10 ~~(18)~~
- 11 (17) Abuse of spouse or cohabitant, in violation of Section
12 273.5.
- 13 ~~(19)~~
- 14 (18) Sodomy, in violation of Section 286.
- 15 ~~(20)~~
- 16 (19) Lewd and lascivious acts with a child, in violation of
17 Section 288.
- 18 ~~(21)~~
- 19 (20) Oral copulation, in violation of Section 287 or former
20 Section 288a.
- 21 ~~(22)~~
- 22 (21) Sexual penetration, in violation of Section 289.
- 23 ~~(23)~~
- 24 (22) Elder abuse, in violation of Section 368.
- 25 ~~(24)~~
- 26 (23) An attempt to commit any crime specified in paragraphs
27 (1) to ~~(23)~~, (22), inclusive.
- 28 (e) When two or more persons who are required to report are
29 present and jointly have knowledge of a known or suspected
30 instance of violence that is required to be reported pursuant to this
31 section, and when there is an agreement among these persons to
32 report as a team, the team may select by mutual agreement a
33 member of the team to make a report by telephone and a single
34 written report, as required by subdivision (b). The written report
35 shall be signed by the selected member of the reporting team. Any
36 member who has knowledge that the member designated to report
37 has failed to do so shall thereafter make the report.
- 38 (f) The reporting duties under this section are individual, except
39 as provided in subdivision (e).

1 (g) A supervisor or administrator shall not impede or inhibit the
2 reporting duties required under this section and a person making
3 a report pursuant to this section shall not be subject to any sanction
4 for making the report. However, internal procedures to facilitate
5 reporting and apprise supervisors and administrators of reports
6 may be established, except that these procedures shall not be
7 inconsistent with this article. The internal procedures shall not
8 require ~~any~~ *an* employee required to make a report under this article
9 to disclose the employee's identity to the employer.

10 (h) For the purposes of this section, it is the Legislature's intent
11 to avoid duplication of information.

12 (i) For purposes of this section only, "employed by a local
13 government agency" includes an employee of an entity under
14 contract with a local government agency to provide medical
15 services.

16 *SEC. 64. Section 12022.3 of the Penal Code is amended to*
17 *read:*

18 12022.3. For each violation of Section 220 involving a specified
19 sexual offense, or for each violation or attempted violation of
20 Section 261, ~~262~~, 264.1, 286, 287, 288, or 289, or former Section
21 262 or 288a, and in addition to the sentence provided, ~~any~~ a person
22 shall receive the following:

23 (a) A 3-, 4-, or 10-year enhancement if the person uses a firearm
24 or a deadly weapon in the commission of the violation.

25 (b) A one-, two-, or five-year enhancement if the person is armed
26 with a firearm or a deadly weapon.

27 *SEC. 65. Section 12022.53 of the Penal Code is amended to*
28 *read:*

29 12022.53. (a) This section applies to the following felonies:

30 (1) Section 187 (murder).

31 (2) Section 203 or 205 (mayhem).

32 (3) Section 207, 209, or 209.5 (kidnapping).

33 (4) Section 211 (robbery).

34 (5) Section 215 (carjacking).

35 (6) Section 220 (assault with intent to commit a specified
36 felony).

37 (7) Subdivision (d) of Section 245 (assault with a firearm on a
38 peace officer or firefighter).

39 (8) Section 261 or *former Section 262* (rape).

40 (9) Section 264.1 (rape or sexual penetration in concert).

- 1 (10) Section 286 (sodomy).
2 (11) Section 287 or former Section 288a (oral copulation).
3 (12) Section 288 or 288.5 (lewd act on a child).
4 (13) Section 289 (sexual penetration).
5 (14) Section 4500 (assault by a life prisoner).
6 (15) Section 4501 (assault by a prisoner).
7 (16) Section 4503 (holding a hostage by a prisoner).
8 (17) Any felony punishable by death or imprisonment in the
9 state prison for life.
10 (18) Any attempt to commit a crime listed in this subdivision
11 other than an assault.
12 (b) Notwithstanding any other ~~provision of law, any~~ a person
13 who, in the commission of a felony specified in subdivision (a),
14 personally uses a firearm, shall be punished by an additional and
15 consecutive term of imprisonment in the state prison for 10 years.
16 The firearm need not be operable or loaded for this enhancement
17 to apply.
18 (c) Notwithstanding any other ~~provision of law, any~~ a person
19 who, in the commission of a felony specified in subdivision (a),
20 personally and intentionally discharges a firearm, shall be punished
21 by an additional and consecutive term of imprisonment in the state
22 prison for 20 years.
23 (d) Notwithstanding any other ~~provision of law, any~~ a person
24 who, in the commission of a felony specified in subdivision (a),
25 Section 246, or subdivision (c) or (d) of Section 26100, personally
26 and intentionally discharges a firearm and proximately causes great
27 bodily injury, as defined in Section 12022.7, or death, to ~~any~~ a
28 person other than an accomplice, shall be punished by an additional
29 and consecutive term of imprisonment in the state prison for 25
30 years to life.
31 (e) (1) The enhancements provided in this section shall apply
32 to any person who is a principal in the commission of an offense
33 if both of the following are pled and proved:
34 (A) The person violated subdivision (b) of Section 186.22.
35 (B) Any principal in the offense committed any act specified
36 in subdivision (b), (c), or (d).
37 (2) An enhancement for participation in a criminal street gang
38 pursuant to Chapter 11 (commencing with Section 186.20) of Title
39 7 of Part 1 shall not be imposed on a person in addition to an
40 enhancement imposed pursuant to this subdivision, unless the

1 person personally used or personally discharged a firearm in the
2 commission of the offense.

3 (f) Only one additional term of imprisonment under this section
4 shall be imposed per person for each crime. If more than one
5 enhancement per person is found true under this section, the court
6 shall impose upon that person the enhancement that provides the
7 longest term of imprisonment. An enhancement involving a firearm
8 specified in Section 12021.5, 12022, 12022.3, 12022.4, 12022.5,
9 or 12022.55 shall not be imposed on a person in addition to an
10 enhancement imposed pursuant to this section. An enhancement
11 for great bodily injury as defined in Section 12022.7, 12022.8, or
12 12022.9 shall not be imposed on a person in addition to an
13 enhancement imposed pursuant to subdivision (d).

14 (g) Notwithstanding any other ~~provision of law~~, probation shall
15 not be granted to, nor shall the execution or imposition of sentence
16 be suspended for, ~~any~~ a person found to come within the provisions
17 of this section.

18 (h) The court may, in the interest of justice pursuant to Section
19 1385 and at the time of sentencing, strike or dismiss an
20 enhancement otherwise required to be imposed by this section.
21 The authority provided by this subdivision applies to any
22 resentencing that may occur pursuant to any other law.

23 (i) The total amount of credits awarded pursuant to Article 2.5
24 (commencing with Section 2930) of Chapter 7 of Title 1 of Part
25 3 or pursuant to Section 4019 or any other ~~provision of law~~ shall
26 not exceed 15 percent of the total term of imprisonment imposed
27 on a defendant upon whom a sentence is imposed pursuant to this
28 section.

29 (j) For the penalties in this section to apply, the existence of any
30 fact required under subdivision (b), (c), or (d) shall be alleged in
31 the accusatory pleading and either admitted by the defendant in
32 open court or found to be true by the trier of fact. When an
33 enhancement specified in this section has been admitted or found
34 to be true, the court shall impose punishment for that enhancement
35 pursuant to this section rather than imposing punishment authorized
36 under any other ~~provision of law~~, unless another enhancement
37 provides for a greater penalty or a longer term of imprisonment.

38 (k) When a person is found to have used or discharged a firearm
39 in the commission of an offense that includes an allegation pursuant
40 to this section and the firearm is owned by that person, a

1 coparticipant, or a coconspirator, the court shall order that the
 2 firearm be deemed a nuisance and disposed of in the manner
 3 provided in Sections 18000 and 18005.

4 (l) The enhancements specified in this section shall not apply
 5 to the lawful use or discharge of a firearm by a public officer, as
 6 provided in Section 196, or by any person in lawful self-defense,
 7 lawful defense of another, or lawful defense of property, as
 8 provided in Sections 197, 198, and 198.5.

9 *SEC. 66. Section 12022.8 of the Penal Code is amended to*
 10 *read:*

11 12022.8. ~~Any~~A person who inflicts great bodily injury, as
 12 defined in Section 12022.7, on ~~any~~ a victim in a violation of
 13 Section 220 involving a specified sexual offense, or a violation or
 14 attempted violation of paragraph (2), (3), or (6) of subdivision (a)
 15 of Section 261, paragraph (1), (2), or (4) of subdivision (a) of
 16 ~~former~~ Section 262, Section 264.1, subdivision (b) of Section 288,
 17 subdivision (a) of Section 289, or sodomy or oral copulation by
 18 force, violence, duress, menace, or fear of immediate and unlawful
 19 bodily injury on the victim or another person as provided in Section
 20 286 or 287, or former Section 288a, shall receive a five-year
 21 enhancement for each violation in addition to the sentence provided
 22 for the felony conviction.

23 *SEC. 67. Section 12022.85 of the Penal Code is amended to*
 24 *read:*

25 12022.85. (a) ~~Any~~A person who violates one or more of the
 26 offenses listed in subdivision (b) with knowledge that ~~he or she~~
 27 ~~the person~~ has acquired immune deficiency syndrome (AIDS) or
 28 with the knowledge that ~~he or she~~ ~~the person~~ carries antibodies of
 29 the human immunodeficiency virus at the time of the commission
 30 of those offenses shall receive a three-year enhancement for each
 31 violation in addition to the sentence provided under those sections.

32 (b) Subdivision (a) applies to the following crimes:

33 (1) Rape in violation of Section ~~261~~. 261 or former Section 262.

34 (2) Unlawful intercourse with a person under 18 years of age
 35 in violation of Section 261.5.

36 ~~(3) Rape of a spouse in violation of Section 262.~~

37 ~~(4)~~

38 (3) Sodomy in violation of Section 286.

39 ~~(5)~~

1 (4) Oral copulation in violation of Section 287 or former Section
2 288a.

3 (c) For purposes of proving the knowledge requirement of this
4 section, the prosecuting attorney may use test results received
5 under subdivision (c) of Section 1202.1 or subdivision (g) of
6 Section 1202.6.

7 *SEC. 68. Section 13701 of the Penal Code is amended to read:*

8 13701. (a) Every law enforcement agency in this state shall
9 develop, adopt, and implement written policies and standards for
10 officers' responses to domestic violence calls by January 1, 1986.
11 These policies shall reflect that domestic violence is alleged
12 criminal conduct. Further, they shall reflect existing policy that a
13 request for assistance in a situation involving domestic violence
14 is the same as any other request for assistance where violence has
15 occurred.

16 (b) The written policies shall encourage the arrest of domestic
17 violence offenders if there is probable cause that an offense has
18 been committed. These policies also shall require the arrest of an
19 offender, absent exigent circumstances, if there is probable cause
20 that a protective order issued under Chapter 4 (commencing with
21 Section 2040) of Part 1 of Division 6, Division 10 (commencing
22 with Section 6200), or Chapter 6 (commencing with Section 7700)
23 of Part 3 of Division 12, of the Family Code, or Section 136.2 of
24 this code, or by a court of any other state, a commonwealth,
25 territory, or insular possession subject to the jurisdiction of the
26 United States, a military tribunal, or a tribe has been violated.
27 These policies shall discourage, when appropriate, but not prohibit,
28 dual arrests. Peace officers shall make reasonable efforts to identify
29 the dominant aggressor in any incident. The dominant aggressor
30 is the person determined to be the most significant, rather than the
31 first, aggressor. In identifying the dominant aggressor, an officer
32 shall consider the intent of the law to protect victims of domestic
33 violence from continuing abuse, the threats creating fear of physical
34 injury, the history of domestic violence between the persons
35 involved, and whether either person acted in self-defense. ~~These~~
36 ~~arrest policies shall be developed, adopted, and implemented by~~
37 ~~July 1, 1996.~~ Notwithstanding subdivision (d), law enforcement
38 agencies shall develop these policies with the input of local
39 domestic violence agencies.

- 1 (c) These existing local policies and those developed shall be
2 in writing and shall be available to the public upon request and
3 shall include specific standards for the following:
- 4 (1) Felony arrests.
 - 5 (2) Misdemeanor arrests.
 - 6 (3) Use of citizen arrests.
 - 7 (4) Verification and enforcement of temporary restraining orders
8 when (A) the suspect is present and (B) the suspect has fled.
 - 9 (5) Verification and enforcement of stay-away orders.
 - 10 (6) Cite and release policies.
 - 11 (7) Emergency assistance to victims, such as medical care,
12 transportation to a ~~shelter~~, *shelter* or to a hospital for treatment
13 when necessary, and police standbys for removing personal
14 property and assistance in safe passage out of the victim's
15 residence.
 - 16 (8) Assisting victims in pursuing criminal options, such as giving
17 the victim the report number and directing the victim to the proper
18 investigation unit.
 - 19 (9) Furnishing written notice to victims at the scene, including,
20 but not limited to, all of the following information:
 - 21 (A) A statement informing the victim that despite official
22 restraint of the person alleged to have committed domestic
23 violence, the restrained person may be released at any time.
 - 24 (B) A statement that, "For further information about a shelter
25 you may contact ____."
 - 26 (C) A statement that, "For information about other services in
27 the community, where available, you may contact ____."
 - 28 (D) A statement that, "For information about the California
29 Victims' Compensation Program, you may contact
30 1-800-777-9229."
 - 31 (E) A statement informing the victim of domestic violence that
32 ~~he or she~~ *the victim* may ask the district attorney to file a criminal
33 complaint.
 - 34 (F) A statement informing the victim of the right to go to the
35 superior court and file a petition requesting any of the following
36 orders for relief:
 - 37 (i) An order restraining the attacker from abusing the victim
38 and other family members.
 - 39 (ii) An order directing the attacker to leave the household.

- 1 (iii) An order preventing the attacker from entering the
2 residence, school, business, or place of employment of the victim.
- 3 (iv) An order awarding the victim or the other parent custody
4 of or visitation with a minor child or children.
- 5 (v) An order restraining the attacker from molesting or
6 interfering with minor children in the custody of the victim.
- 7 (vi) An order directing the party not granted custody to pay
8 support of minor children, if that party has a legal obligation to do
9 so.
- 10 (vii) An order directing the defendant to make specified debit
11 payments coming due while the order is in effect.
- 12 (viii) An order directing that either or both parties participate
13 in counseling.
- 14 (G) A statement informing the victim of the right to file a civil
15 suit for losses suffered as a result of the abuse, including medical
16 expenses, loss of earnings, and other expenses for injuries sustained
17 and damage to property, and any other related expenses incurred
18 by the victim or any agency that shelters the victim.
- 19 (H) In the case of an alleged violation of subdivision (e) of
20 Section 243 or Section 261, 261.5, ~~262~~, 273.5, 286, 287, or 289,
21 or former Section *262 or 288a*, a “Victims of Domestic Violence”
22 card which shall include, but is not limited to, the following
23 information:
- 24 (i) The names and phone numbers of or local county hotlines
25 for, or both the phone numbers of and local county hotlines for,
26 local shelters for ~~battered women~~ *victims of domestic violence* and
27 rape victim counseling centers within the county, including those
28 centers specified in Section 13837, and their 24-hour counseling
29 service telephone numbers.
- 30 (ii) A simple statement on the proper procedures for a victim
31 to follow after a sexual assault.
- 32 (iii) A statement that sexual assault by a person who is known
33 to the victim, including sexual assault by a person who is the
34 spouse of the victim, is a crime.
- 35 (iv) A statement that domestic violence or assault by a person
36 who is known to the victim, including domestic violence or assault
37 by a person who is the spouse of the victim, is a crime.
- 38 (I) A statement informing the victim that strangulation may
39 cause internal injuries and encouraging the victim to seek medical
40 attention.

1 (10) Writing of reports.

2 (d) In the development of these policies and standards, each
3 local department is encouraged to consult with domestic violence
4 experts, such as the staff of the local shelter for ~~battered women~~
5 *victims of domestic violence* and their children. Departments may
6 use the response guidelines developed by the commission in
7 developing local policies.

8 *SEC. 69. Section 13750 of the Penal Code is amended to read:*

9 13750. (a) A city, county, city and county, or community-based
10 nonprofit organization may each establish a multiagency,
11 multidisciplinary family justice center to assist victims of domestic
12 violence, sexual assault, elder or dependent adult abuse, and human
13 trafficking, to ensure that victims of abuse are able to access all
14 needed services in one location in order to enhance victim safety,
15 increase offender accountability, and improve access to services
16 for victims of domestic violence, sexual assault, elder or dependent
17 adult abuse, and human trafficking.

18 (b) For purposes of this title, the following terms have the
19 following meanings:

20 (1) "Abuse" has the same meaning as set forth in Section 6203
21 of the Family Code.

22 (2) "Domestic violence" has the same meaning as set forth in
23 Section 6211 of the Family Code.

24 (3) "Sexual assault" means an act or attempt made punishable
25 by Section 220, 261, 261.5, ~~262~~, 264.1, 266c, 269, 285, 286, 287,
26 288, 288.5, 289, or 647.6, or former Section 262 *or* 288a.

27 (4) "Elder or dependent adult abuse" means an act made
28 punishable by Section 368.

29 (5) "Human trafficking" has the same meaning as set forth in
30 Section 236.1.

31 (c) For purposes of this title, family justice centers shall be
32 defined as multiagency, multidisciplinary service centers where
33 public and private agencies assign staff members on a full-time or
34 part-time basis in order to provide services to victims of domestic
35 violence, sexual assault, elder or dependent adult abuse, or human
36 trafficking from one location in order to reduce the number of
37 times victims must tell their story, reduce the number of places
38 victims must go for help, and increase access to services and
39 support for victims and their children. Staff members at a family

1 justice center may be comprised of, but are not limited to, the
2 following:

- 3 (1) Law enforcement personnel.
- 4 (2) Medical personnel.
- 5 (3) District attorneys and city attorneys.
- 6 (4) Victim-witness program personnel.
- 7 (5) Domestic violence shelter service staff.
- 8 (6) Community-based rape crisis, domestic violence, and human
9 trafficking advocates.
- 10 (7) Social service agency staff members.
- 11 (8) Child welfare agency social workers.
- 12 (9) County health department staff.
- 13 (10) City or county welfare and public assistance workers.
- 14 (11) Nonprofit agency counseling professionals.
- 15 (12) Civil legal service providers.
- 16 (13) Supervised volunteers from partner agencies.
- 17 (14) Other professionals providing services.

18 (d) ~~Nothing in this~~ *This section is intended to does not* abrogate
19 existing laws regarding privacy or information sharing. Family
20 justice center staff members shall comply with the laws governing
21 their respective professions.

22 (e) Victims of crime shall not be denied services on the grounds
23 of criminal history. ~~No~~ A criminal history search shall *not* be
24 conducted of a victim at a family justice center without the victim's
25 written consent unless the criminal history search is pursuant to a
26 criminal investigation.

27 (f) Victims of crime shall not be required to participate in the
28 criminal justice system or cooperate with law enforcement in order
29 to receive counseling, medical care, or other services at a family
30 justice center.

31 (g) (1) Each family justice center shall consult with
32 community-based domestic violence, sexual assault, elder or
33 dependent adult abuse, and human trafficking agencies in
34 partnership with survivors of violence and abuse and their
35 advocates in the operations process of the family justice center,
36 and shall establish procedures for the ongoing input, feedback,
37 and evaluation of the family justice center by survivors of violence
38 and abuse and community-based crime victim service providers
39 and advocates.

1 (2) Each family justice center shall develop policies and
2 procedures, in collaboration with local community-based crime
3 victim service providers and local survivors of violence and abuse,
4 to ensure coordinated services are provided to victims and to
5 enhance the safety of victims and professionals at the family justice
6 center who participate in affiliated survivor-centered support or
7 advocacy groups. Each family justice center shall maintain a formal
8 client feedback, complaint, and input process to address client
9 concerns about services provided or the conduct of any family
10 justice center professionals, agency partners, or volunteers
11 providing services in the family justice center.

12 (h) (1) Each family justice center shall maintain a client consent
13 policy and shall be in compliance with all state and federal laws
14 protecting the confidentiality of the types of information and
15 documents that may be in a victim's file, including, but not limited
16 to, medical, legal, and victim counselor records. Each family justice
17 center shall have a designated privacy officer to develop and
18 oversee privacy policies and procedures consistent with state and
19 federal privacy laws and the Fair Information Practice Principles
20 promulgated by the United States Department of Homeland
21 Security. At no time shall a victim be required to sign a client
22 consent form to share information in order to access services.

23 (2) Each family justice center is required to obtain informed,
24 written, reasonably time limited, consent from the victim before
25 sharing information obtained from the victim with any staff
26 member or agency partner, except as provided in paragraphs (3)
27 and (4).

28 (3) A family justice center is not required to obtain consent from
29 the victim before sharing information obtained from the victim
30 with any staff member or agency partner if the person is a mandated
31 reporter, a peace officer, or a member of the prosecution team and
32 is required to report or disclose specific information or incidents.
33 These persons shall inform the victim that they may share
34 information obtained from the victim without the victim's consent.

35 (4) Each family justice center is required to inform the victim
36 that information shared with staff members or partner agencies at
37 a family justice center may be shared with law enforcement
38 professionals without the victim's consent if there is a mandatory
39 duty to report, or the client is a danger to ~~himself~~ *themselves* or

1 herself, or others. Each family justice center shall obtain written
2 acknowledgment that the victim has been informed of this policy.

3 (5) Consent by a victim for sharing information within a family
4 justice center pursuant to this section shall not be construed as a
5 universal waiver of any existing evidentiary privilege that makes
6 confidential any communications or documents between the victim
7 and any service provider, including, but not limited to, any lawyer,
8 advocate, sexual assault or domestic violence counselor as defined
9 in Section 1035.2 or 1037.1 of the Evidence Code, human
10 trafficking caseworker as defined in Section 1038.2 of the Evidence
11 Code, therapist, doctor, or nurse. Any oral or written
12 communication or any document authorized by the victim to be
13 shared for the purposes of enhancing safety and providing more
14 effective and efficient services to the victim of domestic violence,
15 sexual assault, elder or dependent adult abuse, or human trafficking
16 shall not be disclosed to any third party, unless that third-party
17 disclosure is authorized by the victim, or required by other state
18 or federal law or by court order.

19 (i) An individual staff member, volunteer, or agency that has
20 victim information governed by this section shall not be required
21 to disclose that information unless the victim has consented to the
22 disclosure or it is otherwise required by other state or federal law
23 or by court order.

24 (j) A disclosure of information consented to by the victim in a
25 family justice center, made for the purposes of clinical assessment,
26 risk assessment, safety planning, or service delivery, shall not be
27 deemed a waiver of any privilege or confidentiality provision
28 contained in Sections 2263, 2918, 4982, and 6068 of the Business
29 and Professions Code, the lawyer-client privilege protected by
30 Article 3 (commencing with Section 950) of Chapter 4 of Division
31 8 of the Evidence Code, the physician-patient privilege protected
32 by Article 6 (commencing with Section 990) of Chapter 4 of
33 Division 8 of the Evidence Code, the psychotherapist-patient
34 privilege protected by Article 7 (commencing with Section 1010)
35 of Chapter 4 of Division 8 of the Evidence Code, the sexual assault
36 counselor-victim privilege protected by Article 8.5 (commencing
37 with Section 1035) of Chapter 4 of Division 8 of the Evidence
38 Code, or the domestic violence counselor-victim privilege protected
39 by Article 8.7 (commencing with Section 1037) of Chapter 4 of
40 Division 8 of the Evidence Code.

1 *SEC. 70. Section 13837 of the Penal Code is amended to read:*

2 13837. (a) (1) The California Office of Emergency Services
3 (Cal OES) shall provide grants to proposed and existing child
4 sexual exploitation and child sexual abuse victim counseling
5 centers and prevention programs, including programs for minor
6 victims of human trafficking. Grant recipients shall provide
7 appropriate in-person counseling and referral services during
8 normal business hours, and maintain other standards or services
9 ~~which~~ *that* shall be determined to be appropriate by the advisory
10 committee established pursuant to Section 13836 as grant
11 conditions. The advisory committee shall identify the criteria to
12 be utilized in awarding the grants provided by this chapter before
13 any funds are allocated.

14 ~~In~~

15 (2) *In* order to be eligible for funding pursuant to this chapter,
16 the centers shall demonstrate an ability to receive and make use
17 of any funds available from governmental, voluntary, philanthropic,
18 or other sources ~~which~~ *that* may be used to augment any state funds
19 appropriated for purposes of this chapter. Each center receiving
20 funds pursuant to this chapter shall make every attempt to qualify
21 for any available federal funding.

22 ~~State~~

23 (3) *State* funds provided to establish centers shall be utilized
24 when possible, as determined by the advisory committee, to expand
25 the program and shall not be expended to reduce fiscal support
26 from other public or private sources. The centers shall maintain
27 quarterly and final fiscal reports in a form to be prescribed by the
28 administering agency. In granting funds, the advisory committee
29 shall give priority to centers which are operated in close proximity
30 to medical treatment facilities.

31 (b) (1) It is the intent of the Legislature that a goal or purpose
32 of the Cal OES is to ensure that all victims of sexual assault and
33 rape receive comprehensive, quality services, and to decrease the
34 incidence of sexual assault through school and community
35 education and prevention programs.

36 (2) The Cal OES and the advisory committee established
37 pursuant to Section 13836 shall collaboratively administer sexual
38 assault/rape crisis center victim services programs and provide
39 grants to proposed and existing sexual assault services programs
40 (SASPs) operating local rape victim centers and prevention

1 programs. All SASPs shall provide the services in subparagraphs
2 (A) to (G), inclusive, and to the extent federal funding is made
3 available, shall also provide the service described in subparagraph
4 (H). The Cal OES shall provide financial and technical assistance
5 to SASPs in implementing the following services:

- 6 (A) Crisis intervention, 24 hours per day, seven days per week.
- 7 (B) Followup counseling services.
- 8 (C) In-person counseling, including group counseling.
- 9 (D) Accompaniment services.
- 10 (E) Advocacy services.
- 11 (F) Information and referrals to victims and the general public.
- 12 (G) Community education presentations.

13 (H) Rape prevention presentations and self-defense programs.
14 (3) The funding process for distributing grant awards to SASPs
15 shall be administered as follows:

16 (A) The Cal OES and the advisory committee established
17 pursuant to Section 13836 shall collaboratively adopt each of the
18 following:

19 (i) The process and standards for determining whether to grant,
20 renew, or deny funding to any SASP applying or reapplying for
21 funding under the terms of the program.

22 (ii) For SASPs applying for grants under the RFP process
23 described in subparagraph (B), a system for grading grant
24 applications in relation to the standards established pursuant to
25 clause (i), and an appeal process for applications that are denied.
26 A description of this grading system and appeal process shall be
27 provided to all SASPs as part of the application required under the
28 RFP process.

29 (iii) For SASPs reapplying for funding under the RFA process
30 described in subparagraph (D), a system for grading the
31 performance of SASPs in relation to the standards established
32 pursuant to clause (i), and an appeal process for decisions to deny
33 or reduce funding. A description of this grading system and appeal
34 process shall be provided to all SASPs receiving grants under this
35 program.

36 (B) Grants for centers that have previously not been funded or
37 were not funded in the previous cycle shall be awarded as a result
38 of a competitive request for proposal (RFP) process. The RFP
39 process shall comply with all applicable state and federal statutes
40 for sexual assault/rape crisis center funding, and to the extent

1 possible, the response to the RFP shall not exceed 25 narrative
2 pages, excluding attachments.

3 (C) Grants shall be awarded to SASPs that propose to maintain
4 services previously granted funding pursuant to this section, to
5 expand existing services or create new services, or to establish
6 new sexual assault/rape crisis centers in underserved or unserved
7 areas. Each grant shall be awarded for a three-year term.

8 (D) SASPs reapplying for grants are not subject to a competitive
9 bidding grant process, but are subject to a request for application
10 (RFA) process. The RFA process for a SASP reapplying for grant
11 funds shall ~~consist~~ *consist*, in ~~part~~ *part*, of an assessment of the
12 past performance history of the SASP in relation to the standards
13 established pursuant to subparagraph (A). The RFA process shall
14 comply with all applicable state and federal statutes for sexual
15 assault/rape crisis center funding, and to the extent possible, the
16 response to the RFA shall not exceed 10 narrative pages, excluding
17 attachments.

18 (E) Any SASP funded through this program in the previous
19 grant cycle shall be funded upon reapplication, unless its past
20 performance history fails to meet the standards established pursuant
21 to clause (i) of subparagraph (A).

22 (F) The Cal OES shall conduct a minimum of one site visit
23 every three years for each agency funded to provide sexual
24 assault/rape crisis centers. The purpose of the site visit shall be to
25 conduct a performance assessment of, and provide subsequent
26 technical assistance for, each center visited. The performance
27 assessment shall include, but need not be limited to, a review of
28 all of the following:

- 29 (i) Progress in meeting program goals and objectives.
- 30 (ii) Agency organization and facilities.
- 31 (iii) Personnel policies, files, and training.
- 32 (iv) Recordkeeping, budgeting, and expenditures.
- 33 (v) Documentation, data collection, and client confidentiality.

34 (G) After each site visit conducted pursuant to subparagraph
35 (F), the Cal OES shall provide a written report to the SASP
36 summarizing the performance of the SASP, any deficiencies noted,
37 any corrective action needed, and a deadline for corrective action
38 to be completed. The Cal OES shall also develop a corrective
39 action plan for verifying the completion of ~~any~~ corrective action
40 required. The Cal OES shall submit its written report to the SASP

1 no more than 60 days after the site visit. A grant under the RFA
2 process shall not be denied if the SASP did not receive a site visit
3 during the previous three years, unless the Cal OES is aware of
4 criminal violations relative to the administration of grant funding.

5 (H) SASPs receiving written reports of deficiencies or orders
6 for corrective action after a site visit shall be given no less than
7 six months' time to take corrective action before the deficiencies
8 or failure to correct may be considered in the next RFA process.
9 However, the Cal OES shall have the discretion to reduce the time
10 to take corrective action in cases where the deficiencies present a
11 significant health or safety risk or when other severe circumstances
12 are found to exist. If corrective action is deemed necessary, and a
13 SASP fails to comply, or if other deficiencies exist that, in the
14 judgment of the Cal OES, cannot be corrected, the Cal OES shall
15 determine, using its grading system, whether continued funding
16 for the SASP should be reduced or denied altogether. If a SASP
17 has been determined to be deficient, the Cal OES may, at any point
18 during the SASP's funding cycle following the expiration of the
19 period for corrective action, deny or reduce ~~any~~ further funding.

20 (I) If a SASP applies or reapplies for funding pursuant to this
21 section and that funding is denied or reduced, the decision to deny
22 or reduce funding shall be provided in writing to the SASP, along
23 with a written explanation of the reasons for the reduction or denial
24 made in accordance with the grading system for the RFP or RFA
25 process. Except as otherwise provided, any appeal of the decision
26 to deny or reduce funding shall be made in accordance with the
27 appeal process established by the Cal OES. The appeal process
28 shall allow a SASP a minimum of 30 days to appeal after a decision
29 to deny or reduce funding. All pending appeals shall be resolved
30 before final funding decisions are reached.

31 (J) It is the intent of the Legislature that priority for additional
32 funds that become available be given to currently funded, new, or
33 previously unfunded SASPs for expansion of services. However,
34 the Cal OES may determine when expansion is needed to
35 accommodate underserved or unserved areas. If supplemental
36 funding is unavailable, the Cal OES shall have the authority to
37 lower the base level of grants to all currently funded SASPs in
38 order to provide funding for currently funded, new, or previously
39 unfunded SASPs that will provide services in underserved or
40 unserved areas. However, to the extent reasonable, funding

1 reductions shall be reduced proportionately among all currently
2 funded SASPs. After the amount of funding reductions has been
3 determined, SASPs that are currently funded and those applying
4 for funding shall be notified of changes in the available level of
5 funding prior to the next application process. Funding reductions
6 made under this paragraph shall not be subject to appeal.

7 (K) Notwithstanding any other provision of this section, the Cal
8 OES may reduce funding to a SASP funded pursuant to this section
9 if federal funding support is reduced. Funding reductions as a result
10 of a reduction in federal funding are not subject to appeal.

11 (L) This section shall not be construed to supersede any function
12 or duty required by federal acts, rules, regulations, or guidelines
13 for the distribution of federal grants.

14 (M) As a condition of receiving funding pursuant to this section,
15 a SASP shall do each of the following:

16 (i) Demonstrate an ability to receive and make use of any funds
17 available from governmental, voluntary, philanthropic, or other
18 sources that may be used to augment any state funds appropriated
19 for purposes of this chapter.

20 (ii) Make every attempt to qualify for any available federal
21 funding.

22 (N) For the purposes of this paragraph, “sexual assault” means
23 an act or attempt made punishable by Section 220, 261, 261.5,
24 ~~262~~, 264.1, 266c, 285, 286, 287, 288, or 647.6, or former Section
25 ~~262~~ or 288a.

26 (O) For the purposes of this paragraph, “sexual assault services
27 program” or “SASP” means an agency operating a sexual
28 assault/rape crisis center.

29 *SEC. 71. Section 14205 of the Penal Code is amended to read:*

30 14205. (a) The online missing persons registry shall accept
31 and generate complete information on a missing person.

32 (b) The information on a missing person shall be retrievable by
33 any of the following:

34 (1) The person’s name.

35 (2) The person’s date of birth.

36 (3) The person’s social security number.

37 (4) Whether a dental chart has been received, coded, and entered
38 into the National Crime Information Center Missing Person System
39 by the Attorney General.

1 (5) The person’s physical description, including hair and eye
2 color and body marks.

3 (6) The person’s known associates.

4 (7) The person’s last known location.

5 (8) The name or assumed name of the abductor, if applicable,
6 other pertinent information relating to the abductor or the assumed
7 abductor, or both.

8 (9) Any other information, as deemed appropriate by the
9 Attorney General.

10 (c) The Attorney General, in consultation with local law
11 enforcement agencies and other user groups, shall develop the
12 form in which information shall be entered into the system.

13 (d) The Attorney General shall establish and maintain within
14 the center a separate, confidential historic database relating to
15 missing children and at-risk adults. The historic database may be
16 used only by the center for statistical and research purposes. The
17 historic database shall be set up to categorize cases relating to
18 missing children and at-risk adults by type. These types shall
19 include the following:

20 (1) Runaways.

21 (2) Voluntary missing.

22 (3) Lost.

23 (4) Abduction involving movement of the victim in the
24 commission of the crime or sexual exploitation.

25 (5) Nonfamily abduction.

26 (6) Family abduction.

27 (7) Any other categories as determined by the Attorney General.

28 (e) In addition, the data shall include the number of missing
29 children and missing at-risk adults in this state and the category
30 of each case.

31 (f) The center may supply information about specific cases from
32 the historic database to a local police department, sheriff’s
33 department, or district attorney, only in connection with an
34 investigation by the police department, sheriff’s department, or
35 district attorney of a missing person case or a violation or attempted
36 violation of Section 220, 261.5, ~~262~~, 273a, 273d, or 273.5, or any
37 sex offense listed in Section 290, except for the offense specified
38 in subdivision (d) of Section 243.4.

39 *SEC. 72. Section 5164 of the Public Resources Code is*
40 *amended to read:*

1 5164. (a) (1) A county, city, city and county, or special district
2 shall not hire a person for employment, or hire a volunteer to
3 perform services, at a county, city, city and county, or special
4 district operated park, playground, recreational center, or beach
5 used for recreational purposes, in a position having supervisory
6 or disciplinary authority over a minor, if that person has been
7 convicted of an offense specified in paragraph (2).

8 (2) (A) A violation or attempted violation of Section 220, 261.5,
9 ~~262~~, 273a, 273d, or 273.5 of the Penal Code, or a sex offense listed
10 in Section 290 of the Penal Code, except for the offense specified
11 in subdivision (d) of Section 243.4 of the Penal Code.

12 (B) A felony or misdemeanor conviction specified in
13 subparagraph (C) within 10 years of the date of the employer's
14 request.

15 (C) A felony conviction that is over 10 years old, if the subject
16 of the request was incarcerated within 10 years of the employer's
17 request, for a violation or attempted violation of an offense
18 specified in Chapter 3 (commencing with Section 207) of Title 8
19 of Part 1 of the Penal Code, Section 211 or 215 of the Penal Code,
20 wherein it is charged and proved that the defendant personally
21 used a deadly or dangerous weapon, as provided in subdivision
22 (b) of Section 12022 of the Penal Code, in the commission of that
23 offense, Section 217.1 of the Penal Code, Section 236 of the Penal
24 Code, an offense specified in Chapter 9 (commencing with Section
25 240) of Title 8 of Part 1 of the Penal Code, or an offense specified
26 in subdivision (c) of Section 667.5 of the Penal Code, provided
27 that a record of a misdemeanor conviction shall not be transmitted
28 to the requester unless the subject of the request has a total of three
29 or more misdemeanor convictions, or a combined total of three or
30 more misdemeanor and felony convictions, for violations listed in
31 this section within the 10-year period immediately preceding the
32 employer's request or has been incarcerated for any of those
33 convictions within the preceding 10 years.

34 (b) (1) To give effect to this section, a county, city, city and
35 county, or special district shall require each such prospective
36 employee or volunteer to complete an application that inquires as
37 to whether or not that individual has been convicted of an offense
38 specified in subdivision (a). The county, city, city and county, or
39 special district shall screen, pursuant to Section 11105.3 of the
40 Penal Code, any such prospective employee or volunteer, having

1 supervisory or disciplinary authority over a minor, for that person's
2 criminal background.

3 (2) A local agency request for Department of Justice records
4 pursuant to this subdivision shall include the prospective
5 employee's or volunteer's fingerprints, which may be taken by the
6 local agency, and any other data specified by the Department of
7 Justice. The request shall be made on a form approved by the
8 Department of Justice. A fee shall not be charged to the local
9 agency for requesting the records of a prospective volunteer
10 pursuant to this subdivision.

11 (3) A county, city, city and county, or special district may charge
12 a prospective employee or volunteer described in subdivision (a)
13 a fee to cover all of the county, city, city and county, or special
14 district's costs attributable to the requirements imposed by this
15 section.

16 *SEC. 73. Section 4467 of the Vehicle Code is amended to read:*

17 4467. (a) Notwithstanding any other ~~provision~~ of law, the
18 department shall issue new and different license plates immediately
19 upon request to the registered owner of a vehicle who appears in
20 person and submits a completed application, if all of the following
21 are provided:

22 (1) Proof of ownership of the vehicle that is acceptable to the
23 department.

24 (2) A driver's license or identification card containing a picture
25 of the licensee or cardholder issued to the registered owner by the
26 department pursuant to Chapter 1 (commencing with Section
27 12500) of Division 6. The department shall conduct a search of
28 its records to verify the authenticity of any document submitted
29 under this paragraph.

30 (3) The previously issued license plates from the vehicle.

31 (4) The payment of required fees under subdivision (c) of
32 Section 4850 and subdivision (b) of Section 9265 for the issuance
33 of duplicate license plates.

34 (5) One of the following:

35 (A) A copy of a police report, court documentation, or other
36 law enforcement documentation identifying the registered owner
37 of the vehicle as the victim of an incident of domestic violence,
38 as specified in Section 1708.6 of the Civil Code, the subject of
39 stalking, as specified in Section 1708.7 of the Civil Code or Section
40 646.9 of the Penal Code, the victim of a rape, as defined in Section

1 261 or *former Section 262* of the Penal Code, or the victim of a
2 sexual battery, as defined in Section 1708.5 of the Civil Code.

3 (B) A written acknowledgment, dated within 30 days of
4 submission, on the letterhead of a domestic violence agency or a
5 rape crisis center, that the registered owner is actively seeking
6 assistance or has sought assistance from that agency within the
7 past year.

8 (C) An active protective order as defined in Section 6218 of the
9 Family Code, or issued pursuant to Section 527.6 or 527.8 of the
10 Code of Civil Procedure, ~~which~~ *that* names the registered owner
11 as a protected party.

12 (b) Subdivision (a) does not apply to special license plates issued
13 under Article 8 (commencing with Section 5000) of Chapter 1 of
14 Division 3, special interest license plates issued under Article 8.4
15 (commencing with Section 5060) of Chapter 1 of Division 3, or
16 environmental license plates issued under Article 8.5 (commencing
17 with Section 5100) of Chapter 1 of Division 3.

18 *SEC. 74. Section 6500 of the Welfare and Institutions Code is*
19 *amended to read:*

20 6500. (a) For purposes of this article, the following definitions
21 shall apply:

22 (1) “Dangerousness to self or others” shall include, but not be
23 limited to, a finding of incompetence to stand trial pursuant to the
24 provisions of Chapter 6 (commencing with Section 1367) of Title
25 10 of Part 2 of the Penal Code when the defendant has been charged
26 with murder, mayhem, aggravated mayhem, a violation of Section
27 207, 209, or 209.5 of the Penal Code in which the victim suffers
28 intentionally inflicted great bodily injury, robbery perpetrated by
29 torture or by a person armed with a dangerous or deadly weapon
30 or in which the victim suffers great bodily injury, carjacking
31 perpetrated by torture or by a person armed with a dangerous or
32 deadly weapon or in which the victim suffers great bodily injury,
33 a violation of subdivision (b) of Section 451 of the Penal Code, a
34 violation of paragraph (1) or (2) of subdivision (a) of *former*
35 Section 262 or paragraph (2) or (3) of subdivision (a) of Section
36 261 of the Penal Code, a violation of Section 288 of the Penal
37 Code, any of the following acts when committed by force, violence,
38 duress, menace, fear of immediate and unlawful bodily injury on
39 the victim or another person: a violation of paragraph (1) or (2) of
40 subdivision (a) of *former Section 262* of the Penal Code, a violation

1 of Section 264.1, 286, or 287 of, or former Section 288a of, the
2 Penal Code, or a violation of subdivision (a) of Section 289 of the
3 Penal Code; a violation of Section 459 of the Penal Code in the
4 first degree, assault with intent to commit murder, a violation of
5 Section 220 of the Penal Code in which the victim suffers great
6 bodily injury, a violation of Section 18725, 18740, 18745, 18750,
7 or 18755 of the Penal Code, or if the defendant has been charged
8 with a felony involving death, great bodily injury, or an act ~~which~~
9 *that* poses a serious threat of bodily harm to another person.

10 (2) “Developmental disability” shall have the same meaning as
11 defined in subdivision (a) of Section 4512.

12 (b) (1) A person with a developmental disability may be
13 committed to the State Department of Developmental Services for
14 residential placement other than in a ~~state~~ developmental center
15 or state-operated community facility, as provided in subdivision
16 (a) of Section 6509, if the person is found to be a danger to self or
17 others.

18 (A) An order of commitment made pursuant to this paragraph
19 shall expire automatically one year after the order of commitment
20 is made.

21 (B) This paragraph does not prohibit any party enumerated in
22 Section 6502 from filing subsequent petitions for additional periods
23 of commitment. If subsequent petitions are filed, the procedures
24 followed shall be the same as with the initial petition for
25 commitment.

26 (2) A person with a developmental disability shall not be
27 committed to the State Department of Developmental Services for
28 placement in a ~~state~~ developmental center or state-operated
29 community facility pursuant to this article unless the person meets
30 the criteria for admission to a developmental center or
31 state-operated community facility pursuant to paragraph (2), (3),
32 (4), (5), or (7) of subdivision (a) of Section 7505 and is dangerous
33 to self or others or the person currently is a resident of a state
34 developmental center or state-operated community facility pursuant
35 to an order of commitment made pursuant to this article prior to
36 July 1, 2012, and is being recommitted pursuant to paragraph (4)
37 of this subdivision.

38 (3) If the person with a developmental disability is in the care
39 or treatment of a state hospital, developmental center, or other
40 facility at the time a petition for commitment is filed pursuant to

1 this article, proof of a recent overt act while in the care and
2 treatment of a state hospital, developmental center, or other facility
3 is not required in order to find that the person is a danger to self
4 or others.

5 (4) If subsequent petitions are filed with respect to a resident
6 of a ~~state~~ developmental center or a state-operated community
7 facility committed prior to July 1, 2012, the procedures followed
8 and criteria for recommitment shall be the same as with the initial
9 petition for commitment.

10 (5) In any proceedings conducted under the authority of this
11 article, the person alleged to have a developmental disability shall
12 be informed of their right to counsel by the court and, if the person
13 does not have an attorney for the proceedings, the court shall
14 immediately appoint the public defender or other attorney to
15 represent them. The person shall pay the cost for the legal services
16 if the person is able to do so. At any judicial proceeding under this
17 article, allegations that a person has a developmental disability
18 and is dangerous to self or others shall be presented by the district
19 attorney for the county unless the board of supervisors, by
20 ordinance or resolution, delegates this authority to the county
21 counsel. The regional center shall inform the clients' rights
22 advocate, as described in Section 4433, when a petition is filed
23 under this section and when a petition expires. The clients' rights
24 advocate for the regional center may attend any judicial
25 proceedings to assist in protecting the individual's rights.

26 (c) (1) An order of commitment made pursuant to this article
27 with respect to a person described in paragraph (3) of subdivision
28 (a) of Section 7505 shall expire automatically one year after the
29 order of commitment is made. This section does not prohibit a
30 party enumerated in Section 6502 from filing subsequent petitions
31 for additional periods of commitment. If subsequent petitions are
32 filed, the procedures followed shall be the same as with an initial
33 petition for commitment.

34 (2) An order of commitment made pursuant to this article on or
35 after July 1, 2012, with respect to the admission to a developmental
36 center or state-operated community facility of a person described
37 in paragraph (2), (3), (4), or (7) of subdivision (a) of Section 7505
38 shall expire automatically six months after the earlier of the order
39 of commitment pursuant to this section or the order of a placement
40 in a developmental center pursuant to Section 6506, unless the

1 regional center, prior to the expiration of the order of commitment,
2 notifies the court in writing of the need for an extension. The
3 required notice shall state facts demonstrating that the individual
4 continues to be in acute crisis, as defined in paragraph (1) of
5 subdivision (d) of Section 4418.7, and the justification for the
6 requested extension, and shall be accompanied by the
7 comprehensive assessment and plan described in subdivision (e)
8 of Section 4418.7. An order granting an extension shall not extend
9 the total period of commitment beyond one year, including a
10 placement in a developmental center pursuant to Section 6506. If,
11 prior to expiration of one year, the regional center notifies the court
12 in writing of facts demonstrating that, due to circumstances beyond
13 the regional center's control, the placement cannot be made prior
14 to expiration of the extension, and the court determines that good
15 cause exists, the court may grant one further extension of up to 30
16 days. The court may also issue any orders the court deems
17 appropriate to ensure that necessary steps are taken to ensure that
18 the individual can be safely and appropriately transitioned to the
19 community in a timely manner. The required notice shall state
20 facts demonstrating that the regional center has made significant
21 progress implementing the plan described in subdivision (e) of
22 Section 4418.7 and that extraordinary circumstances exist beyond
23 the regional center's control that have prevented the plan's
24 implementation. This paragraph does not preclude the individual
25 or a person acting on the person's behalf from making a request
26 for release pursuant to Section 4800, or counsel for the individual
27 from filing a petition for habeas corpus pursuant to Section 4801.
28 Notwithstanding subdivision (a) of Section 4801, for purposes of
29 this paragraph, judicial review shall be in the superior court of the
30 county that issued the order of commitment pursuant to this section.

31 (3) An order of commitment made pursuant to this article on or
32 after January 1, 2020, with respect to the admission to an institution
33 for mental disease, as described in subparagraph (C) of paragraph
34 (9) of subdivision (a) of Section 4648, shall expire automatically
35 six months after the earlier of the order of commitment pursuant
36 to this section, the order of a placement in an institution for mental
37 disease pursuant to Section 6506, or the date the regional center
38 placed the individual in the institution for mental disease, unless
39 the regional center notifies the court in writing of the need for an
40 extension. The required notice shall state facts demonstrating that

1 the individual continues to be in acute crisis, as defined in
2 paragraph (1) of subdivision (d) of Section 4418.7, and the
3 justification for the requested extension, and shall be accompanied
4 by the comprehensive assessment and plan described in clause (v)
5 of subparagraph (C) of paragraph (9) of subdivision (a) of Section
6 4648. An order granting an extension shall not extend the total
7 period of commitment beyond one year, including a placement in
8 an institution for mental disease pursuant to Section 6506. If, prior
9 to expiration of one year, the regional center notifies the court in
10 writing of facts demonstrating that, due to circumstances beyond
11 the regional center's control, the placement cannot be made prior
12 to expiration of the extension, and the court determines that good
13 cause exists, the court may grant one further extension of up to 30
14 days. The court may also issue any orders the court deems
15 appropriate in order for necessary steps to be taken to ensure that
16 the individual can be safely and appropriately transitioned to the
17 community in a timely manner. The required notice shall state
18 facts demonstrating that the regional center has made significant
19 progress implementing the plan described in clause (v) of
20 subparagraph (C) of paragraph (9) of subdivision (a) of Section
21 4648 and that extraordinary circumstances exist beyond the
22 regional center's control that have prevented the plan's
23 implementation. This paragraph does not preclude the individual
24 or any person acting on their own behalf from making a request
25 for release pursuant to Section 4800, or counsel for the individual
26 from filing a petition for habeas corpus pursuant to Section 4801.
27 Notwithstanding subdivision (a) of Section 4801, for purposes of
28 this paragraph, judicial review shall be in the superior court of the
29 county that issued the order of commitment pursuant to this section.

30 *SEC. 75. Section 15610.63 of the Welfare and Institutions Code*
31 *is amended to read:*

32 15610.63. "Physical abuse" means any of the following:

- 33 (a) Assault, as defined in Section 240 of the Penal Code.
- 34 (b) Battery, as defined in Section 242 of the Penal Code.
- 35 (c) Assault with a deadly weapon or force likely to produce
36 great bodily injury, as defined in Section 245 of the Penal Code.
- 37 (d) Unreasonable physical constraint, or prolonged or continual
38 deprivation of food or water.
- 39 (e) Sexual assault, that means any of the following:

1 (1) Sexual battery, as defined in Section 243.4 of the Penal
2 Code.

3 (2) Rape, as defined in Section 261 of the Penal Code.

4 (3) Rape in concert, as described in Section 264.1 of the Penal
5 Code.

6 ~~(4) Spousal rape, as defined in Section 262 of the Penal Code.~~

7 ~~(5)~~

8 (4) Incest, as defined in Section 285 of the Penal Code.

9 ~~(6)~~

10 (5) Sodomy, as defined in Section 286 of the Penal Code.

11 ~~(7)~~

12 (6) Oral copulation, as defined in Section 287 or former Section
13 288a of the Penal Code.

14 ~~(8)~~

15 (7) Sexual penetration, as defined in Section 289 of the Penal
16 Code.

17 ~~(9)~~

18 (8) Lewd or lascivious acts as defined in paragraph (2) of
19 subdivision (b) of Section 288 of the Penal Code.

20 (f) Use of a physical or chemical restraint or psychotropic
21 medication under any of the following conditions:

22 (1) For punishment.

23 (2) For a period beyond that for which the medication was
24 ordered pursuant to the instructions of a physician and surgeon
25 licensed in the State of California, who is providing medical care
26 to the elder or dependent adult at the time the instructions are
27 given.

28 (3) For any purpose not authorized by the physician and surgeon.

29 *SEC. 76. No reimbursement is required by this act pursuant*
30 *to Section 6 of Article XIII B of the California Constitution because*
31 *the only costs that may be incurred by a local agency or school*
32 *district will be incurred because this act creates a new crime or*
33 *infraction, eliminates a crime or infraction, or changes the penalty*
34 *for a crime or infraction, within the meaning of Section 17556 of*
35 *the Government Code, or changes the definition of a crime within*
36 *the meaning of Section 6 of Article XIII B of the California*
37 *Constitution.*

38 ~~SECTION 1. Section 485 of the Penal Code is amended to~~
39 ~~read:~~

1 485. ~~A person who finds lost property under circumstances~~
2 ~~that give the person knowledge of or means of inquiry as to the~~
3 ~~true owner, and who appropriates that property to their own use,~~
4 ~~or to the use of another person not entitled to the property, without~~
5 ~~first making reasonable and just efforts to find the owner and to~~
6 ~~restore the property to the owner, is guilty of theft.~~

O

Lew, Lisa (BOS)

From: BOS Legislation, (BOS)
To: Donovan, Dominica (BOS); Stefani, Catherine (BOS); BOS Legislation, (BOS)
Cc: Mullan, Andrew (BOS); Bennett, Samuel (BOS); Falzon, Frankie (BOS)
Subject: RE: D2 Introduction 5/11/2020 - AB 812

From: Donovan, Dominica (BOS) <dominica.donovan@sfgov.org>
Sent: Tuesday, May 11, 2021 3:27 PM
To: Stefani, Catherine (BOS) <catherine.stefani@sfgov.org>; BOS Legislation, (BOS) <bos.legislation@sfgov.org>
Cc: Mullan, Andrew (BOS) <andrew.mullan@sfgov.org>; Bennett, Samuel (BOS) <samuel.bennett@sfgov.org>; Falzon, Frankie (BOS) <frankie.falzon@sfgov.org>
Subject: RE: D2 Introduction 5/11/2020

Apologies! Attaching the bill here.

The League of Cities California has not taken a position on the matter, nor has the California State Association of Cities.

This matter is routine, not contentious in nature, and of no special interest.

Thank you!

-Dominica

From: Donovan, Dominica (BOS) <dominica.donovan@sfgov.org>
Sent: Tuesday, May 11, 2021 2:44 PM
To: BOS Legislation, (BOS) <bos.legislation@sfgov.org>
Cc: Mullan, Andrew (BOS) <andrew.mullan@sfgov.org>; Bennett, Samuel (BOS) <samuel.bennett@sfgov.org>; Falzon, Frankie (BOS) <frankie.falzon@sfgov.org>
Subject: D2 Introduction 5/11/2020

Dear Clerk Staff,

Please see the attached resolution for introduction today.

Thank you!

Dominica Donovan
Legislative Aide
Office of Supervisor Catherine Stefani
City and County of San Francisco
415-554-7752

Introduction Form

By a Member of the Board of Supervisors or Mayor

Time stamp
or meeting date

I hereby submit the following item for introduction (select only one):

- 1. For reference to Committee. (An Ordinance, Resolution, Motion or Charter Amendment).
- 2. Request for next printed agenda Without Reference to Committee.
- 3. Request for hearing on a subject matter at Committee.
- 4. Request for letter beginning : "Supervisor inquiries"
- 5. City Attorney Request.
- 6. Call File No. from Committee.
- 7. Budget Analyst request (attached written motion).
- 8. Substitute Legislation File No.
- 9. Reactivate File No.
- 10. Topic submitted for Mayoral Appearance before the BOS on

Please check the appropriate boxes. The proposed legislation should be forwarded to the following:

- Small Business Commission
- Youth Commission
- Ethics Commission
- Planning Commission
- Building Inspection Commission

Note: For the Imperative Agenda (a resolution not on the printed agenda), use the Imperative Form.

Sponsor(s):

Stefani

Subject:

Supporting California State Assembly Bill No. 812 (Garcia) – The Repeal of the Spousal Rape Exception Act

The text is listed:

Resolution supporting California State Assembly Bill No. 812, The Repeal of the Spousal Rape Exception Act, authored by State Assembly member Cristina Garcia, which would eliminate the “spousal rape exception” in the California Penal Code (Section 262) to ensure that “spousal rape” is treated and punished as seriously as rape of a non-spouse.

Signature of Sponsoring Supervisor: